Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Clarification of the Commission's Rules and	)	WC Docket No. 01-338
Policies Regarding Unbundled Access to	)	
Incumbent Local Exchange Carriers' Inside	)	
Wire Subloop	)	

To: The Commission

REPLY COMMENTS

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December 21, 2004

SUMMARY

The Commission should grant Cox's petition for declaratory ruling and confirm that incumbent LECs must offer competitive LECs direct access to the inside wire subloop at the terminal block in MTEs. The rulings requested in the Petition are entirely consistent with earlier Commission decisions and are necessary to prevent incumbent LECs from avoiding their obligations under the rules and thereby hampering the provision of competitive, facilities-based local telephone services to MTE residents. Indeed, the positions taken by the incumbent LECs that commented in this proceeding demonstrate the necessity of the requested rulings.

The Petition asks the Commission to confirm two prior rulings – in the *Triennial UNE Order* and the *Virginia Arbitration Order* – that require incumbent LECs to permit competitive LECs to have direct access to the inside wire subloop. As shown in the Petition, these rulings address the issues raised in the Petition directly and fully support Cox's request.

The arguments of incumbent LECs to the contrary are based on misreadings and misinterpretations of the Commission's earlier decisions. For instance, the incumbent LECs have no satisfactory response to the specific statements in the Commission's decisions that competitive LEC technicians can cross-connect wiring at accessible terminals. Similarly, SWBT's claim that the *Virginia Arbitration Order* applies only to access to customer-owned wiring conflicts with the explicit language of the order itself. There also is no basis for incumbent LEC theories that the Commission's ban on requiring collocation refers to the kind of facilities placed at end offices or that there is no right to direct access because state commissions might find it to be technically infeasible in particular factual circumstances.

The Commission also should reject the incumbent LECs' procedural attacks on the Petition. The Petition, by its terms, does not ask the Commission to overrule any state

commission decision and so is entirely consistent with the statutory scheme for appealing state decisions. Rather, the Petition seeks to clarify current federal law requirements to guide both state commissions and the U.S. District Court considering Cox's appeal of the OCC's decision. The Petition also does not ask the Commission to usurp the states' role in adjudicating interconnection disputes. Cox has not sought Commission action to address any factual claims in the Oklahoma proceeding, which, in any event, did not result in any findings of technical infeasibility. Cox also would not seek to prevent states from imposing reasonable requirements, such as following the same procedures used by the incumbent LECs, on access to terminal blocks in MTEs.

Finally, the Commission should reject SWBT's effort to relitigate the facts in the Oklahoma proceeding. None of the factual issues raised by SWBT is properly before the Commission because Cox has requested only a declaration of the law and because the OCC's decision did not rest on any of SWBT's factual claims. At the same time, SWBT's factual claims are incorrect in nearly every respect, and most of them were not even presented to the OCC. Consequently, they would be entitled to no weight even if they were properly before the Commission.

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REPLY COMMENTS

Cox Oklahoma Telcom, L.L.C. ("Cox"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits these reply comments in the above captioned proceeding.[1]

I. INTRODUCTION

In this proceeding, the Commission is asked to confirm its previous orders and to clarify that competitive local exchange carriers ("LECs") are entitled to direct physical access to the inside wire subloops owned by incumbent LECs in multi-tenant environments ("MTEs") and that this access should be provided at the terminal block. Despite the fact that the Commission's prior orders are clear on these points, clarification is necessary because incumbent LECs (including Southwestern Bell Telephone ("SWBT") in Oklahoma) have refused to comply with these orders and state commissions (including the Oklahoma Corporation Commission (the "OCC") have not applied these rules uniformly. The incumbent LECs' comments in this

[1] 47 C.F.R. § 1.415 (2004). *See also* Pleading Cycle Established for Comments on Cox's Petition for a Declaratory Ruling, For Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloops, *Public Notice*, WC Docket No. 01-338, DA 04-3520 (rel. November 4, 2004) (Cox's Petition for Declaratory Ruling is hereafter referred to as the "Petition").

proceeding demonstrate how the Commission's orders are being improperly stretched and misinterpreted in an effort to hamper the provision of competitive, facilities-based local phone service.

In response to the Petition, several incumbent LECs argue that the Commission's *Triennial UNE Order* and *Virginia Arbitration Order* do not mean what they say, and that specific language mandating direct access to inside wire subloops was not intended to apply to all incumbent LECs or referred only to a limited number of factual situations.[2] These claims are in direct conflict with the orders themselves. Similarly, incumbent LEC arguments that the Petition does not follow appropriate procedures under the 1996 Act or that grant of the Petition would be inconsistent with the Commission's allocation of responsibilities to state commissions misunderstand the nature of the Petition and the relief Cox has requested.

In light of these arguments, it is particularly ironic that SWBT attempts to relitigate the factual elements of the OCC proceeding by making claims concerning Cox's actions in Oklahoma. SWBT's claims are irrelevant to the legal issues before the Commission, and they should be disregarded. The Commission certainly need not resolve any of SWBT's factual arguments to rule on the Petition. Cox further notes that, although irrelevant here, SWBT's claims are false and are inconsistent with the findings of the OCC. The only proper course of action for the Commission is to grant the Petition.

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[2] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003) ("*Triennial UNE Order*"); Petition of WorldCom, *et al.*, *Memorandum Opinion and Order*, 17 FCC Rcd 27039 (2002) (the "*Virginia Arbitration Order*").

II. THE COMMISSION'S EARLIER DECISIONS SUPPORT THE PETITION.

A. Under the Commission's Previous Orders, Competitive LECs Have a Right to Direct Physical Access to Incumbent LEC Terminal Blocks.

As Cox demonstrated in its Petition, the Commission already has concluded that competitive LECs must have reasonable access to incumbent LECs' inside wire subloops to be able to offer competitive local telephone services to the many millions of customers nationwide who reside or work in multi-tenant environments ("MTEs"). In particular, the Commission's previous orders recognize that competitive LECs have a right to direct physical access to incumbent LEC terminal blocks in MTEs when they purchase incumbent LECs' unbundled inside wire subloops.[3] The Commission has recognized this right on at least two occasions.

Most recently, in the *Triennial UNE Order*, the Commission discussed competitive LEC access to the inside wire subloop at length and confirmed that the unbundling rules require direct access.[4] Specifically, the Commission concluded that access must be granted at any technically feasible point, including incumbent LECs' MTE terminal blocks, and concluded that competitive LECs' technicians must be permitted to cross-connect their facilities with those of the incumbent without interference from incumbent LEC technicians and without being required to construct additional facilities.[5]

Indeed, the Commission explicitly rejected the proposition that incumbent LECs could require that their technicians be present when cross-connections are performed or that they could require competitive LECs to "collocate" additional facilities at incumbent LECs' MTE terminal

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[3] Petition at 8-12.

[4] *Triennial UNE Order*, 18 FCC Rcd at 17193-99.

[5] *Id.* at 17185.

blocks.[6] First, when considering whether incumbent LECs are permitted to require competitive LECs to construct new facilities at the point of access to the incumbent LECs' inside wire subloop, the Commission stated that requiring competitive LECS "to 'collocate' a separate terminal facility in order to gain access to the inside wire subloop . . . [is] contrary to the NID and inside wire subloop unbundling rules we adopt today *and [we] therefore prohibit such requirements*."[7] Second, on the point of whether incumbent LECs can require their technicians to be present when competitive LECs access MTE terminal blocks, the Commission said that "an incumbent LEC requirement to have its technician present and to impose an associated charge on the competitive LEC for such contact on the non-network side of the NID [*i.e.*, the side nearer the customer] also would be contrary to the rules we adopt today" because the competitive LEC "is *not* accessing the incumbent LEC's NID as a UNE."[8] It would have been difficult for the Commission to have been any more direct on these points.

The Commission's rules implementing the *Triennial UNE Order* also recognize that access to the unbundled inside wire subloop permits competitive LECs to access wiring at incumbent LECs' terminal blocks. The rules define "the subloop for access to multiunit premises wiring" as "any portion of the loop that it is technically feasible to access in the incumbent LEC's outside plant at or near a multiunit premises," including inside wire "owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry . . . and the point of demarcation[.]"[9] Points of technically feasible access are "any point

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[6] *Id*. at 17199.

[7] *See id.* (emphasis added).

[8] *See id.* (emphasis in original).

[9] 47 C.F.R. § 51.319(b)(2).

. . . where a technician can access the wire or fiber . . . without removing a splice case," and include the NID and the minimum point of entry.[10] Taken together, these provisions show that the Commission intended to permit competitive LEC technicians to have access to subloops.

The Commission's decision in the *Triennial UNE Order* was part of its finding that competitive LEC entry into local telephone markets is impaired on a nationwide basis without access to incumbent LECs inside wire subloops.[11] As this portion of the *Triennial UNE Order* was not challenged in the courts, it is binding federal law.

The discussion in the *Triennial UNE Order* closely tracks the Commission's analysis of the same issues in the *Virginia Arbitration Order*. In that case, the Commission, sitting as an arbitrator in place of the Virginia State Corporation Commission, adopted competitive LEC proposals that ensured direct access to incumbent LEC terminal blocks regardless of whether the incumbent LEC or the customer owns the inside wiring.[12]

The Commission held that competitive LECs are entitled to direct access to dedicated "customer-side" wiring, up to and including the terminal block to which that wiring is attached.[13] The Commission explained that an incumbent LEC's terminal block is a relevant NID for determining at what point competitive LECs are entitled to access the incumbent's inside wire subloop.[14] The Commission further explained that the terminal block NID is the point at which "network-side" wiring, consisting of the incumbent LECs' multi-customer traffic transmission

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[10] *Id.* at § 51.319(b)(2)(i).

[11] *Id.* at 17190.

[12] *Virginia Arbitration Order*, 17 FCC Rcd at 27239-47.

[13] *Id*. at 27243-44, 27246-47.

[14] *Id*. at 27239-40 ("The Commission has also explained that the NID connecting the network to the subscriber's dedicated line may be accessed whether as a stand-alone UNE, or, as is frequently the case, in connection with a loop or subloop.").

facilities, becomes "customer-side" wiring, consisting of the inside wire that is dedicated to delivering individual customer traffic to individual MTE units.[15] Consequently, competitive LECs are entitled to direct access at the terminal block. The order was quite specific in addressing the effect of incumbent LEC ownership of the wiring on the customer side of the NID:

> Verizon appears to lose sight of the distinction between situations where the NID and demarcation point coincide (so that there is no Verizon inside wire subloop) and situations where the ownership demarcation falls on the customer side of the NID, so that there is a Verizon wire subloop to which AT&T has a right of access . . . . *In either instance, AT&T's technician would handle wire dedicated to a single customer, as opposed to handling distribution facilities on the network side of the NID.*"[16]

Although the *Virginia Arbitration Order* was determined on a particular factual record in Virginia, the analysis of incumbent LECs' networks was based solely on prevailing federal law and did not rely in any relevant part on Virginia law or any Virginia-specific network architecture.[17]

Therefore, both the *Triennial UNE Order* and the *Virginia Arbitration Order* support Cox's position on each of the three issues in the Petition. Competitive LECs have a clearly defined federal right to direct access to incumbent LECs' inside wire subloops and their MTE terminal blocks, and that right cannot be defeated by the vagaries of state law. The incumbent

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[15] *Id.* at 27240 ("On the other hand, in cases where incumbent-owned wire continues on the customer's side of the NID, that incumbent-owned premises wire, which the Commission's rules identify as the "inside wire subloop," may be accessed either at or through the incumbent's NID.").

[16] *Id*. at 27243 (footnotes omitted) (emphasis supplied).

[17] *Id*. at 27043 ("we apply current Commission rules and precedents"), 273239 ("The Commission has explained that the subloop unbundling rules apply across a broad spectrum of possible network architectures").

LECs' argument that the Commission would have to grant new rights or rewrite existing rules is simply incorrect.

B. The Incumbent LECs' Alternative Explanations of the Commission's Rules Are Erroneous.

The incumbent LECs present no plausible interpretation of the Commission's prior rulings that would support a denial of competitive LECs' right to direct access to MTE terminal blocks. The Commission has found repeatedly that incumbent LECs are required to allow unmediated access to "customer-side" wiring at all technically feasible points after network-side transmission facilities are divided into customer-side dedicated customer lines (including at the NID or terminal block). The incumbent LECs fail to reconcile their positions with these rulings. Nonetheless, the incumbent LEC commenters' blatant misreading of the Commission's precedents demonstrates the need for clarification in a declaratory ruling.

For example, the incumbent LECs fail to explain why, if the Commission did not intend for competitive LEC technicians to have direct access to incumbent LECs' MTE terminal blocks, it would have described an accessible terminal as "contain[ing] cables and their respective wire pairs that terminate on screw posts which enables a competitor's technician to cross connect its terminal to the incumbent LEC's to access the incumbent LEC's loop from that point all the way to the end-user customer."[18] SWBT's claim that this passage "merely describe[s] the characteristics of accessible terminals" is implausible.[19] Among other things, SWBT's explanation does not account for the Commission's reference to "a competitor's technician."

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[18] *See Triennial UNE Order*, 18 FCC Rcd at 17185, n.1013.

[19] *See* SBC's Opposition to Cox's Petition for Declaratory Ruling, WC Docket No. 01-338, filed December 6, 2004, at 14 ("SWBT Opposition").

Equally important, SWBT ignores the context of this language, which is part of a section of the order that describes where competitive LECs can "obtain access" to subloops.[20]

SWBT next claims that the Commission requires direct access to terminal blocks only when customers own the inside wire at an MTE. This ignores the explicit findings of the *Virginia Arbitration Order* and the *Triennial UNE Order* and betrays a fundamental misunderstanding of the Commission's framework for analyzing access to inside wire subloops. For example, SWBT suggests that the Commission granted direct access to incumbent LEC terminal blocks in the *Virginia Arbitration Order* only because in Virginia most inside wiring is owned by the customer.[21] The Commission explicitly rejected that argument in the *Virginia Arbitration Order* itself:

> We agree with AT&T that it should have direct access to all wire on the customer side of the NID, even when that wire is owned by Verizon.[22]

In fact, the very passage that SWBT uses to support its claim (that customer ownership of the inside wire is a necessary condition of direct access) proves that SWBT misinterprets the Commission's rules. The sentence that SWBT cites is followed by a footnote stating, "[e]ven in cases where [the incumbent LEC] owns an inside wire subloop, requiring a truck roll [each time a competitive LEC requires access to an MTE terminal block] would be out of proportion to [the

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[20] As SWBT notes, footnote 1013 is similar to a footnote in an earlier Commission order that omitted reference to a competitor's technician. *Id*. Given the Commission's conclusion in the *Triennial UNE Order* to reject incumbent LECs' attempts to restrict competitive LEC access to MTE terminal blocks, the change in the language supports Cox's interpretation of the rules, not SWBT's, because it further clarifies that competitive LEC technicians, not just incumbent LEC technicians, are to have access to these terminals.

[21] *See* SWBT Opposition at 17-18 (citing *Virginia Arbitration Order*, 17 FCC Rcd at 27247).

[22] *Virginia Arbitration Order*, 17 FCC Rcd at 27243.

incumbent LEC's] need to know when to commence billing."[23] Thus, the Commission made clear that the requirement for direct access and the prohibition on requiring an incumbent LEC technician to be present when cross-connections are made did not turn on whether the incumbent LEC or the customer owns the inside wire. Indeed, the point of distinguishing between customer-side and network-side wiring is to separate multi-customer transmission facilities from dedicated customer lines, not to describe the ownership of the inside wiring.[24] Consequently, SWBT is simply wrong when it asserts that all the wiring it owns is "network-side" wiring under the Commission's rules.[25]

SWBT further claims that the FCC permitted direct access in Virginia solely because such access was required only in "rare" instances.[26] This is entirely unsupported by the *Virginia Arbitration Order*. The Commission acknowledged that it was unusual for the incumbent LEC to own the wiring between the terminal block and the customer premises in Virginia, but it did not treat those situations as exceptions. Rather, it required Verizon to provide direct access in all situations because all incumbent LECs are required to "provide for a standardized inside wire

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[23] *Virginia Arbitration Order*, 17 FCC Rcd at n.1418.

[24] There is further evidence of SWBT's selective reading of the Commission's precedent. SWBT cites language in the *Triennial UNE Order* that SWBT says limits direct access rights only to situations where the competitive LEC is connecting customer-owned wires to facilities it owns. SWBT Opposition at 15 (citing *Triennial UNE Order*, 17 FCC Rcd at 17198-99). The two sentences preceding the cited passage, however, make clear that the Commission's directive applies regardless of whether the competitive LEC is "seeking access to the NID or inside wire subloop." *Triennial UNE Order*, 17 FCC Rcd at 17199. Thus, the requirement of direct access applies whether the customer owns the wiring (and the competitive LEC is gaining access to the NID as a standalone UNE or to connect its own facilities to customer owned facilities) or the incumbent LEC owns the wiring (and the competitive LEC is gaining access to the NID as an incident to its purchase of the inside wire subloop).

[25] SWBT Opposition at 7, 10, 18.

[26] *Id.* at 18.

subloop."[27] The Commission's reference to the requirement to provide for a "standardized inside wire subloop" contradicts SWBT's claim and demonstrates that the rule is equally applicable in markets like Oklahoma where it may be more typical for the incumbent LEC to own the wiring between the terminal block and the customer premises.

SWBT and BellSouth also argue that the Commission's prohibition against requiring competitive LECs to "collocate" equipment at the incumbent LECs' terminal block bans only arrangements that meet the technical definition of collocation under the Commission's rules.[28] There is nothing in the *Triennial UNE Order* to support that theory. Rather, a fair reading of the *Triennial UNE Order* confirms that the term "collocation" in this context means the construction and placement of a separate interconnection facility.[29]

Both Qwest and BellSouth also propose an unreasonable interpretation of the Commission's previous orders to limit direct access. These incumbent carriers attack Cox's characterization of direct access as a competitive LEC's right, asserting that no such right exists because state commissions can find direct access to be technically infeasible based on local conditions.[30] This is a non sequitur. Cox has asked the Commission to clarify its baseline unbundling rules for access to incumbent LEC MTE terminal blocks and inside wire subloops. Cox does not challenge the power of state commissions to determine that the exercise of that

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[27] *Virginia Arbitration Order*, 17 FCC Rcd at 27244.

[28] SWBT Opposition at 16; BellSouth Comments at 8-9.

[29] *Triennial UNE Order*, 18 FCC Rcd at 17199. In fact, the order puts the word "collocate" in quotations marks. *Id.*

[30] BellSouth Comments at 3-7; Qwest Comments at 3-5.

right in a particular factual scenario might be technically infeasible, so long as such a finding follows the Commission's duly-adopted standards.[31]

III. COX HAS REQUESTED A RULING ONLY ON THE COMMISSION'S FEDERAL INSIDE WIRE ACCESS RULES.

The incumbent LECs raise several procedural arguments designed to discourage the Commission from acting to clarify competitive LECs' direct access rights. These arguments cannot obscure the basic issues in this proceeding, however, and there is no question that the Commission is in the best position to resolve the entirely legal questions posed in the Petition.

A. The Petition for Declaratory Ruling Does Not Ask the Commission to Overrule the Decision of the Oklahoma Corporation Commission or Any Other State Commission.

Contrary to claims of Qwest and BellSouth, Cox has not asked the Commission to overrule or preempt any decision of a state commission.[32] Cox provided the Commission with details of the OCC proceeding only to give the Commission the context in which these issues arise at the state level – not to suggest that the Commission should address the merits of that proceeding. The OCC proceeding illustrates why the Commission must clarify and amplify its inside wire unbundling rules. In short, there is a significant risk that the intended pro-competitive effects of the Commission's rules will not be realized due to misinterpretation of those rules.

The state commission decisions discussed in the Petition further demonstrate that there is confusion among the states regarding the specific requirements of the Commission's inside wire

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[31] As discussed in Section IV, the OCC failed to acknowledge Cox's basic right to direct access to SWBT's MTE terminal blocks, failed to engage in any form of the technical infeasibility analysis that was required in light of that right, and failed to make a finding that direct access is technically infeasible.

[32] Qwest Comments at 8-9; BellSouth Comments at 7.

subloop unbundling rules. Indeed, BellSouth's claim that Cox's assertion of a split among the state commissions on this point is "exaggerated" is disingenuous. There is no question that state commissions have come to very different conclusions regarding the requirements of federal law in very similar factual scenarios.[33] And this is a national issue because the Commission found nationwide impairment of competitive LEC market entry without access to inside wire subloops. Accordingly, the Commission should clarify its rules to ensure that state commissions addressing this issue uniformly understand precisely what the Commission's rules require.

Bellsouth also devotes considerable time and energy to a question that is beyond the scope of this proceeding. BellSouth attempts to defend the decision of the Georgia Public Service Commission described in the Petition.[34] As explained in the Petition, the Georgia Commission's decision does not comport with the Commission's rules because it does not provide competitive LECs with direct access to incumbent LEC terminal blocks.[35] And, as BellSouth admits, Cox's view has been vindicated by the United States District Court for the Northern District of Florida, which found that the requirement of accessible terminals violates the Commission's rules against mandatory collocation.[36] Nonetheless, the Commission can decide this case without expressing an opinion on any specific state commission proceeding.

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[33] BellSouth Comments at 19-20.

[34] *Id.* at 7-12.

[35] BellSouth's assertion that its provisioning of an access terminal to competitive LECs constitutes "technically feasible access" is an irrelevant gimmick. One of the key points of the Commission's direct access rules is to ensure that competitive LECs have timely access to incumbent LEC customers for competitive purposes. If competitive LECs are required to wait to add customers in an MTE until the incumbent LEC builds an accessible terminal, the competitive LEC is badly disadvantaged because it cannot provide service to new customers quickly.

[36] BellSouth Petition at n.28 (citing AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., Case No. 4:02cv10-RH (Aug. 20, 2004), *appeal pending*, No. 04-1490-CC (11th Cir. Filed Sept. 17, 2004)).

This proceeding seeks only the clarification of three discrete legal issues. For this purpose, the Commission does not need the type of factual record that state commissions use to make individualized determinations, and the Commission's decision can and should refrain from addressing the merits of any specific state cases.

B. The Petition Is Entirely Consistent with the Appeal Procedures in the Communications Act and with Common Federal Court Practice.

The Commission should reject Qwest's claims that the Petition is somehow designed to evade the appeal provisions of Section 252(c)(6) of the Communications Act.[37] Cox properly appealed the OCC's ruling to the United States District Court for the Western District of Oklahoma.[38] Separately, Cox has requested this declaratory ruling to provide material assistance to the federal District Court in Oklahoma, and to every other court and state commission to address the issue, in evaluating the legal issues that are squarely within the Commission's primary jurisdiction. However, the Commission's resolution of these legal issues will not end the case, because the appeal raises issues that are not addressed in this Petition. A declaratory ruling will provide appropriate and necessary guidance to the District Court and state commissions regarding the scope of the Commission's rules and their applicability in state regulatory decisions, but it will not supplant the statutory appeals process.

Ample precedent supports Cox's request for a declaratory ruling to resolve issues within the Commission's primary jurisdiction to aid a federal court in resolving a controversy in which those issues are properly raised.[39] Primary jurisdiction is a judicial doctrine designed to assist

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[37] Qwest Comments at 8-9.

[38] Cox Oklahoma Telcom, L.L.C. v. Corporation Commission of the State of Oklahoma, No. CIV-04-1282-L (W.D. Okla. Filed Oct. 6, 2004).

[39] *See, e.g.*, *In re StarNet, Inc.*, 355 F.3d 634, 639 (7th Cir. 2004) (primary jurisdiction referrals are appropriate when an issue is clearly within an administrative agency's area of expertise).

the courts by permitting expert agencies to resolve technical questions, like the one here, that are otherwise properly raised in the federal courts. Thus, granting Cox's request would not, as Qwest claims, violate the Communications Act. Rather, it would allow the Commission to fulfill its role as the primary expositor of federal communications law, especially as applicable to its own technical rules.

IV. THE REQUESTED RULING IS CONSISTENT WITH THE COMMISSION'S ALLOCATION OF RESPONSIBILITIES BETWEEN FEDERAL AND STATE JURISDICTIONS.

A. State Commissions Play an Important Role in Resolving Intercarrier Disputes, But Their Determinations Must Be Governed by Federal Law.

The petition for a declaratory ruling does not intrude on the proper sphere of state authority to address UNE issues. The Commission properly has carved out a significant role for state commissions in effectuating competitive LEC access to UNEs, adjudicating interconnection disputes, and ensuring the integrity of the public switched telephone network. Nonetheless, that role is limited by federal law as enacted by Congress and interpreted by the FCC. To affirm that principle, the Commission should clarify in its declaratory ruling that the federal rules regarding NIDs, unbundled subloops, and direct access govern state commission consideration of these issues, notwithstanding state laws that might yield a different conclusion in the absence of overriding federal authority.

For example, as explained in the Petition, the OCC made fundamental errors in determining the boundaries between state and federal law regarding NIDs and inside wire subloops, and those errors led to conflicts with the Commission's rules. Specifically, the OCC failed to recognize that, under federal law, NIDs are a defined network element with definite characteristics and that MTE terminal blocks are NIDs within the Commission's definition. Under federal law the NID can be located either at the demarcation point or on either the

customer or network side of the demarcation point.[40] In contrast, Oklahoma law locates the NID solely at the demarcation point between customer-owned and carrier-owned wiring. If the OCC had applied the Commission's definition of the NID (and recognized that federal law controls), it would have recognized that the MTE terminal block, not the first jack at each customer premise, is the relevant NID for the purposes of determining whether competitive LECs are entitled to direct access. Where such a conflict arises between state and federal law in a Section 251 arbitration proceeding, the federal definition of those terms must govern.[41] The Commission should confirm this fundamental rule of law in the context of these rules.

There is no dispute that state commissions are empowered to make determinations of technical feasibility when considering proposed interconnection arrangements in arbitration proceedings.[42] Individual state commissions can base a finding of "technical infeasibility" on "[s]pecific, significant and demonstrable network reliability concerns," provided that they apply governing federal law to their consideration of these issues.[43] The evidentiary burden on an incumbent LEC to sustain a finding of technical infeasibility is very high, however, in light of the Commission's determination in the *Triennial UNE Order* requiring direct access to incumbent LECs' MTE terminal blocks.

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[40] *Virginia Arbitration Order*, 17 FCC Rcd at 27240; *Triennial UNE Order*, 18 FCC Rcd at 17195.

[41] *See* 47 U.S.C. § 252(c)(1); Petition of Worldcom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission, *Memorandum Opinion and Order*, 16 FCC Rcd 6224, 6227 (2001) (application of state law to Section 251 arbitration proceeding fails to satisfy the requirements of Section 252).

[42] Qwest Comments at 8-9; BellSouth Comments at 1-2; 18-19.

[43] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15602-03 (1996).

The *Virginia Arbitration Order* is a case in point. The Commission's analysis in that case provides a guide to state commissions in their consideration of the technical feasibility of direct access. In the *Virginia Arbitration Order*, the Commission heard the same claims of potential harm to the incumbent LEC networks that SWBT has presented to the OCC. In the end, the Commission found the risks of harm to the network were minimal, and consequently rejected claims that direct access was technically infeasible.[44]

Despite the incumbent LECs' best efforts to dress up the OCC's decision, however, the OCC did not engage in the technical feasibility analysis that would be necessary to deny direct access. The OCC found no "specific, significant, and demonstrable network reliability concerns." Instead, the OCC denied direct access based on the mere statement that direct access "may" cause network impairment.[45] The OCC made no finding of technical infeasibility at all.[46] Federal law requires direct access to incumbent LECs' MTE terminal blocks absent a *bona fide*

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[44] *Virginia Arbitration Order*, 17 FCC Rcd at 27243, 27247. The Commission also rejected creation of a rule that would allow competitive LECs to access customer-owned inside wire on the customer side of the NID if the wire were customer owned but not if that same wire if it were carrier owned; such a rule would be unreasonable because the network security issues would be the same in either case. *Id.* at 27243.

[45] The only findings the OCC made concerning network damage were: "that 'direct access' ***may*** seriously jeopardize SBC-OK's ability to maintain network integrity, security and control . . ."; "that 'direct access' as practiced by Cox in the past in Oklahoma ***may*** cause SBC-OK unreasonably [sic] and unnecessary difficulty in maintaining network integrity, security and control . . ." ; and that "[t]he Arbitrator finds that the ability of SWBT-OK to maintain network integrity and control ***may*** be further debilitated if the Commission were to approve the Cox-sponsored amendment to the Interconnection Agreement and other CLECs chose to avail themselves of direct access to these same facilities." Arbitrator's Report at 45-46 (emphasis supplied). There were no findings in the Arbitrator's Report to the effect that Cox had caused any damage whatsoever to SWBT's network.

[46] Indeed, in its effort to locate a finding of fact that might support a finding of technical infeasibility, SWBT cites to the portion of the arbitrator's decision that consists of a summary of the parties' evidence, which of course does not constitute a finding of the OCC. SWBT Opposition at 5-6 & n.9 (citing Arbitrator's Report at 26-28).

finding of technical infeasibility. The OCC failed to adhere to this federal rule because the OCC misapprehended the primacy of the rule and its applicability. If the Commission clarifies its rules, it can expect the OCC and other state commissions to engage in the proper analysis in the future, protecting competitive LEC access to MTEs and encouraging competition.

B. The Petition Does Not Undercut State Authority Over Other Interconnection Issues.

The Petition seeks to clarify that state commissions must follow federal law, including existing Commission rules, in determining whether competitive LECs are entitled to direct access, and, contrary to the comments of Qwest, it does not seek to diminish the role of state commissions over other interconnection issues. State commissions already are authorized to impose many of the obligations Qwest describes in the context of an arbitration or other dispute resolution, without running afoul of the Commission's rules.

For example, where competitive LECs engage in direct access, state commissions can and should ensure that incumbent LEC networks are adequately safeguarded and that incumbent LECs are notified when competitive LECs have gained access to unbundled inside wire subloops.[47] Indeed, Cox agrees that state commissions can and should require competitive LEC technicians to "follow correct procedures for notifying and reimbursing ILECs when they disconnect and reroute the ILECs' inside wire subloop."[48]

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[47] *Virginia Arbitration Order*, 17 FCC Rcd at 27243.

[48] Qwest Comments at 11. As Cox explained to the OCC, Cox's technicians follow the same technical standards used by SWBT's technicians, and Cox would not object to a state commission finding that adherence to incumbent LEC technical standards is a necessary precondition to direct access to inside wire subloops.

In addition, while Qwest's formulation that "ILECs [must] receive compensation . . . when the activities of the CLECs . . . generate costs" might be overbroad,[49] Cox has no objection to a requirement that competitive LECs pay when they use incumbent LEC facilities or technicians. Cox seeks a determination only that incumbent LECs cannot impose unnecessary costs on competitive LECs in the guise of "protecting their networks."[50]

V. THE COMMISSION SHOULD REJECT SWBT'S ATTEMPTS TO RELITIGATE THE FACTS OF THE ARBITRATION BEFORE THE OKLAHOMA COMMISSION.

SWBT devotes a substantial portion of its comments to claims concerning Cox's alleged activities in Oklahoma.[51] This strategy serves only one purpose: to divert the Commission's attention from the relevant issues in the Petition. Plainly, the Petition seeks clarification on legal issues within the Commission's unique expertise, and it does not ask the Commission to determine any factual disputes in the OCC proceeding. Notably, the OCC decision did not rest on any of the factual claims that SWBT makes in its opposition, but in any event SWBT's factual claims are wrong.

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[49] *Id.* at 10.

[50] Qwest essentially concedes that SWBT's proposal would impose unnecessary costs, explaining that Qwest permits competitive LECs to access its facilities without mediation. Qwest "stresses that it is not necessary for an ILEC to perform all of the connections and rerouting of inside wire subloop themselves, and that Qwest has no objections to CLECs using their own personnel." *See id.* at 11. If direct access posed a genuine danger to the integrity of incumbent LECs' networks, Qwest could not make such a statement. Qwest goes on to claim that Cox and others are "arbitrarily accessing Qwest's terminals." *Id.* This is incorrect, at least as to Cox. Cox and Qwest have an agreement governing these issues in Nebraska, and this agreement has been in effect since the end of 2001.

[51] SWBT Opposition at 4-6, 10-13.

A. SWBT's Factual Claims Should Not Be Considered in this Proceeding.

SWBT's factual claims are irrelevant to this proceeding and should not be considered. The Petition seeks a declaration to clarify federal law governing the inside wire subloop. It does not seek a review of the OCC decision and it certainly does not ask the Commission to decide whether, in the particular case that was before the OCC, SWBT adequately demonstrated in Oklahoma that it was technically infeasible for Cox to have direct access to the inside wire subloop.[52] While some of SWBT's claims, if accurate, arguably might have been relevant to a determination of technical feasibility in Oklahoma,[53] they do not have anything to do with the legal issues currently before the Commission.

That SWBT's factual arguments are irrelevant is made even more clear by the fact that the OCC's decision did not rest on any of the factual arguments SWBT is now making. As demonstrated in the Petition, the OCC based its decision on the erroneous conclusion that state law (rather than federal law) governs demarcation points.[54] This was a legal conclusion, not a factual determination, and the OCC merely accepted SWBT's premise that the demarcation point for every MTE customer in Oklahoma is at the first jack.[55] Consequently, SWBT's factual arguments did not form, and could not have formed, the basis for the OCC's decision.

Indeed, SWBT is attempting to convince the Commission of something that it failed to prove at the OCC. As described above, the OCC stated only that direct access "may" cause harm

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[52] In any event, as noted above, the OCC made no such finding and, similarly, did not find that Cox's proposal for direct access would cause harm to SWBT's network. *See supra* p. 16 & n.45.

[53] Even this is doubtful because (among other reasons) SWBT's claims, even if taken at face value, relate only to Cox's past practices, not to the question of whether there are other ways to implement direct access without damaging the SWBT network.

[54] Petition at 12-16, Arbitrator's Report at 43-44.

[55] Arbitrator's Report at 44.

to SWBT's network, and it made no finding that direct access had caused actual network harm or that direct access caused any more harm than SWBT's own activities.[56] SWBT's effort to relitigate these factual issues in a proceeding to clarify purely legal issues is entirely misplaced and should be rejected.

B. SWBT's Irrelevant Factual Claims Are Nonetheless Incorrect and Unsupported by the Record.

None of the factual claims SWBT raises to obfuscate this proceeding are relevant here, and the Commission should ignore them. However, Cox cannot allow the record to remain uncorrected while SWBT makes false assertions about Cox, mischaracterizes the OCC record in the proceeding between SWBT and Cox, and introduces new and misleading information. Accordingly, Cox seeks the Commission's indulgence briefly to correct the record, including SWBT's new allegations.

SWBT repeatedly states that the OCC rejected Cox's position on direct access because Cox's direct access to inside wire subloops at MTEs allegedly caused damage to SWBT's network. This and several of SWBT's other assertions are simply untrue. SWBT mischaracterizes the record and relies upon highly selective and contradicted evidence to assert its points. But if the entire record were examined (which the Commission is not called upon to do here), the record evidence would prove that Cox has not caused significant damage (if any) to SWBT's network and has not caused service outages or degraded service to SWBT's customers.

For example, SWBT states in its Summary that the OCC rejected Cox's position "based on *undisputed* evidence in the record before it demonstrating actual, significant damage caused

[56] *See supra* p. 16 & n.45.

by Cox."[57] This is entirely incorrect.[58] In fact, Cox presented evidence that not only disputed but disproved that there was "actual, significant damage caused by Cox." In summary, Cox presented evidence that: 1) Cox employed exactly the same procedures to perform network cross-connections as the procedures SWBT technicians used; 2) aside from the occasional mistake (which did not cause significant damage), Cox has not damaged SWBT's network at all; and 3) there is no reason to believe Cox caused more than a handful of the minor network imperfections that SWBT claims, because the same network imperfections exist in SWBT's network *where Cox does not even offer telephone service*. SWBT's accusations are illogical and wrong.

SWBT attempts to support its assertion that Cox has damaged its network with the affidavit of William Weydeck and his eighteen photographs. Of course, Cox has performed tens of thousands of inside wire cross-connections, so eighteen examples, even if they were true, would be of no statistical significance.

In any event, these photographs fall woefully short of showing that *Cox* has caused significant damage to SWBT's network. In fact, it is unrefuted that these same installation practices are prevalent in SWBT's network at locations where Cox does not offer telephone service at all, and, therefore, there is no basis to conclude that Cox is responsible for all of them.[59] By way of example, Cox introduced forty-one photographs in the OCC proceedings

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[57] SWBT Opposition at iii (emphasis supplied).

[58] *E.g.*, Oklahoma Corporation Commission Cause No. PUD 200300157 ("Cause No. PUD 200300157"), Prefiled Rebuttal Testimony of Greg Beveridge to William Weydeck and Roman Smith at 4-9 (Questions 5 and 6); Cause No. PUD 200300157, Transcript of Hearing ("Transcript"), February 11, 2004, at 92; Cause No. PUD 200300157, Prefiled Rebuttal Testimony of Carl Branscum at 4-7 (Questions 9-19).

[59] Transcript, February 11, 2004, testimony of Greg Beveridge at 156, line 20 to 170, line 13.

illustrating the prevalence of these installation practices by SWBT at locations where Cox does not offer telephone service.[60]

Mr. Weydeck also states that SWBT conducted an "audit" of MTE facilities that identified many SWBT terminals allegedly damaged in some fashion by Cox.[61] It must be stressed that this so-called audit was not introduced in the OCC proceedings, and Mr. Weydeck never has been subject to cross-examination about it. However, even a cursory examination of the audit shows that it does not prove that Cox damaged SWBT's network. The audit is nothing more than a listing of every single minor imperfection in SWBT's network.[62] SWBT nevertheless blames Cox for all these imperfections when, in most instances, there is no proof whatsoever that Cox is responsible for them.[63] In fact, the SWBT terminals in Oklahoma typically are located outside of apartment buildings and are accessible to SWBT employees, SWBT contractors, and innumerable others, including vandals, any of whom could pull terminals off of walls, remove grommets and plug material, fail to seal terminals and cause the other imperfections of which SWBT complains.[64]

Moreover, Mr. Greg Beveridge, a Cox consultant, under the supervision of a SWBT employee, conducted an audit of SWBT facilities at locations where Cox does *not* offer telephone service and could *not* have caused damage to SWBT's network. This audit is separate from, and in addition to, the SWBT site visits that resulted in the forty-one photographs Cox introduced before the OCC and referred to above. In his audit, Mr. Beveridge inspected

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[60] Copies of these photographs are attached hereto as Exhibit 1.

[61] SWBT Opposition, Affidavit of William E. Weydeck, ¶ 11.

[62] *See* Exhibit 2, Declaration of Greg Beveridge, ¶ 9.

[63] *Id*.

[64] *Id.*

approximately 300 SWBT terminals in the Oklahoma City area. Mr. Beveridge's audit reveals that SWBT facilities at locations where Cox does not offer telephone service are in virtually the same condition as facilities at those locations where Cox does offer service.[65] At those locations where Cox is not present, Mr. Beveridge found that, among other imperfections, terminals were open and unsealed; terminals were torn or pried from mountings on building walls; there were bare and unprotected wires in terminals; wire scraps were left on binding posts within terminals; wires were run through terminal doors, preventing doors from sealing; and plug material and grommets had been removed from terminal openings allowing moisture and insects to enter the terminals.[66] In sum, SWBT facilities in locations where Cox does not do business are in exactly the same condition, and exhibit the same imperfect installation practices and maintenance, as the terminals identified in SWBT's so-called audit.

SWBT also attempts to support its contention that Cox has damaged its network by alleging that Cox has caused thousands of customer service outages.[67] These misleading allegations are based upon OCC Exhibit 132 (SWBT Exhibit 38), a list of "trouble reports" allegedly caused by Cox. Examination of the trouble reports, however, shows that virtually none were the result of any error, mistake, or damage related to Cox's direct access installation practices. Virtually all reported "trouble" occurred when SWBT, after winning back a customer that it had lost to Cox, tried to turn on that customer's service remotely from the central office. Because the inside wire subloop naturally had been connected to Cox's network when the customer had switched to Cox, SWBT had to dispatch a technician to reconnect the inside wire

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[65] *Id.*, ¶ 10-11.

[66] *Id.*, ¶ 11.

[67] SWBT Opposition at 12, Affidavit of William E. Weydeck, ¶¶ 14-15.

subloop to the SWBT network.[68] Plainly, such "trouble" does not reflect any improper conduct by Cox and it certainly does not demonstrate damage to SWBT's network; it is simply the unavoidable result of competition with a facilities-based telephone company. In fact, it is entirely expected and anticipated that SWBT will have to dispatch a technician to reconnect the inside wire subloop to SWBT's network each time SWBT wins back a customer from Cox; this is a specific element in all of SWBT's own proposals in the Oklahoma proceeding.[69]

Ironically, SWBT's list of trouble reports actually supports Cox's point that moving SWBT customers to Cox's service by switching the inside wire subloop from SWBT's network to Cox's network has not caused "significant network damage." Exhibit 132 purports to list every trouble call Cox allegedly caused. Almost all the "trouble" calls were caused by the need to move wires from one terminal to another.[70] However, such switching would be required even under SWBT's own proposals, none of which contemplate harm to SWBT's network. Therefore, Cox's switching of wires between terminals ("causing" the need to switch them back) cannot have caused damage to SWBT's network.

In addition, the uncontested evidence in the record before the OCC and common sense prove that even the *possibility* of "significant network damage" from direct access is remote, at best. Direct access to the inside wire subloops occurs at the farthest reaches of SWBT's network

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[68] Cause No. PUD 200300157, OCC Exhibit 132; Transcript, February 13, 2004, testimony of William Weydeck at 164, line 12 to 168, line 15; SWBT Opposition, Affidavit of William E. Weydeck, ¶¶ 14-15.

[69] Transcript, February 13, 2004, testimony of William Weydeck, at 168, line 16 to 170, line 10.

[70] Transcript, February 13, 2004, testimony of William Weydeck, at 167, line 4 to 168, line 3 (witness would not disagree with conclusion that 99.5 percent of listed trouble calls result from need to move wires).

at locations that serve, at most, only a handful of customers in an MTE.[71] Thus, even *complete destruction of* the accessible terminal would affect only the handful of customers served by that terminal and could not by any stretch of the imagination cause "significant network damage."

Finally, SWBT repeatedly asserts that the direct access to inside wire subloops that Cox seeks will result in future damage to SWBT's network. This is rank speculation. It also is contradicted by the record. SWBT's own witness, William Weydeck, was asked whether there would be any adverse network reliability impacts if the OCC adopted Cox's direct access proposal and if Cox did what it was required to do under that proposal. Mr. Weydeck was unable to identify any future damage at all that would result from Cox's direct access proposal, stating only that he had "no answer for" and was "unable to answer" the question.[72]

VI. CONCLUSION

For the foregoing reasons, Cox respectfully requests that the Commission grant its Petition and issue a declaratory ruling stating that:

(1) Competitive LECs have a right to direct physical access to incumbent LECs' inside wire subloops in MTEs, subject to the Commission's technical feasibility requirements;

(2) This right allows competitive LECs to obtain direct access to inside wire subloops at incumbent LECs' terminal blocks in MTEs where such access is not technically infeasible;

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[71] Cause No. PUD 200300157, Redacted Prefiled Rebuttal Testimony of Greg Beveridge on Behalf of Cox Oklahoma Telcom, L.L.C., at 6 (Question no. 6).

[72] Transcript, February 13, 2004, Testimony of William E. Weydeck, at136, line 10 to 137, line 3.

(3) Where there is a conflict between the Commission's rules governing access to inside wire subloops and relevant state law, the Commission's rules apply.

Respectfully submitted,

COX OKLAHOMA TELCOM, L.L.C.

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J.G. Harrington
Jason E. Rademacher

Its Attorneys

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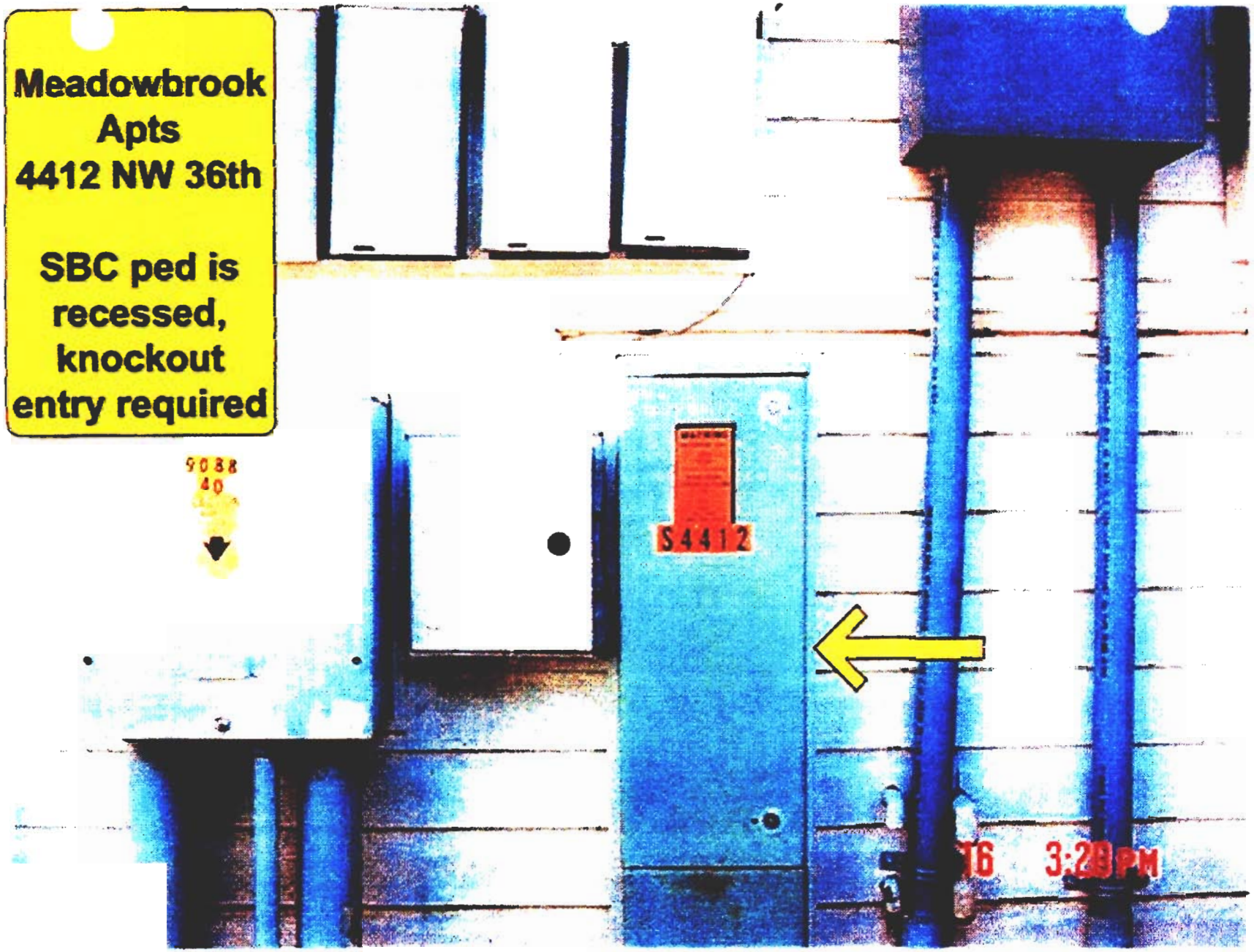
Washington, DC 20036
(202) 776-2000 (phone)
(202) 776-2222 (fax)

December 21, 2004

EXHIBIT 1

Photographs of SWBT MTE Terminal Blocks at Locations to Which Cox Does Not Provide Service


Meadowbrook
Apts
4412 NW 36th
SBC ped is
recessed,
knockout
entry required
9088
40
S4412
16 3:28PM

Riverton Apts
7426 NW 10th

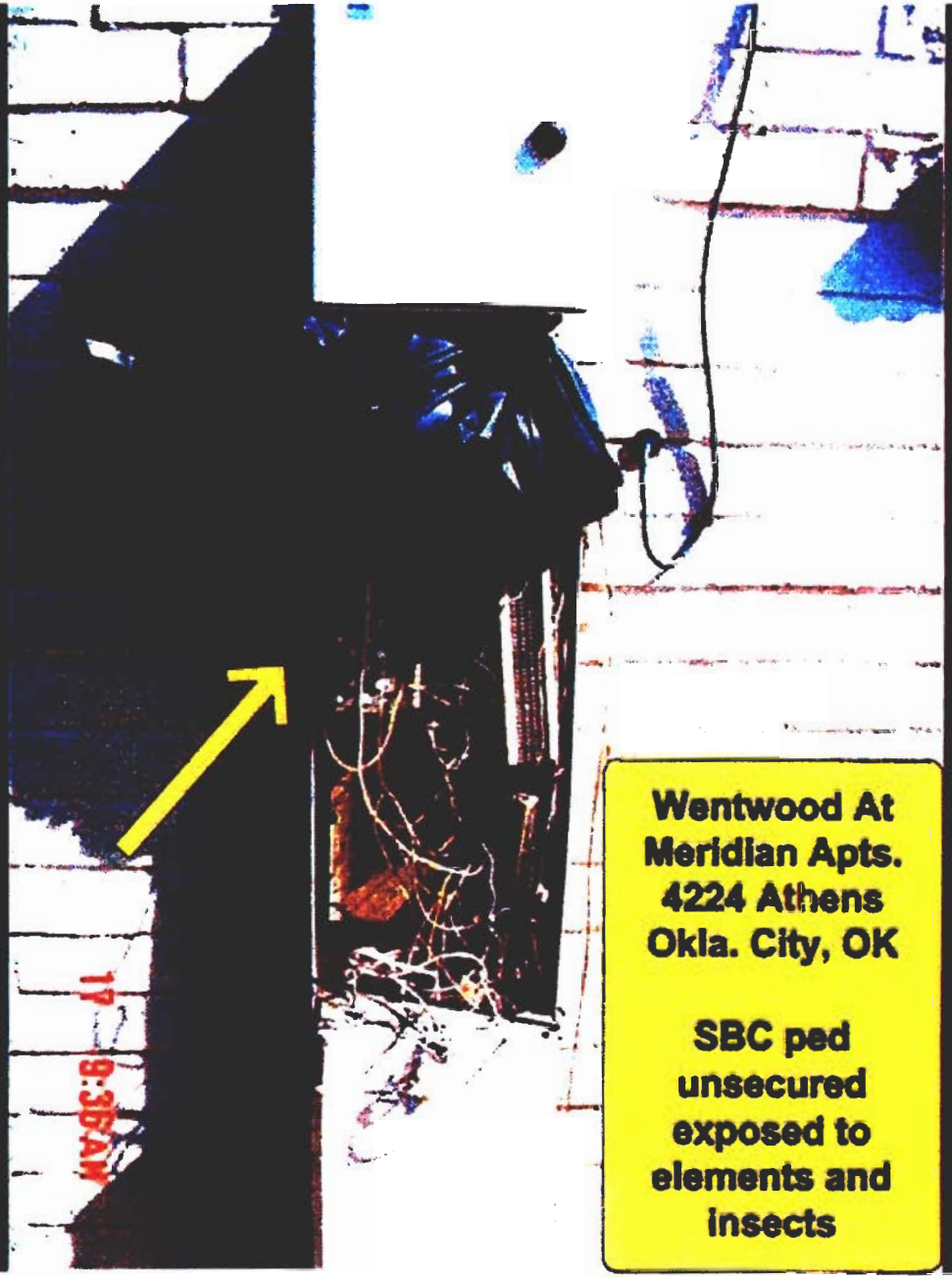
SBC ped is recessed, knockout entry required

S 5 04

Wentwood At
Meridian Apts.
4224 Athens
Okla. City, OK

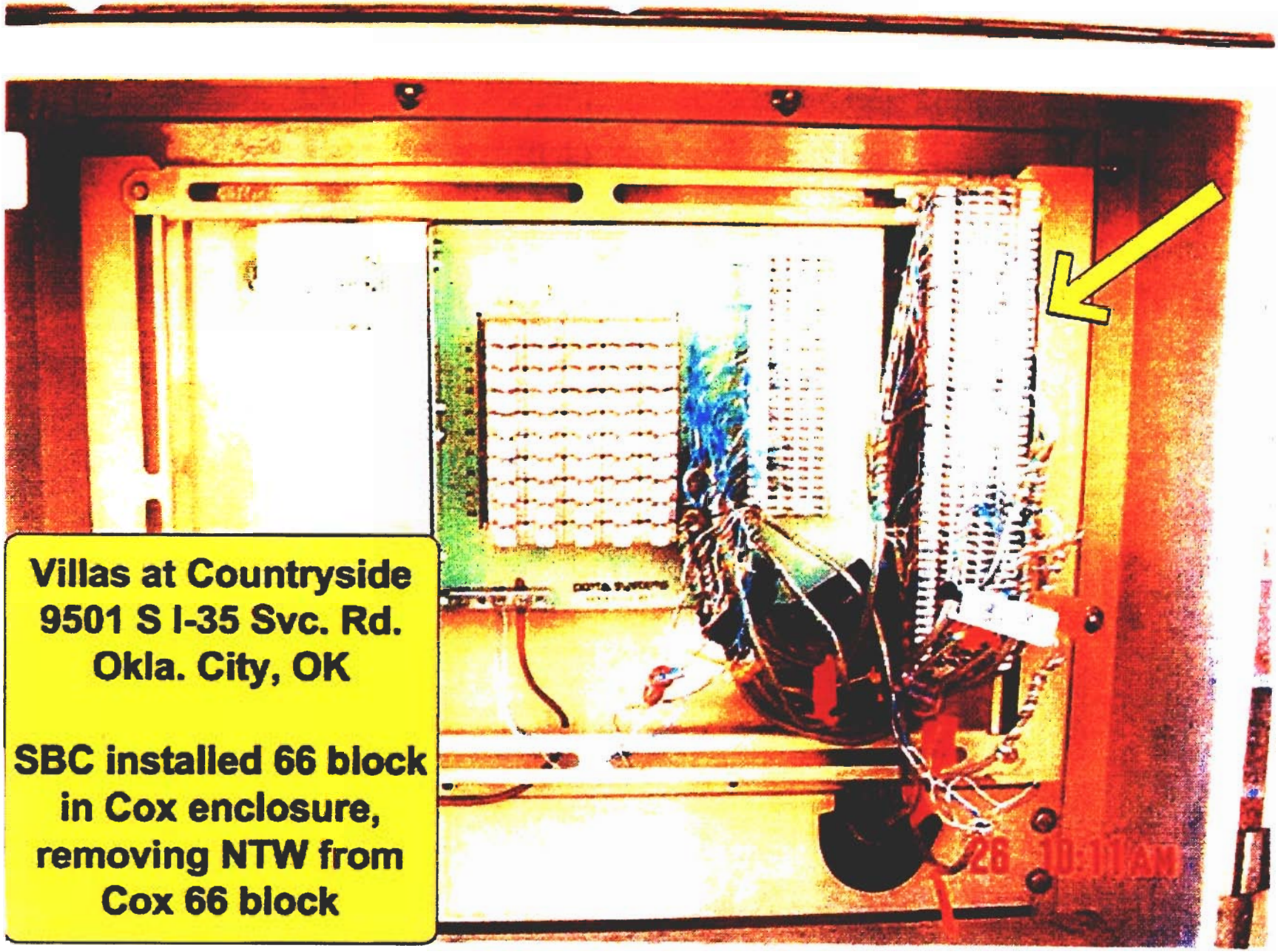
1-Cox network
2-SBC NTW splice
with biscuit jack
leaving exposed to
elements

298.003

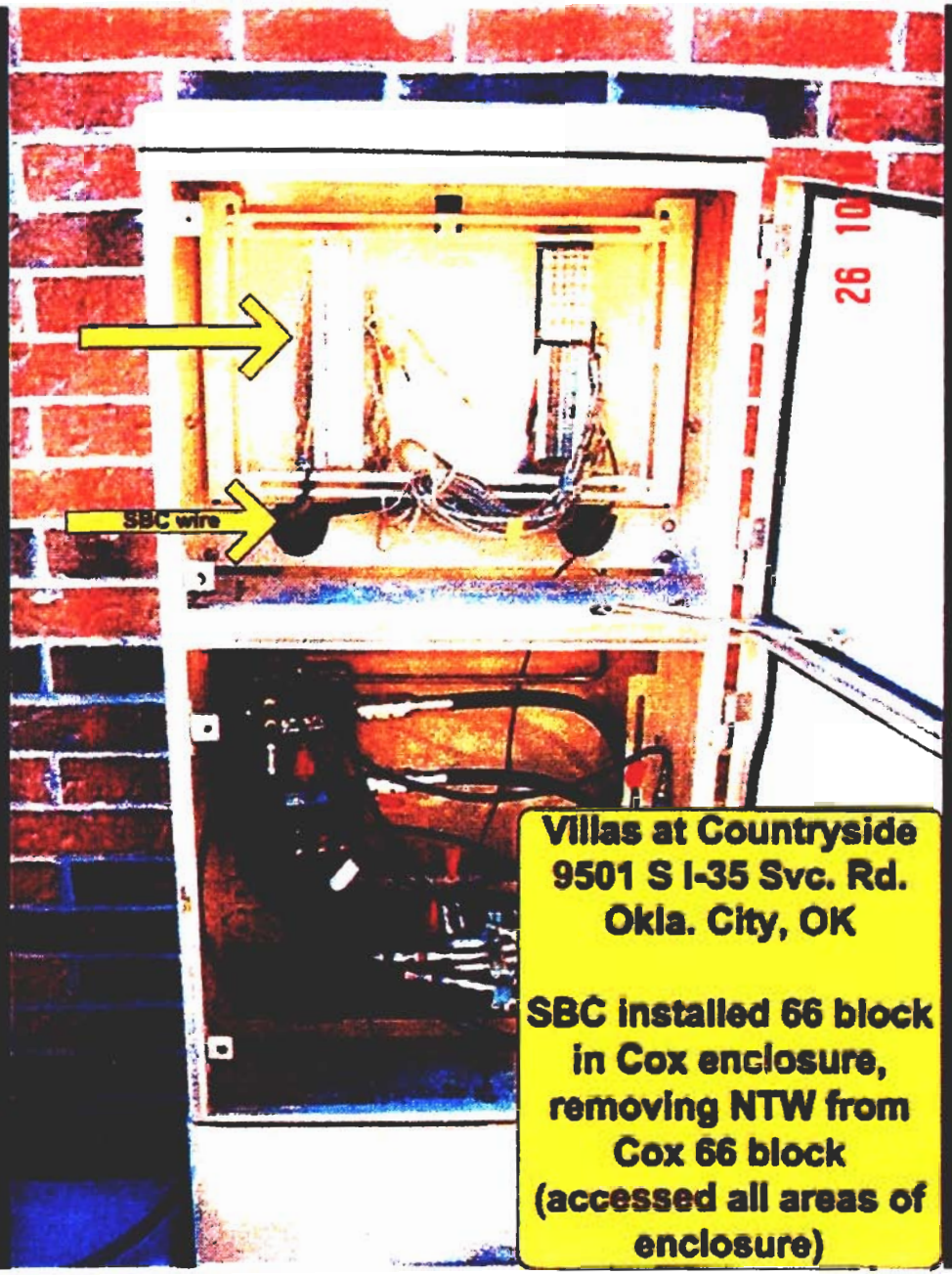


Wentwood At
Meridian Apts.
4224 Athens
Okla. City, OK

SBC ped
unsecured
exposed to
elements and
insects


Villas at Countryside
9501 S I-35 Svc. Rd.
Okla. City, OK
SBC installed 66 block
in Cox enclosure,
removing NTW from
Cox 66 block

298.005



Villas at Countryside
9501 S I-35 Svc. Rd.
Okla. City, OK

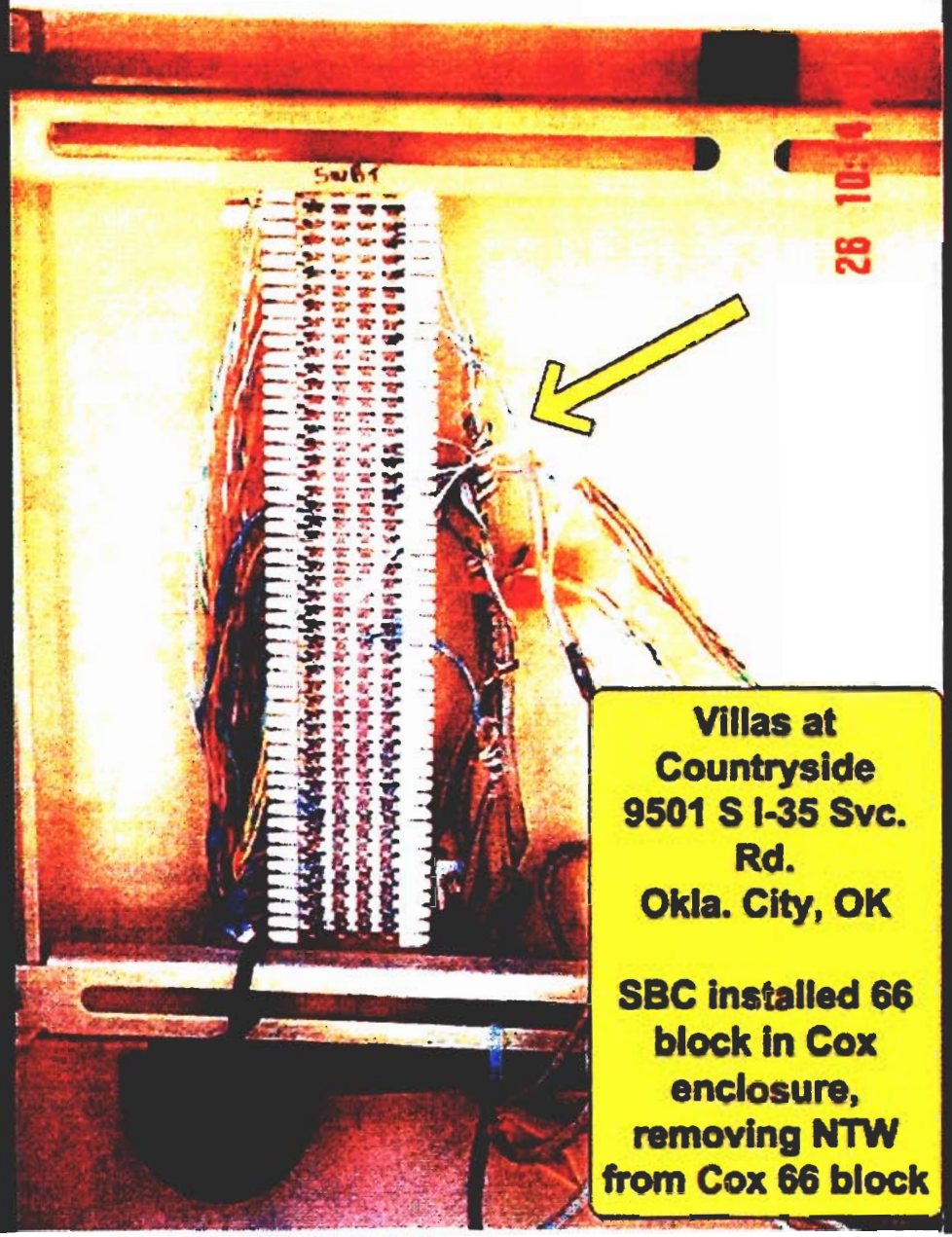
SBC installed 66 block in Cox enclosure, removing NTW from Cox 66 block (accessed all areas of enclosure)

298.006

Villas at Countryside
9501 S I-35 Svc. Rd.
Okla. City, OK

SBC installed 66 block in Cox enclosure, removing NTW from Cox 66 block

298.007

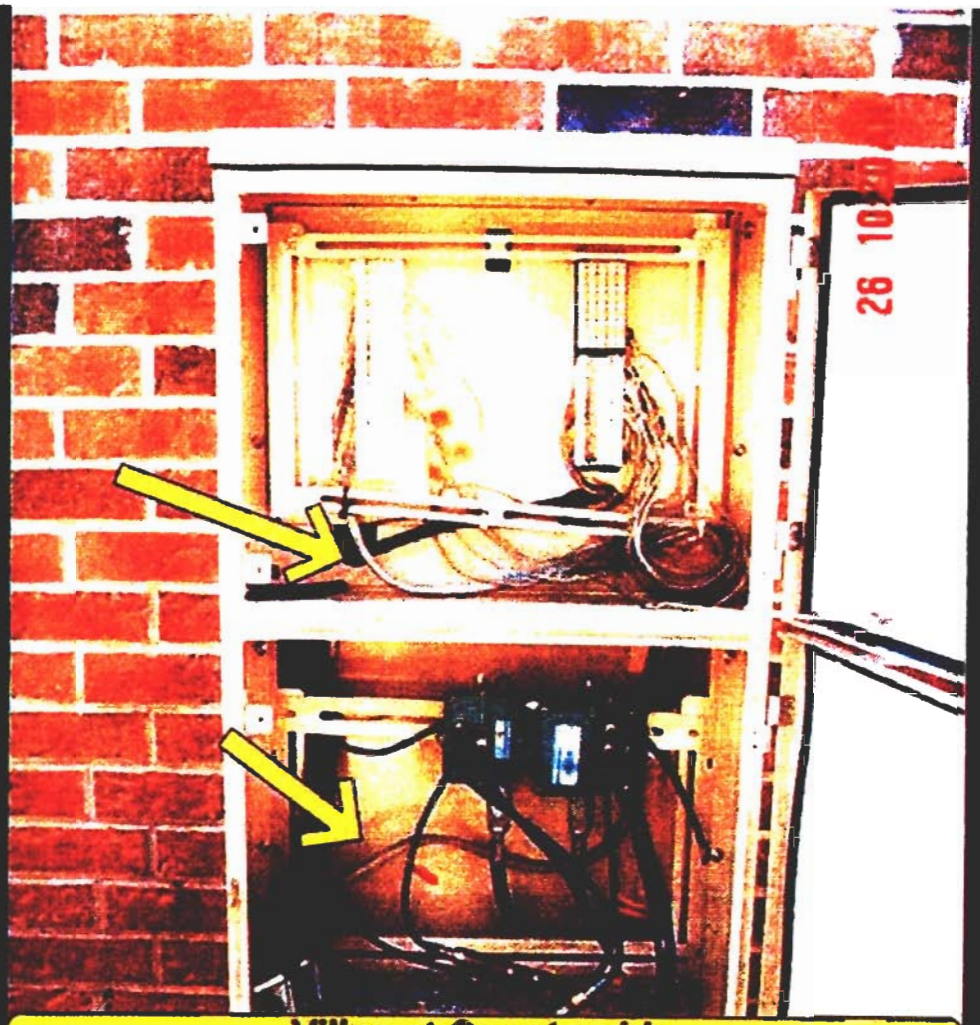

Villas at
Countryside
9501 S I-35 Svc.
Rd.
Okla. City, OK
SBC installed 66
block in Cox
enclosure,
removing NTW
from Cox 66 block

298.008

Villas at Countryside
9501 S I-35 Svc. Rd.
Okla. City, OK

SBC ped that feeds SBC 66 block inside Cox enclosure

298.009



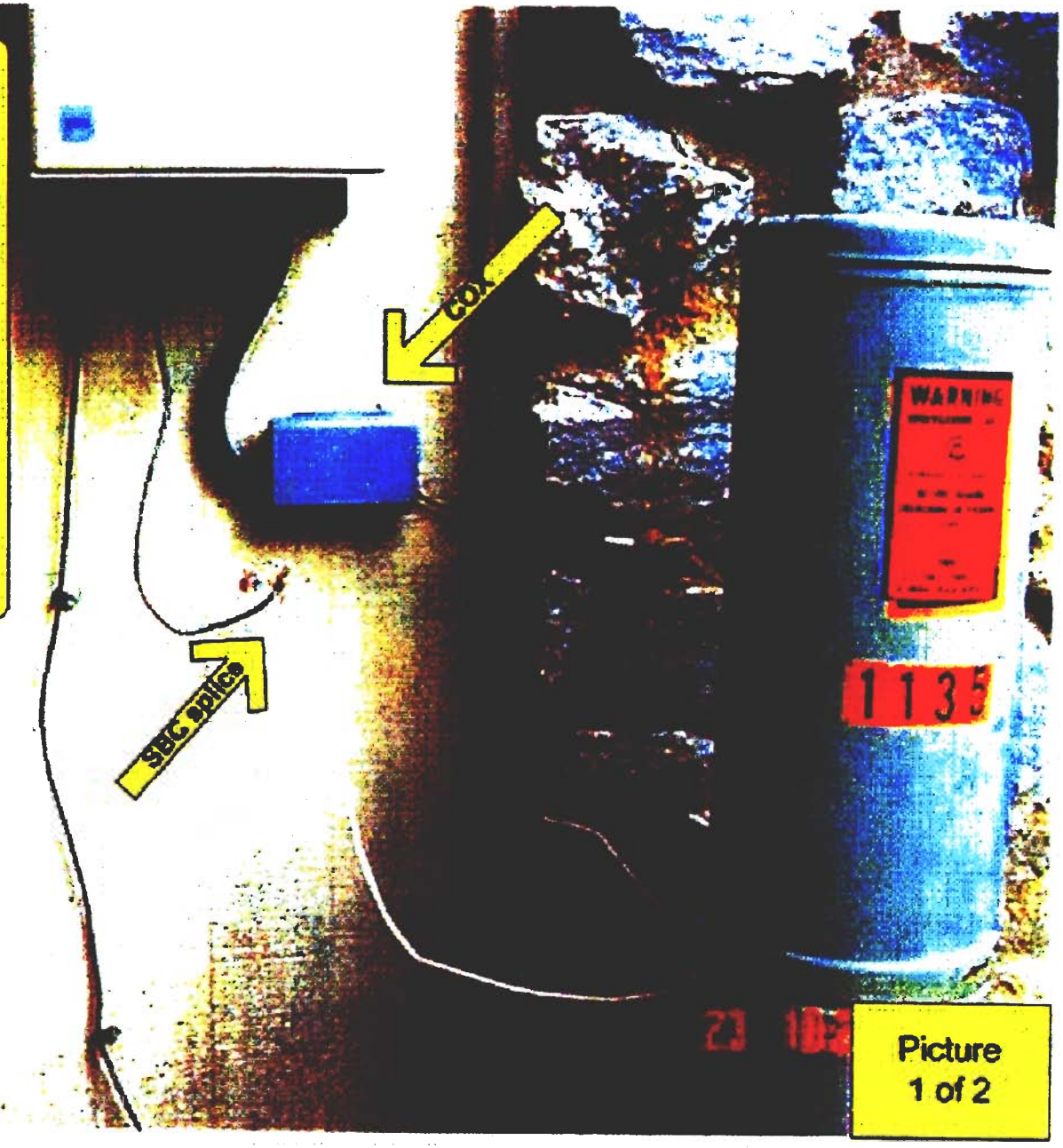
Villas at Countryside
9501 S I-35 Svc. Rd.
Okla. City, OK

SBC wire feeding from SBC ped through Cox enclosure to SBC 66 block.

298.010

Villas at Countryside
9501 S I-35 Svc. Rd.
Okla. City, OK

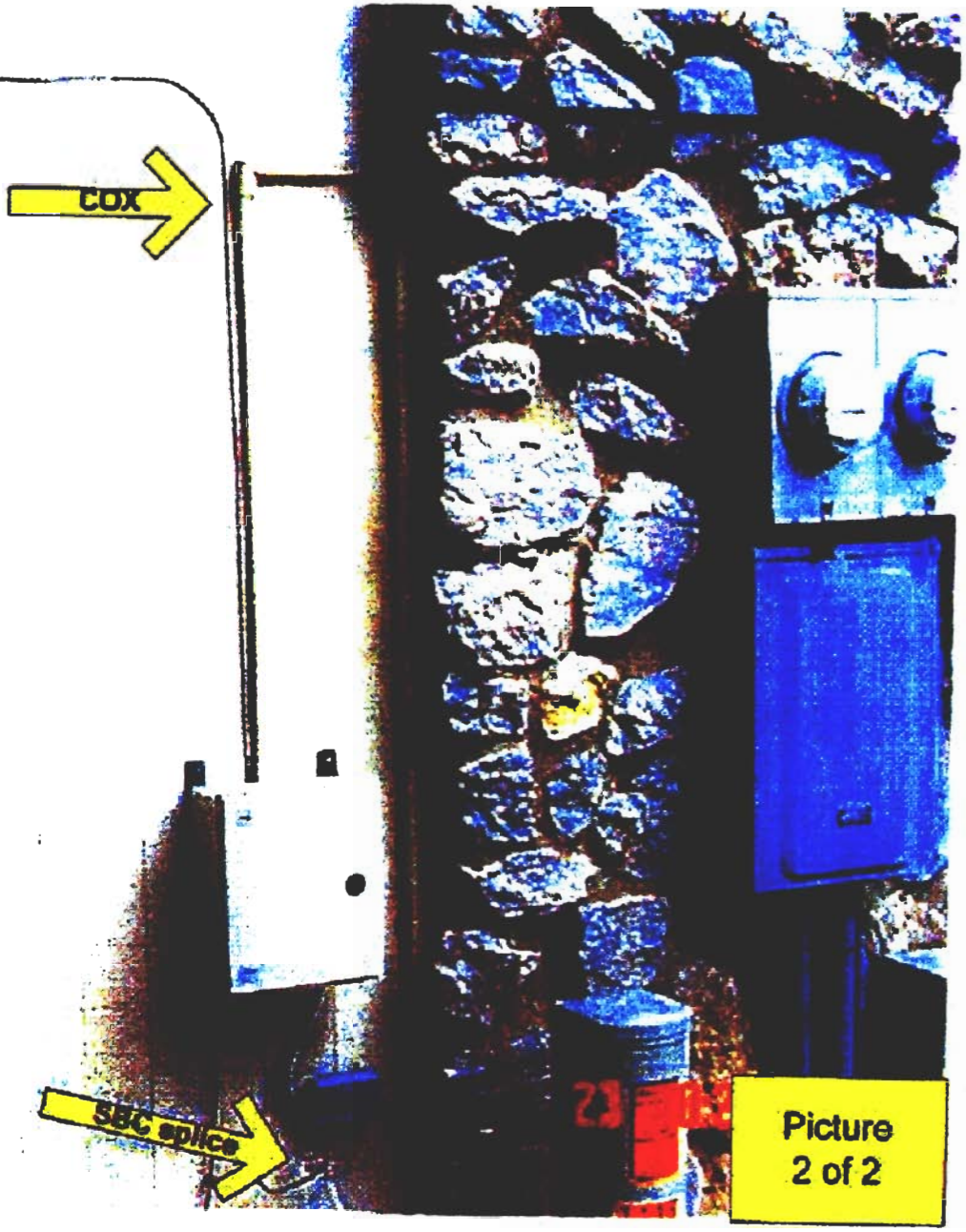
SBC splice COX NTW with scotch locks leaving exposed to elements



Picture 1 of 2

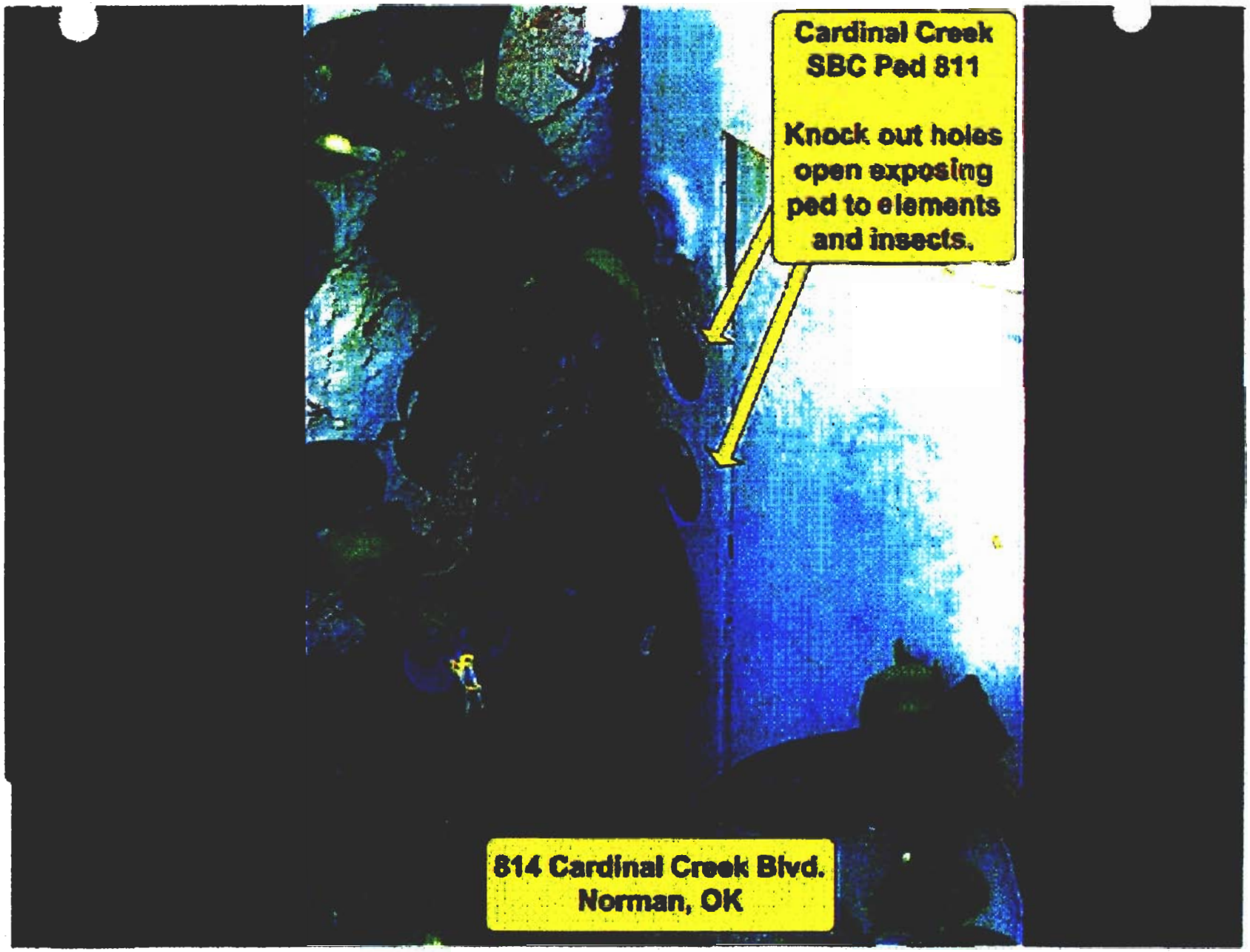
Villas at Countryside
9501 S I-35 Svc. Rd.
Okla. City, OK

SBC splice COX NTW with scotch locks leaving exposed to elements

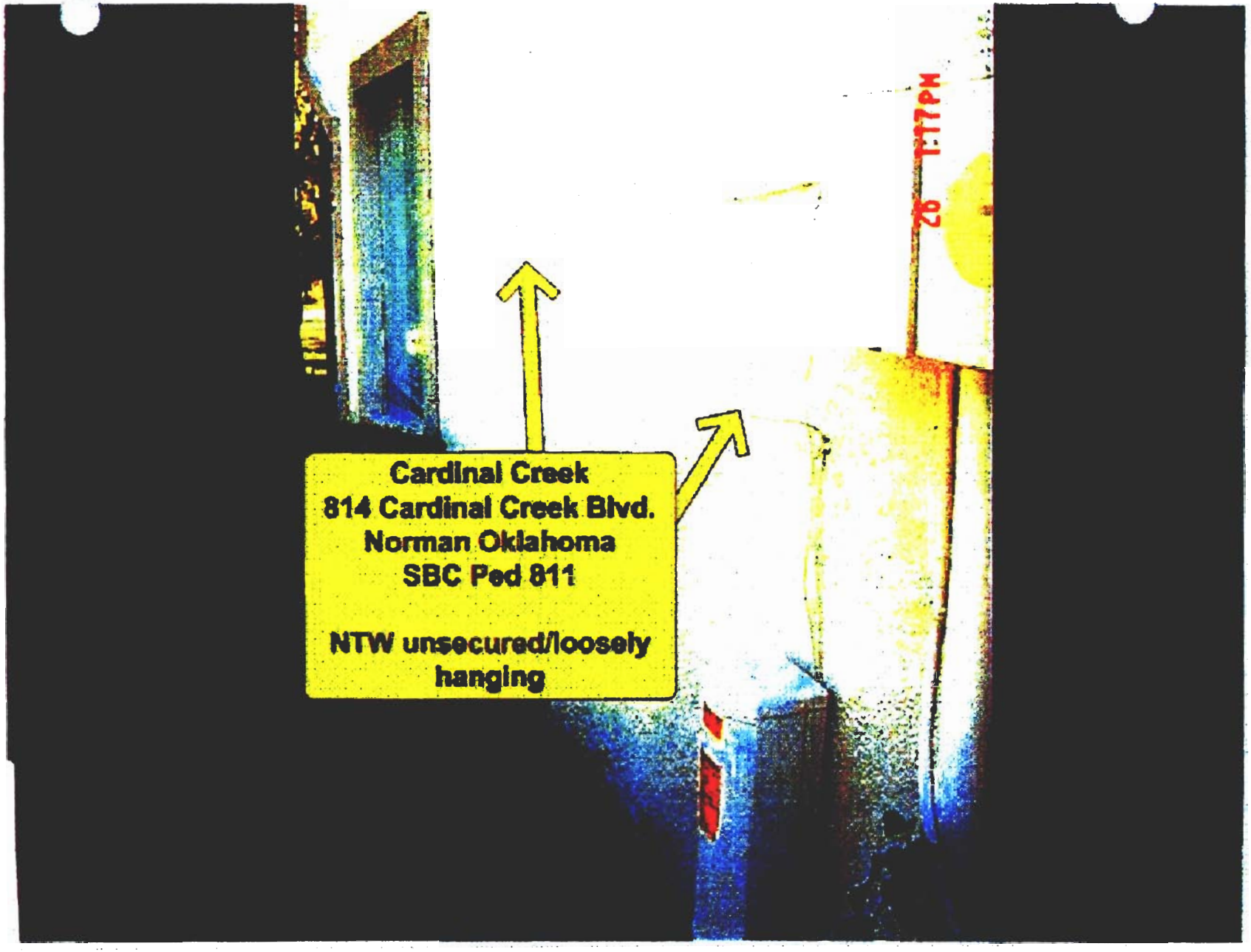


Picture
2 of 2

298.012

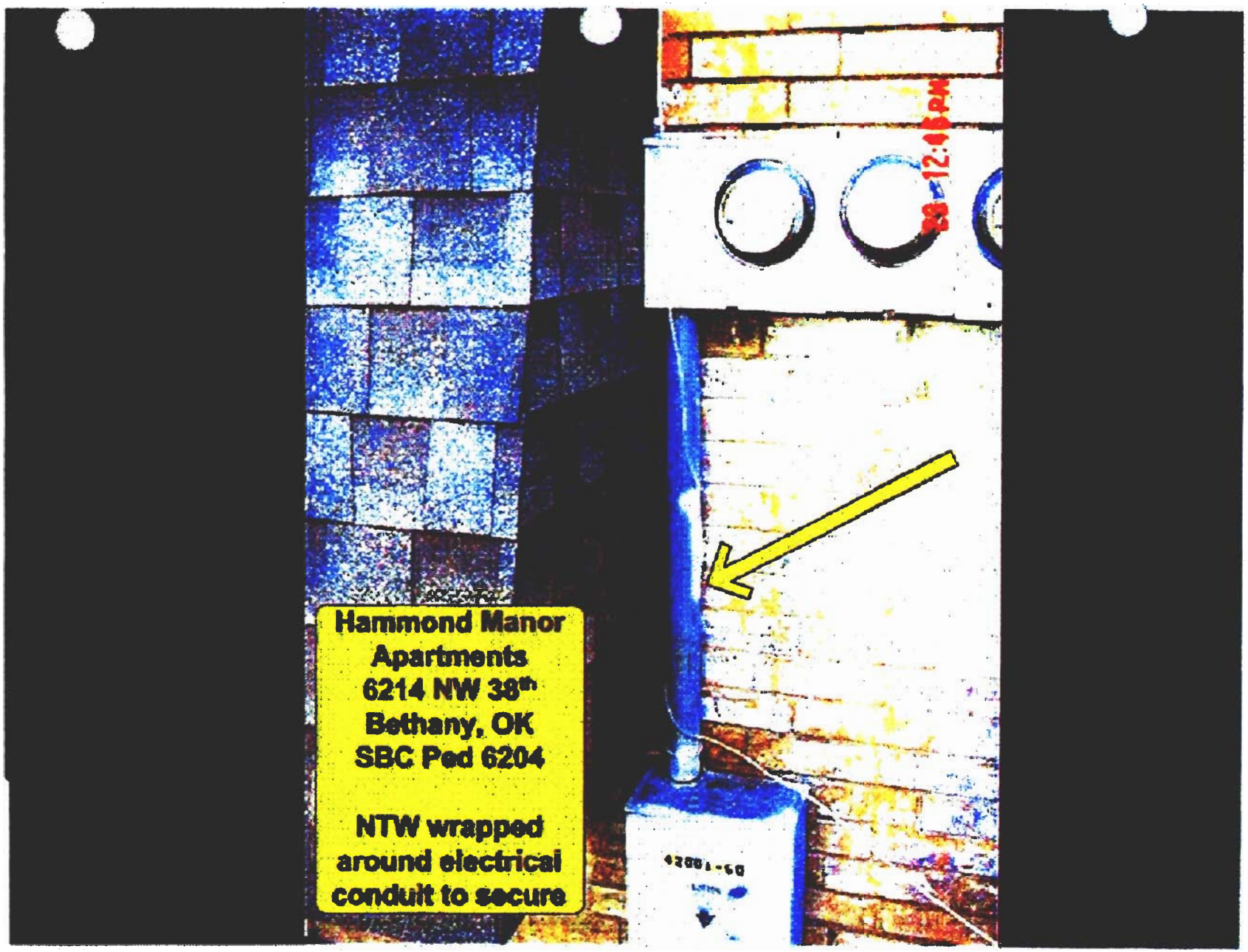

Cardinal Creek
SBC Ped 811
Knock out holes open exposing ped to elements and insects.
814 Cardinal Creek Blvd.
Norman, OK

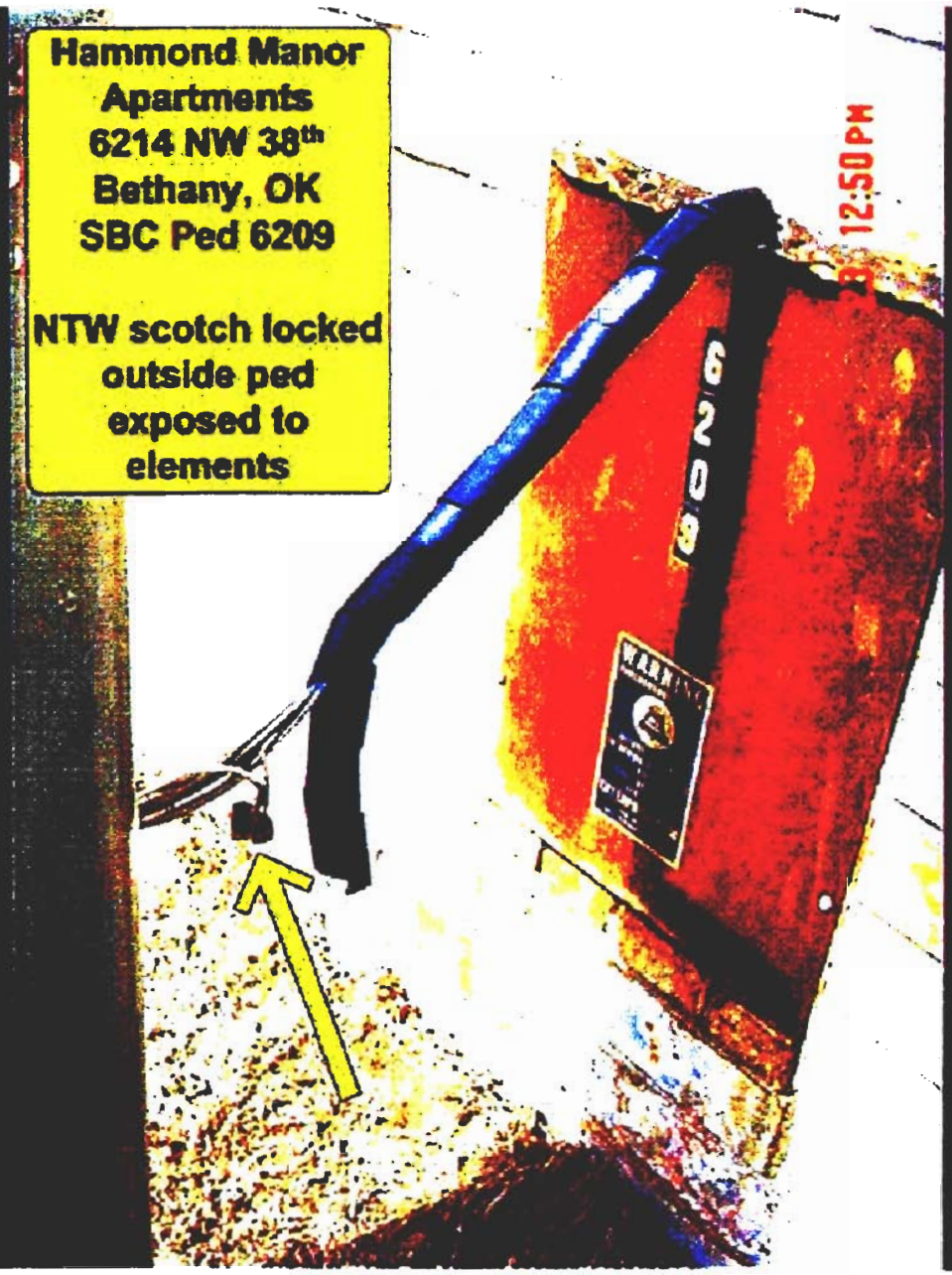
298.013


Cardinal Creek
814 Cardinal Creek Blvd.
Norman Oklahoma
SBC Ped 811
NTW unsecured/loosely
hanging
26 T:17PM

Hammond Manor
Apartments
6214 NW 38th
Bethany, OK
SBC Ped 6204
NTW laying on
ground unsecured

298.015


Hammond Manor
Apartments
6214 NW 38th
Bethany, OK
SBC Ped 6204
NTW wrapped
around electrical
conduit to secure


Hammond Manor
Apartments
6214 NW 38th
Bethany, OK
SBC Ped 6209
NTW scotch locked
outside ped
exposed to
elements
6209
12:50PM

298.017

Pine Creek
Apts
1800 N
Rockwell
Bethany, OK
SBC Ped 4
Lid to ped off
exposing
scotch locks
and
connections to
elements.
23 2:14PM

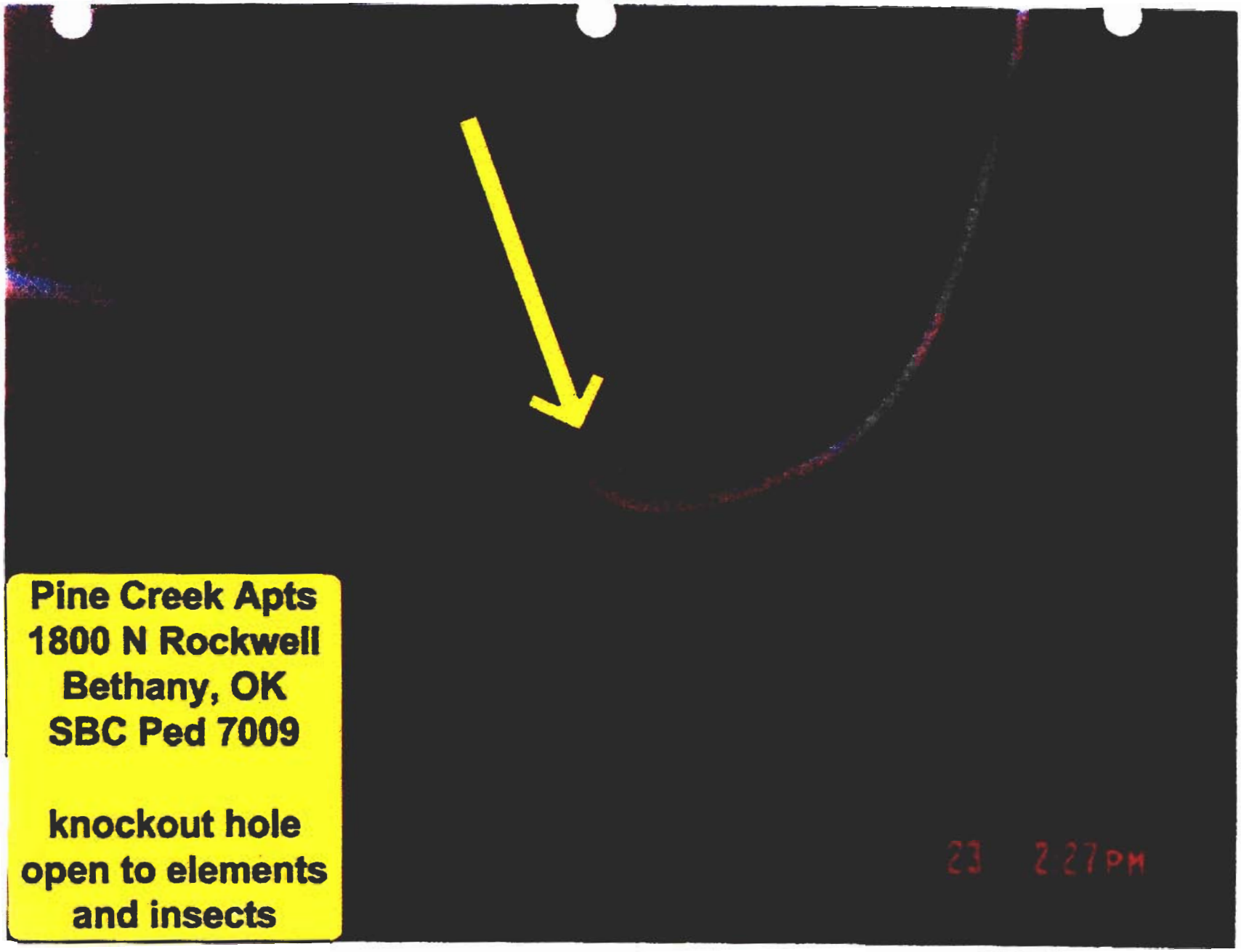
298.018

Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 16
(1)protective coating removed
(2)wire looped through conduit
(3)wire looped around conduit
WARNING
1
6
2:22PM
Picture 1 of 2

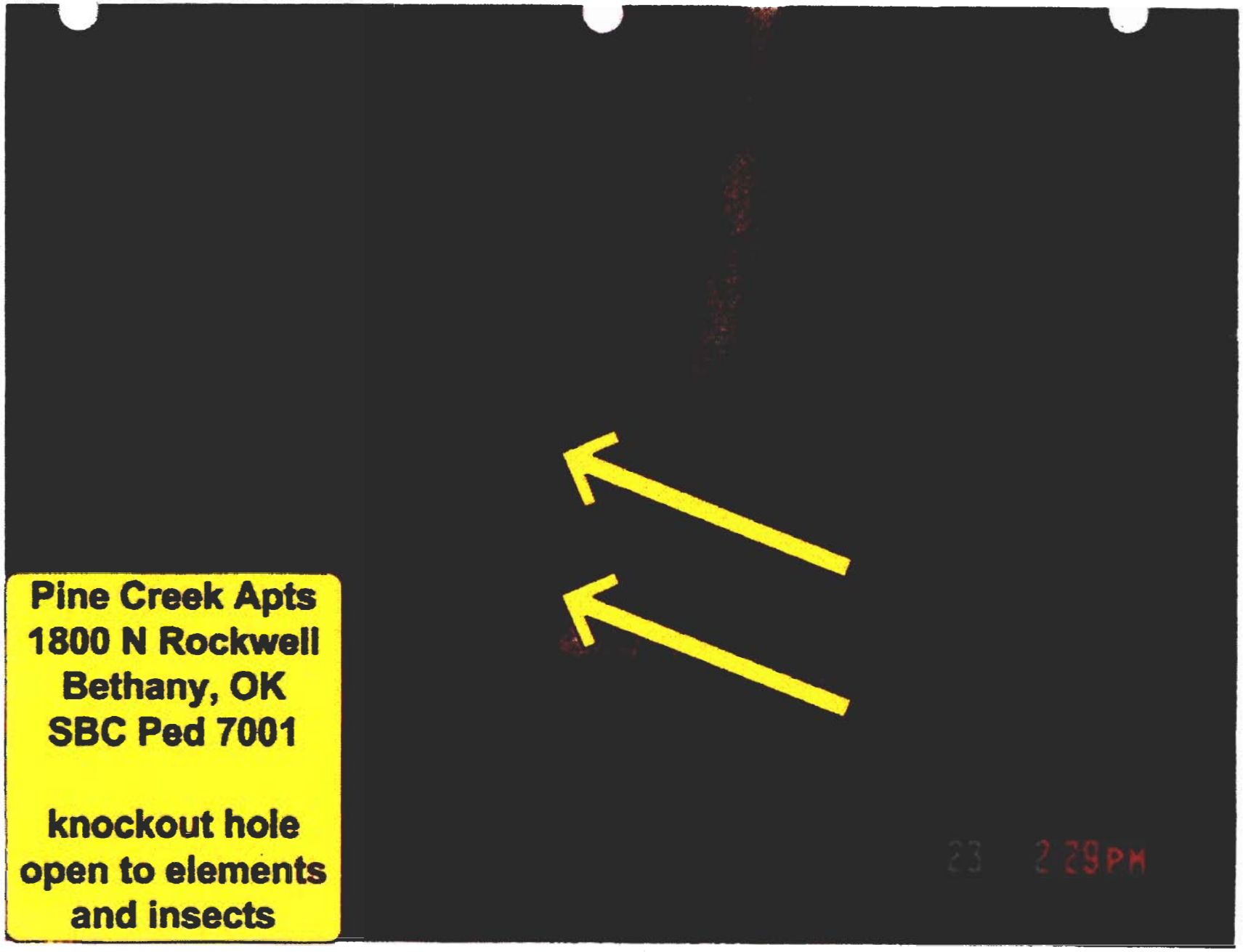
298.019

Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 16
wire looped
around conduit
and laying on
ground
unsecured
Picture 2 of 2

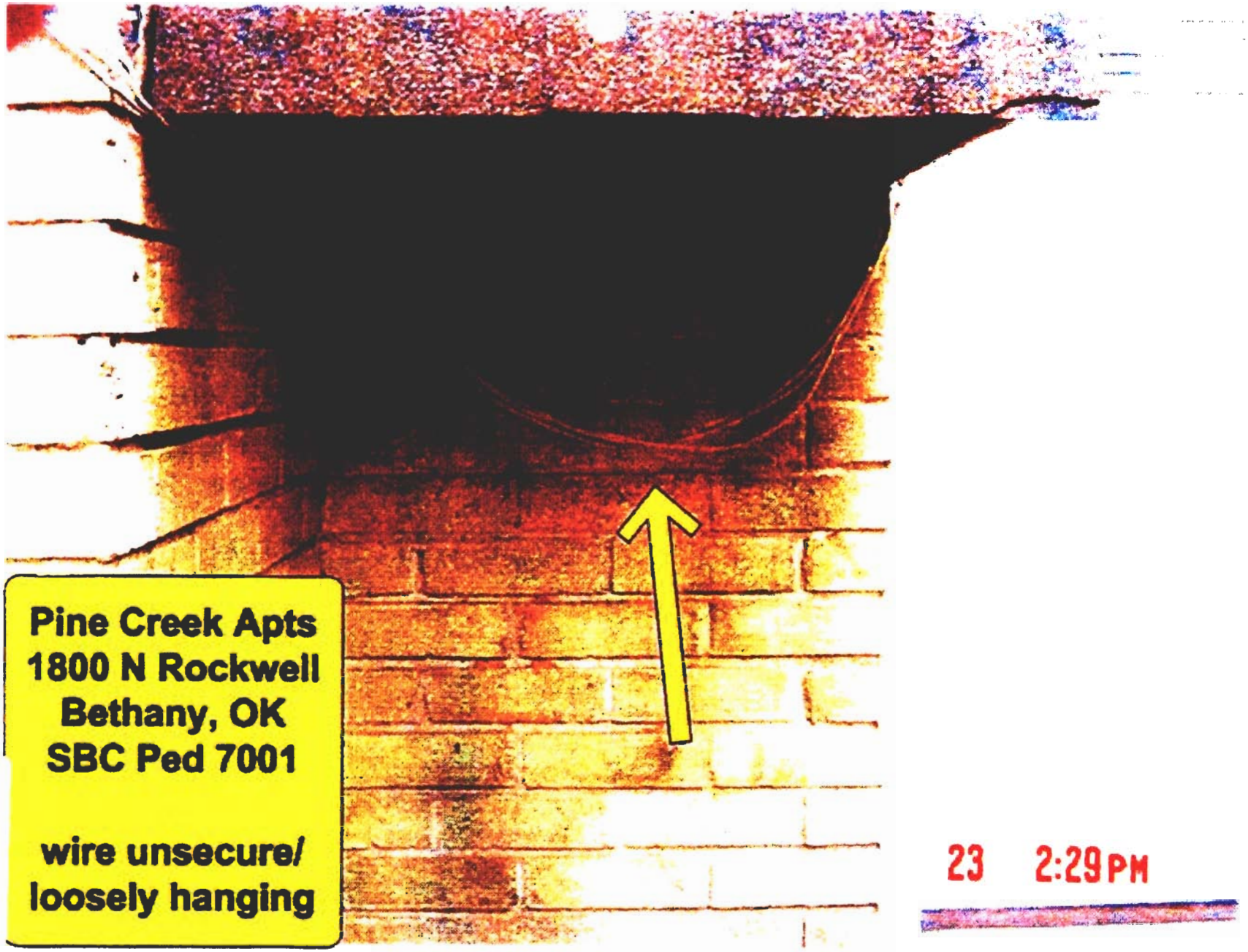
288.020


Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7009
knockout hole
open to elements
and insects
23 2 27PM

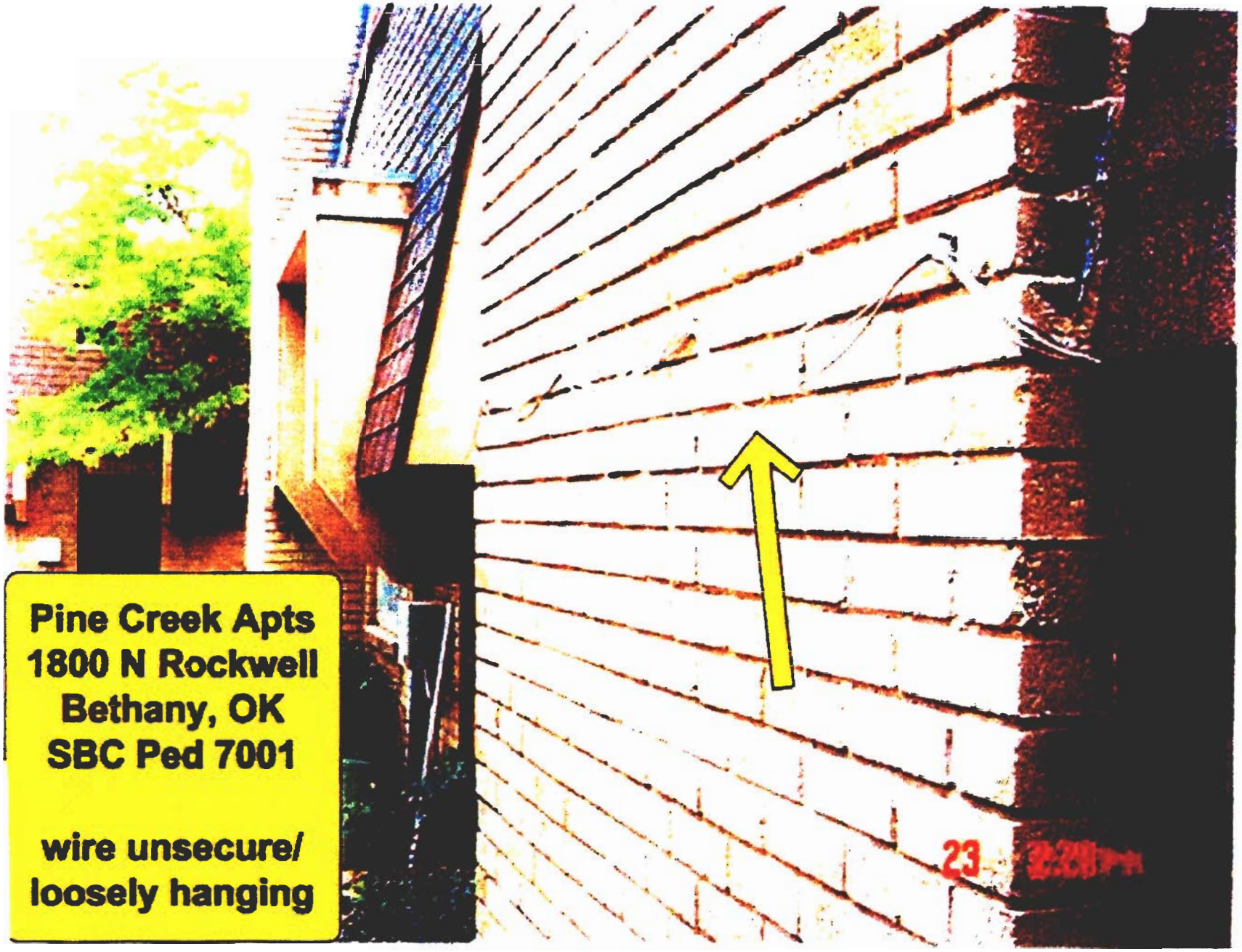
298.021


Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7001
knockout hole
open to elements
and insects
23 2 29PM

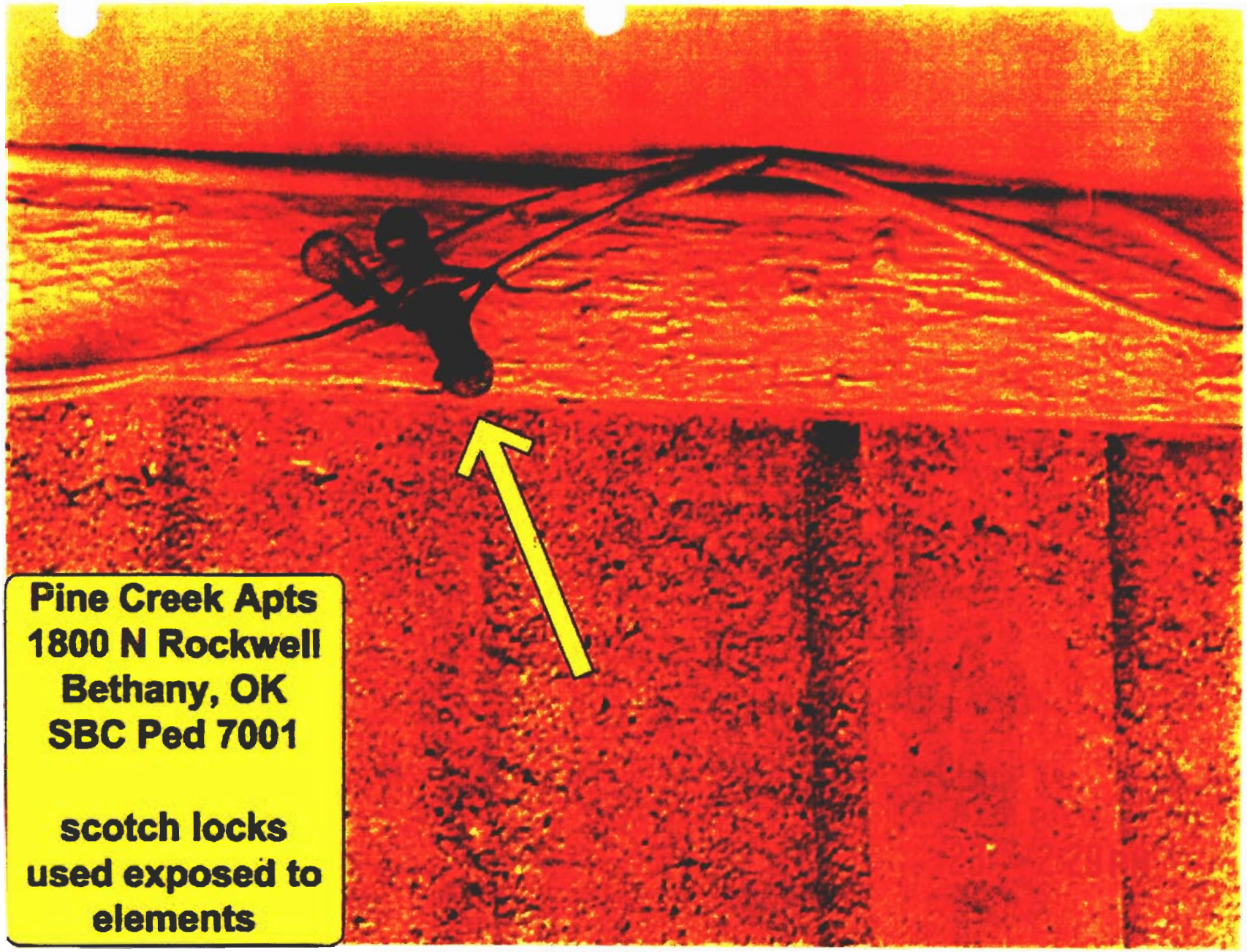
298.022


Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7001
wire unsecure/
loosely hanging
23 2:29PM

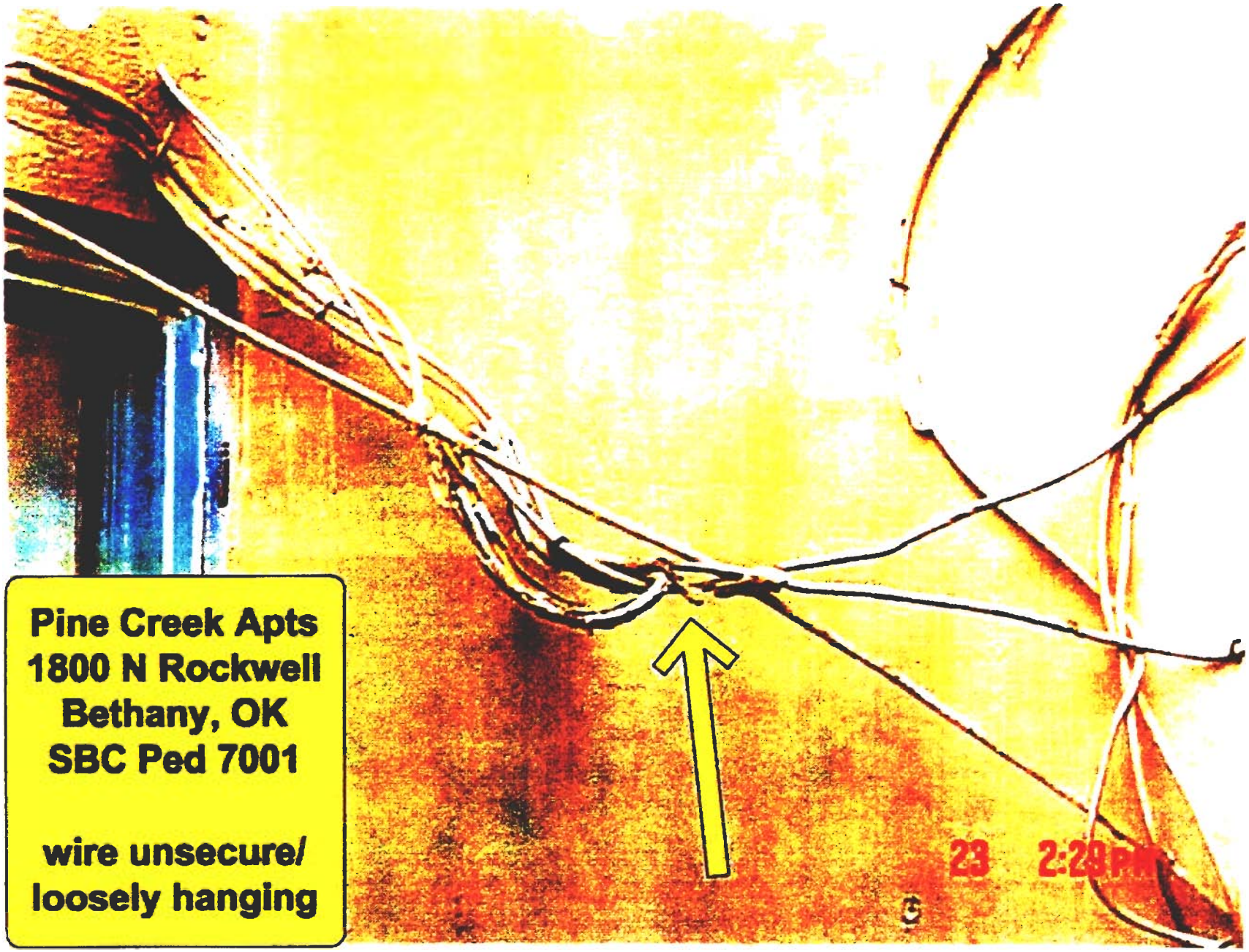
298.023


Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7001
wire unsecure/
loosely hanging
23

298.024


Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7001
scotch locks
used exposed to
elements

298.025



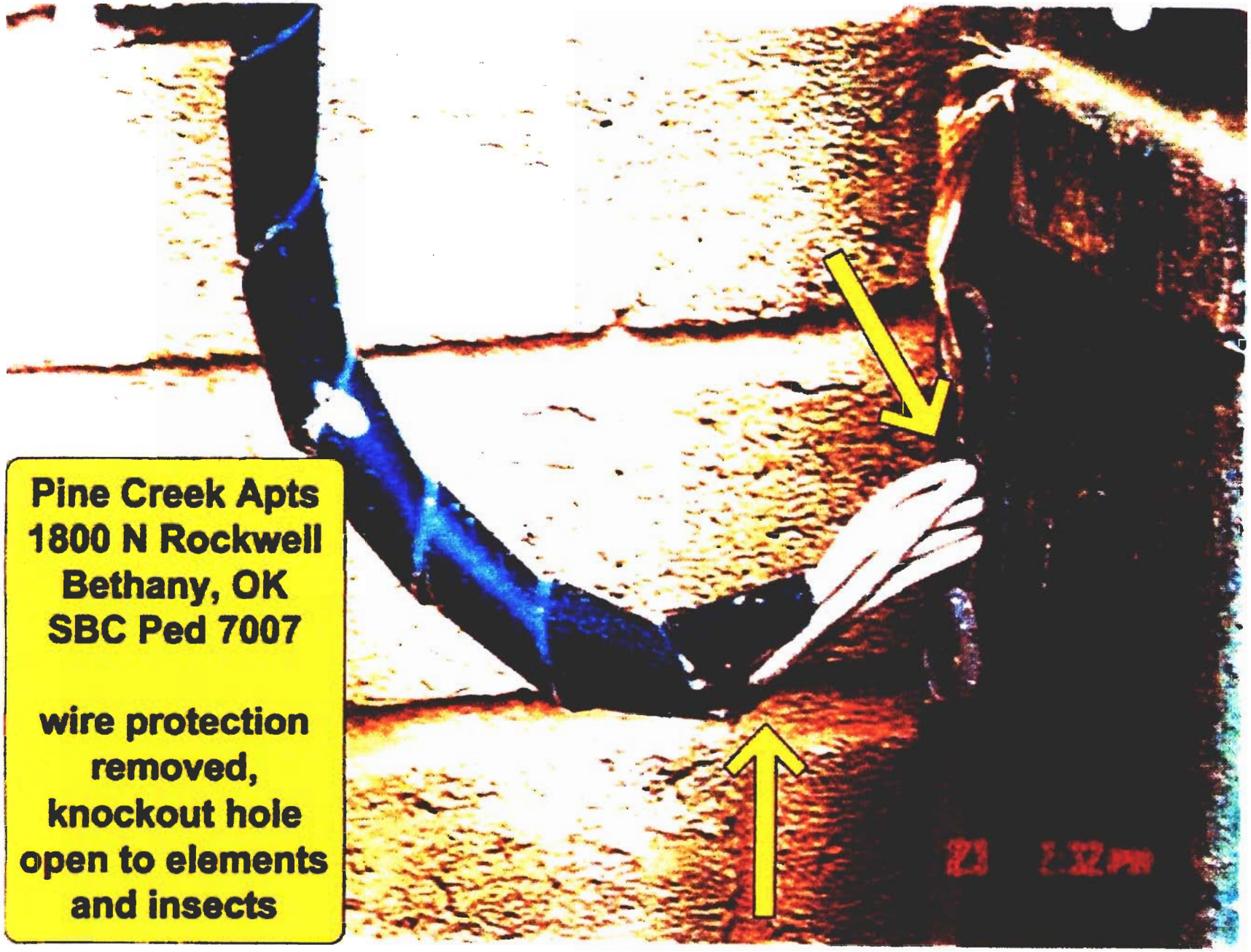
Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7001

wire unsecure/
loosely hanging

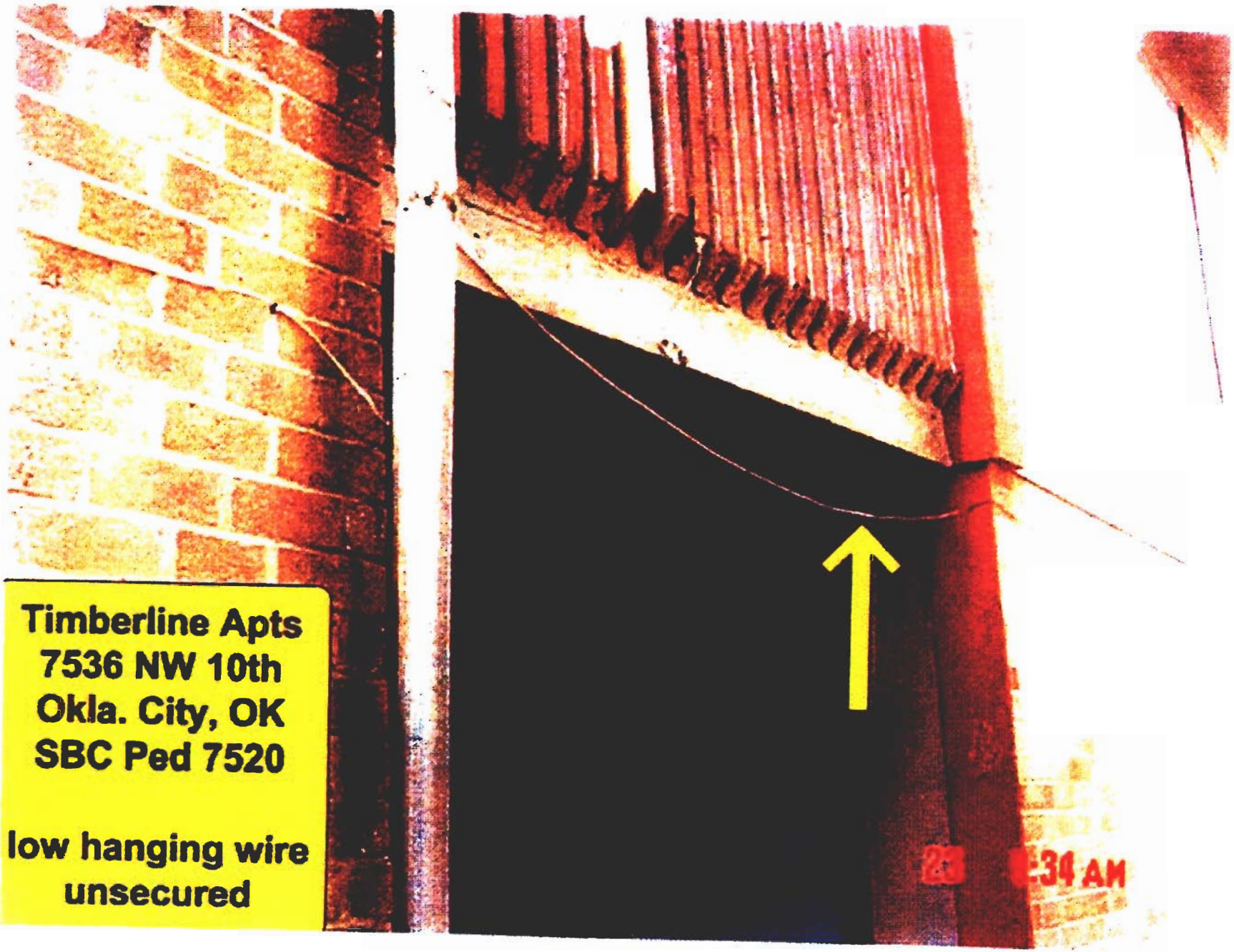
298.026

Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7009 B
knock out hole
open exposed to
elements and
insects

298.027


Pine Creek Apts
1800 N Rockwell
Bethany, OK
SBC Ped 7007
wire protection
removed,
knockout hole
open to elements
and insects

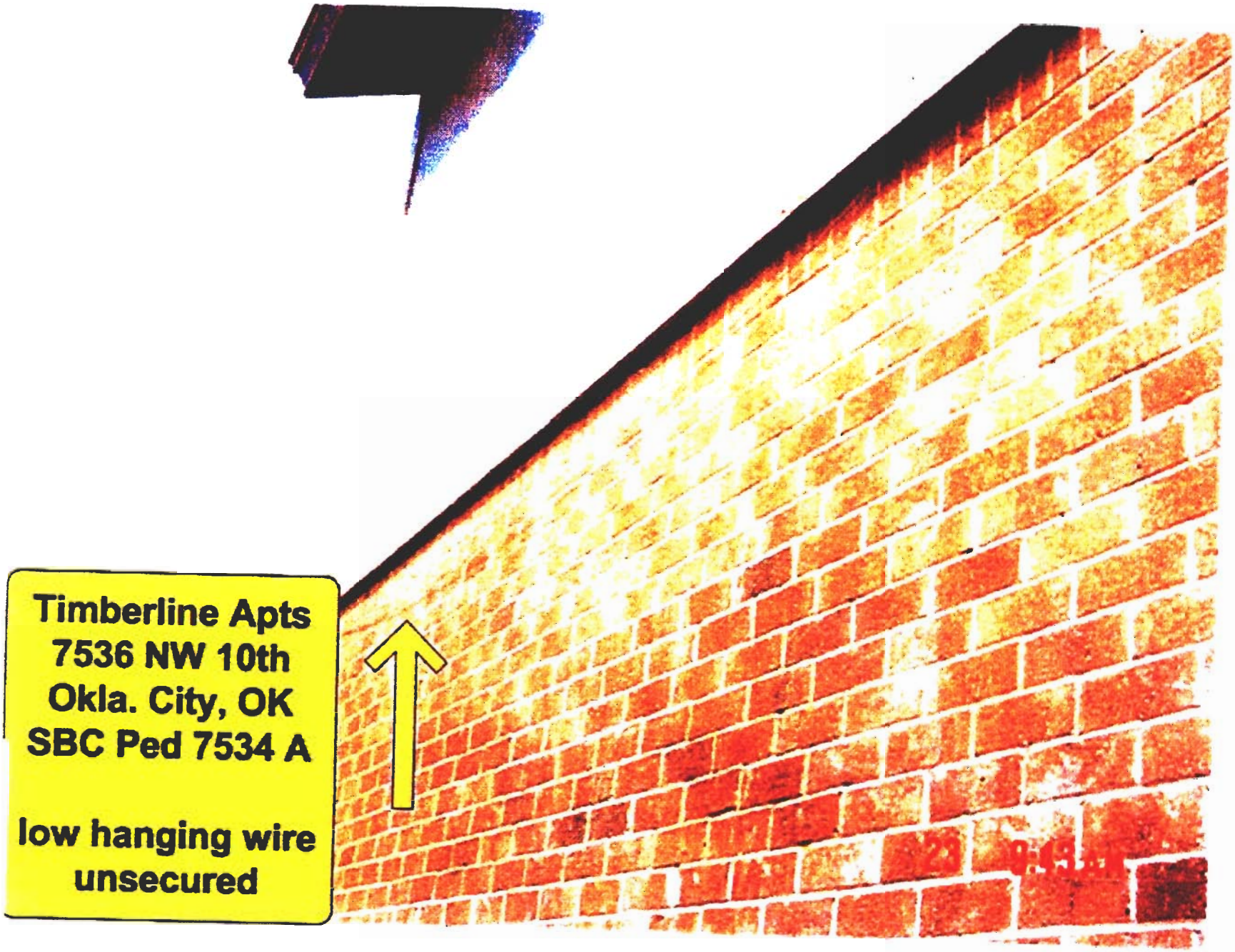
298.028


Timberline Apts
7536 NW 10th
Okla. City, OK
SBC Ped 7520
low hanging wire
unsecured

298.029

Timberline Apts
7536 NW 10th
Okla. City, OK
SBC Ped 7530
low hanging wire
unsecured

298.030


Timberline Apts
7536 NW 10th
Okla. City, OK
SBC Ped 7534 A
low hanging wire
unsecured

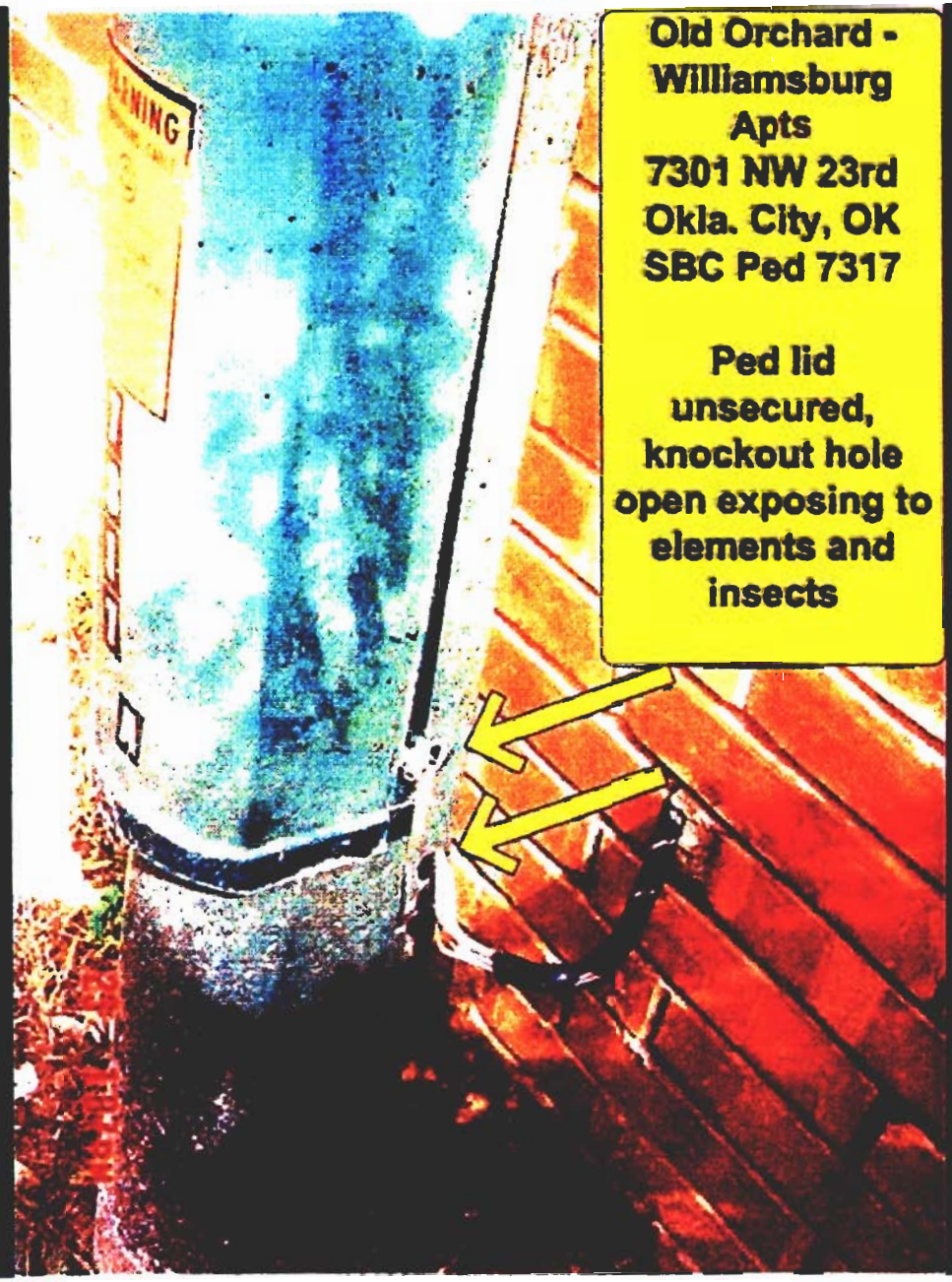
298.031

Timberline Apts
7536 NW 10th
Okla. City, OK
SBC Ped 7534 B
knockout hole
open exposed to
elements and
insects

298.032

Timberline Apts
7536 NW 10th
Okla. City, OK
SBC Ped 7522
scotch locks
exposed to
elements

298.033


Old Orchard -
Williamsburg
Apts
7301 NW 23rd
Okla. City, OK
SBC Ped 7317
Ped lid
unsecured,
knockout hole
open exposing to
elements and
insects

298.034

Old Orchard -
Williamsburg
Apts
7301 NW 23rd
Okla. City, OK
SBC Ped 2509
knockout hole
open exposing to
elements and
insects
23 1:35 PM

298.035

Old Orchard - Williamsburg Apts
7301 NW 23rd
Okla. City, OK
SBC Ped 2480

Ped lid unsecure, knockout hole open exposing to elements and insects

298.036

Old Orchard - Williamsburg Apts
7301 NW 23rd
Okla. City, OK
SBC Ped 2512 18
biscuit jack used for splice, knockout hole open exposing to elements and insects

298.037

Old Orchard - Williamsburg Apts
7301 NW 23rd
Okla. City, OK
SBC Ped 2472 74
wire protection removed, knockout hole
open exposing to elements and insects
23 1:47PM

298.038

800/802 NW 8th Apts
Okla. City, OK
SBC NID
NTW unsecured, NID
secured to porch

298.039

Cherrywood Apts
7203 Melrose Lane
Okla. City, OK
SBC Ped ????

Ped not secured
exposed to elements
and insects

298.040

Meridian Mansion
1309 N Meridian Ave
Okla. City, OK
SBC Bld 1309-3
several open splices
and scotch locks
exposed to elements

298.041

EXHIBIT 2

Declaration of Greg Beveridge

(This declaration is being filed in facsimile form. The Original will be filed when received by counsel.)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Clarification of the Commission's	)	WC Docket No. 01-338
Rules and Policies Regarding Unbundled	)	
Access to Incumbent Local Exchange	)	
Carriers' Inside Wire Loop	)	

DECLARATION OF GREG BEVERIDGE
ON BEHALF OF COX OKLAHOMA TELCOM L.L.C.

1. My name is Greg Beveridge. I am currently employed as President of Beveridge Consulting, Inc. Beveridge Consulting, Inc. provides consulting services to clients in the telecommunications industry. I have a Bachelor of Science degree from Arizona State University in electronic engineering technology. I have been employed in the telecommunications industry for thirty-six years. I was employed by Mountain Bell/U.S. West (now Qwest Communications) in positions of increasing responsibility from July 1, 1973 until June 1997. I was Chief of Technology for U.S. West International from September 1994 until I left the company in June 1997. Eight patents related to telecommunications have issued in my name and two more are pending. I have been published in a variety of trade magazines related to the telecommunications industry and in IEEE journals. I have also led various industry efforts to establish technical standards in the telecommunications industry.

2. I participated as a testifying expert witness for Cox Oklahoma Telcom, L.L.C. ("Cox") in the matter of the Application of Cox Oklahoma Telcom, L.L.C. for Arbitration of Open Issues Concerning Unbundled Network Elements, Cause No. PUD 200300157, before the Oklahoma Corporation Commission ("PUD 200300157").

3. I am familiar with the proposals of Cox and Southwestern Bell Telephone, L.P. d/b/a SBC-Oklahoma ("SBC") which were the subject of PUD 200300157. I attended the hearing in PUD 200300157. I am familiar with the evidence presented at the hearing, and other matters related to that evidence.

4. I have reviewed and am familiar with the so-called audit conducted by SBC of SBC terminals at multi-tenant environment ("MTE") locations in the Oklahoma City area. This so-called audit is evidenced by in excess of 7,000 photographs that have been annotated by SBC.

5. I have reviewed and am familiar with the listing of SBC "trouble reports" which was introduced in PUD 200300157.

6. Under the supervision of SBC employee Don Rollins I inspected approximately three hundred SBC terminals in the Oklahoma City area at locations where Cox does not offer telephone service.

7. I have reviewed SBC's Opposition to Cox's Petition for Declaratory Ruling in this matter including the Affidavit of William E. Weydeck.

8. Cox has performed tens of thousands of cutovers in the Oklahoma City area where Cox disconnected the SBC inside wire subloop from the SBC network and attached it to Cox's network.

9. The so-called audit conducted by SBC is a comprehensive listing of every single minor imperfection in SBC's network. There is no indication of who caused many of the imperfections shown in the audit, and certainly no indication that many of them were caused by Cox. SBC terminals are usually located outside of apartment buildings. They are accessible to SBC employees, SBC contractors, and many other people, including vandals. Any of these people can pull terminals off walls, remove grommets and plug material, fail to seal terminals, leave wire stubs on binding posts, and cause the other imperfections SBC complains of, and attributes to Cox.

10. Under the supervision of Mr. Don Rollins of SBC, I inspected over three hundred SBC terminals in the Oklahoma City area where Cox does not offer telephone service. The same installation practices and minor imperfections found in SBC's so-called audit are present at SBC terminals where Cox does not offer telephone service.

11. At the SBC terminals I inspected where Cox does not offer telephone service, I found terminals open and unsealed; terminals torn or pried from their mountings on building walls; bare and unprotected wire outside terminals; unprotected splices outside terminals; wire scraps left on binding posts within terminals; wire run through terminal doors, preventing doors from sealing; plug material and grommets removed from terminal openings, allowing moisture and insects to enter the terminals; and other installation practices complained of by SBC. In sum, SBC terminals in locations where Cox does not do business are in substantially the same condition, and exhibit the same imperfect installation practices, as the terminals complained of in SBC's so-called audit.

12. There are in excess of three thousand trouble reports summarized in the listing of trouble reports introduced in PUD 200300157. Virtually none of the trouble reports were caused by any error, mistake, or damage from Cox's direct access installation practices. Virtually all reported trouble resulted when SBC won back a customer from Cox, tried to turn on that customer's service remotely from the central office and, because Cox had connected the inside wire subloop to its network, SBC had to dispatch a technician to reconnect the inside wire subloop to the SBC network.

13. Dispatching a technician to reconnect the inside wire subloop to the SBC network is simply the unavoidable result of competition with a facilities-based telephone company like Cox. It is not the result of damage to SBC's network or improper installation practices by Cox. Under all of SBC's own proposals in PUD 200300157, SBC would have to dispatch a technician to reconnect the inside wire subloop to SBC's network every time SBC wins back a customer from Cox.

14. Under Cox's proposal in PUD 200300157, Cox is obligated to notify SBC of every instance in which Cox disconnects an inside wire subloop from SBC's network and reconnects it to Cox's network. While SBC will have to dispatch a technician to reconnect the inside wire subloop if SBC wins back a customer from Cox, under Cox's proposal SBC will have all information necessary to maintain its facilities inventory database, and the ability to provision and maintain service to its customers.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 21, 2004

Gregory J. Beveridge

Greg Beveridge

CERTIFICATE OF SERVICE

I, Dawn V. Freeman, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC do hereby certify that on this 21st day of December, 2004, I caused a copy of the foregoing Reply Comments of Cox Communications, Inc. to be served on the following via First Class U.S. mail:

Janice M. Myles
Federal Communications Commission
Wireline Competition Bureau
Competition Policy Division
445 12th Street, SW, Suite 5-C327
Washington, DC 20554

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Dawn V. Freeman

Dawn V. Freeman