



Public Service Commission

State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
Sheri Haugen-Hoffart

April 19, 2022

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Robert Eatherly
Eatherly Construction, Inc.
1709 N 19th St Ste 3
Bismarck ND 58501-2121

Re: ND One-Call Excavation Notice System: North Dakota Century Code Chapter 49-23

Dear Mr. Eatherly:

Enclosed is a copy of a ND One-Call Complaint, against Eatherly Construction, Inc. received by the North Dakota Public Service Commission (Commission) on April 13, 2022, from Halstad Telephone Company, Halstad, Minnesota, Case Number GS-22-168. The location of the damage identified in the complaint is roughly 1-2 blocks south of the driveway into 513 Hwy 81 NE, Cummings, North Dakota.

I am sending you this information so that you are aware of the complaint and may respond with information concerning the complaint. **Please respond to Executive Secretary, North Dakota Public Service Commission, 600 East Boulevard Avenue, Dept 408, Bismarck, ND 58505-0480 by May 4, 2022**, with your written account of the event, including the applicable One-Call locate ticket number for work performed at the address indicated.

Your response and the ND One-Call Complaint will be reviewed to determine whether there may be a violation of the One-Call Excavation Notice System law.

If I do not receive a response by the date noted, I will determine whether there was a violation, without your side of the story, based on the facts contained in this complaint. If I conclude a violation did occur, I will file a formal complaint against Eatherly Construction, Inc. with the Commission, which may result in a penalty up to \$25,000 per violation as approved by the North Dakota Legislative Assembly in 2013 under North Dakota Century Code Section 49-07-01.1.

Please contact me at 701-328-4097 or at kcrockford@nd.gov with any questions regarding this correspondence.

Sincerely,

Konrad Crockford
Director, Compliance Division

Enc: ND One-Call Complaint

c: Halstad Telephone Company

Hamre, John G.

From: Mark Forseth <markforseth@rrv.net>
Sent: Wednesday, April 13, 2022 9:49 AM
To: -Info-Public Service Commission
Subject: ND One-Call Camplaint
Attachments: Halstad Tel ND-one-call-complaint-form.pdf; ND One Call Located Ticket # 21060828.pdf; HTC Photo #1.jpg; HTC Photo #2.jpg; HTC Photo #3.jpg; HTC Photo # 4.jpg; HTC Photo #5.jpg; HTC Photo Descriptions.pdf; ECI Invoice.pdf

******* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *********

Good Morning,

Attached is Halstad Telephone's(HTC) One-Call Complaint against Eatherly Construction, Inc.(ECI). ECI struck two of HTC's located fiber optic cable on Saturday June 19th near Cummings, ND. HTC repaired the cables and has billed ECI for the cost of the repair. ECI has refused to pay for the damages they cause to HTC located cable. I have attached the following information:

- SFN 59067.
- A Copy of Locate Ticket #21060828.
- 5 Photos showing locate flags before and after the damage.
- A description of the photos.
- HTC's Repair Invoice to ECI.

Please feel free to contact me for any additional information you may need.

Thank you,

Mark Forseth
CEO/General Manager
Office: (218)-456-2125
1-800-457-2125
Fax: (218-456-2196)





ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (5-17)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person Halstad Telephone /Mark Forseth	Street Address 345 2nd Ave West	City Halstad	State and Zip Code MN, 56548
Telephone and Cell Phone Number 218-456-2125 or 701-430-0616	Email Address markforsth@rrv.net	Date 4-12-2022	
<input checked="" type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person Eatherly Construction, Inc / Robert Eatherly	Street Address 4831 West 136th Street, Suite E	City Leawood	State and Zip Code Kansas, 66224
Telephone and Cell Phone Number 913-685 9026 Office	Email Address unkown		

PART C – ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input checked="" type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input checked="" type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) _____
Location of Violation: Roughly 1-2 blocks South of the driveway into 513 Hwy 81 NE, Cummings, ND 58223
Date and Time of Violation: Saturday, June 19th, 2021 approximately 4:00pm.
Description (summarize the observations on which you rely to allege the violation) <i>If more space is required, please provide the description on a separate page.</i> June 9, 2021 Eatherly Constructors Inc, (ECI) submitted ND One Call locate ticket #21060828. On June 11 approximately 10:00am . Halstad Telephone Company's (HTC) locating contractor, LSI Utility Locating Services, Inc (LSI) responded to the ticket that HTC's cables were marked. June 19th, approximately 4:00pm ECI hit HTC's located cable consisting of a 288 fiber and a 60 fiber that were buried in the same trench. HTC employees were contacted by ECI and arrived on the scene at 5:40pm June 19. HTC mobilized equipment, materials and repairs began at 8PM that same evening. Repairs were completed and the cables were backfilled by 5pm Wednesday June 23. HTC has pictures before and after the cut showing the locates in place. They are attached to this complaint. HTC has billed ECI for damages, ECI has refused to pay

PART D – DAMAGE

Fatalities 0	Injuries 0	In-patient Hospitalization 0
Underground facility type(s) and Operator(s) affected: 1 288 Fiber optic cable & 1 60 Fiber optic cable, Halstad Telephone		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ \$29,135.93	Number of Customers Affected 60	
Other impact of event: The fiber cut disabled 3 sections of HTC's transport network. These transport sections aid in providing ring protection and reliability to all of HTC's customers, for all of its services including its 2,200 phone lines and 2,500 broadband connections		
Please attach photos of Event Area or Damaged Facility		

PART E – SIGNATURE

Signature of Person Filing Complaint 	Date 4-13-2022
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Submit

If the "Submit" function is not working properly, please print the completed form and then either email to ndpsc@nd.gov, fax to 701-328-2410 or send to Public Service Commission, 600 E Boulevard Ave Dept 408, Bismarck ND 58505-0480.

Telephone: (701) 328-2400

North Dakota One Call

Ticket No: 21060828
LORQ ROUTINE
Original Call Date: 06/09/21 06:12 pm
Op: webusr6
Work to Begin Date: 06/12/21 12:01 am
Op: webusr6
Expiration Date: 07/03/21 12:01 am

CALLER INFORMATION

Company Name: EATHERLY CONSTRUCTORS INC
Contact Name: DOUG BOWLING
Phone: 515-250-6495
Alt Contact: DOUG
Alt. Phone: 515-250-6495
Caller Address: 1020 VICTOR STUART, IA 50250
Email Address: bigdoog@dwx.com

DIG SITE INFORMATION

Type of Work: WATERLINE INSTALLATION
Work Being Done For: EAST CENTRAL WATER
Depth: OVER 10FT
Explosives: N
Tunneling/Boring: Y
White Lining/Site Identification: PROJECT STAKING

DIG SITE LOCATION


County: TRAILL
Place: ELDORADO TWP
City Limits: N
Address:
Street: STATE HWY 200
Intersecting Street: CO HWY 81
Location of Work: MARK 37.5 FEET EITHER SIDE OF THE STAKED ROUTE - WOOD LATH. MARK FOLLOWING THE ROUTE S FOR 1.05 MILES.

GOOGLE DRIVING DIRECTIONS:
 FROM THE INTERSECTION OF STATE HWY 200 AND CO HWY 81, HEAD NORTH ON COUNTY HWY 81 NE FOR 91 FT, HEAD E FOR 52 FEET TO THE BEGINNING OF THE ROUTE.

Remarks:
Map Twp: 146N
Rng: 50W
Sect-Qtr: 8-NW,5-SW-NW
Map Twp: 147N
Rng: 50W
Sect-Qtr: 32-SW
Map Coord NW Lat: 47.4983544
Lon: -97.0702518
SE Lat: 47.4830166
Lon: -97.0697264

MEMBERS NOTIFIED

District	Company Name	Marking Concerns	Status
CTLND01	CTLQL-CENTURYLINK	800-283-4237	Marked
DNG01	DAKOTA NATURAL GAS, LLC	888-933-9743	Marked (Dakota natural gas will need to be notified and present before boring for 6th st ne is done. we have a 6 inch gas main in the south ditch of 6th st ne.. call brian at 701-430-1307 or lauren at 507-327-0834)
GFTWTR01	GRAND FORKS TRAILL WATER USERS	701-599-2963	Clear/No conflict
HALSTD01	HALSTAD TELEPHONE COMPANY	701-951-9884	Marked (Marked)
NODAK01	NODAK ELECTRIC COOPERATIVE	701-746-4461	Marked (10I 2H)
POLAR04	POLAR COMMUNICATIONS	701-284-7221	Marked (1I)
TRLWTR01	TRAILL RURAL WATER USERS	218-791-1916	Marked

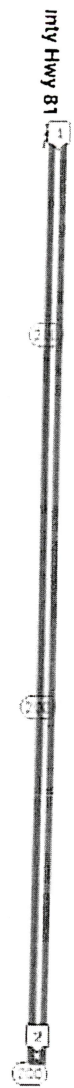
Legend:  Locate Polygon

Lat/Lon



Hwy 81

Sky Tractor



Go gle



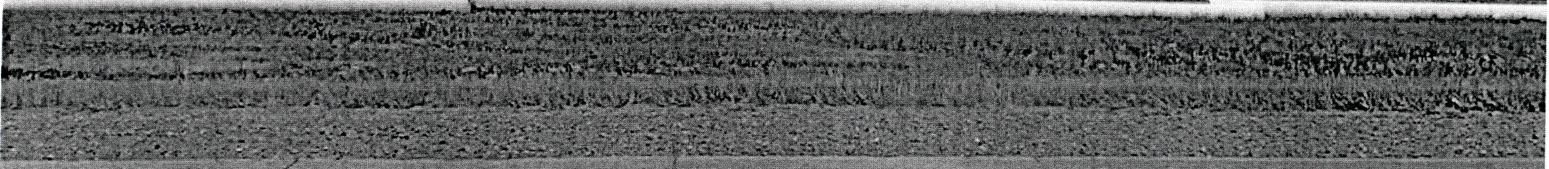
200 m

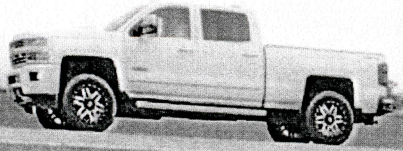
RMap data ©2022

Status History Ticket No: 21060828

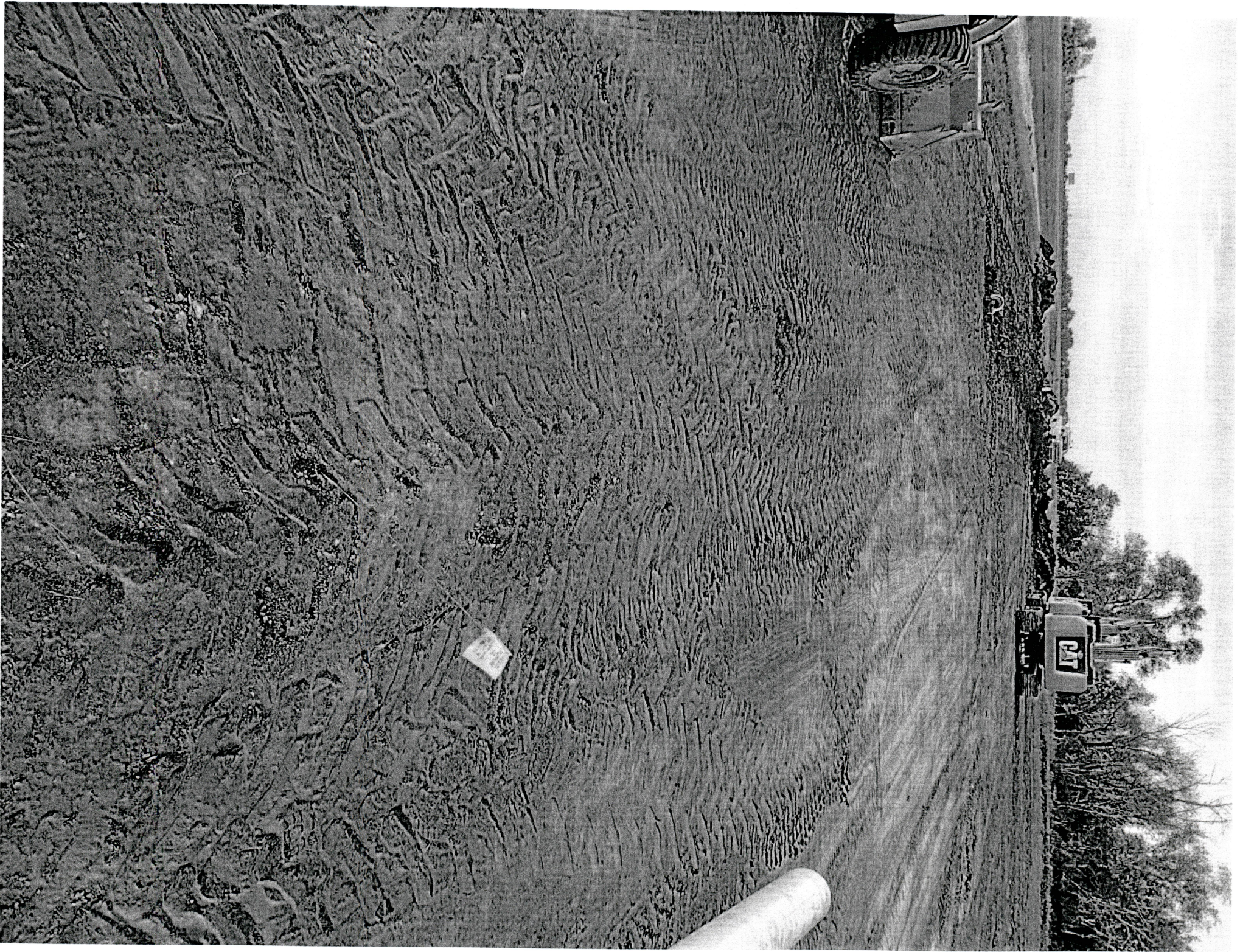
Date: Tue Apr 05 10:59:26 CDT 2022

Date	Type	District	Company	Status	Notes
06/09/21 18:12:37	Ticket Created				
06/09/21 18:12:37	Ticket Check Response Added	CTLND01	CTLQL- CENTURYLINK	Not yet responded	
06/11/21 14:37:28	Ticket Check Response Added	CTLND01	CTLQL- CENTURYLINK	Marked	
06/10/21 07:59:34	Ticket Check Response Added	DNG01	DAKOTA NATURAL GAS, LLC	Marked	Dakota natural gas will need to be notified and present before boring for 6th st ne is done. we have a 6 inch gas main in the south ditch of 6th st ne.. call brian at 701-430-1307 or lauren at 507-327-0834
06/09/21 18:12:37	Ticket Check Response Added	DNG01	DAKOTA NATURAL GAS, LLC	Not yet responded	
06/09/21 19:40:11	Ticket Check Response Added	GFTWTR01	GRAND FORKS TRAILL WATER USERS	Clear/No conflict	
06/09/21 18:12:37	Ticket Check Response Added	GFTWTR01	GRAND FORKS TRAILL WATER USERS	Not yet responded	
06/09/21 18:12:37	Ticket Check Response Added	HALSTD01	HALSTAD TELEPHONE COMPANY	Not yet responded	
06/11/21 09:59:06	Ticket Check Response Added	HALSTD01	HALSTAD TELEPHONE COMPANY	Marked	Marked
06/10/21 11:14:21	Ticket Check Response Added	NODAK01	NODAK ELECTRIC COOPERATIVE	Marked	101 2H
06/09/21 18:12:37	Ticket Check Response Added	NODAK01	NODAK ELECTRIC COOPERATIVE	Not yet responded	











HTC Photo #1: This photo shows:

- CO-Owner of LSI Bret Peterson working on locate ticket #21060828 for HTC on June 11th, 2021 at the site of the June 19th cut.
- To the left of Mr. Peterson is a HTC locate flag for its cable.
- At the bottom you see the pipe line laid out to be installed.
- Photo was taken by Dennis Peterson Co-Owner of LSI.

HTC Photo #2: This photo shows:

- ECI's route stake on June 11th for locate ticket # 210608828 at the site of the June 19th cut.
- HTC's locate and flags in front of and behind the route stake on June 11th.
- On the left edge you see the end of the pipe line shown in HTC Photo #1.
- Photo was taken by Bret Peterson Co-Owner of LSI.

HTC Photo #3: This photo shows:

- The site of the cut on June 19th.
- In the bottom right corner you see a remaining HTC locate flag that was seen in HTC Photo #1.
- The upper left you see the pipe line laid out to be installed that is also shown in HTC Photos #1 & #2
- Photo was taken by HTC employee Andy Shulstad.

HTC Photo #4: This photo shows:

- The site of the cut cable June 19th.
- Mostly this the same photo as HTC Photo #3 but taken from the next HTC June 11th locate flag south of the cut site looking back towards the site.
- Top center you see HTC June 11th locate flag shown in HTC Photo #1 & #3
- ECI' Equipment.
- Photo was taken by HTC employee Andy Shulstad.

HTC Photo #5: This photo shows:

- The site of the cut and the cut cable on June 19th.
- The lathe in the upper left marks the flag shown in HTC Photo #1, #3 and #4
- ECI' Equipment.
- Photo was taken by HTC employee Andy Shulstad.



PO BOX 55
345 2ND AVE W
HALSTAD, MN 56548

Invoice

Customer Number	Date	Invoice Number
CUST-2014	8/5/2021	INV-5657
Amount Due:		29,135.93

Bill To:
Eatherly Constructors Inc
1020 Victor Ave
Stuart, IA 50250

Ship To:
Eatherly Constructors Inc
1020 Victor Ave
Stuart, IA 50250

Please make all checks payable to: Halstad Telephone Company and include the invoice number on your payment.

Ship Via	Terms	Due Date	Customer PO
UPS Ground	NET 30 DAYS	9/30/2021	

Item No	Quantity	B/O	Ship	Description	Tax	Sales Price	Disc	Total
Repair Fiber Cut Hwy 200 and Hwy 81 Hillsboro, ND. Locate Ticket 21060828								
	200.00	0	200.00	BFO 288	MN	1.90	0%	380.00
	696.00	0	696.00	Fusion Splices	MN	30.00	0%	20,880.00
	1.00	0	1.00	Equipment Overhead	MN	3,196.71	0%	3,196.71
	2.00	0	2.00	Splice Case D	MN	576.00	0%	1,152.00
	8.00	0	8.00	Splice Tray Tyco D	MN	45.59	0%	364.72
	2.00	0	2.00	Splice Case Tyco 450B	MN	391.96	0%	783.92
	6.00	0	6.00	Splice Tray Tyco B	MN	26.39	0%	158.34
	200.00	0	200.00	Fiber Cable BFO60	MN	1.73	0%	346.00

Halstad Telephone Company PO BOX 55 345 2ND AVE W HALSTAD, MN 56548 (218)456-2125 (218)456-2196 Fax	Customer Number	Subtotal:	27,261.69
	PO BOX 55	Freight:	0.00
	Invoice Number	Total Tax:	1,874.24
	INV-5657	Total:	29,135.93

Thank you for your business!