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May 25, 2007

Ex Parte Notice

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

FILED/ACCEPTED

MAY 25 2007

Federal Communications Commission
Office of the Secretary

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 John Hunter, Legal Advisor to Commissioner McDowell, and Nick Alexander, Legal Advisor to Commissioner Tate on May 24, 2007 regarding the above-listed proceeding. AT&T's representatives reiterated AT&T's position that Cox's Petition for Declaratory Ruling is unnecessary. Specifically, we explained that direct access to ILEC terminals in multi-tenant environments (MTEs) is unwarranted because Cox has multiple options for accessing AT&T's inside wire subloops and increasingly has relied on its own intra-MTE facilities to serve MTEs – and thus has no need for direct access to AT&T's facilities. We further explained that the Oklahoma Corporation Commission (OCC), based on overwhelming evidence that Cox's practice of helping itself to AT&T's inside wire subloops had caused significant damage to AT&T's facilities, reasonably concluded that direct access to AT&T's facilities posed a threat to network integrity and reliability, and therefore should not be permitted in Oklahoma – just as the Commission anticipated when it left it to state Commissions to let decide where and how parties could access such facilities if parties could not reach agreement.

We urged the Commission, if it nevertheless decides that CLECs should be permitted direct access to intra-MTE subloops, to make clear that Cox's practice of helping itself to AT&T's facilities without notice or agreement between the parties is unacceptable and that states may adopt reasonable safeguards to prevent CLECs from damaging an ILEC's facilities and to indemnify the ILEC if they do. We observed that Cox had directly accessed AT&T's facilities without having any agreement in place authorizing such access, ordering such facilities, or providing notice of any kind that it had appropriated AT&T's facilities to its own use. As a consequence, AT&T's property records were rendered inaccurate (causing delays in provisioning and repair of AT&T's facilities), and AT&T was unable to bill Cox and obtain compensation for Cox's use of AT&T's facilities. We explained that, worse yet, Cox technicians employed grossly substandard engineering practices, causing significant damage to AT&T's facilities – including leaving AT&T's terminals at MTEs unsealed and open to the elements, leaving loose bare wires

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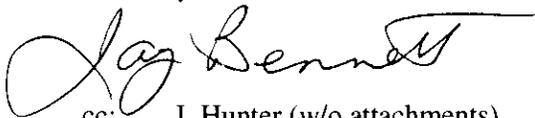
within those terminals, cutting AT&T's wires, and prying terminal boxes from walls.¹ We noted that, as documented in the record in this proceeding, between 2000 and mid-2004, Cox damaged more than 7,000 of AT&T's terminal blocks, caused more than 3,000 instances of trouble on AT&T's network and more than 9,000 hours of service outages for AT&T's customers, and forced AT&T to incur hundreds of thousands of dollars in expenses to repair this damage (AT&T owns the facilities at issue and thus is responsible for maintaining and restoring them if they are damaged – no matter who caused such damage).² We concluded that it was inconceivable that the Commission would condone Cox's actions, and that, in the face of clear evidence of the damage caused by Cox technicians, it behooved the Commission to clearly address the issue of safeguards if it is going to allow direct access to ILEC intra-MTE subloops.

Specifically, we urged the Commission to make clear that states can and should exercise their authority to adopt appropriate safeguards to address legitimate network integrity, reliability and security concerns, as well as to ensure that ILECs receive appropriate compensation for the use of their facilities (as well as for restoring such facilities for any CLEC damage) in the event a CLEC demands direct access to the ILECs' facilities. We requested that the Commission clarify that, among other things, such safeguards must include a requirement that a CLEC have an approved interconnection agreement authorizing direct access to such facilities that addresses ordering of and compensation for such facilities to ensure that ILECs receive notice when a CLEC intends to access its facilities (both to ensure that the ILECs' property records are accurate and to bill for such access) and obtain compensation/indemnification for the use of and any CLEC damage to those facilities. Such safeguards also could include requirements that a requesting carrier is responsible for ensuring that its technicians complete training in the engineering standards and practices used by the owning carrier, and that its technicians abide by such standards and practices and that reasonable bonding of a requesting carrier's technicians may also be required. We also asked that the Commission make clear that state commissions may adopt additional, reasonable safeguards based on conditions in their states. Naturally any direct access requirements for intra-MTE subloops should apply equally to both CLEC and ILEC facilities.

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,



cc: J. Hunter (w/o attachments)
N. Alexander (w/o attachments)

Attachments

¹ We provided photographs providing examples of the type of damage caused by Cox's practices. These photographs and other documentation of such damage were previously included in the record of this proceeding.

² We further noted that, in denying Cox direct access to AT&T's intra-MTE subloop facilities, the OCC found – after three days of testimony and reviewing thousands of pages of pre-filed testimony and exhibits – that AT&T had substantiated its claims regarding the damage to its network caused by Cox technicians, and that the Commission therefore should reject Cox's claim that it has not damaged AT&T's network and should be trusted to have completely unfettered access to AT&T's and other ILECs' facilities.

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

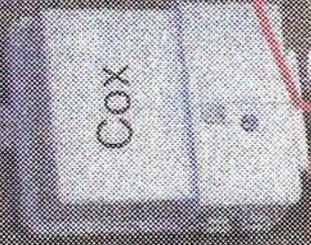
- ***Cox's claim that direct access poses no threat to AT&T's network is belied by the facts and the findings of the OCC.***
 - In rejecting Cox's request for direct access to intra-MTE subloops, the OCC considered undisputed evidence that Cox had caused significant damage to AT&T's network, and found 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.**
 - Qwest 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.



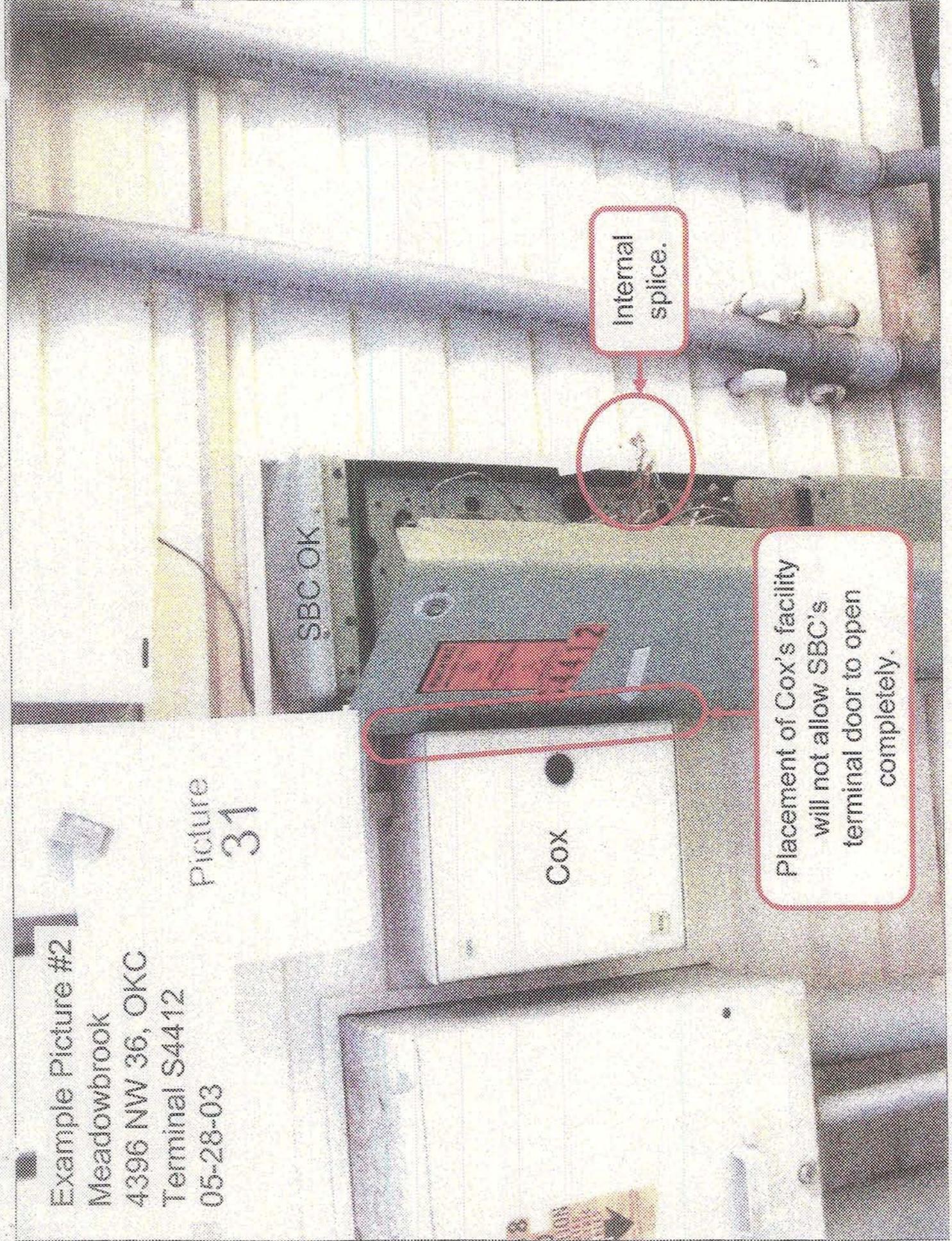
Internal
splices.

Network terminating
wires (NTWs) from
SBC terminal removed.



Example Picture #2
Meadowbrook
4396 NW 36, OKC
Terminal S4412
05-28-03

Picture
31



Internal
splice.

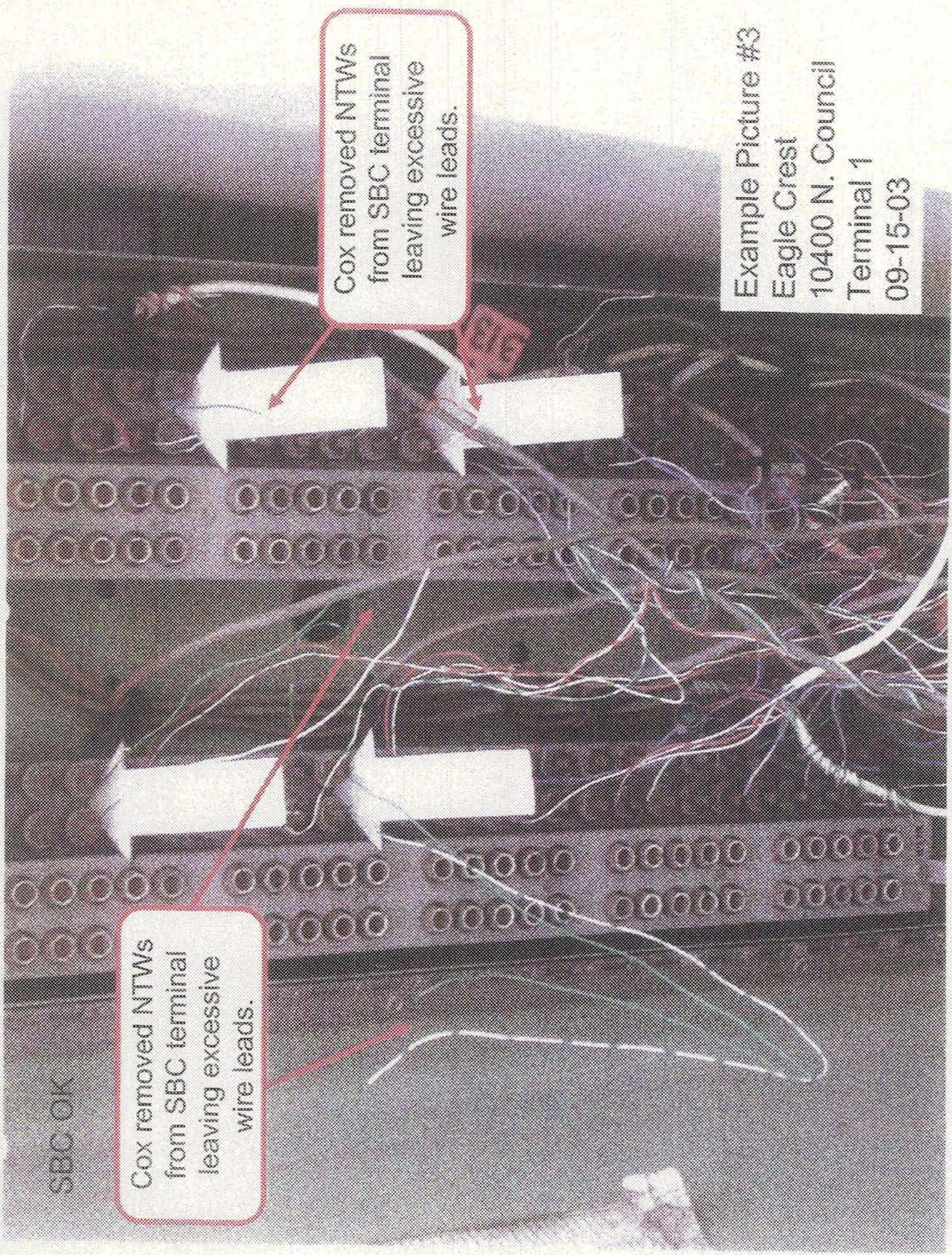
Placement of Cox's facility
will not allow SBC's
terminal door to open
completely.

SBC OK

Cox removed NTWs
from SBC terminal
leaving excessive
wire leads.

Cox removed NTWs
from SBC terminal
leaving excessive
wire leads.

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

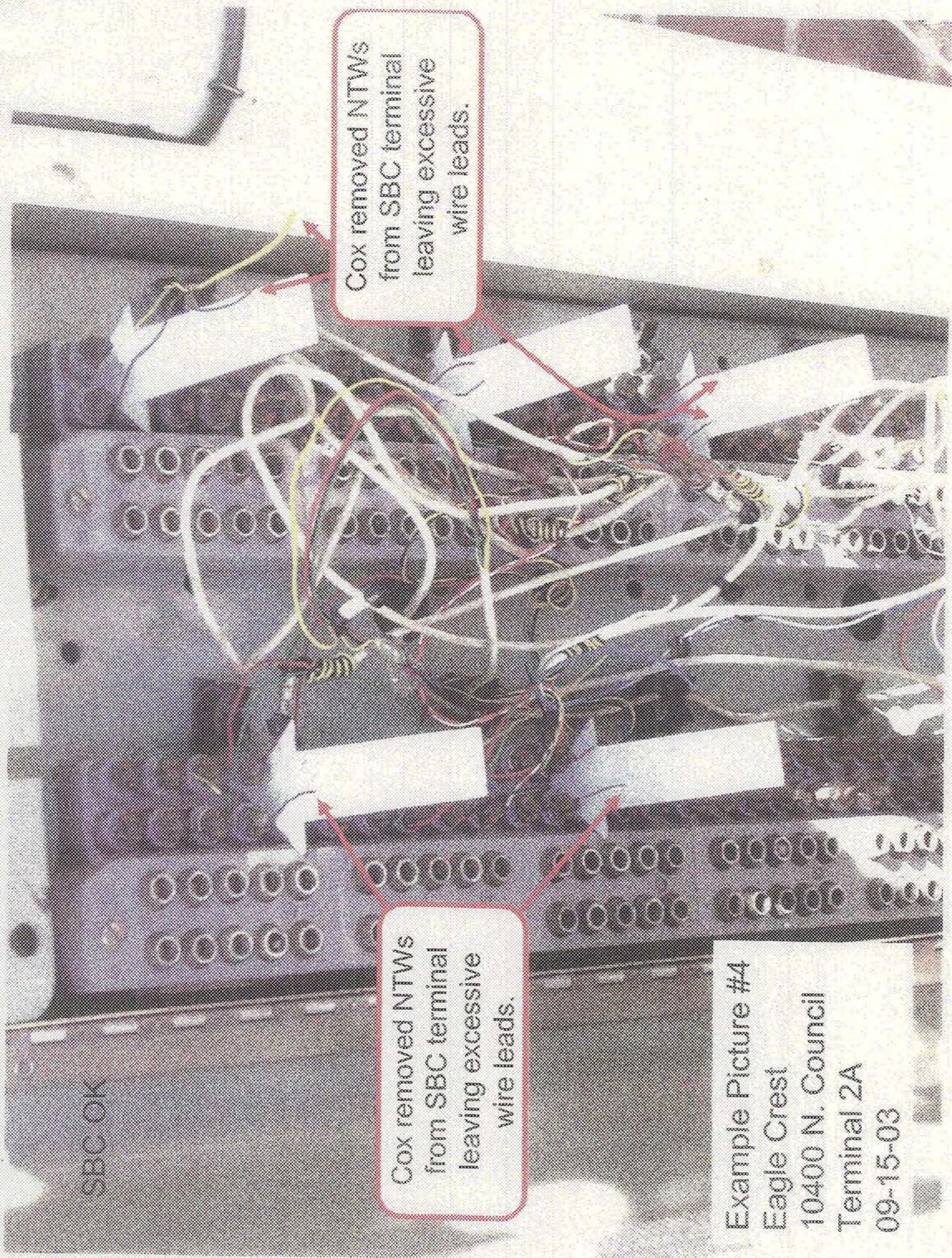


SBC OK

Cox removed NTWs
from SBC terminal
leaving excessive
wire leads.

Cox removed NTWs
from SBC terminal
leaving excessive
wire leads.

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



Knockout removed and not sealed. Cox has the only wire going through knockout.

Internal splice.

SBC OK

Cox

6114B