

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

BCA Directional Drilling, LLC	)	
	)	
v.	)	Case No. 14002
	)	
Qwest Corporation d/b/a CenturyLink QC	)	

**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

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Conduit Markings  
 **USW DUCT** 

1

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

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

Caller Information

<b>Company:</b>	B C A CONSTRUCTION	<b>Fax Phone:</b>	
<b>Contact Name:</b>	ALLEN FLEMING	<b>Contact Phone:</b>	(503) 538-8244 Ext
<b>Address:</b>	11205 NE HURLEYS LANE NEWBERG, OR 97132	<b>Best Time:</b>	
<b>Alt Contact Name:</b>	ALLEN CELL CALL 1ST	<b>Contact Email:</b>	
		<b>Alt Contact Phone:</b>	(503) 518-7955

Dig Site Information

**Type of Work:** INSTALL MAINLINE FIBER  
**Work Being Done For:** TIME WARNER

Dig Site Location

<b>State:</b>	WA	<b>County:</b>	CLARK	<b>Place:</b>	VANCOUVER
<b>Address:</b>					
<b>Street:</b>	NE 18TH ST				
<b>Nearest Intersecting Street:</b>	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 11584

Remarks:

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

<b>Twpx:</b>	<b>Rng:</b>	<b>Sect-Qtr:</b>
Twpx 1N	Rng: 2E	Sect-Qtr: 38-SW,38-SE,1-NW,1-NE
<b>ExCoord NW Lat:</b> 45.8105878	<b>Long:</b> -122.5121289	<b>SE Lat:</b> 45.8061119 <b>Long:</b> -122.498189

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	NW NATURAL	(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)607-1555	(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)606-8474	(360)606-8474	(360)487-8177

Exhibit A

WASHINGTON ONE CALL

Ticket No: 13207584  
 Transmit Date: 08/08/2013  
 Original Call Date: 08/08/2013  
 Work to Begin Date: 08/13/2013

2 FULL BUSINE SS DAYS  
 Time: 08:30  
 Time: 08:28  
 Time: 00:00

NEW TICKET  
 Op: omaltp  
 Op: omaltp

Caller Information

Company: B C A CONSTRUCTION  
 Contact Name: ALLEN FLEMING  
 Address: 11205 NE HURLEYS LANE  
 NEWBERG, OR 97132  
 AIL Contact Name: ALLEN CELL CALL 1ST

Fax Phone:  
 Contact Phone: (503) 538-6244 Ext  
 Best Time:  
 Contact Email:  
 AIL Contact Phone: (503) 518-7955

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  
 Address:  
 Street: NE 18TH ST  
 Nearest Intersecting Street: NE 162ND AVE

Location of Work

SITE BEGINS AT SE CORNER OF ABV INTER. FROM THERE, MARK W APX 600FT ALONG S SIDE OF NE 18TH ST.

Remarks:

BEST INFORMATION AVAILABLE CALLER GAVE THOMAS GUIDE PAGE 538 E4

Twpx: Rng: Sect-Qtr:  
 Twpx: 2N Rng: 2E Sect-Qtr: 24-SW,24-SE,25-NW,25-NE  
 ExCoord NW Lat: 45.6360831 Lon: -122.5092107 SE Lat: 45.6360898 Lon: -122.5054769

Members

District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
CMCST03	COMCAST CABLE COMM.MNGMT, LLC	(253)933-2343	(503)617-1212	(866)873-8735
CPS01	CLARK PUBLIC SERVICES	(360)921-3524	(360)397-2446	(360)397-2446
CPU01	CLARK PUBLIC UTIL ELECTRIC	(253)933-2343	(360)892-8581	(360)892-3000
NWVN02	NWVNATURAL	(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)281-6081	(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





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...

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 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

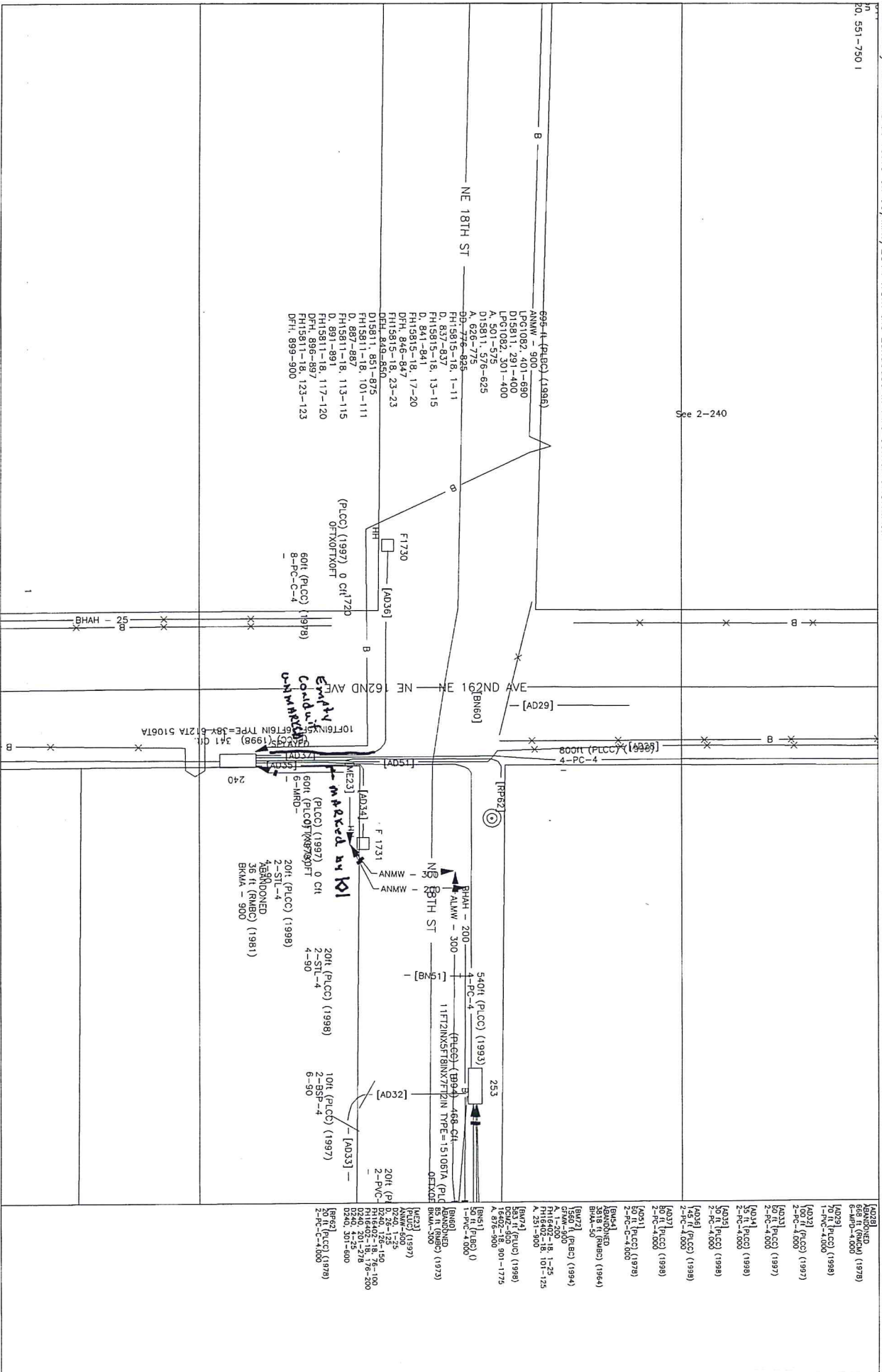
INVOICE NO: A275579-

<del>16.00 Hours MEDIUM TRUCK W/EQUIP</del>				
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 -----



See 2-240