

ORIGINAL

PORGES HAMLIN KNOWLES & PROUTY, PA
ATTORNEYS AT LAW

JASON M. DEPAOLA
CURTIS D. HAMLIN*
JAMES A. HARRISON**
MARY R. HAWK***
KEVIN J. KAPUSTA
SANJIT KAUR
TIMOTHY A. KNOWLES
JOSEPH L. NAJMY**
RICINDA H. PERRY
GREGORY J. PORGES***
STEVEN W. PROUTY
RACHEAL C. SAUER***
STEPHEN W. THOMPSON
RICHARD A. WELLER
OF COUNSEL:
HARRY W. HASKINS+

BRADENTON
1205 MANATEE
AVENUE WEST
BRADENTON, FL 34205
TEL: (941) 748-3770
FAX: (941) 746-4160

LAKEWOOD RANCH
6320 VENTURE DRIVE
SUITE 104
BRADENTON, FL 34202
TEL: (941) 907-3216
FAX: (941) 907-3947

SARASOTA
3400 SOUTH TAMiami TRAIL
SUITE 201
SARASOTA, FL 34239
TEL: (941) 366-1388
FAX: (941) 953-4284

April 7, 2005

* BOARD CERTIFIED
REAL ESTATE LAWYER
** ALSO CERTIFIED
PUBLIC ACCOUNTANT
*** ALSO ADMITTED IN NEW YORK
+ BOARD CERTIFIED IN CIVIL AND BUSINESS LAW
ALSO ADMITTED IN IOWA
++ ALSO ADMITTED IN MINNESOTA
+++ ALSO ADMITTED IN GEORGIA

REPLY TO:

Bradenton

VIA HAND DELIVERY

Mr. Ernie Padgett, County Administrator
1112 Manatee Avenue West, Suite 920
Bradenton, FL 34205

050000-07

COMMISSION
CLERK

APR - 8 PM 1:26

RECEIVED-FPSC

Re: Bright House Networks - Verizon Damage to Fiber-Optic Lines
OFN: 1653-48

Dear Mr. Padgett:

Please consider this letter to be a formal complaint filed on behalf of Bright House Networks ("BHN") against Verizon Florida, Inc. ("Verizon"), as a result of Utilities Services and Associates, Inc.'s, a Verizon contractor ("Contractor"), negligent destruction of BHN-owned fiber-optic lines located in the vicinity of 8800 State Road 70 East, at approximately 8:00 a.m. on Wednesday, April 6, 2005. This damage resulted in loss of cable, high-speed internet, and/or digital telephone to approximately 550 BHN customers.

In addition to the negligent destruction of BHN's fiber optic cable, Verizon and its Contractor are also negligent, perhaps intentionally, in two other respects:

1. Verizon and its Contractor failed to provide immediate notice regarding the destruction of BHN's fiber-optic line in order to permit BHN to send its personnel to the location as soon as possible to effect temporary or permanent repair of the damage as necessary to restore service to its customers. Had it not been for BHN's own sophisticated status monitoring system and, during the rest of the day, the many calls from out-of-service customers, BHN would have had no knowledge of the contact and damage caused by Verizon and its Contractor.
2. Verizon and its Contractor failed to immediately cease the drilling activity that may have caused further damage to BHN's underground cable.

DOCUMENT NUMBER DATE

03469 APR - 8 05

FPSC-COMMISSION CLERK

I am enclosing herein photographs which depict the damage to the BHN fiber-optic lines caused by Verizon and its Contractor. These photos also show, with great clarity, the painstaking manner by which BHN marked this area in orange to identify where its fiber-optic lines were located and the indiscriminate white markings over the BHN orange marks which denote Verizon's dig location. Since the area was so well marked by BHN and then overmarked by Verizon's Contractor, it would appear that Verizon's Contractor was grossly or intentionally negligent in the course of its work on behalf of Verizon.

The actions of Verizon and its Contractor constitute significant violations of Chapter 556, *Florida Statutes*, titled "Underground Facility Damage Prevention and Safety" and the terms of the Rights-of-Way System Construction Authorization Agreement entered into by Manatee County and Verizon. Such violations and breaches are more specifically described as follows:

- A. Under the provisions of Section 556.105(11), *Florida Statutes*, if any contact with or damage to a pipe or cable or any other underground facility occurs, the excavator (Verizon and the Contractor) causing the contact or damage shall immediately notify the member operator (BHN) so that, upon receiving such notice, the member operator may send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. No notice was given by Verizon or its Contractor.
- B. Also under the provisions of Section 556.105(11), *Florida Statutes*, the excavator, Verizon and the Contractor, must cease excavation activities that may cause further damage, which Verizon and its Contractor failed to do.
- C. Paragraph 16 of the Rights-of-Way System Construction Authorization Agreement requires Verizon to comply with Chapter 556, *Florida Statutes*. As reflected in paragraphs A. and B. above, Verizon and its Contractor failed to observe the strict notice requirements set forth in Section 556.105(11), *Florida Statutes*, thereby breaching Verizon's obligation to comply with the requirements of Chapter 556, *Florida Statutes*.

It should also be noted that the provisions of the Rights-of-Way System Construction Authorization Agreement provides absolutely no protection for non-governmental facilities which furnish or transport materials or services within a portion of the Manatee County public rights-of-way and easements. Throughout this Agreement, there is reference to protection for "Manatee County's existing and future facilities located within the public rights-of-way and easements"; "distances to be maintained from ... any existing Manatee County facilities"; and requirements that "...care and caution are necessary around all Manatee County facilities, structures or related appurtenances." In addition, the requirement to immediately report the nature and extent of any

damages or injuries to Manatee County relates only to "Manatee County facilities." There is no reporting requirement regarding the facilities used by other providers. The residents of Manatee County are dependent upon the delivery of services and materials by means of underground facilities owned by many non-governmental third parties located within many of Manatee County's rights-of-way. Consequently, any rights-of-way system construction authorization agreement should also provide for protection of all such facilities not just "Manatee County facilities" as seems to be the case with the existing Verizon agreement.

Yesterday's occurrence is not an isolated incident. Also enclosed herein are copies of two articles relating to damage caused during Verizon's fiber-optic build-out in Hillsborough County. As indicated by memoranda from Craig England, Manatee County's Right-of-Way Supervisor, dated November 12, 2004, and November 17, 2004 (copies also enclosed), Manatee County has been aware of the Verizon problems in Hillsborough County and hoped to avoid such problems through proper drafting of the Rights-of-Way System Construction Authorization Agreement ("Rights-of-Way Agreement"). This effort does not appear to have been successful, especially due to the lack of any protection in such agreement for non-governmental providers of services and materials located within the County's rights-of-way.

In order to assure that:

- (i) such negligent activities do not occur again;
- (ii) there is protection for not only the Manatee County facilities located within the County's rights-of-way, but also the facilities of all other utilities and providers of services and materials authorized to use the County's rights-of-way; and
- (iii) BHN is made whole for the damage caused to BHN's fiber-optic cable and loss of revenues related thereto,

Verizon and its Contractor, as well as all other Verizon contractors presently operating under the Rights-of-Way Agreement, should be immediately required to cease and desist all further work within Manatee County's rights-of-way pending:

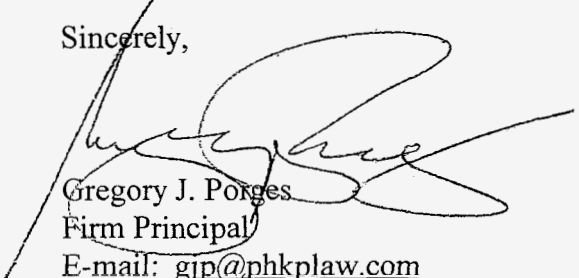
1. Determination of the cause of the gross negligence of Verizon and its Contractor in damaging BHN's fiber-optic cable and violating the provisions of Chapter 556, *Florida Statutes*;
2. Receipt of adequate assurances and evidence that Verizon and its contractors are in full compliance with Chapter 556, *Florida Statutes*;

3. In accordance with the requirements of Section 556.106(2)(a), *Florida Statutes*, payment to BHN or provision for adequate security for payment to BHN by Verizon of an amount equal to the total sum of the losses to BHN as a result of the damage to BHN's fiber-optic cable and the loss of revenues as a result thereof;
4. Modification of the existing Rights-of-Way System Agreement entered into by and between Manatee County and Verizon for the purpose of including language which will provide protection for third-party non-governmental utilities and other providers of services and materials through authorized use of the County's rights-of-way, i.e., provide protective language that is on a par with the protections provided to the Manatee County facilities under the terms of such agreement; and
5. Determination that Verizon and its Contractor, and all other Verizon contractors, have met and will continue to meet the requirements of the Rights-of-Way Agreement, as modified to protect other authorized users of Manatee County's rights-of-way.

This matter requires Manatee County's immediate attention. As soon as you have an opportunity to review the foregoing and consult with the County Attorney's office in regard to the same, please immediately advise the undersigned of the action which will be taken by the County to protect the citizens of Manatee County and the authorized users of its rights-of-way from further jeopardy by Verizon and Verizon's contractors.

Thank you for your attention to this matter.

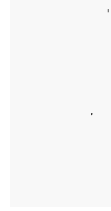
Sincerely,



Gregory J. Porges
Firm Principal
E-mail: gjp@phkplaw.com

GJP/dea
Enclosures

cc: Florida Public Service Commission, Attn: Blanca S. Bayo, Commission Clerk
Frizzette McCarthy, Manatee County Communications Coordinator
Craig England, Manatee County Right-of-Way Supervisor
Robert Michael Eschenfelder, Assistant County Attorney
Rose Carlson, Bright House Networks
Steven Gerber, Esquire



Picture 1

The drilling rod pulled back from the hole far enough to see the white pvc pipe and fiber hit.



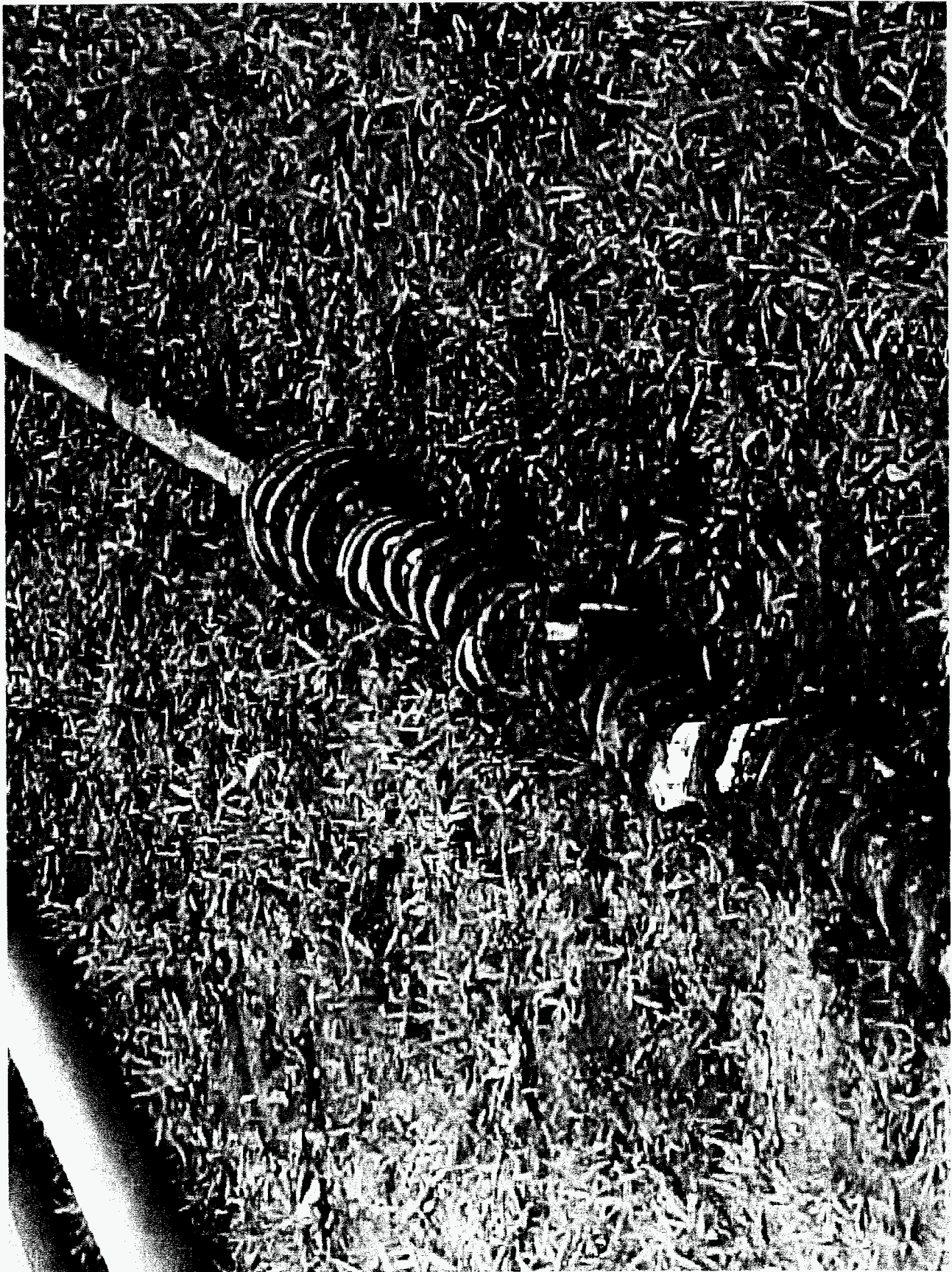
Picture 2

The fiber and some pvc piled up after being cut off the drilling rod.



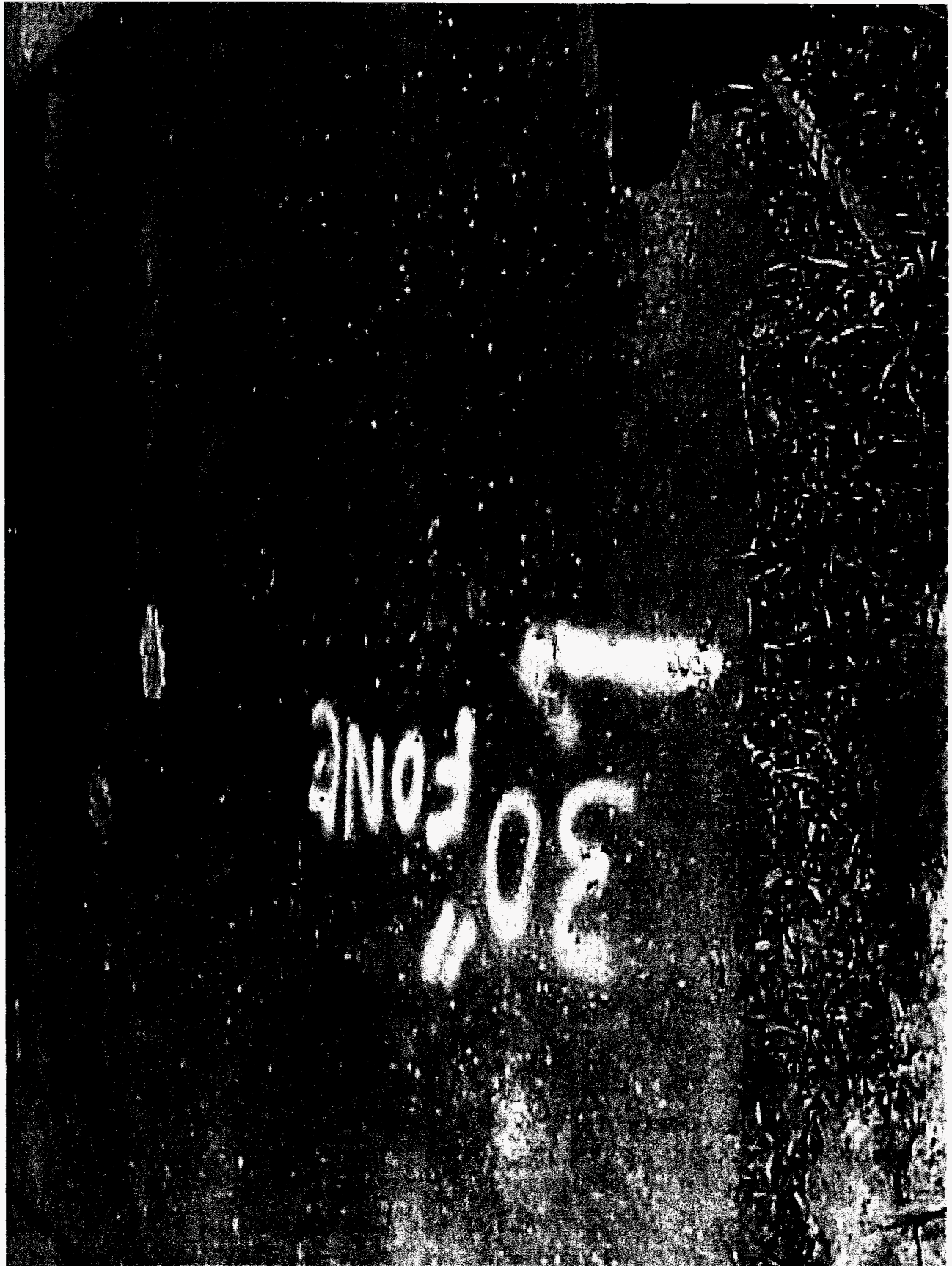
Picture 3

Shows drilling rod removed and cleaned of bentonite with fiber and conduit entangled.



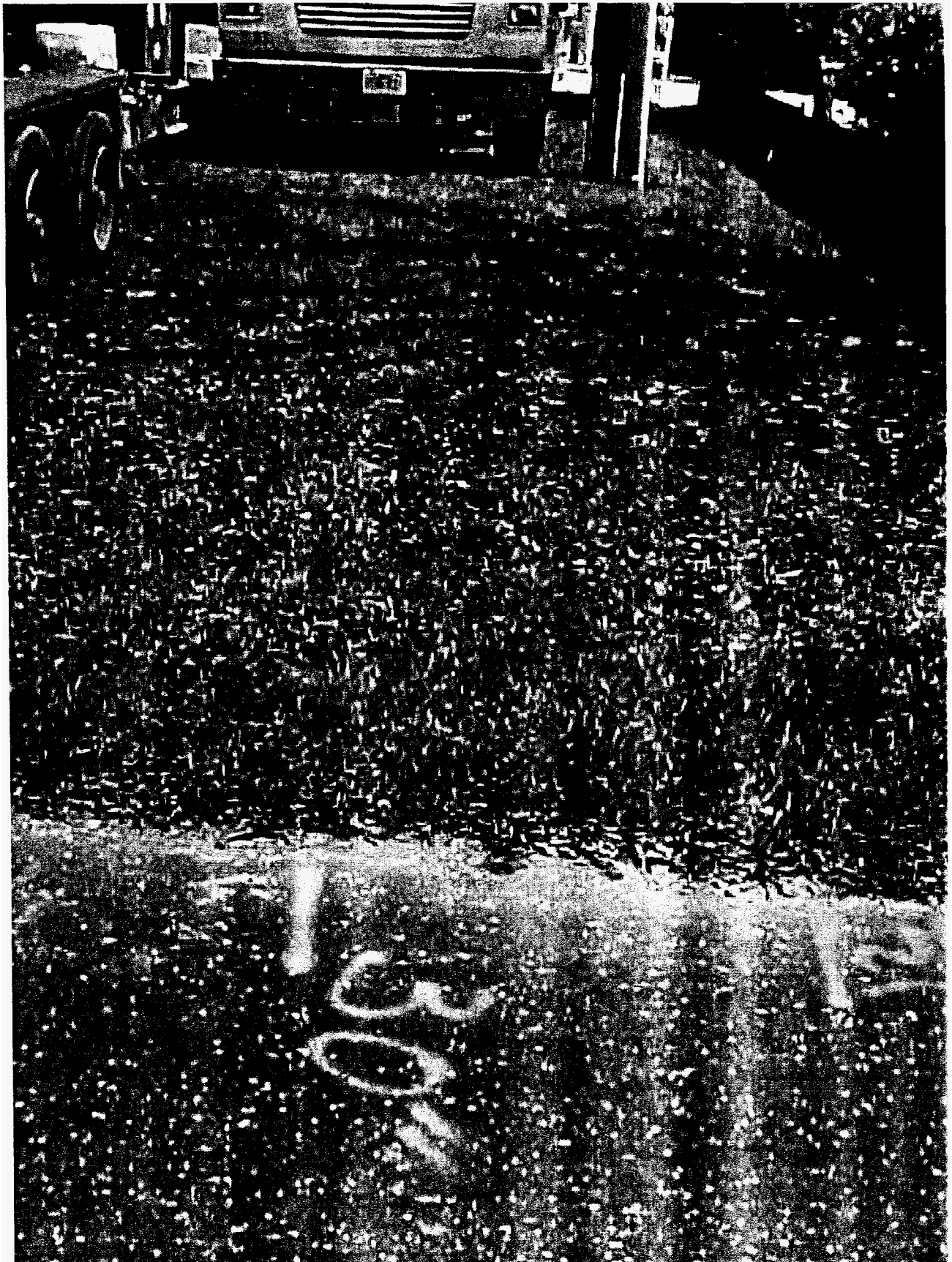
Picture 4

Shows orange mark on pavement with white construction line over our mark.



Picture 5

Shows mark other side of driveway to firehouse.



Picture 6

Close up of Picture 4 - white mark over orange cable mark.



Picture 7

Represents marks, same area.



Picture 8

Area excavated for drill rig parallel to road. Note alignment of drill pipe with marks to forefront of picture.





Nov 12, 2004

Verizon Has Officials, Residents Boiling Hot

By JILL KING GREENWOOD
jgreenwood@tampatrib.com



Photo by: ROBERT BURKE
Verizon crews installing fiber optic lines have hit nearly 200 water and sewer lines, costing almost \$103,000 in repairs.

TAMPA - Last week, Georgann Crotty stepped outside the front door of her Valrico home and saw a geyser of raw sewage spewing into her front yard.

Crotty discovered that contractors for Verizon had broken a sewer pipe.

Also last week, crews broke a waterline in the FishHawk community in Lithia, interrupting service for customers and leaving some residents with holes in their front yards and ripped-up driveways.

In September, a broken waterline caused a hole to open in a Seffner neighborhood, partially swallowing a minivan and scaring - but not injuring - the mother and two children inside.

Since August, nearly 200 water-, sewer and reclaimed water lines have been broken across the county by Verizon crews installing fiber optic lines underground.

“This is ridiculously inconvenient and frustrating, and it shouldn't keep happening,” Crotty said. “They break the line, and then they don't give you information or a straight answer about what's going on or what happened. It's crazy.”

Crotty said in her neighborhood residents have suffered through broken cable, water-, sewer, phone and reclaimed water lines in recent weeks. Crews still have not repaired the damage to her front yard caused by fixing the sewer line, she said.

The daily breaks have frustrated county officials and angered customers.

“This can't continue to go on, because it's a daily occurrence, and our customers deserve better than this,” said Michelle VanDyke, spokeswoman for the Hillsborough County Water Department. “This is an escalating problem, and it's very frustrating for everyone.”

More than 2,000 workers are laying the fiber optic cable across Hillsborough each day for Verizon. The nearly 200 lines breached since August have led to interruptions in service, boil-water notices and mangled property for some of the 2,676 residents affected.

With just one incident Monday, a broken waterline near Cypress Trace Drive in northwest Hillsborough, the inconvenience amounted to a boil-water notice for hundreds of residents.

The tab for repairing all those breaks approached \$103,000 Wednesday.

When the lines are broken, county crews make the repairs, VanDyke said.

County auditors examine the cause of each break and determine whether Verizon or county water department officials are to blame. The responsible party is billed, said Rich Cummings, section manager for line maintenance for the water department.

A Better Network

Bob Elek, spokesman for Verizon, said the company is in the midst of

converting and upgrading its network nationwide during the next 10 to 15 years.

The company will spend \$800 million to \$1 billion this year in nine states, Elek said, and has invested nearly \$1.5 billion in Florida in the past five years.

The upgrades involve installing fiber optic cables underground. Elek said the fiber optic lines are more reliable and durable than the current copper lines.

He said the massive project will bring new or improved phone, television, cable and Internet service to customers and will provide clearer calls, quicker Internet connections and can link to services - such as home security systems - that the current Verizon network can't.

Elek acknowledged that the project has created problems, and he said several subcontractors have been fired for "taking shortcuts or doing shoddy work."

He said Verizon has 10 contractors and about 2,000 subcontractors working on the project in Hillsborough County. Verizon officials, contractors and representatives from the water department have been meeting weekly to discuss the problems and possible solutions.

"Overall we've approached this together, and I think we can look forward to some improvement," Elek said.

Assessing Fault

Elek said some of the problems Verizon is having are centered on the accuracy of the maps provided by the water department. Some of those maps are wrong, outdated or incomplete, he said.

He said contractors use those maps to locate the utility lines underground. He said they employ a variety of techniques, including metal probes and other equipment to locate the lines.

In many older neighborhoods the maps are no good, he said. In newer neighborhoods where the maps are more likely to be accurate, crews

are breaking reclaimed water lines housed in PVC pipe. The location of those pipes is harder to pinpoint from aboveground, Elek said, and even when crews begin digging slowly, the pipes easily are struck and broken.

`` Any time you're working underground, you have the potential for a lot of problems," Elek said.

Cummings acknowledged that some of the maps provided to Verizon might not accurately pinpoint the location, depth or width of existing utility lines, but he said Verizon crews need to do more work before they dig.

`` There are more ways to find a line than just by using a map," Cummings said.

Cummings said Verizon crews could use satellite or global positioning technology to locate lines, or they could use a vacuum technique that allows workers to suck the dirt out of a defined area until the line is located.

Harold McLean, of the state Public Service Counsel, said it's unlikely Verizon will be able to increase its service rates to pass on to consumers the cost of repairing the breaks.

`` It's doubtful because they're regulated by price caps by the state and are considered to be in a competitive market," McLean said. `` If they passed the cost on to consumers, their competitors would eat them alive."

Elek agreed and said there's no way Verizon could make up for the mounting repair bills by increasing the amount customers pay for services.

`` Basically, this is a cost that we'll just have to eat," he said.

Reporter Jill King Greenwood can be reached at (813) 657-4534.

This story can be found at:

<http://www.tampatrib.com/MGBEK96VF1E.html>

NEWS Multichannel™

Verizon Resumes Work on Fla. Buildout

By Linda Haugsted

12/6/2004

The Verizon Communications Inc. fiber-optic buildout in Hillsborough County, Fla., resumed after a two-and-a-half week hiatus caused when county officials stopped work Nov. 18 due to about 200 instances in which county-owned sewer and water pipes were hit.

In the highest-profile incident, a car sank into the ground Nov. 12 when the roadbed caved in beneath it. Verizon contractors were working underneath the road the previous day and it gave way when a motorist backed his car over the site, according to Verizon.

Once pulled out of the sinkhole, the car was able to drive away, officials noted.

Verizon is upgrading its plant throughout Hillsborough and Pasco counties in the Tampa area as part of its \$800 million investment this year into fiber-to-the-premises technology in several areas of the country.

Verizon has construction underway in eight other states, with the goal of offering its FiOs-branded broadband services to current telephony customers.

Scott Cottrell, director of the engineering division of the county's public works department, said the stop-work order came when the infrastructure damage reports came in at a rate "that's way too frequent."

Company spokesman Bob Elek said Verizon has constructed 6.5 million path feet since the project began in March.

It would be impossible to work flawlessly given that level of activity, he said.

Of the 200 damage incidents, 82 affected one or fewer people, he said. Some of those involved damage to PVC pipe, which is not listed on infrastructure maps. Another 42 incidents affected 10 or fewer people, he said, and were repaired as soon as possible.

The car incident was caused when a sewer line was clipped by digging machines. The sewer was not visible nor was it on plans, Elek said.

After the sinkhole developed, Verizon voluntarily stopped the build, in advance of the county order, Elek said.

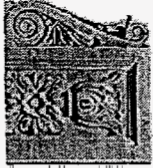
County officials and Verizon executives worked out a plan that allowed Verizon to resume work on Nov. 30, with close supervision of the drilling crews. Construction continued within the county in the city limits of Tampa, and also in Pasco County.

Elek said the planned launch of services early next year shouldn't be affected.

Sanford C. Bernstein & Co. analyst Tom Wolzien said in a research note last week that the Verizon incidents "should serve as a reminder that — in the real world — massive infrastructure projects like fiber deployment are messy, take time and incur very real costs of customer goodwill."

<<< Back | Print

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Craig England/MCG

11/12/2004 03:06 PM

To Robert Eschenfelder/MCG@MCG, Larry Mau/MCG@MCG

cc

bcc

Subject VERIZON FIBER TO THE PREMISE

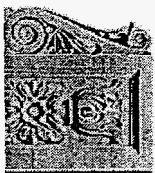
Today, Brian Lantz of Verizon met with me and presented a draft of an agreement to operate under an annual permit.

As you know Verizon is about to rebuild their entire system by placing fibre to every home in Manatee County. In addition they intend to bring in numerous contractors to achieve this in a short amount of time. In my conversations with other municipalities their efforts overwhelm the assets and personnel normally used to for construction in the right-of-ways.

Today, in the front section of the Tampa Tribune was an article pointing out problems in Hillborough County associated with this work. I've met with representatives from Hillsborough County and the City of Tampa to discuss anticipated problems in an effort to spare Manatee County the same bad experiences.

Monday, Nov 15th, you should be receiving this draft agreement. I have questions & concerns with the wording and intent of parts of this agreement. I would greatly appreciate the opportunity to meet with you to discuss how this will impact the country. The costs of damages and implementing our responsibilities reach many departments and I want to make every effort to assign the costs where they belong, primarily with Verizon. Thanks

Craig England
Right-Of-Way Supervisor
Transportation dept
708-7400 x-7486



Craig England/MCG
11/17/2004 11:01 AM

To Robert Eschenfelder/MCG@MCG

cc

bcc

Subject VERIZON RIGHT-OF-WAY AGREEMENT

As per our e-mails friday, Verizon has submitted a proposed Right-of-Way Agreement that I assume you've received. The attached article is what I want to avoid in Manatee County. Please call me if you want to discuss.
Thanks



County To Verizon Stop Digging - from TBO.com.url
Craig England
Right-Of-Way Supervisor
Transportation dept
708-7400 x-7486

cell 773-7264