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April 14, 2005

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REPLY TO:

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

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

Dear Mr. Padgett:

I am writing to respond to Verizon's letter dated April 13, 2005, regarding Bright House Networks' (BHN) complaint against Verizon for damaging BHN's fiber-optic lines and for failing to notify BHN of such damage. Despite Verizon's insinuations, BHN is motivated by concern for the safety of its customers and residents of Manatee County. Some of the 550 BHN customers who lost service for 9 hours were Digital Voice customers. These Manatee County residents would not have been able to dial 911 in an emergency because of the damage caused by Verizon's contractor.

Verizon's attempt to minimize the issues or shift blame is not surprising. However, it just does not fit with the facts, which might be better stated as follows:

- A. Verizon originally informed all right-of-way users in Manatee County at a construction meeting that it would use white lines to indicate where it would install its lines. Now Verizon's letter claims that the white lines indicate both location and depth of facilities, when depth should actually be determined by the industry standard for the safe distance from an existing facility.
B. The locate marks for the area Verizon's contractor was working were completed on March 17 and redone due to a one call request on March 31. On April 5, Verizon's contractor drilled a hole for their facilities but, at the end of the day, left the drill in the ground. The following day, April 6, a BHN contract locator placed additional marks (new orange paint) for the Rockdale Pipeline Company which had submitted a locate request through the Statewide one call system. The new marks indicated the service drop to the fire station building. On the morning of April 6, Verizon's contractor pulled back its drill and damaged BHN's facilities. The cause for the damage to BHN's

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Bradenton

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facilities can only be attributed to the bore location being well inside the acceptable accommodation ranges for existing facilities, i.e., within an inch rather than the industry standard of 24 inches.

- C. The pictures which I supplied with BHN's initial complaint reflect that BHN marked the depths of its facilities to be at 30 inches. In several places, Verizon's white markings indicate that its facilities were to be installed at a depth of 30 or 31 inches. This is clearly too close as industry standards require a 2-foot accommodation zone.
- D. Verizon's letter suggests "... boring companies often bore above or below the underground lines denoted by the orange marks on the pavement (i.e., the bore is at a different depth than the facility and therefore misses it altogether)." However, Verizon's letter further states that its contractor used a reamer with a 5 ½ inch rod for its directional bore which, by Verizon's own markings, was to be no more than an inch below BHN's existing facilities. Clearly, with equipment of this size, Verizon's choice of bore location demonstrates a speculative and negligent approach given the narrow margin of error that it elected to take.
- E. Verizon's allegations regarding statements purportedly made by Tom Wright, a BHN employee, are patently false. Mr. Wright is an engineer and his responsibilities as a BHN employee are neither that of a locator nor an inspector. When Mr. Wright was asked by Verizon's contractor regarding the BHN marks, he did not say "... that Bright House failed to mark the location of the cables ..." as alleged by Verizon. Rather, he advised Verizon's contractor that he lacked the ability to be able to tell the contractor what the various BHN marks were for. This is hardly an admission to any failure on BHN's part.
- F. Verizon's assertion that it is unreasonable to expect their contractor to notice that it cut the facilities in the right-of-way is implausible. BHN had three 2-inch conduits damaged. The pictures clearly show how entangled the conduit and fiber became in the drilling machine. It is highly unlikely that a properly trained crew would not notice 2-inch conduits entangled in the drill. This is corroborated by the second paragraph of Craig England's memorandum of April 14, 2005 (copy enclosed), wherein Mr. England states that, based upon his experience, "... an experienced directional boring crew usually knows relatively quickly when something has gone wrong."

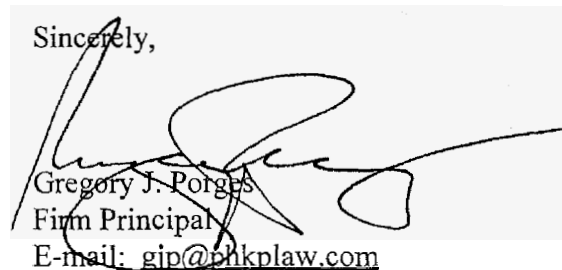
Verizon's letter attempts to deflect or minimize the importance of this issue by pointing out that BHN has cut Verizon's facilities in the past. While it is true that facilities are inadvertently cut while working in the right-of-way, Verizon mistakes BHN's complaint. It is not that Verizon cut BHN's facilities. Rather, it is that they cut BHN's facilities because of negligent work and then failed to notify BHN pursuant to State law. Verizon's failure to give proper notice is BHN's primary concern because it prolonged an outage which could have endangered public safety.

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Once again, BHN would request that Manatee County direct Verizon and its contractors to immediately cease and desist all further work pending determination of those issues as reflected in the formal complaint dated April 7, 2005. I realize that Mr. England's memorandum previously referred to herein suggests that since the damage caused by Verizon was "... conducted in FDOT right-of-way, FDOT is the proper organization to handle this specific complaint" However, as Mr. England also states, the earlier complaint does make several points that may pertain to Manatee County. Therefore the specific location of the damage that occurred is not the issue. Rather Verizon's conduct which resulted in such damage and Verizon's failure to give proper notice on the occurrence of such damage are the issues to be considered. These elements should be the criteria for Manatee County's decision regarding Verizon's continued ability to work within Manatee County's rights-of-way.

Thank you for your attention to this matter.

Sincerely,



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

GJP/dea
Enclosure

cc: **FPSC**, Attn: Blanca S. Bayo, Commission Clerk (w/enclosure)
Frizzette McCarthy, Manatee County Communications Coordinator (w/enclosure)
Craig England, Manatee County Right-of-Way Supervisor (w/enclosure)
Robert Michael Eschenfelder, Assistant County Attorney (w/enclosure)
Rose Carlson, Bright House Networks (w/enclosure)
Steven Gerber, Esquire (w/enclosure)
Richard A. Chapkis, VP & General Counsel, Verizon (w/enclosure via e-mail)



Greg Porges
746-4160

MANATEE COUNTY GOVERNMENT

MEMORANDUM

DATE: April 14, 2005

TO: Larry R. Mau, P.E., Transportation Director
 Rob Eschenfelder, Assistant County Attorney, CAO
 Frizette McCarthy, Communications Coordinator, CSD

FROM: Craig England, Right-Of-Way Supervisor *CE*

SUBJECT: Bright House vs Verizon

Received By
 Manatee County Attorney's Office
 Date 4-14-05
 Time 8:30 Am
 Rec'd By Mail
 Rec'd By Hand-Delivery
 Rec'd By Fax
 Time Sensitive. Y N

In response to Gregory Porges's formal complaint dated April 7, 2005, I inspected the site to see if the charges were reasonable. I'm sure you're all aware that this activity was conducted in FDOT right-of-way under its authority; **not** under any agreement with Manatee County as referred to on page 2 of the formal complaint. FDOT is the proper organization to handle this specific complaint, although Mr. Porges does make several points that may pertain to Manatee County, which are separate issues.

Charge one is that Verizon and its contractor failed to provide immediate notice regarding the damage. Having not been there, and with no firsthand knowledge of the events, I can only respond based on experience. There is a certain "feel" through the equipment to the boring operator, and an experienced directional boring crew usually knows relatively quickly when something has gone wrong. This changes with the size of the boring rig and the object hit.

Charge two is that Verizon and its contractor failed to immediately cease the drilling activity that may have caused further damage. Again, without firsthand knowledge of events, it's hard to know exactly when the boring crew discovered the damage and when they stopped work.

Photos 4, 6 & 7 were submitted as proof of negligence. Again without firsthand knowledge, it is hard to substantiate their claim based on these photos. There are utility locates made by a communication utility based on the orange color code, but there are also existing Verizon cables that had been located. I cannot say which orange locates belong to which entity. Typically, white paint is put down first to show the locators where a proposed activity is to take place so that they can focus on a specific area. The fact that the white paint overlaps the orange may mean old locates. The picture only indicates that at some time prior to taking the photo, locates had been made with no certainty as to when. Please note the attached photos I have taken. Both Verizon and Bright House are occupying the right-of-way in close proximity to each other.

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The last paragraph of page 2, which continues on page 3, Mr. Porges combines this incident with the agreement pertaining to the "Fiber to the Premise" project. He laments that we are not protecting all the facilities that exist in the right-of-way, especially those of BHN. Although we make every effort to do so, I am not aware that allowing other entities to use the right-of-way obligates us to protect their facilities. On the reverse side of every Right-Of-Way Use Permit it states;

".....the permittee will at all times, assume all risk of and indemnify defend, and save harmless the County of Manatee, its officials and its employees, from and against all loss, damage, expense, claim suit or judgment....."

Conclusion:

As previously stated, I am unable to determine who knew what and when, with respect to the damage to BHN's cable. This is an issue between BHN, Verizon and FDOT. If damage occurs in Manatee County's right-of-way that violates our standards, appropriate action will be taken to include revoking any permits or agreements.

If you have any further questions or need additional information, please contact me at Ext. 7486.

CE/ce

Attachments



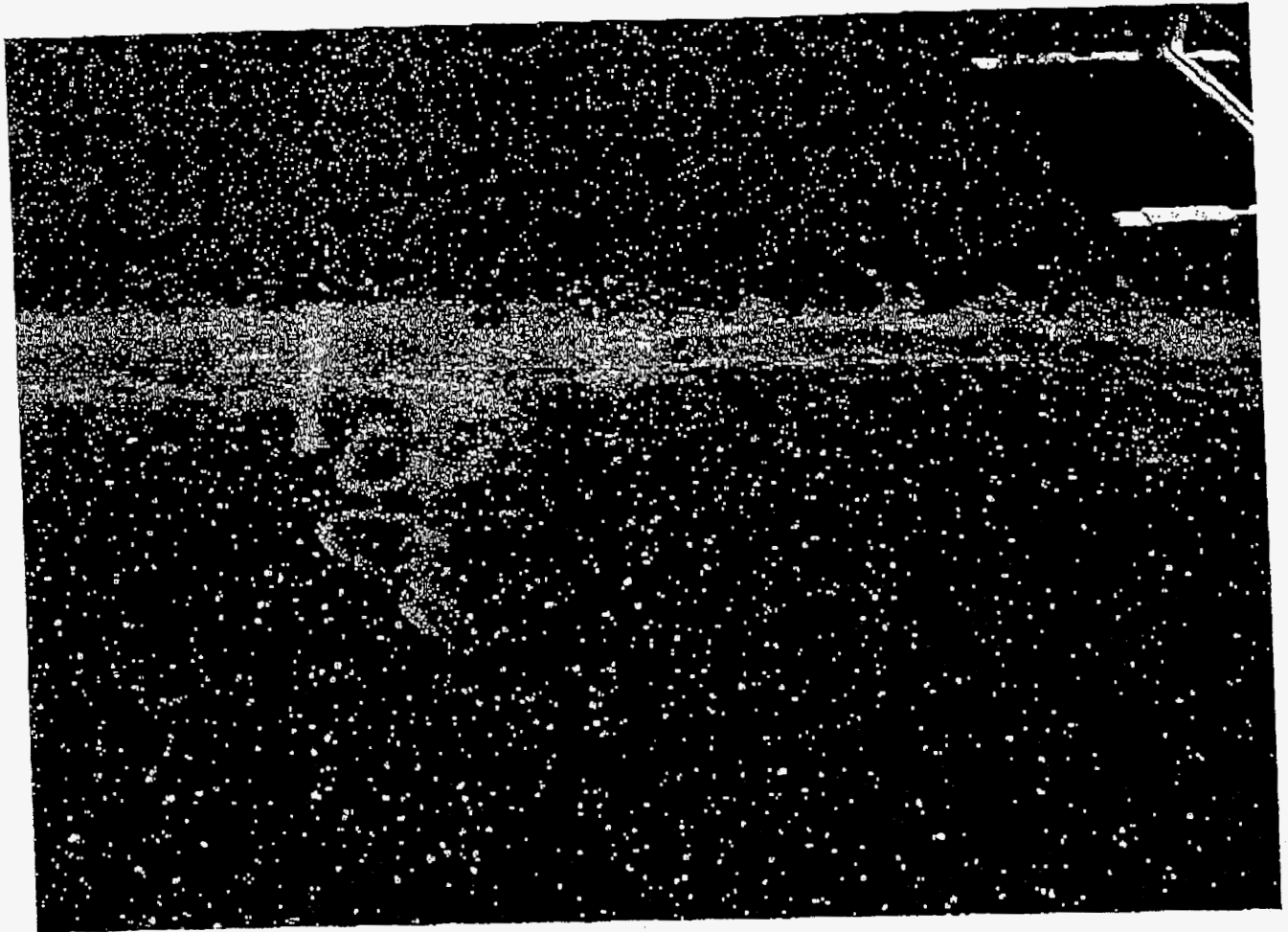
View facing west. The large cabinet in front of the pole and the small plastic canister behind the pole are Verizons. The line of orange flags running directly in front of the pole, in line with the BHN cable, was their running line. Note the old and new orange paint marks.



View facing east

In the foreground are the orange locates for the communications companies and white paint typically indicating the proposed running line.

In the background you can see the end of the bore sticking out of the ground and existing Verizon cabinet located in front of the power pole.



It appears, from the color of the paint, that some of the markings are considerably newer than others.