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MAY 2 4 2007

Federal Communications Commission
Office of the Secretary

Ex Parte Notice

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325-Lobby
Washington, D.C. 20554

ORIGINAL

Dear Ms. Dortch:

Re: *Cox Petition for Declaratory Ruling on Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloops, WC Docket No. 01-338*

On behalf of AT&T, Christopher Heimann, Frank Simone and the undersigned met separately with Scott Bergmann, Legal Advisor to Commissioner Adelstein, and Scott Deutchman, Legal Advisor to Commissioner Copps on May 23, 2007 regarding the above-listed proceeding. AT&T's representatives explained that the Petition for Declaratory Ruling is unnecessary as Cox has multiple existing options for accessing AT&T's inside wire subloops and that Cox's actions to date in Oklahoma have caused damage to thousands of AT&T's terminals resulting in thousands of hours of service outages. Additionally, since the Oklahoma Arbitration decision was issued, Cox increasingly has relied on its own intra-MTE facilities to serve MTEs. The attached materials were distributed during the meeting.

We are submitting this Memorandum to the Secretary in accordance with Section 1.1206 of the Commission's rules. Please include a copy of this submission in the record of the above-listed proceeding. Please contact me at (202) 457-3031 if you have any questions.

Sincerely,

Attachments

cc: S. Bergmann (w/o attachments)
S. Deutchman (w/o attachments)

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Cox Communications' MTE "Direct Access" Petition Is Flawed and Should Be Rejected

- **Cox's request for a declaratory ruling is inconsistent with the Commission's subloop unbundling rules and precedent, which expressly leave to state commissions the authority to determine technically feasible points and methods of access to unbundled subloops in multiunit premises if parties cannot reach agreement on such access.**
    - The Commission specifically stated that, in determining whether access is feasible, state commissions should take into account network security and reliability concerns.
    - Here, the Oklahoma Corporation Commission (OCC) performed the very task assigned to them by the Commission, concluding that Cox's practice of helping itself to AT&T's inside wire subloops in multiunit premises was neither authorized by federal law nor in the public interest. Based on these findings, the OCC adopted AT&T's proposal for access to subloops – offering Cox three options for accessing such facilities.
    - In reaching this conclusion, the OCC relied on a 54 page report (with 12 pages of detailed findings of fact and conclusions of law) by an Administrative Law Judge (ALJ), who heard three days of testimony and reviewed almost five hundred of pages of pre-filed testimony and countless pages of exhibits.
- **The Commission may not change course and adopt uniform standards or requirements regarding technically feasible points and methods of access to unbundled subloops in multi-tenant environments (MTEs) through a declaratory ruling.**
    - Under the APA, the Commission must conduct a rulemaking before changing its rule, relying on state commissions to determine technically feasible points and methods of access to the facilities at issue.
- **The *Virginia Arbitration Order* does not support the direct access Cox demands.**
    - In the *Virginia Arbitration Order*, the Bureau held only that CLECs could access MTE inside wire subloops on the customer's side of the NID, and acknowledging that CLECs are not entitled to access on the network side of the network interface device (e.g. paragraphs 421 & 426).
    - Unlike the facts in the Virginia arbitration, in Oklahoma the NID is located at the same point as the demarcation point, and is the first jack in a tenant customer's premise in virtually all MTEs.
        - Cox acknowledged as much in sworn testimony and in writing as far back as February 2003.
    - As a consequence, AT&T, rather than the building owner, owns and is responsible for maintenance of the wiring between the terminal block and the NID in an individual living unit, which is part of AT&T's regulated network.

Cox Communications' MTE "Direct Access" Petition Is Flawed and Should Be Rejected

- **Cox's claim that direct access poses no threat to AT&T's network is belied by the facts and the findings of the OCC.**

  - In rejecting Cox's request for direct access to intra-MTE subloops, the OCC considered undisputed evidence that Cox had caused significant damage to AT&T's network, and found that direct access posed a threat to "network integrity, security and control, as well as accountability for damage and substandard engineering and operational practices."

  - An AT&T audit of Cox practices found that, between 2000 and mid-2004, Cox:
    - Damaged 7,100 of AT&T's terminals blocks
    - Caused more than 3,000 instances of trouble on AT&T's network
    - Caused more than 9,000 hours of resulting service outages AT&T's customers
    - Forced AT&T to incur hundreds of thousands of dollars in expenses to repair this damage

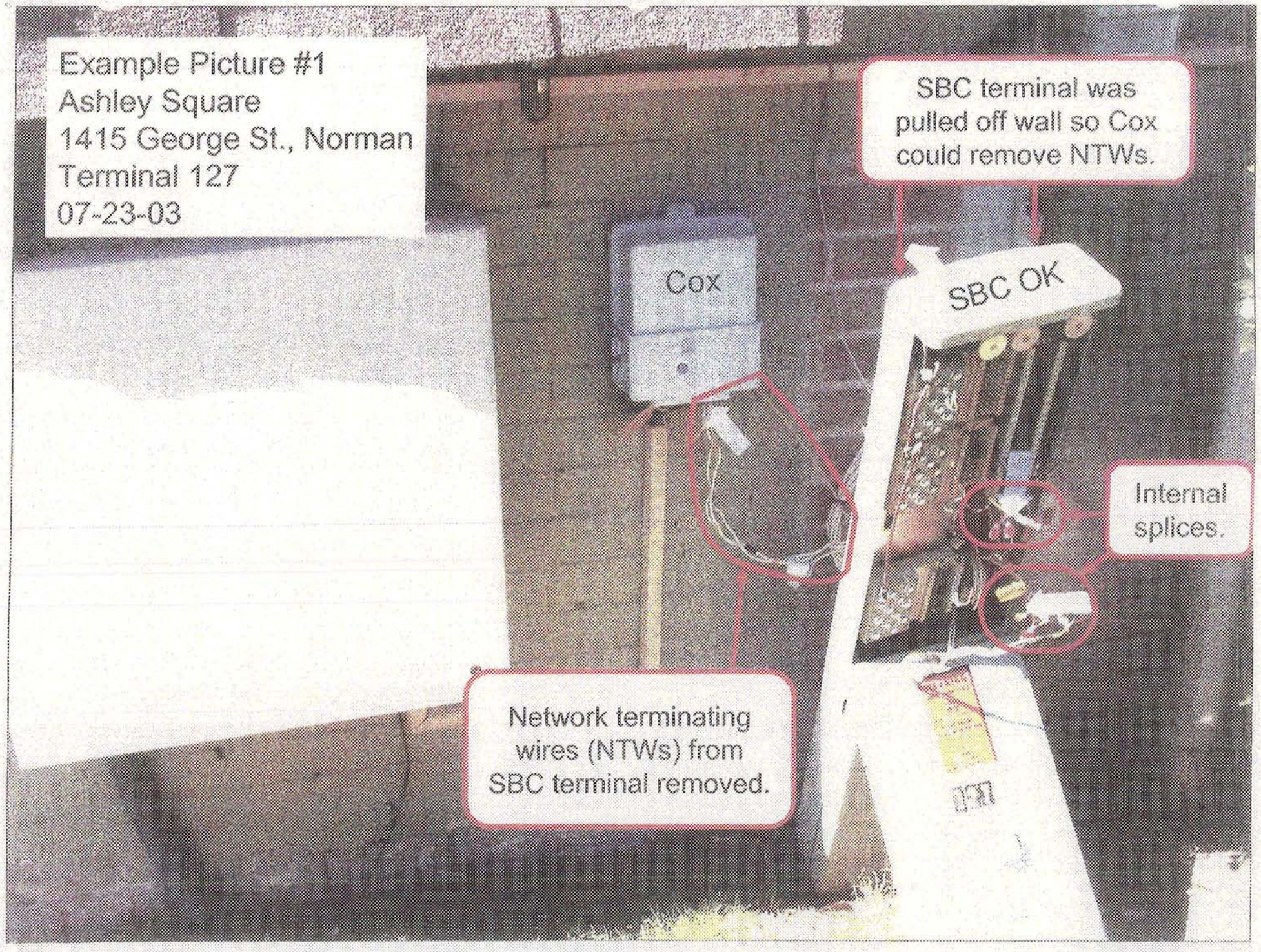
  - These unsound "self-help" practices include:
    - Leaving AT&T's terminals unsealed and open to the elements
    - Cutting AT&T's network wires and cables
    - Leaving loose bare wires within AT&T's terminals
    - Damaging AT&T's terminals

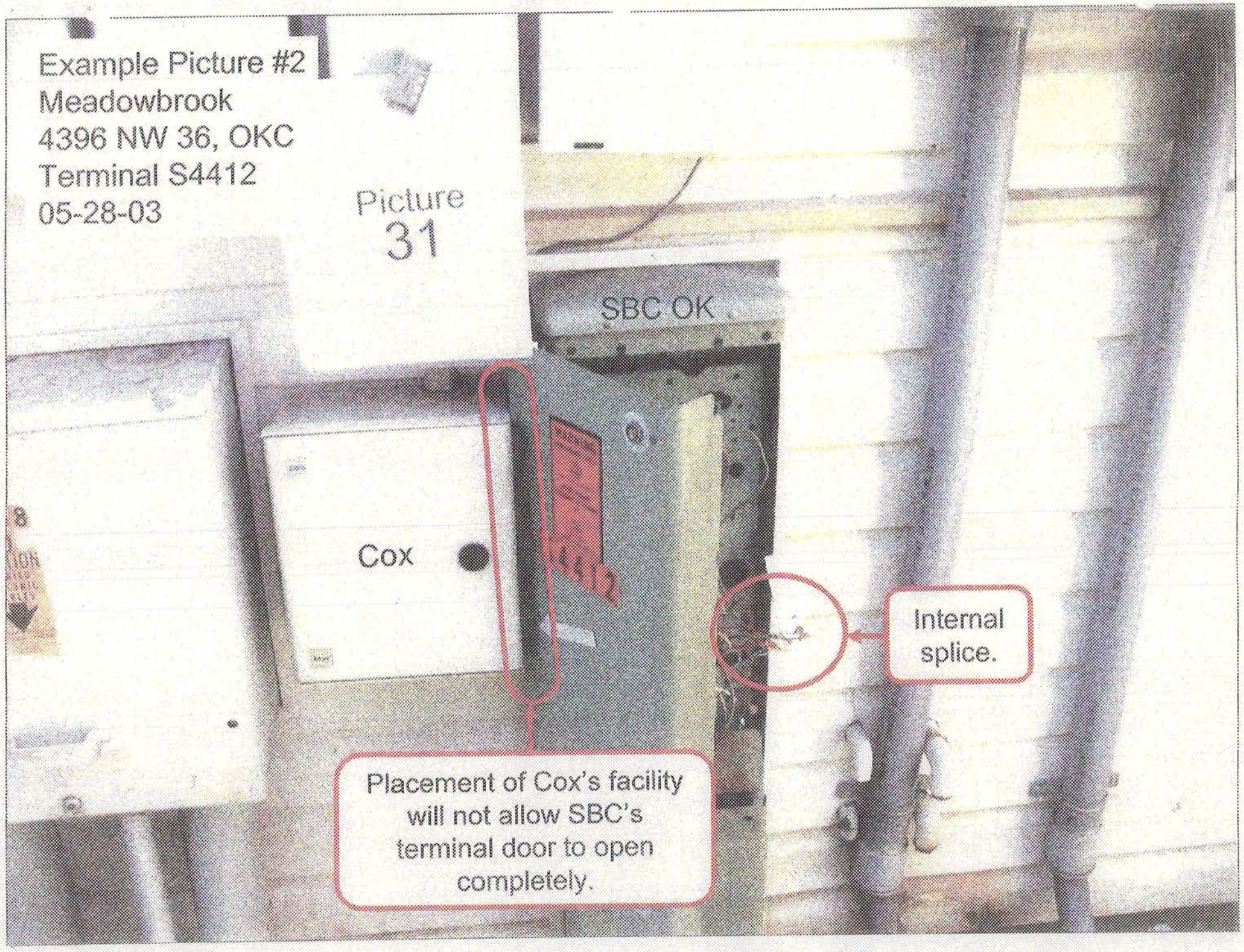
  - In addition to the physical damage to AT&T's network, Cox's practices undermine the accuracy and reliability of AT&T's plant records, which negatively impacts customers
    - Results in provisioning and repair delays, as well as billing issues

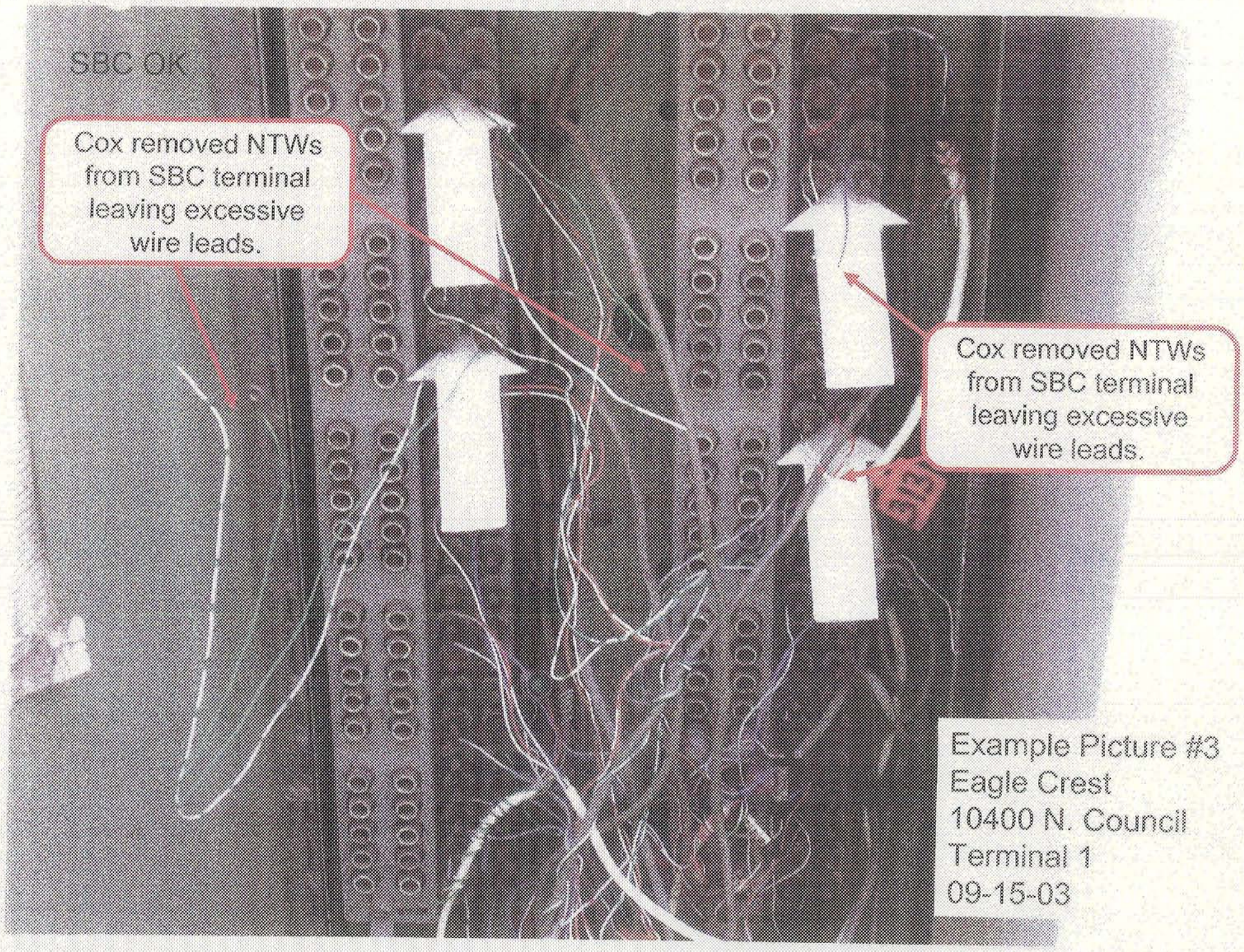
  - When Cox was practicing direct access in Oklahoma, it has refused to order subloops and to pay for subloops it has used.

Cox Communications' MTE "Direct Access" Petition Is Flawed and Should Be Rejected

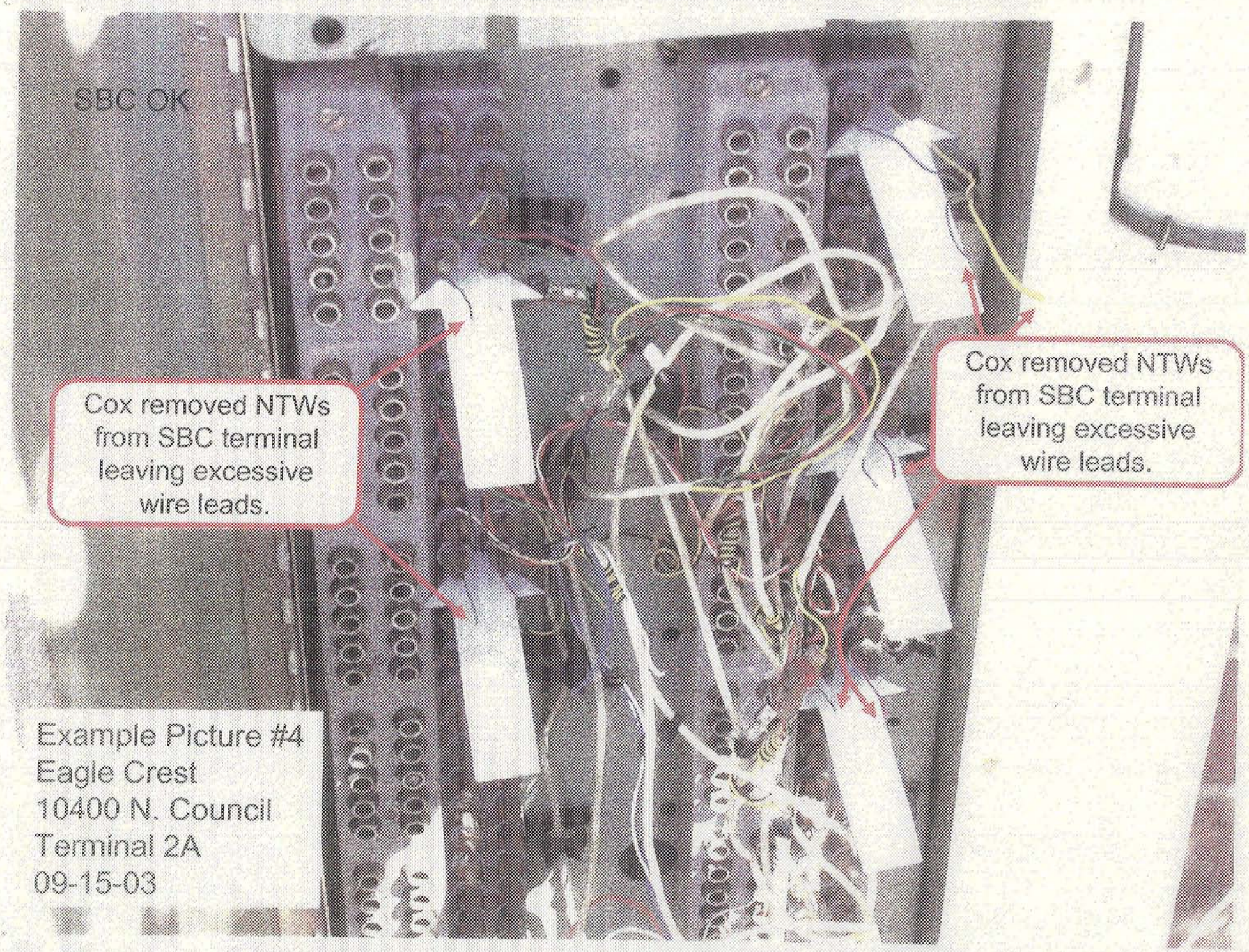
- **Cox's claim that it needs direct access to intra-MTE subloops in Oklahoma is specious.**
  - Cox has achieved dramatic growth operating under the existing rules:
    - 2.1 million telephone subscribers nationally
      - *21.2% year-over-year growth*
    - "For every video customer the phone companies have connected to their new video services in our footprint in the past year, we've connected more than 50 phone subs." Joe Rooney, chief marketing officer
  - Since the Oklahoma Arbitration decision was issued, Cox increasingly has relied on its own intra-MTE facilities, eliminating the need for access to AT&T subloops to serve MTEs.
    - Between August 2004 and May 2006 Cox disconnected 89% of the MTE subloops it previously utilized
    - Cox has placed *no* orders for new subloops since July 2006
- **Cox asserts that Qwest permits direct access, yet Qwest has filed a complaint against Cox in Arizona asking the Arizona Corporation Commission to enjoin Cox's unauthorized access to Qwest's intra-MTE subloop facilities, which has caused extensive damage to Qwest's network.**
  - Quest cites violations of Qwest's ICA with Cox, confiscation of subloops without ordering or payment, physical damage to the network and adverse service effects for Qwest customers
  - Arizona experience demonstrates the same problems created by direct access in Oklahoma:
    - Incumbent cannot maintain accountability for damage
    - Disrupts inventory control
    - Lack of control over billing and collection of amounts owed for use of subloops


Example Picture #1
Ashley Square
1415 George St., Norman
Terminal 127
07-23-03
SBC terminal was pulled off wall so Cox could remove NTWs.
Cox
SBC OK
Internal splices.
Network terminating wires (NTWs) from SBC terminal removed.

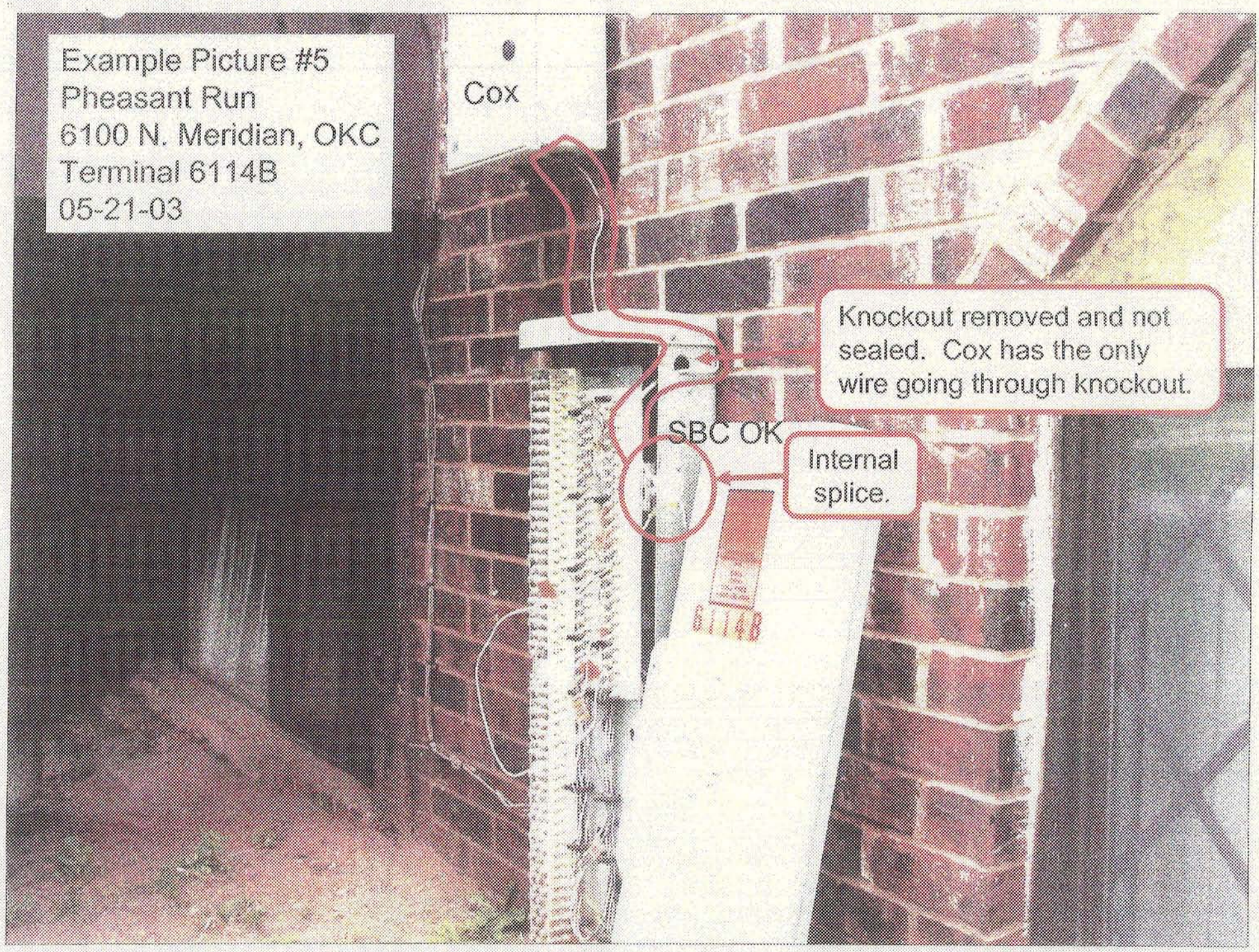

Example Picture #2
Meadowbrook
4396 NW 36, OKC
Terminal S4412
05-28-03
Picture
31
SBC OK
Cox
Internal
splice.
Placement of Cox's facility
will not allow SBC's
terminal door to open
completely.



Example Picture #3
Eagle Crest
10400 N. Council
Terminal 1
09-15-03



Example Picture #4
Eagle Crest
10400 N. Council
Terminal 2A
09-15-03


Example Picture #5
Pheasant Run
6100 N. Meridian, OKC
Terminal 6114B
05-21-03
Cox
Knockout removed and not sealed. Cox has the only wire going through knockout.
SBC OK
Internal splice.
6114B