

ORIGINAL

050000

**PORGES, HAMLIN, KNOWLES,
PROUTY, THOMPSON & NAJMY, P.A.**

ATTORNEYS AT LAW 05 JUL 29 AM 9 43

JASON M. DEPAOLA
CURTIS D. HAMLIN*
JAMES A. HARRISON
MARY R. HAWK***
KEVIN J. KAPUSTA
SANJIT KAUR
TIMOTHY A. KNOWLES
JOSEPH L. NAJMY**
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) 748-4180

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

July 28, 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 GEORGIA

REPLY TO:

Mr. Larry R. Mau, P.E.
Transportation Director
Manatee County
1022 26th Avenue East
Bradenton, FL 34208

RECEIVED-FRSC
BRADENTON
JUL 29 AM 10:38
COMMISSION
CLERK

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

Dear Mr. Mau:

This letter constitutes a formal complaint filed on behalf of Bright House Networks ("BHN") against Verizon Florida, Inc. ("Verizon") as a result of Artazen Construction, Inc., a Verizon contractor ("Contractor"), causing the negligent destruction of BHN-owned fiber optic lines located at Pro Am Avenue East and Clubview Court East at approximately 2:45 p.m. on Tuesday, July 12, 2005. This damage resulted in a loss of cable, high-speed internet, and/or digital telephone service to approximately six hundred sixty-four (664) BHN customers, most of whom reside in the Peridia subdivision, for more than seven (7) hours.

As was the case with the previous negligent destruction of BHN-owned fiber optic lines by a Verizon contractor on April 6, 2005, the Contractor once again failed to give immediate notice regarding the destruction of BHN's fiber optic line. Such notice would have permitted BHN to immediately send its personnel to the location in order to repair the damage thereby restoring service to BHN's customers. Only BHN's sophisticated system status monitoring system and the receipt of calls from out-of-service customers provided BHN with the knowledge of the damage caused by Verizon and its Contractor.

I am enclosing a series of photos which evidence damage caused by Verizon's Contractor to BHN's three (3) underground conduits containing fiber optic cable. Perhaps the most telling aspect of these photos is the location of the bore which caused the damage in relation to the orange marks placed by BHN to identify the location of its fiber optic lines. As had also been the case with the April 6, 2005, incident, this Contractor either ignored BHN location markings; or failed to exercise due caution by boring above, below or adjacent to BHN's marked underground lines. BHN had accurately identified and marked the location of its existing underground conduit in order that Verizon's Contractor, in its exercise of good construction practice, could avoid the destruction which occurred on July 12, 2005.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- BCL _____
- DPC _____
- ICA _____
- ICR _____
- IGA _____
- EC 1
- TH _____

DOCUMENT NUMBER DATE
07291 JUL 29 05

It is important to recognize that the occasional need to adjust locations was specifically recognized in the Rights-of-Way System Construction Authorization Agreement entered into by and between Manatee County and Verizon, particularly the Manatee County Annual General Agreement document related thereto. Item 5 of the Annual General Agreement specifically states that minor changes in the advance notification of construction locations can be made in the field, without revision. The purpose of this language is undoubtedly intended to permit a contractor to exercise proper professional discretion for the purpose of avoiding the type of damage which occurred to BHN's underground conduit on July 12, 2005. Verizon's Contractor failed to exercise such authorized discretion.

The actions of Verizon's contractors as to both the April 6, 2005, and the July 12, 2005, damage to BHN facilities constitute a significant violation 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. 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 its contractors) 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. In neither case was notice given by Verizon or its contractor. Paragraph 16 of the Rights-of-Way System Construction Authorization Agreement requires Verizon to comply with Chapter 556, *Florida Statutes*. Verizon's contractors 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*.

By letter dated April 7, 2005, addressed to Ernie Padgett, County Administrator, this firm filed a formal complaint on behalf of BHN as to Verizon's construction activities which resulted in the destruction of BHN's fiber optic cable located under the right-of-way of State Road 70 on April 6, 2005. Manatee County determined that, since the damage occurred within the FDOT right-of-way, FDOT was the proper organization to handle that specific complaint. However, since the July 12, 2005, damage did occur within a Manatee County right-of-way, Manatee County does have jurisdiction in this incident. The County's attempt to avoid such problems through the Rights-of-Way System Construction Authorization Agreement mentioned above does not appear to have been successful. Therefore, in order to assure that such negligent activities do not occur again, whether within or outside of the County rights-of-way, Verizon and its contractors 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 on July 12, 2005, 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*, and also have a full understanding of the provisions of the Rights-of-Way System Construction Authorization Agreement;
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 additional expense and loss of revenues occurring as a result thereof;

Mr. Larry R. Mau, P.E.
July 25, 2005
Page 3

and

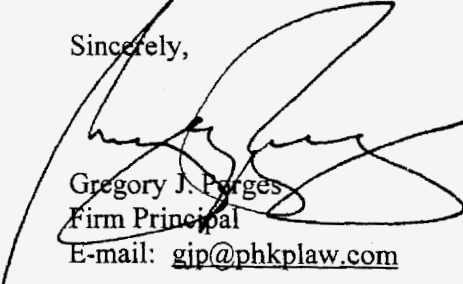
4. Determination that Verizon and all Verizon contractors have met and will continue to meet the requirements of the Rights-of-Way Agreement.

BHN has not yet been compensated for the damage to its system which occurred on April 6, 2005; does not look forward to addressing its claim for the damage which occurred on July 12, 2005; and, most of all, would prefer to avoid any similar incidents in the future.

This matter requires Manatee County's immediate attention in order 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.

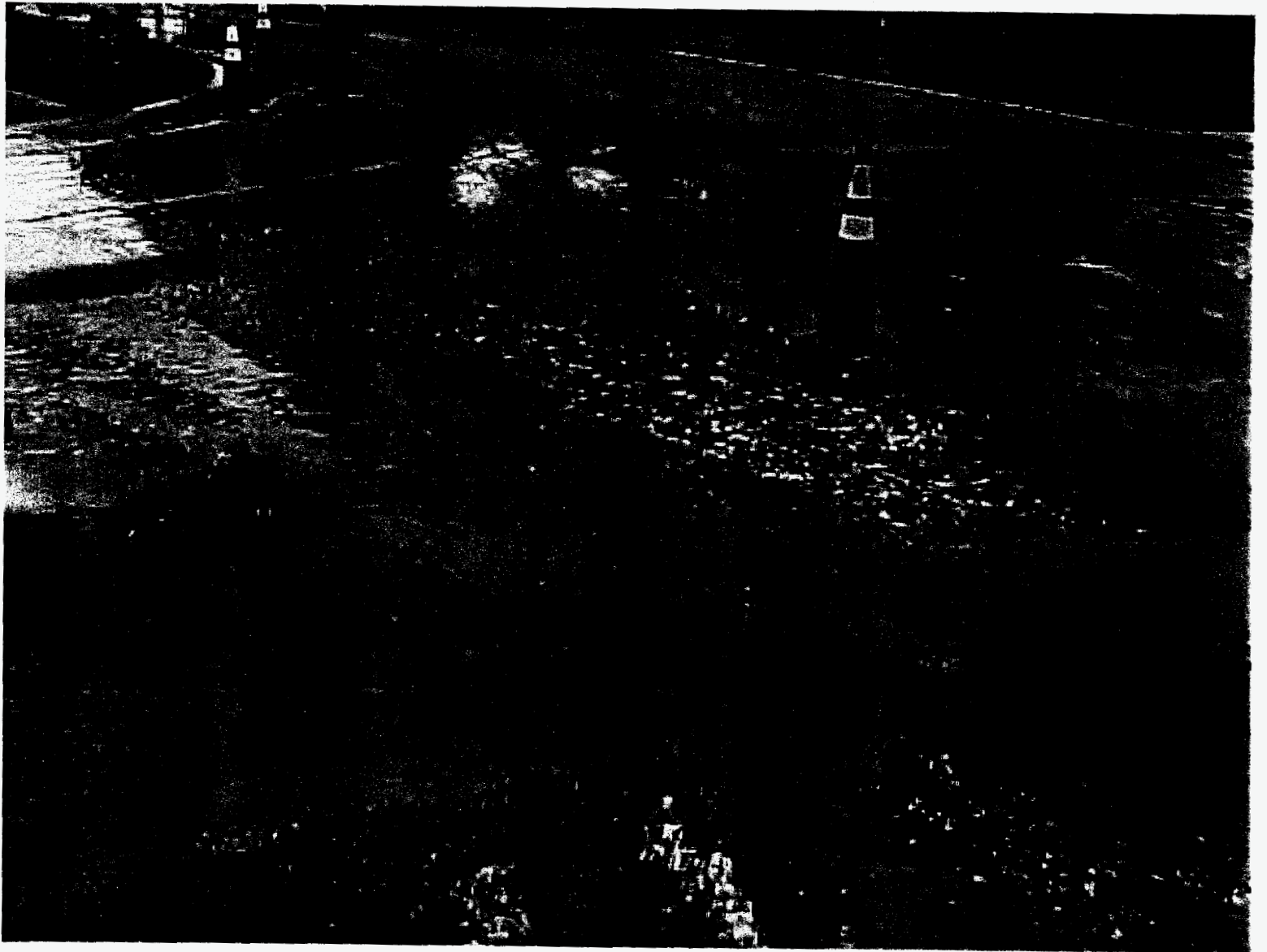
Sincerely,



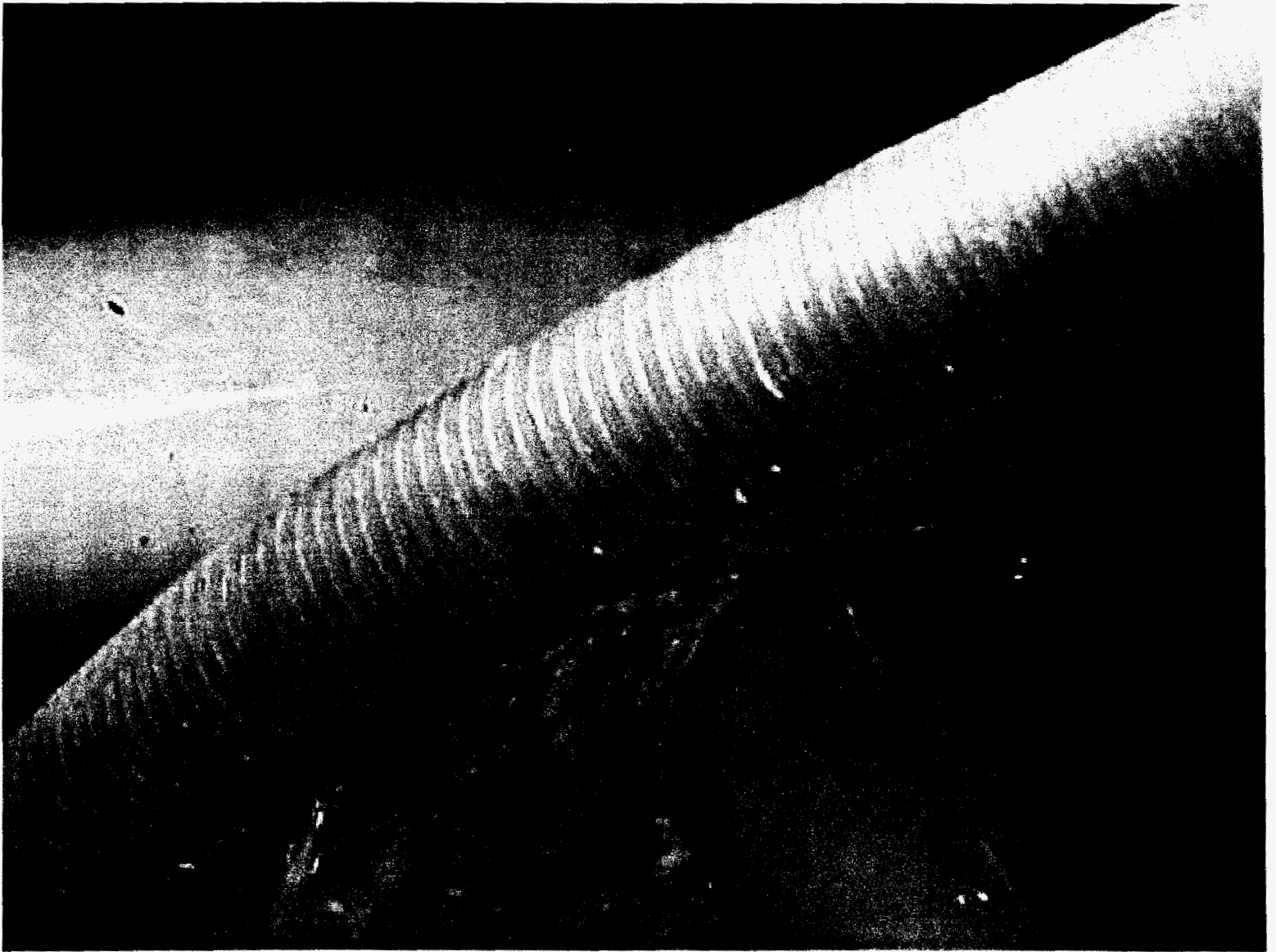
Gregory J. Porges
Firm Principal
E-mail: gjp@phkplaw.com

GJP/dea
Enclosures

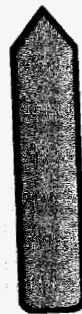
cc: Ernie Padgett, Manatee County Administrator (w/enclosures)
Frizzette McCarthy, Manatee County Communications Coordinator (w/enclosures)
Craig England, Manatee County Right-of-Way Supervisor (w/enclosures)
Robert Michael Eschenfelder, Assistant County Attorney (w/enclosures)
Rose Carlson, Bright House Networks (w/enclosures)
Steven J. Gerber, Esquire (w/enclosures)
Florida Public Service Commission, Attn: Blanca S. Bayo, Commission Clerk (w/enclosures)
Richard A. Chapkis, Esquire, Vice President, General Counsel, Southeast Region,
Verizon (w/enclosures)

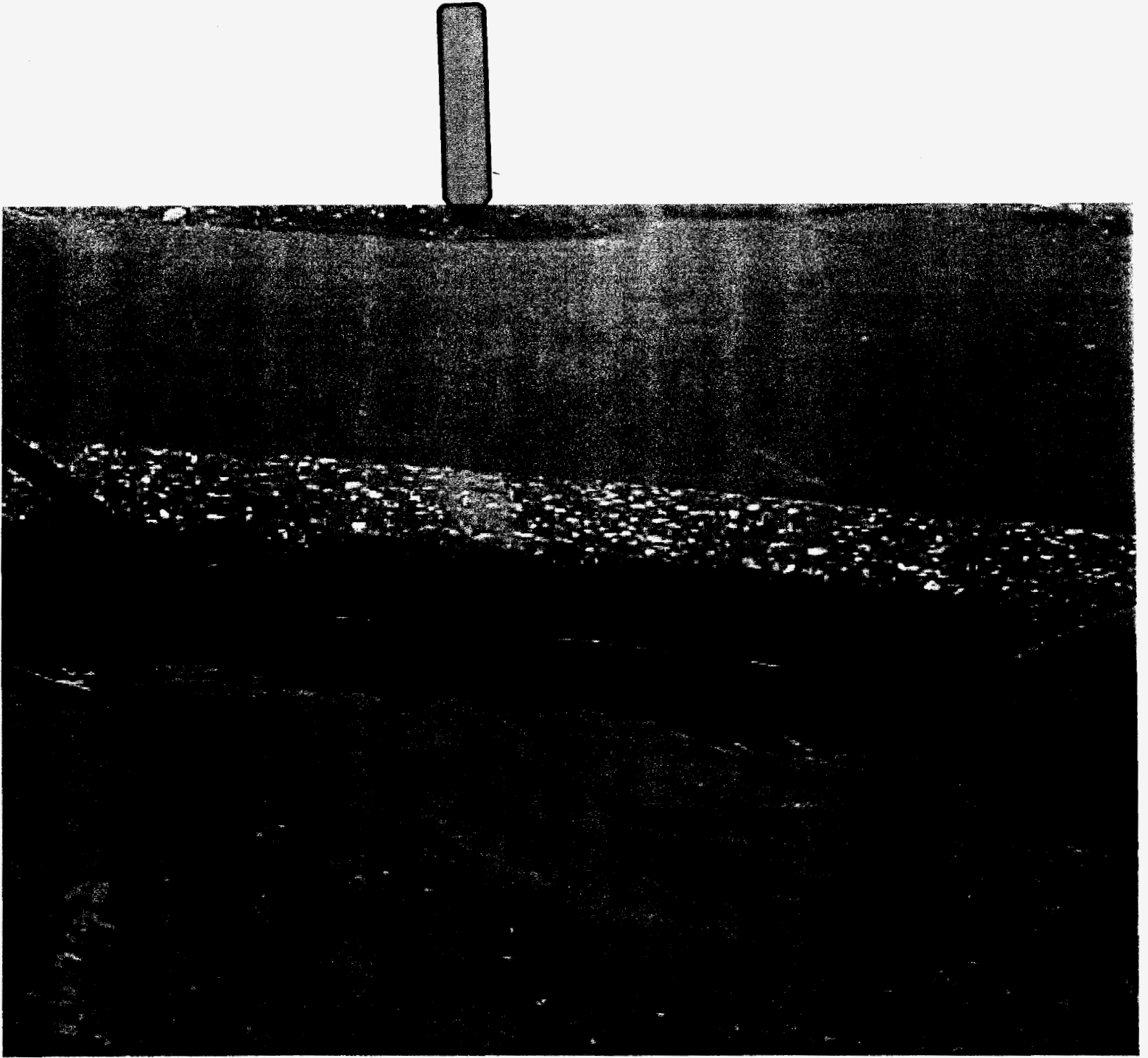


**Intersection of Pro Am Avenue East
&
Clubview Court East
After County Waterline and BHN Underground Conduit
Damaged by Verizon
7-12-05**



**County Waterline (Blue)
as Damaged by Verizon Bore (Gray)
7-12-05**





**BHN Underground Conduit Location
Marked on Curb
7-12-05**



**BHN Curb Mark (Orange) Reflects
Location of BHN Underground Conduits (White)
As Damaged by Verizon Bore (Gray)**

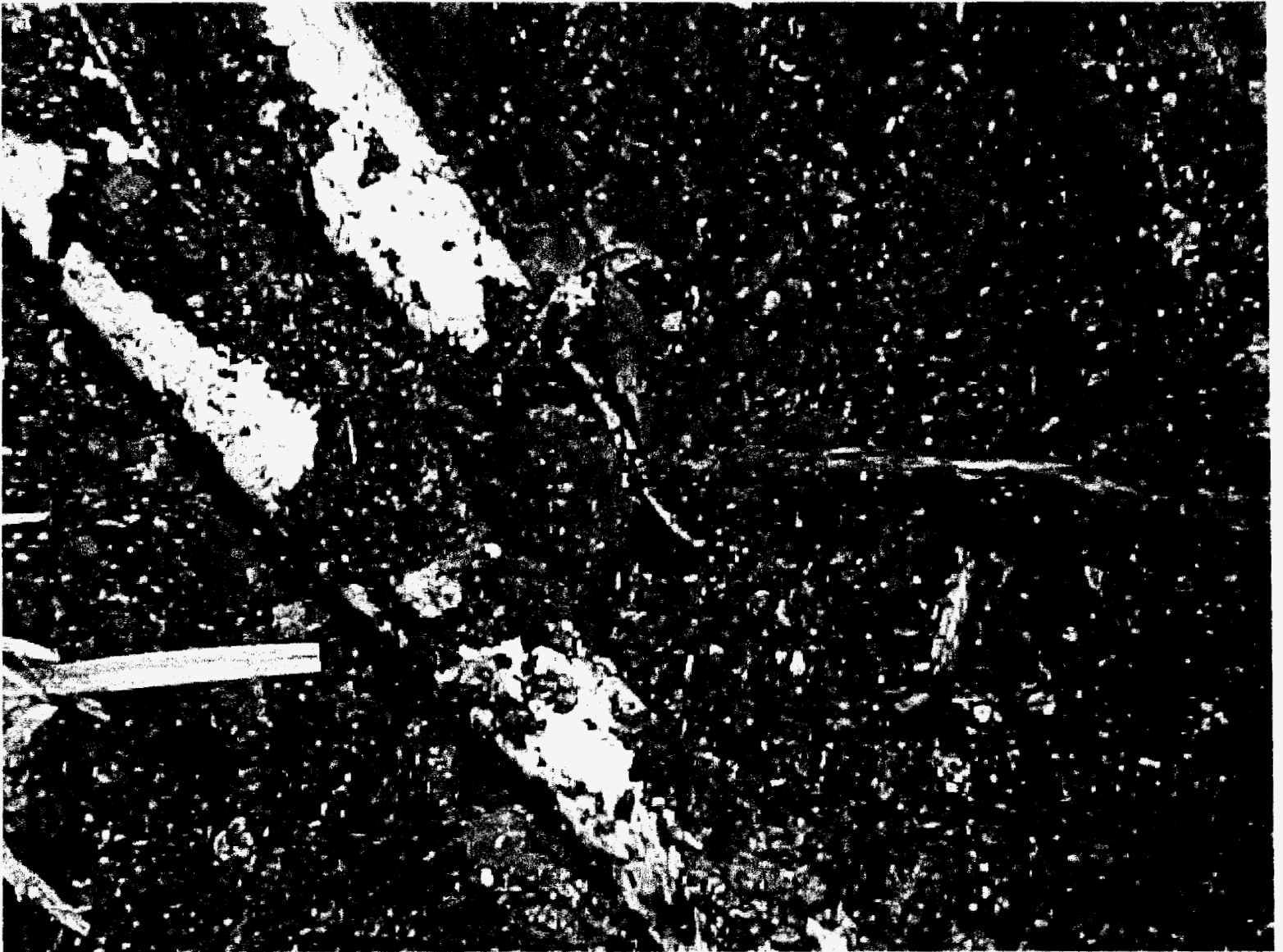
7-12-05



**Verizon Bore (Gray)
Piercing BHN Underground
Conduits (White)
7-12-05**

**Damage Caused to Three BHN Underground
Conduits and Fiber Optic Cable
by Verizon Bore
7-12-05**





**Damage to BHN Underground Conduit
and Fiber Optic Cable
Due to Verizon Bore
7-12-05**