

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2147

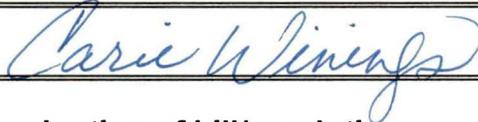
2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

SB 2147
2/13/2015
Job # 23826

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subdivision i of subsection 1 and subdivision h of subsection 3 of section 49-23-04 of the North Dakota Century Code, relating to the one-call excavation notice system.

Minutes:

Attachments 1 - 6

Chairman Dever: Opened the hearing on SB 2147.

Senator Rust, District 2: See Attachment #1 for testimony as sponsor and in support of the bill.

(3:40) Senator Marcellais: "Reasonable Cost", that is very vague, what is reasonable cost?

Senator Rust: It would be the cost of that person that goes out there and I presume in that cost it would involve the transportation and so forth of having to do that. I believe others behind me can tell you exactly of what that can be. There are many times that there are multiple calls to the same location and they end up paying for that. Right now the law provides for some charges of those people already.

Chairman Dever: What is behind the amendments? There have been varied interests in the past on the same subject. Do they represent conversations that have taken place?

Senator Rust: I think that when you look at the original bill - this covers the things that were missed. It was to clarify.

(7:15)David Crothers, North Dakota Association of Telecommunications Cooperatives: See Attachment #2 for testimony in support of the bill.

(16:35)Chairman Dever: You were very clear in your testimony.

(17:00) Dean Rustad, Operations Manager, Northwest Communications Cooperative: See Attachment #3 for testimony in support of the bill.

(25:25) Senator Davison: On Page 3, when you are talking about the data on this, what percentage of the \$760,000 would you say that occurred after the 2nd call?

Dean Rustad: I do not have that data because of the tickets we get and how they are built. I could tell you the number of re-spots. I did not compile how many of them as a whole were like my examples on the last page. I would be guessing at about 20% to 30% of the re-spots would be third re-spots and beyond.

Senator Davison: When we are talking about reasonable cost, you suggested what you would pay a contractor to do, is that the reasonable cost in your mind that you are looking for or are there additional costs besides that?

Dean Rustad: Our intent is not to make a profit but to pass the actual cost on.

Senator Davison: If someone cuts a cable or damages the infrastructure, who's responsibility is it to cover the costs in that situation?

Dean Rustad: It depends on who is at fault. If the locate was done incorrectly and the flags and marking paint are off, that is our problem and we have to fix it at our cost. It is not the responsibility of the contractor. If it was located correctly, and we arrive on site and there are flags and everything is marked, then it is the contractor's responsibility to pay for the costs of those repairs.

Senator Davison: In the bill it talks about "reasonable excavating" so what would that be?

Dean Rustad: The way I would define that depends on the size of the crew that is working on it and the project. Every situation varies.

Senator Davison: Do you perceive this as being a form that you bring out there with you when you are doing the locate and you talk to the head of the excavation crew and find out the scope of the project and get signatures on both sides?

Dean Rustad: That could be a solution, or a meeting with the contractor to find out the extent of the project and what the work is that will be done and then we could discuss the reasonableness of it.

(30:20) Kent Blickensderfer, Century Link: See Attachment # 4 for testimony in support of the bill with the amendments that have been proposed.

(32:05) Carlee McLeod, President, Utility Shareholders of North Dakota: See Attachment #5 for testimony in opposition to the bill.

(37:35) Senator Davison: Within the bill, what part of it are you against? Are you testifying against what would be reasonably excavated?

Carlee McLeod: I don't not have a problem with the reasonable language. I do not think that it is necessary. We actually have a provision in law that is not listed as one of these

two sections being amended that says that if you call in a relocate you have to modify that to the area you expect to be excavating during the next 21 days. What I understand is the practice right now is that if there are large projects they walk through what will be done. I cannot tell you what is reasonable, but I can say that I do not think that language is necessary. If you put that part in, I am not going to have heartburn. I really have a problem with making them pay for relocate.

Senator Davison: They brought forward some data regarding the number of increase in costs. Do you have something that shows that the bill threatens property or employees?

Carlee McLeod: I do not have data that shows that this threatens actual people because this would be a new change in law. What I can say is that since this has been in place we have encouraged people to report violations on all sides of the law. We are starting to build more data about problems that exist currently with cutting through facilities and damages. Making it a more cumbersome process for those people who are trying to do the right thing and call to get things marked; I do not think that will have a positive effect on damages. I think it will have a negative effect.

Chairman Dever: Are you suggesting that if the contractor/excavator had to pay the expenses of the relocate, that they may rather violate the law?

Carlee McLeod: I am suggesting that. I realize that seems like a silly thing to say because we do not create laws that only people can abide by with no effort. Obviously we have laws on the books for a reason. (Gives an example) Before we upped the penalty for violations for violations from \$5000 to \$25,000, this was happening all the time.

(41:57) Shane Goettle, MDU Resources: Testified in opposition to the bill. We really are on both sides of this. We are both a utility and they are also an excavator. They have balanced these competing interests internally and the outcome is that they would like the law to remain the way it is.

(42:51) Senator Davison: Do you think that is fair comparison if you have a company that has two internal organizations that can better coordinate and work together as opposed to someone that is working with separate contractors and people they do not communicate with on a regular basis?

Shane Goettle: Let me clear up a misimpression. Certainly they work together internally but they also work with other contractors so they are not always constantly working together. Since they see this from both sides, they have looked at this policy and have looked at what the best interests served are.

(44:05) Mark Dougherty, Associated General Contractors of North Dakota: See Attachment #6 for testimony in opposition to the bill. Testimony was written before seeing the proposed amendments.

(52:00) Senator Nelson: I have a question on safety. I have seen when the markings have been removed to mow or something of that sort; who is responsible for that?

Mark Dougherty: I do not know if I can answer that. It is not unusual. It is difficult to find either side responsible. That is why they mark with flags and paint or chalk as well as the 21 day requirement for relocating.

Senator Cook: You made an argument that relocations happen because a contractor forgets to call and stop a regular schedule of relocate. That in my mind is lazy behavior that causes a cost on someone else. How do we stop that if not this way? It is a great argument to vote for the bill.

Mark Dougherty: I do not disagree that has to be dealt with. That is what we did with this subsection last session when we put it in there. We tried to cover those costs last session when we dealt with this issue.

Senator Davison: You said twice in your testimony that North Dakota is the only one that puts a charge at all on those. I do not see a problem with there being a charge or shared cost in some of the expenses based on the amount of growth the state is experiencing. Do you not think that is reasonable?

Mark Dougherty: With everything I have learned about this through years and years of working with it, I think that what one call is doing is that it is making one place we can call and get all the utilities located in the area that we are going to excavate. The federal government and we think that should be a responsibility of the operators of these facilities to protect their facilities and the public. So I would not agree with that.

Chairman Dever: Closed the hearing on SB 2147.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee

Missouri River Room, State Capitol

SB 2147

2/19/2015

Job # 24149

Subcommittee

Conference Committee

Committee Clerk Signature



Minutes:

Attachments 1

Chairman Dever: Opened SB 2147 for committee discussion. See Attachment #1 for amendments proposed by Senator Rust.

Senator Nelson: Moved Amendment 15.0613.01001.

Senator Davison: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Chairman Dever: It sounded to me that the argument on one side is that there are a great deal of expenses involved with dealing with the marking, that contractors because they are not bearing the expense, they may not be quite so responsible in acting in an expedient fashion so that it is not necessary to re- mark it. The other side says that if we make them responsible for covering those expenses, they may not bother calling to have them re-marked and there could be some safety issues. Does that reflect the understanding of the members of the committee?

Senator Nelson: My big problem with this is that so often they ask for an initial locate for such a large area knowing full well that they can't get that done in the 21 days. It seems to me if we could put some restrictions on how much territory the locate covered, we might be solving some of these problems.

Chairman Dever: Is that something you think we can legislate?

Senator Poolman: I echo Senator Nelson's comments. I think that amendment tries to help that - what can be reasonably excavated. Encouraging contractors to only ask for what they can reasonably complete in 21 days and you get 2 chances in order to complete that work in 21 days. The contractors talked about what a convenience the one-call system saves them in time and hassle. I think it absolutely can be considered part of the cost of construction in order to absorb some of these costs

Senator Cook: I want to point out that SB 2167 that is asking for a legislative study of one-call excavation notices.

Chairman Dever: Is that a mandatory study?

Senator Cook: No.

Senator Poolman: If we let this bill go, we are still going to have companies that are absorbing a large amount of this cost over the next two years while the study is being done and I am concerned about that.

Chairman Dever: It seems to me the costs are being absorbed by the people that have no control over the cost.

Senator Poolman: Moved a Do Pass As Amended.

Senator Nelson: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Motion Carried.

Senator Dever will carry the bill.

15.0613.01001
Title.02000

Prepared by the Legislative Council staff for
Senator Rust

January 20, 2015

70

2/19/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2147

Page 1, line 14, remove the overstrike over "~~third~~"

Page 1, line 14, remove "second"

Page 1, line 14, overstrike "where no excavation"

Page 1, line 15, overstrike "has occurred"

Renumber accordingly

2/19

Date:
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2147

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 15.0613.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Nelson Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2147**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Poolman Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook		✓			
Senator Davison	✓	✓			
Senator Flakoll		✓			

Total (Yes) 5 No 2

Absent 0

Floor Assignment Dever

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2147: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2147 was placed
on the Sixth order on the calendar.

Page 1, line 14, remove the overstrike over "~~third~~"

Page 1, line 14, remove "second"

Page 1, line 14, overstrike "where no excavation"

Page 1, line 15, overstrike "has occurred"

Renumber accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2147

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2147
3/23/2015
Job Number 25264

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

One-call excavation notice system.

Minutes:

Attachments 1-8

Chairman Keiser: Opens the hearing

Dave Crothers~North Dakota Association of Telecommunications Cooperatives:
(Attachment 1).

(11:30)

Representative Ruby: You have a problem with the word "reasonable." Then you propose to put "reasonably" into the bill.

Dave Crothers: "Reasonable" and "reasonable costs" are a term that all the stakeholders in this body have always used in the one-call statutes in North Dakota. The attachment to my testimony shows where the two terms are used ten times. We chose to use the same words that supporters of one-call have always used.

Representative Ruby: Who is making that determination when looking at the area to be excavated?

Dave Crothers: There are a couple of options for the word "reasonable." We are being called back to the same area and the same projects over and over. If there is no construction or minimal construction, it is not reasonable to be called back a 3rd, 4th, or 5th time. There may be outside factors at play like weather that prevent the construction.

Representative Ruby: You may have one contractor who will use both locates and then there are others that come along that need it also like gas line people, landscapers, etc. Isn't there a concern that the first contractor may use up the two locates and then everyone else will have to pay?

Dave Crothers: The legislation is not site specific. It is excavator specific. Everyone can call in locate requests. It starts new with each request.

Representative Laning: Do you consider each individual company to be eligible for two calls?

Dave Crothers: Yes.

Representative M Nelson: When people call in for the large projects, does your call center do any screening to make sure it can be done in the time given?

Dave Crothers: I would defer that question to the one-call board. There is already a requirement in state law that excavators are limited to reasonable requests. It is being abused. That is why we are here today.

Representative M Nelson: I can see a large project that is done in stages. When there is excavation being done several times, is it just the 21 days for each time? What if it is a month between?

Dave Crothers: They don't have to be consecutive. This legislation will bring greater planning by excavators.

Representative Laning: Regarding the lines, is there a minimum depth that you place the lines?

Dave Crothers: I will defer that question to Dean Rustad from Northwest Communications Cooperative.

Representative Ruby: If they break the project into sections, are you saying this would allow them to get two for every section of that project?

Dave Crothers: We would be delighted if it was broken up and desirable so we don't have to mark the long project. That would be ideal.

Representative Ruby: That would be good if the two sides work together. You were talking about the difference between the utilities. One has the protection to be able to make a profit. But they also have to submit requests for rate increases to the PSC. When I get my notices of increase from the co-op that I am on, it is just the board that decides if we need to make an increase. It is your board and administration that makes sure the cooperative doesn't lose money.

Dave Crothers: If it's regulated by the PSC, it's a monopoly. That is not the case in telecommunications. The PSC's priority is safety. Because they are a monopoly, they don't face the same competitive pressures. The telecommunications industry has tremendous competition. We are at the top of the rate ceiling now in becoming uncompetitive. That is why this bill is here today.

Representative Louser: How does the \$1.10 relate to an average expense? How do you calculate the expense of a locate?

Dave Crothers: That's a decision every underground utility infrastructure owner faces whether they should have their own employees or contract out. If a contract employee relocates a residential lot that is probably \$17. To locate a section of land that is \$170. That is per line. If there are 3 lines it would \$170 times 3 which would be \$510 for a section. It costs a telephone company up to \$95 an hour to send a skilled technician out. Consolidated out of Dickinson sends technicians up to 80 miles one way to do a locate.

Chairman Keiser: If I'm a contractor, my solution would be to call you out more often. I would divide my project into segments. I would call for a locate for each segment. Could this be a problem rather than a solution?

Dave Crothers: We would like it in increments.

Chairman Keiser: That seems to be a downside of the legislation.

Dave Crothers: I don't concur with that. The excavator wants to do the work. By state law they can have us back out there in 48 hours.

Chairman Keiser: I can see myself making an adjustment so I don't have to pay. That could result in a lot more trips.

Dave Crothers: We would find it ideal if there was more planning by excavators and is something we desire.

Dean Rustad~Operations Manager-Northwest Communications Cooperative (NCC):
(Attachment 2).

(37:15)

Vice Chairman Sukut: If an excavator breaks it into 6 or 7 segments, he can have 2 calls on each segment. How does that you save money?

Dean Rustad: After the second one we can cover our costs on it. If the job takes six months, any locate after that we can ask to recover our expenses.

Vice Chairman Sukut: If you don't get a third call that is not cheap to keep doing the first two calls.

Dean Rustad: That is our cost of doing business. But when the jobs go on and on, we are asking for compensation. Seventy percent of our calls were past locates. It is common among a lot of contractors.

Representative M Nelson: Locates are only good for 21 days unless other arrangements are made. Why aren't other arrangements made like hardwire in GPS positions of your infrastructure or put up more permanent signage. Why do you keep going back to the same spot?

Dean Rustad: It's a matter of liability. If something happens it is our problem. We have potholed the facility by exposing and marking. It doesn't work for every situation.

Representative Ruby: The area that is going to be worked on for two years is defined. You don't see that on a gravel pit, etc. with a whole quarter. Is it government that mandates it relocated?

Dean Rustad: What would help is an extended locate period. It used to be ten days then we went to 21 days. Thirty days would help. The flags need to be maintained by the excavator. After 30 days of driving in and out the flags get run over and paint marks fade. I don't know if all parties would agree to 30 days.

Representative Louser: It looks like about seven out of eight are contracted. How are you allocating the cost for the ones that you have your three locators?

Dean Rustad: It's based on whether it is copper or fiber. Then we apply our hourly rate of \$95 per hour to the customer. I don't know what our hourly rate is internally.

Representative Louser: In the event that this bill passes, would you hire more locators and be charging more than \$17 that is allocated now for the contractors?

Dean Rustad: That's not our intent. We would have hired more employees if we could. It's hard to find employees. The job pays in the mid 20s. That is not good enough money. Our intent is to cover more locating. We only charge what our costs are.

Representative Laning: Is there a minimum depth to bury lines?

Dean Rustad: Yes. From the house to the nearest point it is 18 to 24 inches. The main line we like to keep 36 to 42 inches deep.

Representative Louser: How does this affect a residential property owner?

Dean Rustad: There are different contractors for residential. This affects the longer term jobs. Most of the other projects are smaller.

Chairman Keiser: The issue "it may be reasonably excavated." How would you work with them to find what is "reasonably excavated"?

Dean Rustad: It's not our business to get into their work. It is their business to decide how much they can get done in 21 days. We have a concern when it proves itself out that they are not going to get done.

Chairman Keiser: Some contractors have more than one job that they are working on. If we get a segment of bad weather it backs up everything. How do you deal with that reasonably?

(48:12)

Dean Rustad: Things happen beyond their control. Why do we have to bear those costs? We can't help it if it rained or people quit but yet we have to pay for it. They profit and we pay.

Representative Laning: Driving a stake in the ground is starting an excavation. Would we be able to exclude driving a stake into the ground when considering excavation?

Dean Rustad: The stake is based on where the facility is. They want to know where our lines are running.

Representative M Nelson: How many locates do you call in a year?

Dean Rustad: We are putting in 132 miles this year. We contract that out. We don't want them to go beyond what they can finish in a 21 day period.

Chairman Keiser: Your pie charts show you have grown, it's a good problem.

Dean Rustad: Our accountants have told us that the costs have exceeded our ability to recover with the growth. We don't see a two or three month recuperation time on the return on investment. It takes years for a return on what we put into the ground.

Representative Kasper: How large has your business increased over the last 5 or 6 years.

Dean Rustad: We've grown about 500 lines or about 10%.

Representative Lefor: Would home owners be charged after a second time?

Dean Rustad: There is not an exception for them.

Kent Blickensderfer~Representing CenturyLink in North Dakota: (Attachment 3).

(56:10)

Representative Ruby: This includes utilities that are cooperatives that have boards to adjust their rates. Do you see this as a broad change that does affect any utility and not just the telecoms? If so how would we narrow that down to what you do?

Kent Blickensderfer: You can go to a wireless device for your telecom needs but it is a smaller customer base. You can't go to another power supplier. They have 100% of the rate base. They are regulated by their board of directors.

Representative Kasper: Do you know what your total cost to the state of North Dakota was for one call system requests over the past 12 months?

Kent Blickensderfer: \$1.5 million.

Opposition:

Carlee McLeod~Representing the shareholders of North Dakota Investor-Owned Utilities: (Attachment 4).

(1:12:00)

Representative Ruby: In Section one the original language almost seems more definitive?

Carlee McLeod: I agree. I don't have any heartburn with it. In practice, it's already happening.

Representative Louser: Are homeowners considered excavators? Of the projects you mentioned, are there different projects requiring different one calls.

Carlee McLeod: That's where it's confusing. A homeowner is an excavator. This bill doesn't say when a project starts or ends. Modifying a yard is an on-going project. So after the first two tickets you could be billed.

Shane Goettle~MDU Resources: MDU Resources has utility companies in electric and natural gas in eight states. They are on both sides of the issue. MDU decided internally to side with safety. The natural gas distribution system in this state has about one quarter of the hits that are from no-calls. Any policy that might increase the odds of no-calls because the homeowner must now pay for the third call is something the company doesn't want to accept. Any time you are digging below 12 inches you are an excavator

Representative Kasper: Who hires the excavator and how is the homeowner going to be billed?

Shane Goettle: If the homeowner is not doing the work, it is the company doing the work.

Representative Kasper: The excavator is doing the work, who pays the excavator?

Shane Goettle: The homeowner. The excavator is the one who is doing the digging.

Representative Kasper: If it is a contractor, it could be in the bid to the excavator?

Shane Goettle: If the contract terms permitted that.

Representative Kasper: This bill doesn't prohibit that being in the contract?

Shane Goettle: No.

Mark Dougherty~Membership Service Director for the Associated General Contractors of North Dakota: (Attachment 5).

This year we will spend about \$200,000 on TV, radio, and news ads. They all have a statement that this is free. My concern is that when they are charged for it, it will break down the communication. Some calls won't be made.

(1:27:00)

Chairman Keiser: The law passed last session was a remedy for the bad actors. Is that true for the one call system?

Mark Dougherty: It takes care of part of it. There were locates being put in for over a year where there was nothing going on. Many were pipeline projects and they ran into easement problems.

Chairman Keiser: What is the penalty?

Mark Dougherty: The penalty is now they have to pay for it. You could bring a complaint against them through the PSC and use the \$25,000 penalty.

Chairman Keiser: Have we done that for bad actors?

Mark Dougherty: I am not aware of any complaints to that effect.

Representative Louser: How would this impact DOT projects?

Mark Dougherty: This will have a huge impact on the DOT. Their costs will go up because of this. Many of their projects are large. Some are two-year projects. By law we now have to remark every 21 days.

Chairman Keiser: Would the cost be based on the different needs of the subcontractors?

Mark Dougherty: The law states that the person doing the excavation has to make the one-call. A prime contractor can't blanket the whole job and have all their subs work under that ticket.

Brenda Elmer~ABC Associated Contractors: (Attachment 6).

(1:35:33)

Representative M Nelson: When a contractor is billing a job, there is no way for him to know beforehand what utilities he is going to deal with?

Brenda Elmer: That is the reason for the one call.

James Ruud~President & Project Manager for Edling Electric: (Attachment 7).

(1:41:24)

Mike Sullivan~Sullivan Construction: We typically do a 10 to 15 acre subdivision. We clear the property so that would be one request. We do water and sewer as well. It takes a couple of years to finish a project. We have had trouble with locates that were wrong. We have hit utilities that were missed. The gas main that we hit was off by four feet. The power was not located at all.

Representative Kasper: I don't know if this bill would change anything for the process other than who pays for it.

Mike Sullivan: In a 28 lot residential subdivision we would have one locate for the land clearing portion. Then would be the foundation, water, sewer, and grading.

Representative Kasper: You are going to have the same problems whether or not this bill passes. It is just who pays the locates.

Mike Sullivan: That's correct.

Representative Laning: Do you have problems scheduling the small projects within the 21 days?

Mike Sullivan: We manage our projects in stages.

Neutral:

Patrick Fahn, Director of Compliance and Competitive Markets, PSC: The commission does investigate all the complaints filed. We determine if there is a violation and then if there should be a penalty. Sometimes the contractor and the staff of the Public Service Commission come to an agreement. That agreement is brought before the commission for a vote. In other cases the excavator may have a challenge to the violation that may go to a hearing before a decision is made.

Representative M Nelson: We were told that sometimes locates aren't done properly. Does the PSC get complaints in those cases and do you act on them?

Patrick Fahn: Yes.

Representative M Nelson: Have you taken action against any utilities?

Patrick Fahn: Yes, we have where the facility was not located properly.

Representative Ruby: Is there some way for the contractor to recoup their loss for the cost of the project?

Patrick Fahn: The commission only determines if there was a violation of the law and then we assess a penalty for a violation. The law says that if an excavator causes damage, the excavator is responsible for the damages. I don't think there is anything in the law that works the other way around.

Chairman Keiser: There is recourse in civil law.

Dan Lindquist~Owner of Dan Lindquist Construction, Inc: (Attachment 8). He was unable to attend but submitted testimony for the record.

Chairman Keiser: Closed the hearing

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2147
3/23/2015
25262

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

One-call excavation notice system.

Minutes:

Chairman Keiser: Opens the work session on SB 2147. What are the wishes of the committee?

Representative Kasper: Moves a Do Not Pass

Representative Lefor: Seconded.

Chairman Keiser: I believe this is going to create a lot more problems than they think. It certainly creates problems for our contractors.

Representative Kasper: I thought we pretty much dealt with it in the last session. The study is the appropriate manner you suggested.

Representative Laning: Same thing, the study has already signed by the governor.

Representative Louser: If this bill doesn't fail, I would like to consider some amendments for the residential area.

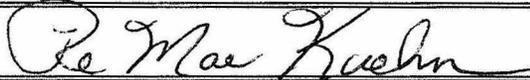
Roll call was taken on SB 2147, for a Do Not Pass with 10 yes, 4 no, 1 absent and Representative M Nelson will carry the bill.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2147
3/25/2015
25385

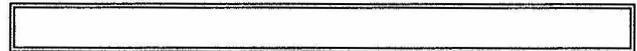
- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

One-call excavation notice system.

Minutes:



Chairman Keiser: Opens the work session on SB 2147.

Representative Louser: There was conflicting language in the bill. I would like to amend so there would be three free calls instead of two. Then a carve out for residential property owners. So residential property owners would be able to make one call without charge.

Representative Kasper: I will resist the motion to reconsider. We had a big battle two years ago and we came up with a compromise. Now we have one side not liking what we agreed to two years ago and want to change everything. We also have a bill that was passed that is a study. We need to come up with a solution that all sides agree to again. The amendment that Representative Louser is proposing doesn't solve the issue. It puts a band aide on it. It still doesn't solve the problem of who pays for the cost. That will take an interim study.

Representative Lefor: What was agreed to two years ago?

Representative Kasper: What was agreed to is what the current law is.

Representative Ruby: It was mainly extending it to the 21 days.

Representative Hanson: Is the intent to make the bill better so you would support it?

Representative Louser: I voted no on the Do Not Pass.

Representative Louser: Moved to reconsider the committee's actions of Do Not Pass.

Representative Beadle: Seconded the motion.

Representative Ruby: I'm going to resist this motion. I didn't hear any concerns with the residential part of it. It still doesn't solve the issue where you have contractors that have delays because they have to get out of the area to let other contractors in to do their work. I think there are other remedies they can do. I think we should do it through the study process.

Chairman Keiser: The suggested amendment improves some of the concerns but I still have reservations. I don't want residential users to think they are exempt from doing this. They are exempt from the payment. Safety is the number one priority. I will resist the motion also.

A Roll Call vote was taken: Yes 5, No 9, Absent 1.

Motion to reconsider fails.

Date: Mar 23, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2147

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Kasper Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser		X
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman		X
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson		X
Representative Kasper	X		Representative M Nelson	X	
Representative Laning		X			

Total (Yes) 10 No 4

Absent 1

Floor Assignment Rep M Nelson

If the vote is on an amendment, briefly indicate intent:

Date: Mar 25, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2147

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Louser Seconded By Rep Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Representative Lefor		X
Vice Chairman Sukut		X	Representative Louser	X	
Representative Beadle	X		Representative Ruby		X
Representative Becker		X	Representative Amerman		X
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson	X	
Representative Kasper		X	Representative M Nelson		X
Representative Laning		X			

Total (Yes) 5 No 9

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

motion failed

REPORT OF STANDING COMMITTEE

SB 2147, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO NOT PASS (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2147 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2147

Mr. Chairman and Members of the Government and Veterans Affairs Committee:

For the record, I am David Rust, State Senator from District 2 in NW ND.

SB 2147 relates to the one-call excavation notice system.

I am introducing this bill as a result of meetings with telephone cooperatives essentially west of Highway 83. They are experiencing an explosion in 8-1-1 calls for locates and relocations due to the increased oil and gas activity in that area of the state. It is creating a financial burden on their businesses amounting to hundreds of thousands of dollars per year.

Line 7 will provide some relief by limiting the locate to the area "that may be reasonably" excavated. For example, if a project involves 40 miles of work and a relocate is necessary, the entire 40 miles would have to be relocated again. This would allow for a shorter distance of relocate based on what work may reasonably be done, perhaps only 10 miles.

I have an amendment to line 14 of the bill. The amendment:

- 1) removes the overstrike on the word "three,"
- 2) removes the word "second," and
- 3) overstrikes where no excavation has occurred.

It would then read, "Upon the third locate request at the same excavation site after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in the location."

The result of such essentially charges the excavator for reasonable costs after the second locate.

I urge a "Do Pass as amended" on SB 2147 and will stand for any questions you may have.

15.0613.01001
Title.

Prepared by the Legislative Council staff for
Senator Rust

January 20, 2015

1
Pg 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2147

Page 1, line 14, remove the overstrike over "~~third~~"

Page 1, line 14, remove "second"

Page 1, line 14, overstrike "where no excavation"

Page 1, line 15, overstrike "has occurred"

Renumber accordingly



SENATE BILL 2147

SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

FEBRUARY 13, 2015

DAVID CROTHERS
NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 150,000 homes and small businesses and approximately 96 percent of the geographic territory of the State.

Members of the Association strongly urge the adoption of the amended Senate Bill 2147.

Following adoption of the amendment, Senate Bill 2147 will do three things:

First, on page 1, line 7, it will clarify that excavators are to call in locate requests only for the area they can reasonably work upon during the period of a valid ticket. All too often members of the Association are required to go out and mark underground telecommunications infrastructure by excavators who have no intention, or no ability, to complete a project during the 21 day life of a valid ticket.

Second, on page 1, line 14, the amendment removes the overstrike on the word "third" and strikes out the word "two". The practical effect of this language to give the excavator two free locates of a project.

Third, on page 1, lines 14 and 15, the amendment strikes from existing law the words "where no excavation has occurred".

Today, the way "call before you dig" operates in North Dakota is that an excavator calls the North Dakota One Call Center and gives a physical description of the area they would like located. The One Call Center notifies those with underground facilities in the area. Those who have buried infrastructure within that area are required by North Dakota law to go to that location and mark their facilities within 48 hours of receiving the notification.

Following that 48 hour period, the excavator has a 21 day window to do their excavation. After 21 days the ticket is no longer valid and if the dirt work is not complete, the excavator is required to call the One Call Center again and the process repeats itself.

For each location the excavator calls in, he or she is charged \$1.10. The expense for the underground facility owner to go out and mark those facilities is substantially higher. Some requests cost hundreds of dollars to perform locates.

In essence, what Senate Bill 2147 does is give excavators two free locates of underground facilities and requires them to pay for locates after that. Two free locates gives an excavator 42 days to complete a project. Not the whole project; but six weeks to complete the work in the area they have requested us to mark.

The reason we are here, though, testifying in favor of the amended version of Senate Bill 2147 is that time after time members of the Association are being called back to the same construction projects over and over.

The magnitude of the problem is immense. The changes this body made to One Call statutes during the last legislative session have not resolved the problem. Construction activity in North Dakota, particularly the western part of the State, has grown exponentially during the last six years. Reservation Telephone Cooperative is a telephone company with 5,000 members that six years ago had two part time employees doing fewer than 10,000 locates. Today, they have 12 people locating underground facilities, do in excess of 40,000 locates a year and are

spending \$1.4 million annually. Not one cent of that \$1.4 million expense is compensated by anyone.

The problem members of the Association are facing are the relocates. We are being forced to go out over and over again to relocate the same underground facilities that we previously marked. The small telephone company that I said was spending \$1.4 million each year on locating expenses? One third of that expense is on relocates.

Members of the Association have no objection to going out...in some cases, sending skilled technicians up to 80 miles one way...and marking our facilities for free so that an excavator can do their work. And we acknowledge that sometimes bad weather or the magnitude of a project or even bad planning by an excavator may necessitate a second trip to re-mark that same underground infrastructure. However, we believe costs of the third and subsequent trips should be borne by those that are causing the expense.

The first flaw in North Dakota's One Call statutes is that the cost causer is not the cost payer. The only obligation of the excavator is to pay the \$1.10 to the One Call Center for a new ticket. The underground facility owner, on the other hand, is required to either send technicians or contract employees to the site again. There is no motivation for the excavator to request locates for only the amount of work they can do within the 21 day period of a valid locate ticket.

The second flaw can be found in the language on lines 14 and 15. It is why we support striking the words "where no excavation has occurred". The existing law today allows excavators to be charged for the third and subsequent locates when no excavation has occurred. The problem is the law is so broad that an excavator simply pounding in a single stake has performed an excavation and no further work has to be completed within the 21 day period. After calling the One Call Center for a new ticket, the excavator can pound in a second stake or turn over a shovelful of dirt and "excavation" has again occurred. In practice...and in reality...the excavator always asserts that "excavation" has occurred and they should not have to pay an underground facility owner for relocates.

Another example of the same problem is when excavators request locates for extremely large or long projects, such as pipelines. There is no way the excavator can complete the project within 21 days, but they are working somewhere on the multi-mile span and the underground facility owner is compelled under North Dakota law to re-mark the site over and over until the excavator no longer calls the One Call Center.

Finally, we anticipate opposition to the amended version of Senate Bill 2147. We have been told that changes the sixty-third legislative assembly made in 2013 have not had sufficient time to work. We have been told that requiring excavators to compensate underground facility owners for the third and subsequent locates will discourage excavators from calling the One Call Center and, as a result, endanger public safety. Members of the Association find both arguments to be specious.

First, the changes to North Dakota's One Call statutes became effective 20 months ago. Construction season in North Dakota is no longer a summertime activity. Excavation in the State, especially in oil country, occurs every month of the year. Reservation Telephone Cooperative of Parshall has 60,000 trips into the field worth of experience.

Second, arguing that excavators will not call the One Call Center for a third locate because they will incur costs is disingenuous, the Association believes. While none of us enjoys incurring costs it is a part of doing business. There is no one on that job site working for free except the underground facility owner marking their infrastructure.

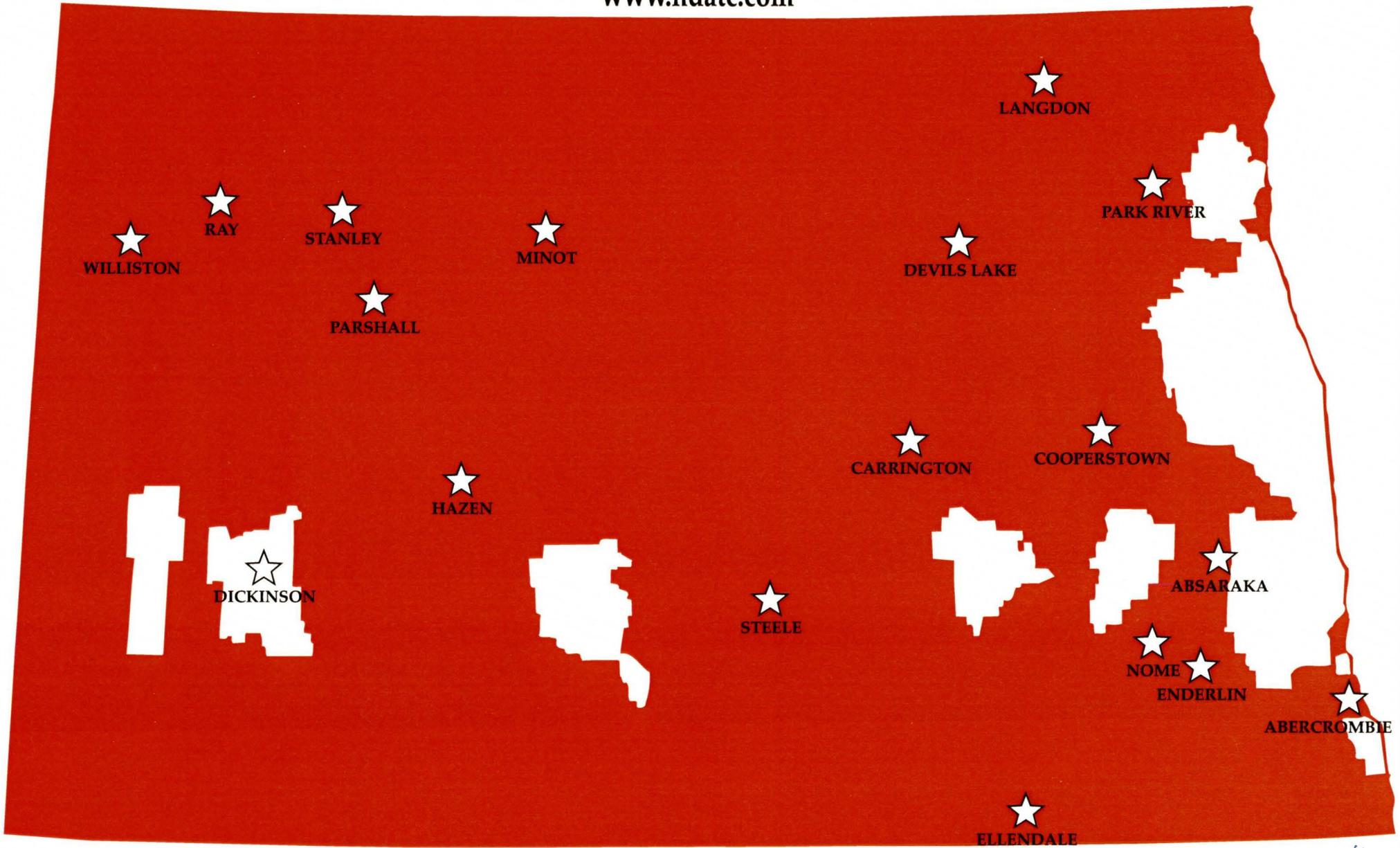
Additionally, it is the excavators themselves who will largely determine whether they will require more than two locates for a job site. It is the excavator who determines the size and scope of a project they call into the One Call Center. By limiting their request to the amount of work they can actually perform in the 42 days of two valid locate tickets they will never incur a bill from the underground facility owner.

Members of the Association believe these provisions of existing law are bad public policy. Those that incur the costs are not responsible for paying for any portion of them. Independent telephone companies agree and acknowledge our responsibility to mark our facilities. In fact, we believe marking them twice for

free is good public policy. However, the law today requires us to do the same work over and over at the whim of others. Telephone companies are incurring real harm that is resulting in less training for employees and less investment for the broadband infrastructure rural North Dakotans are increasingly dependent upon.

Members of the North Dakota Association of Telecommunications Cooperatives urge a "Do Pass" recommendation for an amended Senate Bill 2147.

NORTH DAKOTA
ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES
www.ndatc.com



INDEPENDENT TELEPHONE COMPANY TERRITORY IN NORTH DAKOTA

#2
pg 4

ABSARAKA TELEPHONE COMPANY

Absaraka, ND 58002
Mgr: Ann Faught
Phone: 701-896-3404

BEK COMMUNICATIONS

Steele, ND 58482
Mgr: Derrick Bulawa
Phone: 701-475-2361
Website: www.bektel.com

CONSOLIDATED TELCOM

Dickinson, ND 58602
Mgr: Paul Schuetzler
Phone: 701-483-4000
Website: www.ctctel.com

DAKOTA CENTRAL TELECOMMUNICATIONS

Carrington, ND 58421
Mgr: Keith Larson
Phone: 701-652-3184
Website: www.daktel.com

DICKEY RURAL TELEPHONE

Ellendale, ND 58436
Mgr: Bob Johnson
Phone: 701-344-5000
Website: www.drtdel.net

INTER-COMMUNITY TELEPHONE COMPANY

Nome, ND 58062
Mgr: Keith Andersen
Phone: 701-924-8815
Website: www.ictc.com

MIDSTATE TELEPHONE COMPANY

Stanley, ND 58784
Mgr: Ryan Wilhelm
Phone: 701-628-2522
Website: www.midstatetel.com

MISSOURI VALLEY COMMUNICATIONS

Scobey, MT 59263
Mgr: Mike Kilgore
Phone: 406-783-5654
Website: www.nemontel.net

**THE NORTH DAKOTA RURAL
TELEPHONE INDUSTRY**

- High-Speed Internet in 278 North Dakota rural communities.
- Independent telcos serve 96 percent of North Dakota's geographic territory.
- Over \$1.3 billion total investment in local telecom infrastructure.
- Over \$72 million in payroll for rural residents in 2013.
- Over 39,000 miles of fiber optic cable.
- \$298 million in 2010-2012 construction spending on rural telecom infrastructure.
- 1100 highly trained and educated employees in rural North Dakota communities.

MLGC

Enderlin, ND 58027
Mgr: Tyler Kilde
Phone: 701-437-3300
Website: www.mlgc.com

NEMONT TELEPHONE COOPERATIVE

Scobey, MT 59263
Mgr: Mike Kilgore
Phone: 406-783-5654
Website: www.nemontel.net

NORTH DAKOTA TELEPHONE COMPANY

Devils Lake, ND 58301
Mgr: Dave Dircks
Phone: 701-662-1100
Website: www.gondtc.com

NORTHWEST COMMUNICATIONS

Ray, ND 58849
Mgr: Mike Steffan
Phone: 701-568-3331
Website: www.ncrcray.com

POLAR COMMUNICATIONS

Park River, ND 58270
Mgr: David Dunning
701-284-7221
Website: www.polarcomm.com

RED RIVER COMMUNICATIONS

Abercrombie, ND 58001
Mgr: Jeff Olson
Phone: 701-553-8309
Website: www.rrt.net

RESERVATION TELEPHONE

Parshall, ND 58770
Mgr: Royce Aslakson
Phone: 701-862-3115
Website: www.rtc.coop

SRT COMMUNICATIONS

Minot, ND 58702
Mgr: Steve Lysne
Phone: 701-858-1200
Website: www.srt.com

UNITED TELEPHONE COOPERATIVE

Langdon, ND 58249
Mgr: Perry Oster
Phone: 701-256-5156
Website: www.utma.com

WEST RIVER TELECOMMUNICATIONS

Hazen, ND 58545
Mgr: Bonnie Krause
Phone: 701-748-2211
Website: www.westriv.com

#2 P. 7

My name is Dean Rustad, operations manager; from Northwest Communications Cooperative (NCC). NCC has been a cooperative since 1951 and currently provides land line telephone, high speed internet and video services to over 5400 customers in Burke County and most of Williams, Divide counties and parts of Mountrail and Ward counties, geographically this covers 5100 square miles. NCC has 3733 miles of fiber, copper and coaxial cable that delivers the aforementioned services to those counties. Currently we have 45 full-time employees to install and maintain the cable plant and to service the communication needs of our cooperative customers. As operations manager I am responsible for the entire facility that brings modern communications to Northwest North Dakota.

The development of the Bakken oil fields has been a boom to our counties and has brought prosperity to our area. It has also brought growing pains that can be difficult to deal with. We have thousands of miles of cable in the ground that needs to be protected against damages from excavators that are building oil pads, installing a variety of pipelines, building roads and the list can go on and on. The ND One call system is a great system for all facility owners to protect their underground assets. With a single call, a contractor can notify existing facility owners as to the location of their work and extent of work to be done. Then the existing owners can identify their facilities with spray paint and marker flags thus allowing contractors to dig safely and not damage existing infrastructure. If the construction lasts longer than 21 days, another "locate" must be conducted to ensure markings are still visible. This process continues every 21 days until the project is complete. Some projects last for months and require multiple locates. If construction is in progress, the owner of existing facilities must continually shoulder the expense of these locates. Our locating costs have increased from \$107,000.00 in 2008 to \$760,000.00 in 2014, a 610% increase. NCC or its contractors performed 22,042 locates in 2012, 18,355 locates in 2013 and 20,226 locates in 2014. On average, about 33% of those locates are re-spots. Current law allows the owner to bill for locates, after one routine locate and one re-spot, if there is no work in progress. The cost of these locates has become a costly burden to NCC, one that inhibits our ability to build out capital projects, such as fiber to the home (FTTH). To finish this fiber build out would provide a communications medium that will be of immense value to farms, business, governmental departments, schools, airports and residences for decades to come.

The passing of Senate Bill 2147 would allow NCC to bill for all locates after the first re-spot. This would allow 42 days for contractors to finish their projects. Why should NCC have to bear the costs on thousands of projects that continue for not just weeks but months and occasionally years (Please refer to last page of handouts)? This is a cost we cannot pass on to our cooperative customers and inhibits our ability to provide the services that NCC was formed to provide. Cooperatives were formed in marginal profit areas and this adds a further burden to an already high cost business. This bill would give some protection against costs that we have no other means to defray.

NCC feels that Senate Bill 2147 would improve the language to protect against costs that are not manageable by any other means. NCC urges a "Do Pass" recommendation on Senate Bill ~~1467~~.

2147

NCC stats

Counties Served: Burke, Divide, Mountrail, Ward and Williams

Total Access Lines: 5452 lines. 1722 Business and 3730 Residence

Route Miles Copper: 2341

Fiber: 1392

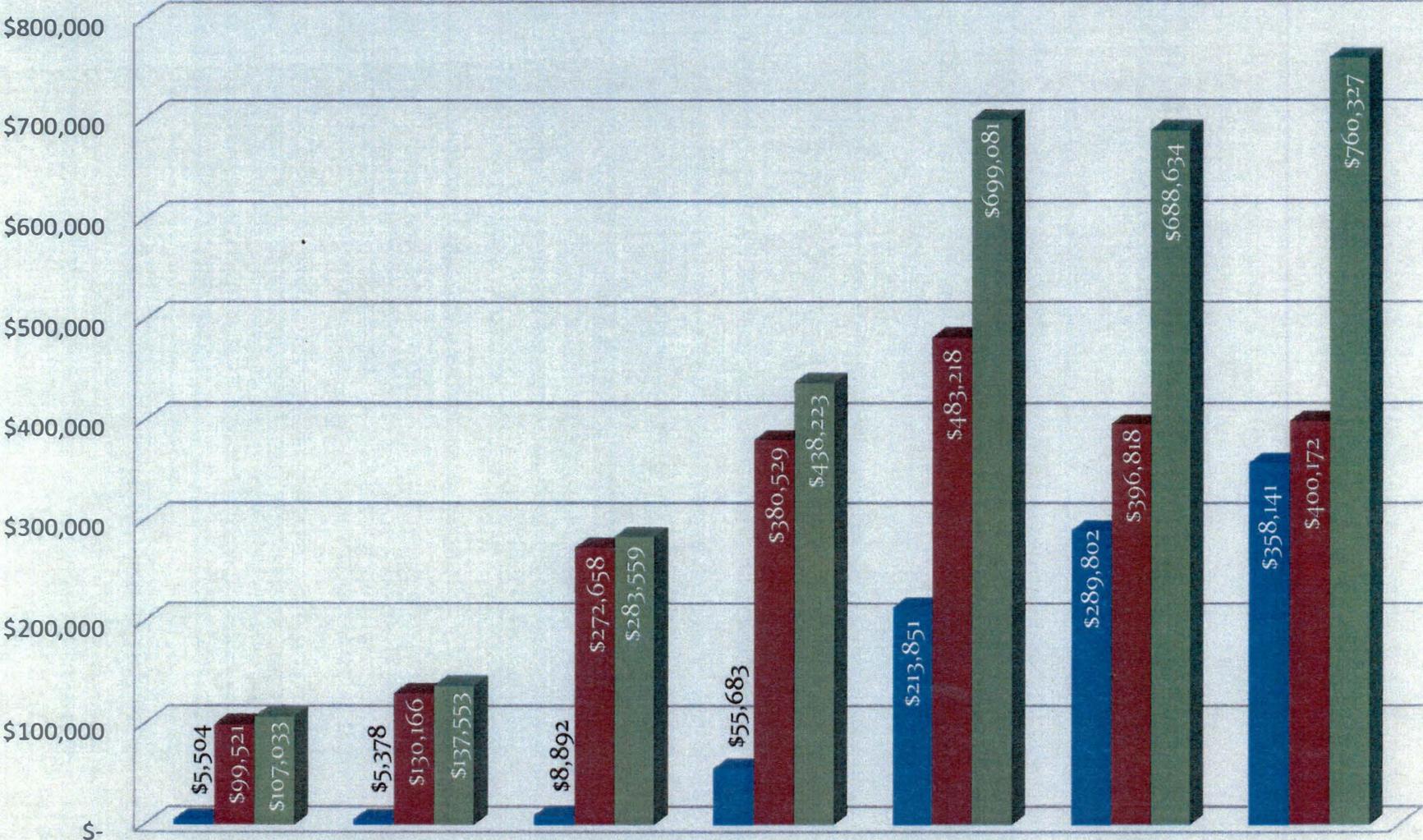
Total Miles: 3733 (does not include additional miles added or retired in 2014)

Employees: 45

Square Miles: 5100

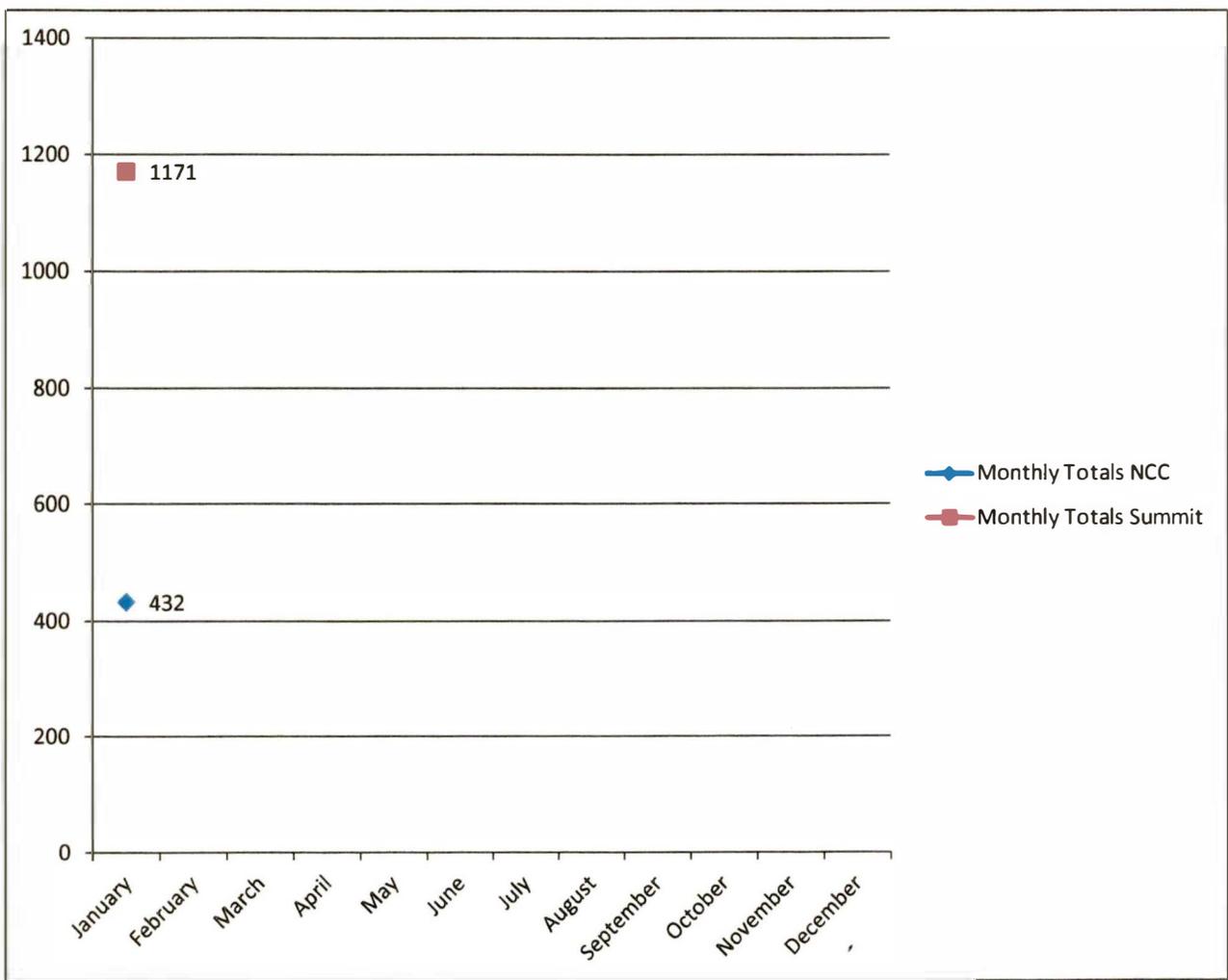
NCC Locating Costs

3 pg 3

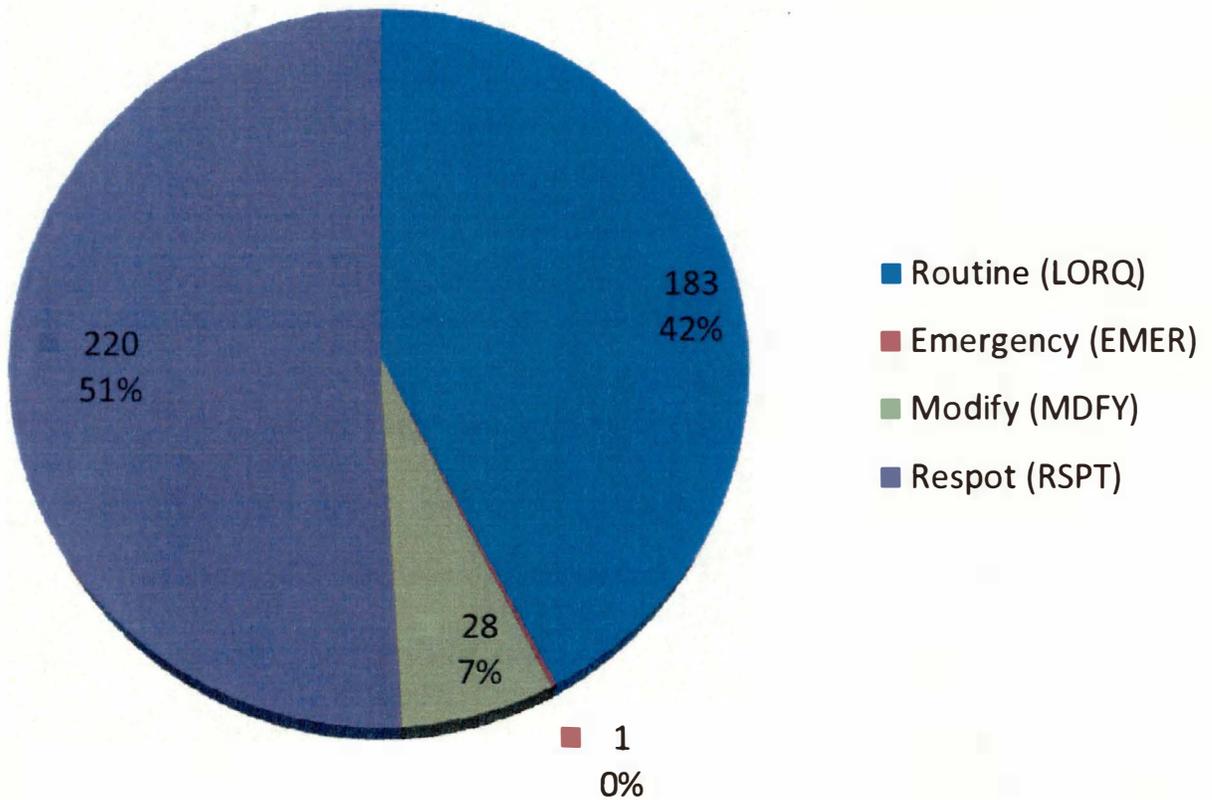


■ Cable Locating Expense - Fiber ■ Cable Locating Expense - Copper ■ Total Locating Expense

Monthly Totals	NCC	Summit	Avg/Day	Total
January	432	1171	13.94	1603.00
February			0.00	
March			0.00	
April			0.00	
May			0.00	
June			0.00	
July			0.00	
August			0.00	
September			0.00	
October			0.00	
November			0.00	
December			0.00	



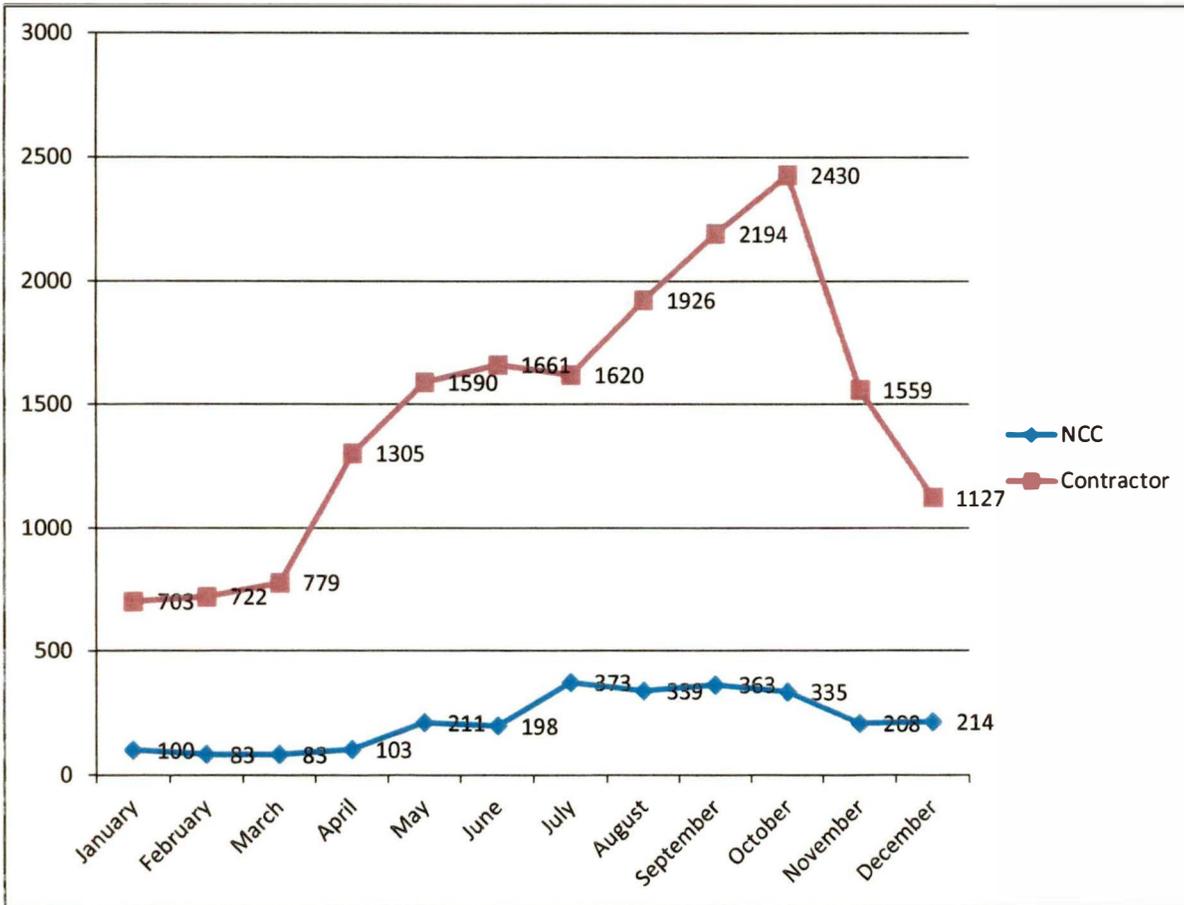
January 2015 call breakdown by Ticket Type



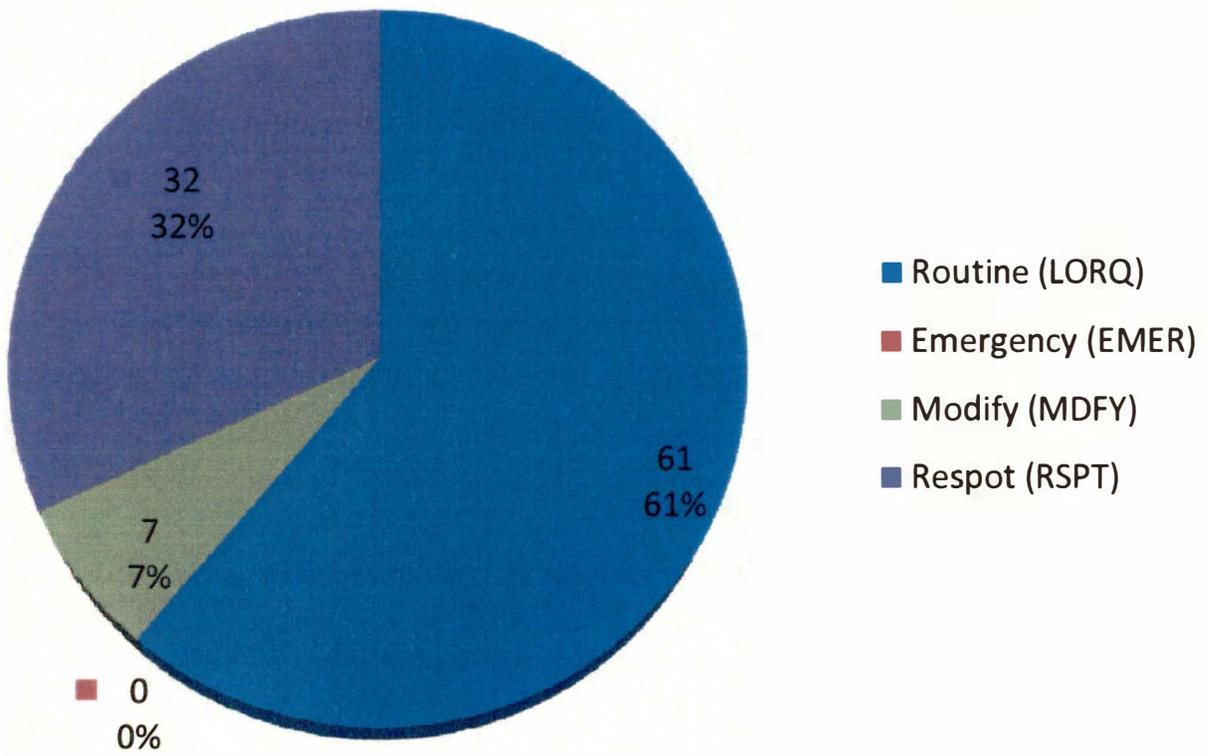
2014 Locate Summary

#3 pg 4

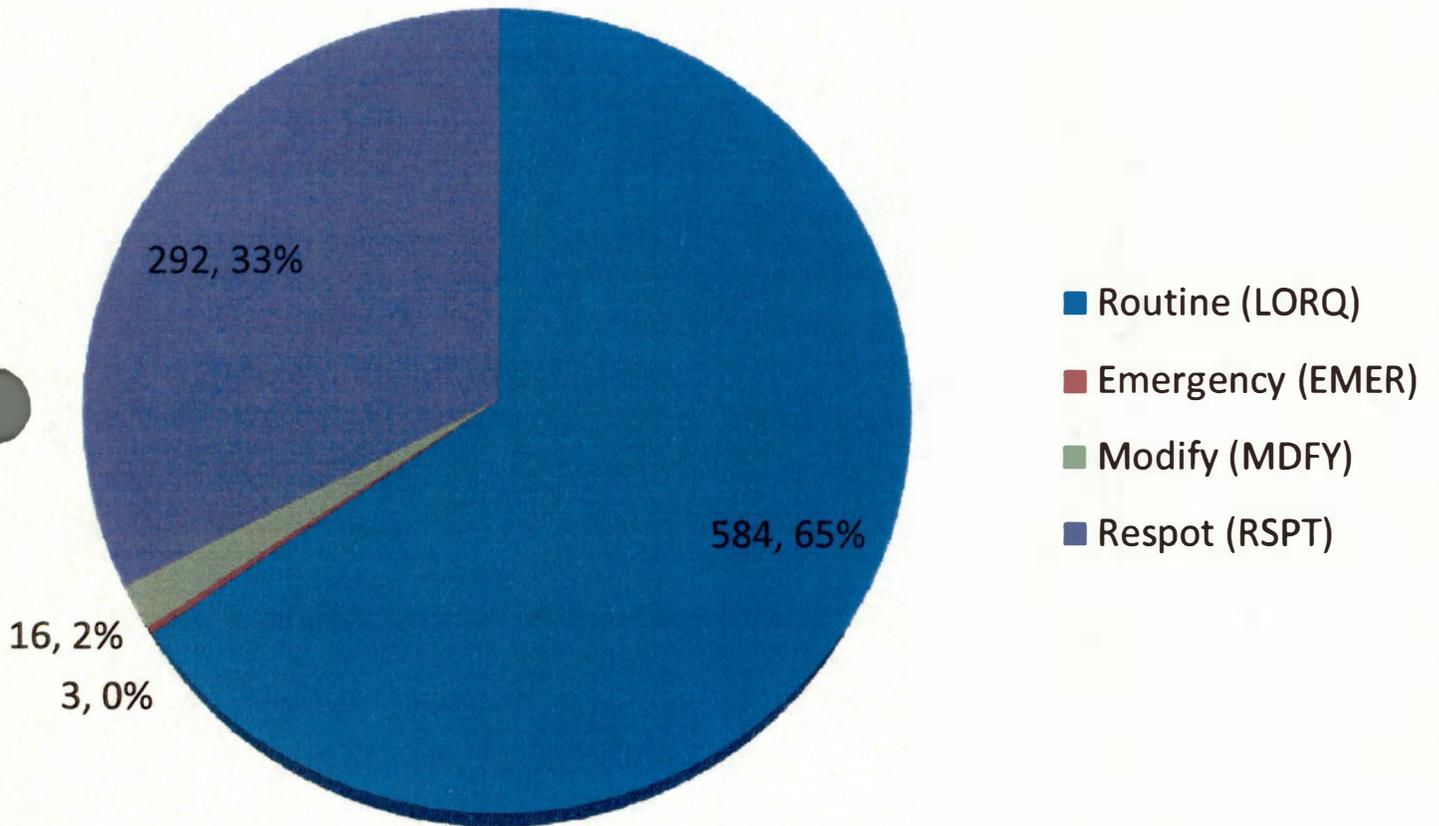
	NCC	Contractor	Avg/Day	Monthly Totals		
January	100	703	3.23	803		
February	83	722	2.86	805		
March	83	779	2.68	862		
April	103	1305	3.43	1408		
May	211	1590	6.81	1801		
June	198	1661	6.60	1859		
July	373	1620	12.03	1993		
August	339	1926	10.94	2265		
September	363	2194	12.10	2557		
October	335	2430	10.81	2765		
November	208	1559	6.93	1767		
December	214	1127	6.90	1341	Number of	
		Yearly Total		20226	Respos	7184



January 2014 call breakdown by Ticket Type



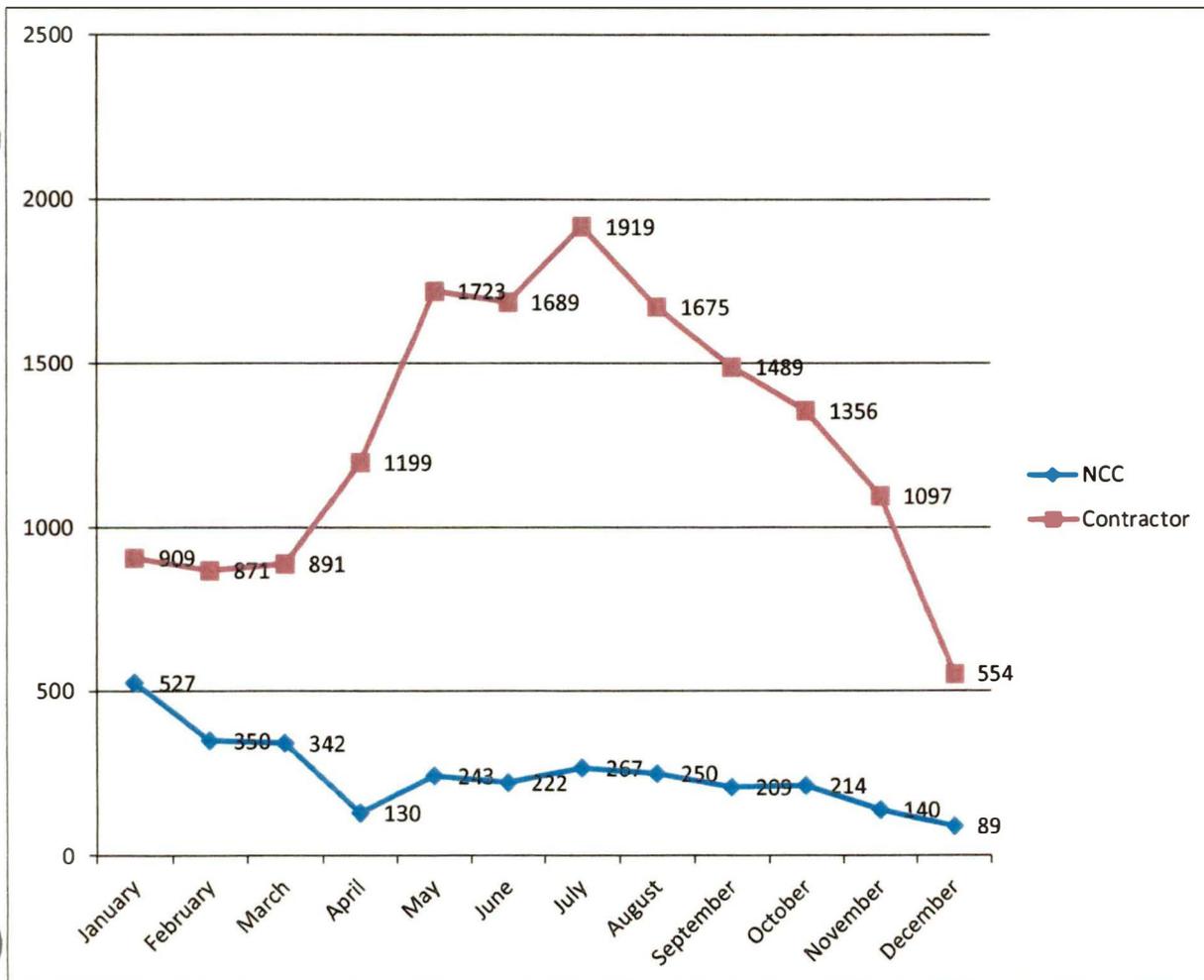
October 2014 call breakdown by Ticket Type



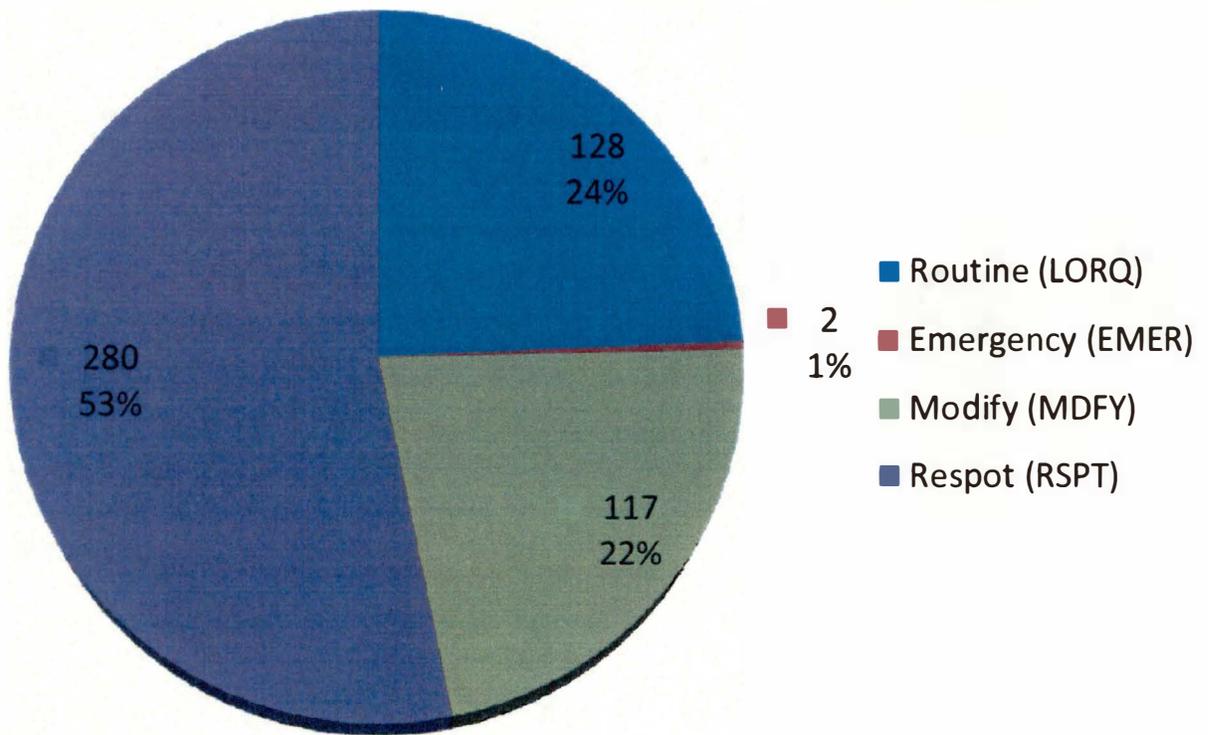
2013 Locate Summary

#3 pg 9

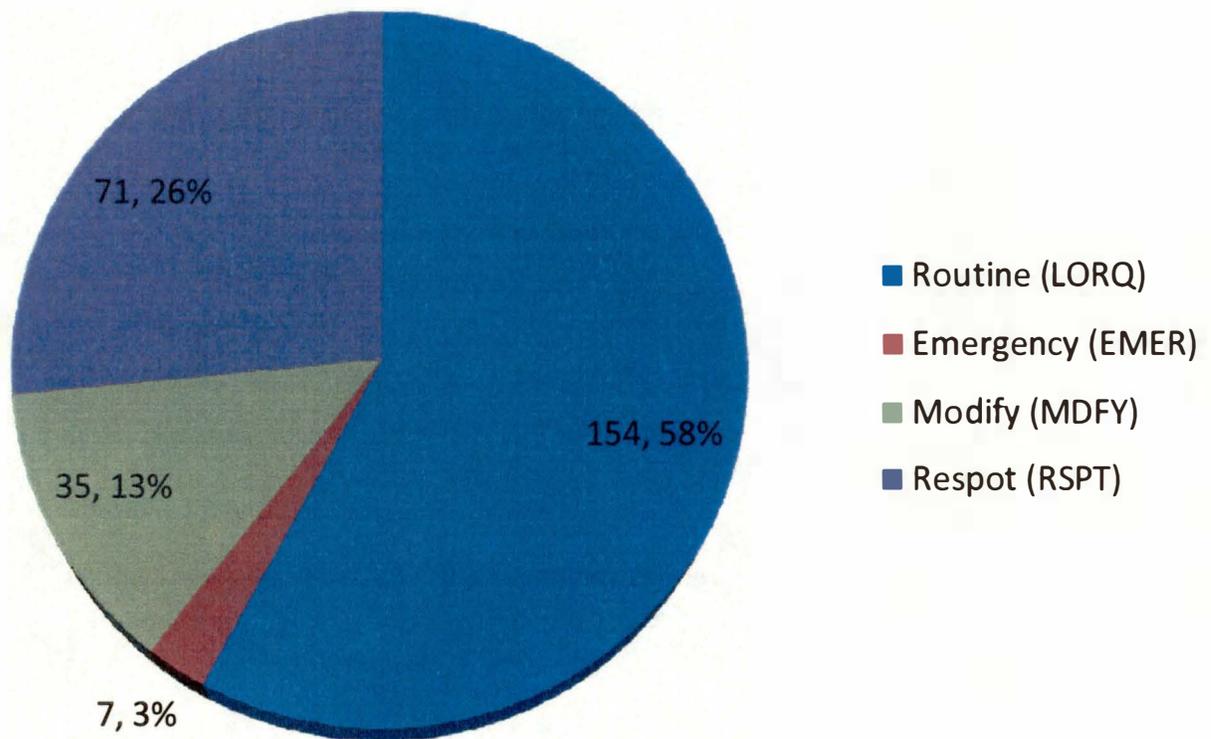
	NCC	Contractor	Avg/Day	Monthly Totals		
January	527	909	17.00	1436		
February	350	871	12.07	1221		
March	342	891	11.03	1233		
April	130	1199	4.33	1329		
May	243	1723	7.84	1966		
June	222	1689	7.40	1911		
July	267	1919	8.61	2186		
August	250	1675	8.06	1925		
September	209	1489	6.97	1698		
October	214	1356	6.90	1570		
November	140	1097	4.67	1237		
December	89	554	2.87	643	Number Of	
		Yearly Total		18355	Respots	6136



January 2013 call breakdown by Ticket Type

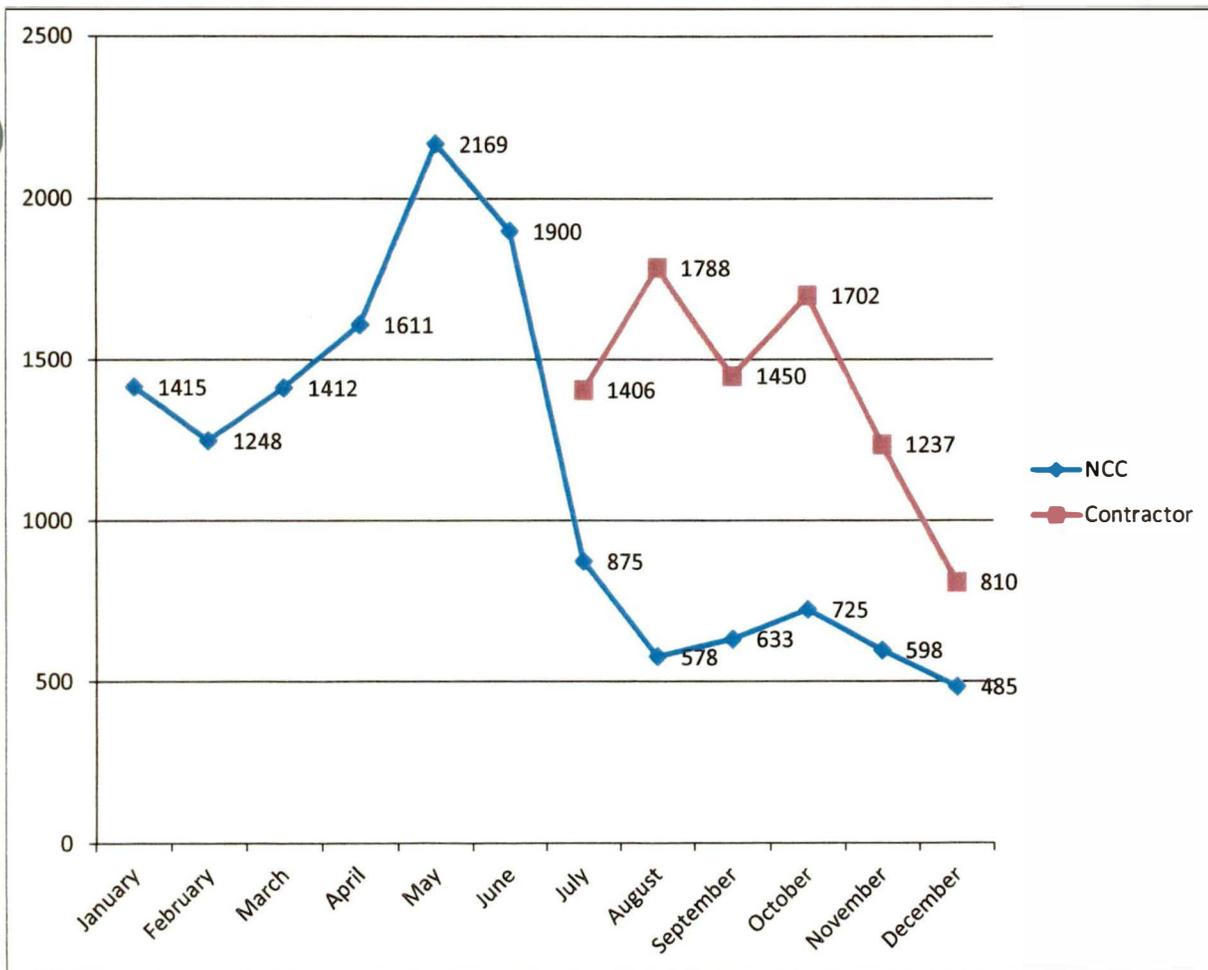


July 2013 call breakdown by Ticket Type

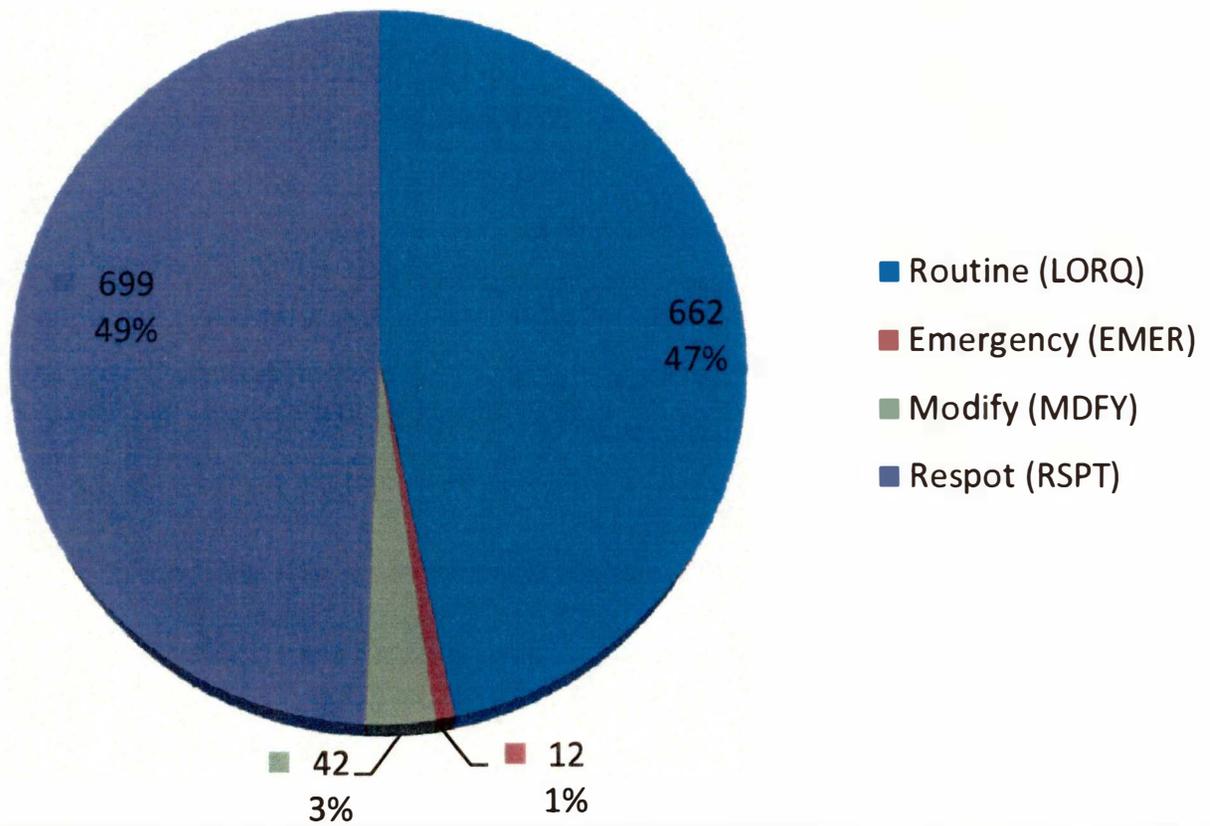


Monthly

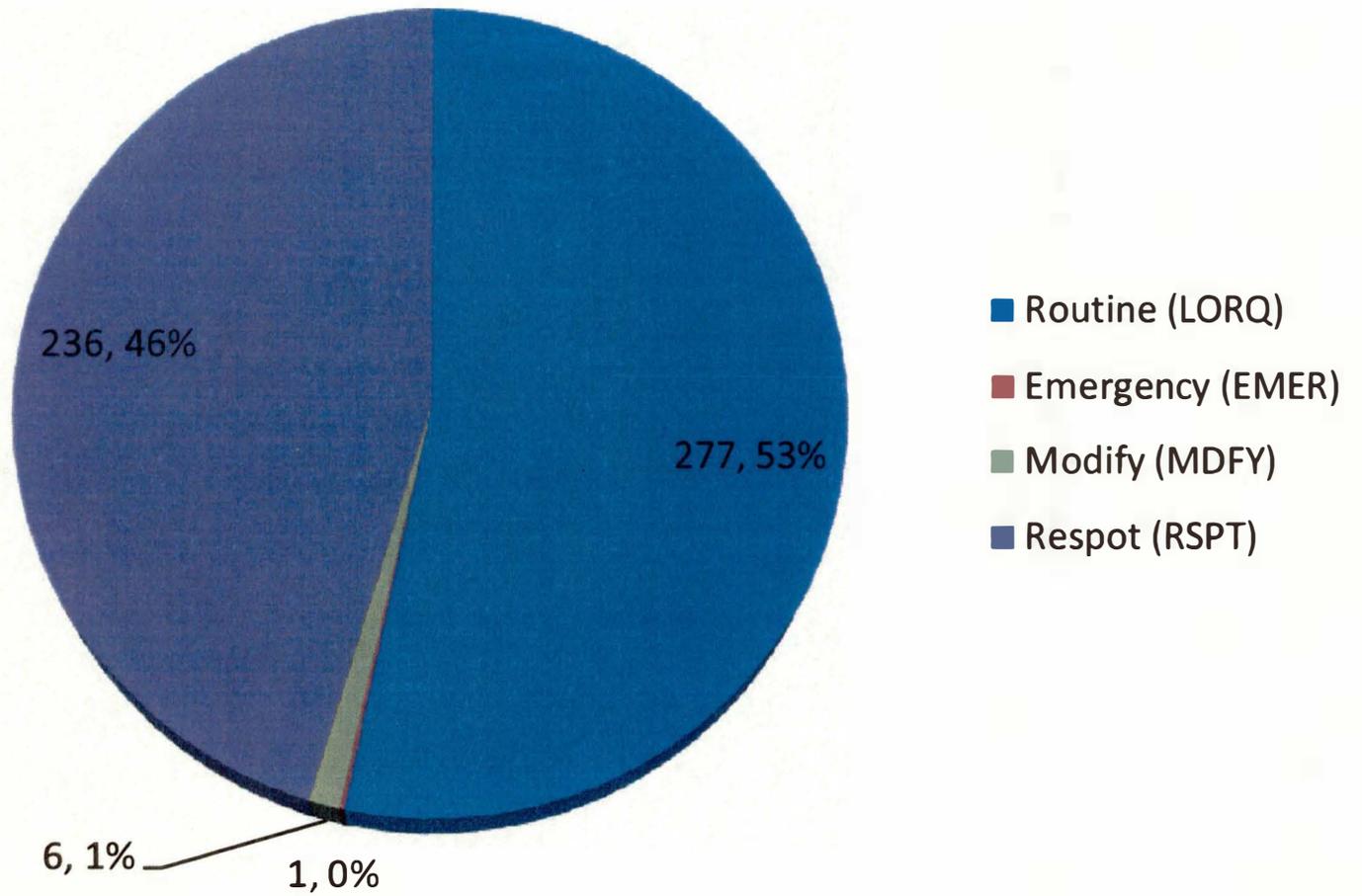
	NCC	Contractor	Avg/Day	Totals		
January	1415		45.65	1415		
February	1248		43.03	1248		
March	1412		45.55	1412		
April	1611		53.70	1611		
May	2169		69.97	2169		
June	1900		63.33	1900		
July	875	1406	28.23	2281		
August	578	1788	18.65	2366		
September	633	1450	21.10	2083		
October	725	1702	24.17	2427		
November	598	1237	19.93	1835		
December	485	810	15.65	1295	Number of	
			Yearly Totals	22042	Respots	7757



January 2012 call breakdown by Ticket Type



August 2012 call breakdown by Ticket Type



Dates	Costs	Work Description
10/14/2014	\$ 51.00	Pipeline
10/28/2014	\$ 170.00	
11/11/2014	\$ 17.00	
11/25/2014	\$ 17.00	
12/8/2014	\$ 170.00	
12/26/2014	\$ 170.00	
1/9/2015	\$ 170.00	
1/20/2015	\$ 17.00	
2/4/2015	\$ 170.00	
Total	\$ 952.00	

Still in progress

Number of locates **9**

Dates	Costs	Work Description
10/12/2014	\$ 17.00	16" Gas Line
10/24/2014	\$ 17.00	
11/7/2014	\$ 17.00	
11/21/2014	\$ 170.00	
12/5/2014	\$ 17.00	
12/19/2014	\$ 170.00	
1/2/2015	\$ 17.00	
1/15/2015	\$ 17.00	
1/29/2015	\$ 170.00	
Total	\$ 612.00	

Number of locates **9**

Dates	Costs	Work Description
8/11/2014	\$170.00	Install Water line
9/4/2014	\$17.00	
9/9/2015	\$17.00	
9/29/2014	\$170.00	
10/20/2014	\$17.00	
Total	\$391.00	

Number of locates **5**

Dates	Costs	Work Description
6/5/2014	\$ 210.00	12" Poly Gas Line
6/19/2014	\$ 63.00	
7/7/14	\$ 17.00	
7/23/2014	\$ 17.00	
8/8/2014	\$ 17.00	
8/22/2014	\$ 17.00	
9/9/2014	\$ 17.00	
9/23/2014	\$ 17.00	
10/9/2014	\$ 17.00	
10/21/2014	\$ 85.00	
11/5/2014	\$ 17.00	
11/19/2014	\$ 170.00	
12/2/2014	\$ 17.00	
12/16/2014	\$ 170.00	
12/31/2014	\$ 17.00	
1/12/2015	\$ 17.00	
1/26/2015	\$ 170.00	
2/9/2015	?	
Total	\$ 1,055.00	

Still in Progress

Number of locates **18**

Dates	Costs	Work Description
5/8/2014	\$21.00	Digging Contaminated Soil
5/28/2014	\$11.00	
6/16/2014	\$11.00	
7/2/2014	\$11.00	
7/18/2014	\$17.00	
8/6/2014	\$17.00	
8/25/2014	\$17.00	
9/14/2014	\$17.00	
10/2/2014	\$17.00	
10/20/2014	\$17.00	
11/4/2014	\$17.00	
11/20/2014	\$17.00	
12/22/2014	\$17.00	Test pits
1/11/2014	\$17.00	
2/1/2015	\$17.00	
Total	\$241.00	

Still in Progress

Number of locates **15**

Contractor informed Northwest Communications Cooperative that this could take two more years to complete

#4

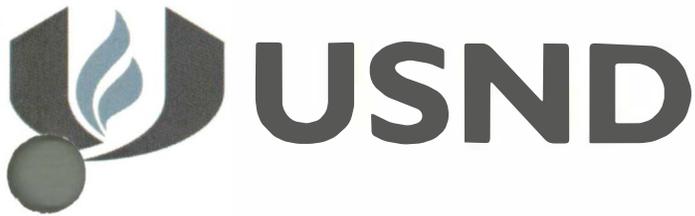
Senate Bill 2147
Testimony of Kent Blickensderfer
Presented to Chairman Dick Dever
Senate Government and Veterans Affairs Committee
February 13, 2015

Good morning Chairman Dever and committee members. My name is Kent Blickensderfer and I represent CenturyLink in North Dakota. CenturyLink is the successor company to the former Qwest, US West Communications and Northwestern Bell Telephone Company. Century Link today has a worldwide network with local telecom operations in 37 US states.

I am here today to express our strong support for Senate Bill 2147, with the amendment supported by the Association for Rural Telecommunication Cooperatives and Independent Companies. Like those companies, CenturyLink has also seen an increase in requests for locates and re-spotting requests. By limiting the free requests to forty two days worth of located work area, excavators will be encouraged to manage their construction jobs better and not force further costs onto the owners of underground facilities.

We've heard that only offering two free locates will encourage excavators to break the law to avoid payment for multiple re-spotting requests. I would argue that someone planning or threatening to break the law is no reason not to pass good public policy. When cost causers have no financial disincentive to change their behavior, problems for the cost payer will only worsen.

CenturyLink facilities carry an enormous amount of traffic crucial to the state's commerce and public safety needs. We understand the importance of marking our facilities to keep that traffic safe. What we're asking for is some reasonable accommodation from excavators with respect to repeated location requests. Please give SB2147 with the amendments your careful consideration and a "do-pass" recommendation. Questions?



Senate Bill 2147

Senate Government and Veterans Affairs
Testimony in Opposition

February 13, 2015

Chairman Dever, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in opposition to this bill. USND is an association representing approximately 3,700 individual members who own stock in investor-owned utilities operating in North Dakota. Those utilities are Xcel Energy, Montana-Dakota Utilities, and Otter Tail Power Company. We depend on strong one-call laws to protect our property and to keep employees safe. This bill threatens that property and those employees.

The changes proposed in SB 2147 pose a safety risk to underground facilities, the people who rely on the services and the underground facilities provide, and the people possibly coming into contact with the facilities if improper digging occurs or repair is needed. While we understand that increased location requests place a burden on facility owners, we do not believe that the change proposed in this bill strikes a good balance between easing the burden of increased location requests and protecting safety.

Prior to the 2013 session, there was no provision in law to allow for billing when location requests occurred. Through a broad-based coalition, the law was changed to allow for billing to occur on the third locate when no excavation had occurred. At the time, tickets were good for 10 days, and many facility owners were overwhelmed with location requests and re-spot requests. In order to make excavation possible quickly, many companies kept areas marked at all times, which meant they called in re-spot requests every 10 days for an area they might excavate. The provision to bill for the locate after 2 locates with no excavation, combined with extending the ticket length to 21 days from 10, was an effort to ease the burden of increased excavation while maintaining safety controls.

It is reasonable for an excavator to call in a ticket and not be able to proceed with excavation as planned. Despite the best of intentions and planning, things happen to postpone excavation. Only allowing one call before billing commences is too harsh a line. Further, the more onerous the one-call process becomes, the more likely that violations will occur. Safety is and always should be the most important factor in the one-call law. If an excavating company knows it will be billed for location requests, it is practical to look for ways to avoid extra charges. Rushed

excavation may result, which could pose risks. A more likely possibility is that the excavator might rely on existing marks from an expired ticket. Those marks might be reliable, or some might have been obliterated unknown to the excavator. Excavating without knowing that marks are properly in place puts facilities, excavators and people relying on the facilities in danger. I know that opposing a law because of potential violators is not necessarily compelling. However, with the potential result of a violation being as extreme as death, it is important to consider the reality the change might produce.

Lastly, the billing provision is still rather new, and very few companies are even using it. Changing the law now to make a small faction of locators happy at the risk of all underground facilities seems reckless. The companies I work with have also seen dramatic increases in the number of location requests. Even with the increase, they believe that safety trumps the cost, and this bill is a risk to safety. Further, my members, the shareholders, share in the cost of increased location requests, and we still do not believe that this change is important enough to counter the safety risk it poses.

I strongly urge you to vote down this bill.

With that, I'll stand for any questions.

Thank you.

Senate Bill 2147
Testimony in Opposition
Senate Government and Veterans Affairs Committee
February 13, 2015

#6 pg 1

Chairman Dever and Committee members; my name is Mark Dougherty and I represent the 500 members of the Associated General Contractors of North Dakota. The AGC of North Dakota is a contractor's trade association made up of general contractors, specialty contractors, subcontractors and a host of related industry members including material, equipment and service suppliers.

We are here in opposition to SB 2147. The bill attempts to solve a problem for which there are solutions in the existing statute language. The problem is the number of one-call locates some companies are receiving now as opposed to what they received previous to the huge growth in excavation activity caused by the current oil boom. Their solution is to penalize excavators; who are following the requirements of the statute; by making them pay for the utility owner's costs in making the utility relocates. These relocates are necessary when project activity continues and the prior locate has been in-place for 21 days or the locate marks have been obliterated by some force of nature (wind, rain, snow, etc.), equipment traffic or vandals. The number of relocates requested when there is no excavation completed is a small percentage of the hundreds of thousands of locates made in North Dakota every year and is made by a small minority of excavators mostly working in western North Dakota. I know from discussion with some of the offenders the continuing relocates are the result of two main problems:

1. The excavator is an out-of-state company and someone in North Dakota has instructed someone in their home office to put in this locate every so often until they are told to stop.
2. Some companies have safety policies requiring field personnel and contractors hired to complete their projects to refresh locates on a set basis which may differ from the 21 days our statute allows.

North Dakota's one-call law was made to centralize where an excavator could call to get utilities located before digging. Before the law the excavators had to find the utility owners in an area they were going to work in and get them to mark their underground facility. I can say from experience it was difficult at times to find the right guy. I can't imagine dealing with the amount

of construction and development activity in the State today without ND One Call. Is this system perfect, hardly, but we would have a lot more damaged utilities and many more injuries and possibly fatalities if we didn't have the existing system. One concern with the proposed legislation is it starts a process of punishing excavators for following the law and could change whether they will make the legally required calls for relocations if there is a punishment attached. If decisions not to make a relocate call happen someone is going to get hurt and utilities are going to be damaged.

The existing law currently allows operators to apply reasonable charges for relocate requests after two locates where no excavation has been done since the previous request. Current statute 49-23-04.3.h reads as follows: "If excavation has not occurred within the initial twenty-one days of the locate, the excavator shall request that the facility be relocated before excavating unless other arrangements have been made with the underground facility owner. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location." Not all projects will be completed in 21 or 61 days and in many cases not in 2 years. In those cases there is a continuing need and requirement in statute to request relocations for continued excavation activities. Some excavators are at times guilty of not modifying the existing excavation ticket to remove completed areas of the project. If that happens the existing statute 49-23-04.3.i reads as follows: "If a relocate request is made for an area which includes areas where excavation has been completed, a request for relocate must be modified from the original locate request to reflect only the area to be excavated during each subsequent twenty-one-day period, otherwise the excavator is responsible for reasonable costs associated with relocating facilities in the location."

Based on the above information the AGC of North Dakota sees no need for the changes proposed in SB 2147 as the existing statute covers what the proposed changes are attempting to do and strongly urges the Senate Government and Veterans Affairs Committee to give a DO NOT PASS recommendation to the full Senate.

Thank you for the opportunity to provide testimony and I will stand for any questions you may have at this time.

15.0613.01001
Title.

Prepared by the Legislative Council staff for
Senator Rust

January 20, 2015

2/19

#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2147

Page 1, line 14, remove the overstrike over "~~third~~"

Page 1, line 14, remove "second"

Page 1, line 14, overstrike "where no excavation"

Page 1, line 15, overstrike "has occurred"

Renumber accordingly



SENATE BILL 2147

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

MARCH 23, 2015

DAVID CROTHERS
NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 150,000 homes and small businesses and approximately 96 percent of the geographic territory of the State.

Members of the Association strongly urge the adoption of Senate Bill 2147.

Senate Bill 2147 will do two things:

First, on page 1, line 7, it will clarify that excavators are to call in locate requests only for the area they can reasonably work upon during the period of a valid ticket. All too often members of the Association are required to go out and mark underground telecommunications infrastructure by excavators who have no intention, or no ability, to complete a project during the 21 day life of a valid ticket.

Second, on page 1, lines 14 and 15, the language strikes from existing law the words "where no excavation has occurred".

The practical effect of this language to give the excavator two free locates of a project.

Today, the way "call before you dig" operates in North Dakota is that an excavator calls the North Dakota One Call Center and gives a physical description of the area they would like located. The One Call Center notifies those with underground facilities in the area. Those who have buried infrastructure within that area are required by North Dakota law to go to that location and mark their facilities within 48 hours of receiving the notification.

Following that 48 hour period, the excavator has a 21 day window to do their excavation. After 21 days the ticket is no longer valid and if the dirt work is not complete, the excavator is required to call the One Call Center again and the process repeats itself.

For each location the excavator calls in, he or she is charged \$1.10. The expense for the underground facility owner to go out and mark those facilities is substantially higher. Some requests cost hundreds of dollars to perform locates.

In essence, what Senate Bill 2147 does is give excavators two free locates of underground facilities and requires them to pay for locates after that. Two free locates gives an excavator 42 days to complete a project. Not the whole project; but six weeks to complete the work in the area they have requested us to mark.

The reason we are here, though, testifying in favor of Senate Bill 2147 is that time after time members of the Association are being called back to the same construction projects over and over.

The magnitude of the problem is immense. The changes this body made to One Call statutes during the last legislative session have not resolved the problem. Construction activity in North Dakota, particularly the western part of the State, has grown exponentially during the last six years. Reservation Telephone Cooperative is a telephone company with 5,000 members that six years ago had two part time employees doing fewer than 10,000 locates. Today, they have 12 people locating underground facilities, do in excess of 40,000 locates a year and are spending \$1.4 million annually. Not one cent of that \$1.4 million expense is compensated by anyone.

The problem members of the Association are facing are the relocations. We are being forced to go out over and over again to relocate the same underground facilities that we previously marked. The small telephone company that I said was spending \$1.4 million each year on locating expenses? One third of that expense is on relocations.

Members of the Association have no objection to going out...in some cases, sending skilled technicians up to 80 miles one way...and marking our facilities for free so that an excavator can do their work. And we acknowledge that sometimes bad weather or the magnitude of a project or even bad planning by an excavator may necessitate a second trip to re-mark that same underground infrastructure. However, we believe costs of the third and subsequent trips should be borne by those that are causing the expense.

The first flaw in North Dakota's One Call statutes is that the cost causer is not the cost payer. The only obligation of the excavator is to pay the \$1.10 to the One Call Center for a new ticket. The underground facility owner, on the other hand, is required to either send technicians or contract employees to the site again. There is no motivation for the excavator to request locates for only the amount of work they can do within the 21 day period of a valid locate ticket.

The second flaw can be found in the language on lines 14 and 15. It is why we support striking the words "where no excavation has occurred". The existing law today allows excavators to be charged for the third and subsequent locates when no excavation has occurred. The problem is the law is so broad that an excavator simply pounding in a single stake has performed an excavation and no further work has to be completed within the 21 day period. After calling the One Call Center for a new ticket, the excavator can pound in a second stake or turn over a shovelful of dirt and "excavation" has again occurred. In practice...and in reality...the excavator always asserts that "excavation" has occurred and they should not have to pay an underground facility owner for relocations.

Another example of the same problem is when excavators request locates for extremely large or long projects, such as pipelines. There is no way the excavator can complete the project within 21 days, but they are working somewhere on the multi-mile span and

the underground facility owner is compelled under North Dakota law to re-mark the site over and over until the excavator no longer calls the One Call Center.

Finally, there has been opposition to Senate Bill 2147. We have been told that changes the sixty-third legislative assembly made in 2013 have not had sufficient time to work. We have been told that requiring excavators to compensate underground facility owners for the third and subsequent locates will discourage excavators from calling the One Call Center and, as a result, endanger public safety. Members of the Association find both arguments to be wrong.

First, the changes to North Dakota's One Call statutes became effective 20 months ago. Construction season in North Dakota is no longer a summertime activity. Excavation in the State, especially in oil country, occurs every month of the year. Reservation Telephone Cooperative of Parshall has 60,000 trips into the field worth of experience.

Second, arguing that excavators will not call the One Call Center for a third locate because they will incur costs is disingenuous, the Association believes. While none of us enjoys incurring costs it is a part of doing business. There is no one on that job site working for free except the underground facility owner marking their infrastructure.

Third, Senate Bill 2147 has been opposed by some other utility companies. There is a reason for this. Those companies are either monopolies and can charge their customers whatever rate they would like, or they are rate regulated by either the Public Service Commission or Federal Energy Regulatory Commission. For those that are regulated by a State or Federal agency they will not only get back the money they spend on their underground facility locates, but they will also receive a guaranteed rate of return. In fact, if they did twice as many locates, they would earn twice as much money from the locate requests. Telecommunications companies do not have that luxury. They are neither monopolies, nor do they have the government insuring they make a profit.

Fourth, an association of builders in the State's largest city has sent a notice to their members urging them to contact you and oppose this measure because there is no definition of "reasonable" in the bill. As you will recall, an excavator will be responsible for the "reasonable costs" of the third and subsequent locates. First, the "reasonable costs" language already occurs three times in existing law and are the exact words opponents themselves inserted into North Dakota's One Call statutes two years ago (NDCC 49-23-04(3)(h) and (NDCC 49-23-06(1)(a))). Second, the word "reasonable" is a term of art in North Dakota's One Call statutes. The Association has included an attachment to your testimony of the last two pages of the six page statute. The word "reasonable" or "reasonably" is used no fewer than ten times.

Finally, it is the excavators themselves who will largely determine whether they will require more than two locates for a job site. It is the excavator who determines the size and scope of a project they call into the One Call Center. By limiting their request to the amount of work they can actually perform in the 42 days of two valid locate tickets they will never incur a bill from the underground facility owner.

Members of the Association believe these provisions of existing law are bad public policy. Those that incur the costs are not responsible for paying for any portion of them. Independent telephone companies agree and acknowledge our responsibility to mark our facilities. In fact, we believe marking them twice for free is good public policy. However, the law today requires us to do the same work over and over at the whim of others. Telephone companies are incurring real harm that is resulting in less training for employees and less investment for the broadband infrastructure rural North Dakotans are increasingly dependent upon.

Members of the North Dakota Association of Telecommunications Cooperatives urge a "Do Pass" recommendation for Senate Bill 2147.

- (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
 - (2) The markings have been obliterated or obscured;
 - (3) Weather conditions have impeded visibility of the markings;
 - (4) The site shows evidence of recent excavation; or
 - (5) The excavator has other reason to believe the markings are incorrect or missing.
- g. An excavator may not use a location more than twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.
 - h. If excavation has not occurred within the initial twenty-one days of the locate, the excavator shall request that the facility be relocated before excavating unless other arrangements have been made with the underground facility owner. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location.
 - i. If a relocate request is made for an area which includes areas where excavation has been completed, a request for relocate must be modified from the original locate request to reflect only the area to be excavated during each subsequent twenty-one-day period, otherwise the excavator is responsible for reasonable costs associated with relocating facilities in the location.
 - j. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.
 - k. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
 - l. An underground facility owner shall make all new facilities locatable.
4. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

49-23-05. Precautions to avoid damage.

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and when possible remove all tangible marking materials used to mark the facility.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.

6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

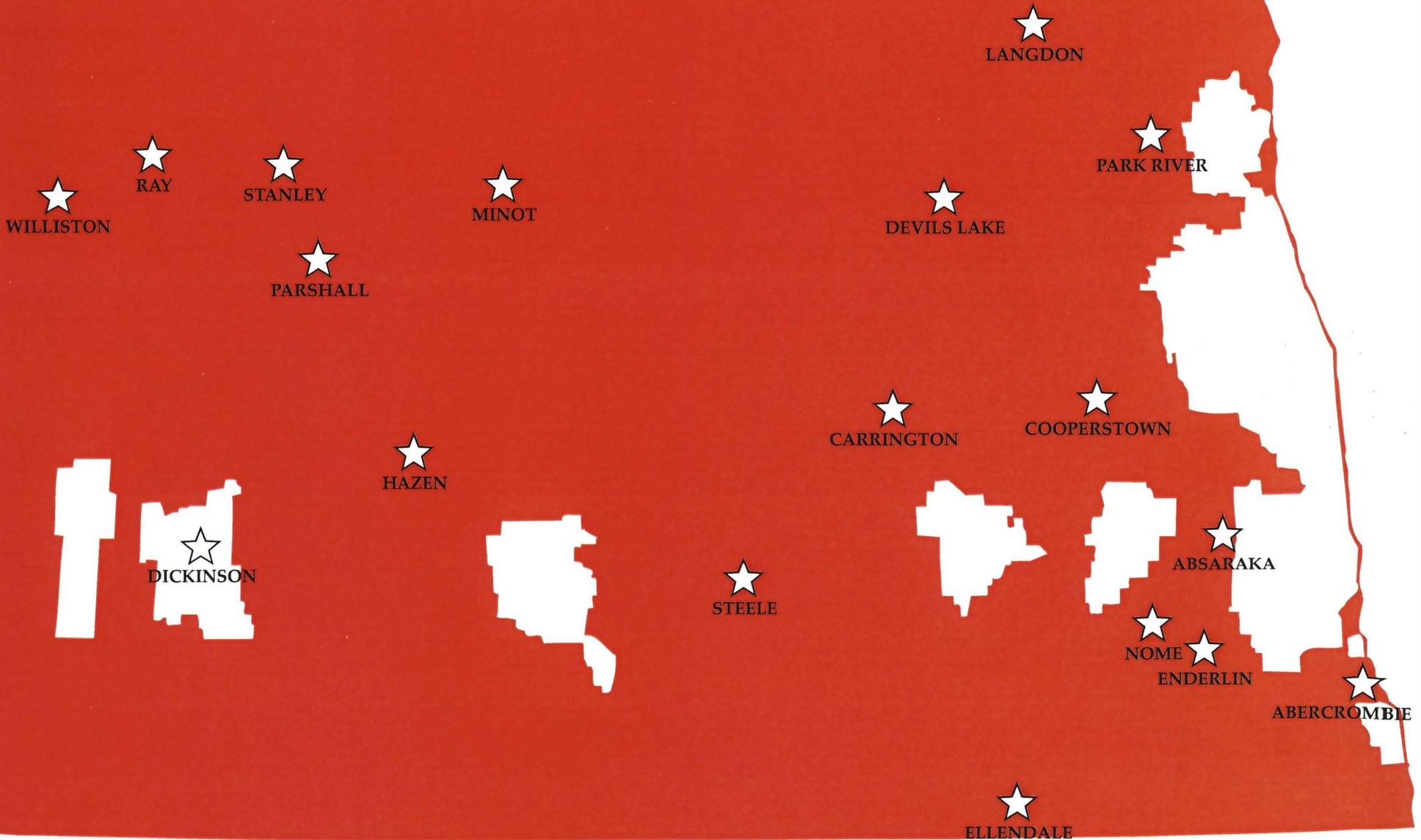
49-23-06. Damage to facilities - Penalty.

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
- b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
- c. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.
2. a. If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
- b. Reimbursement to the operator under this subsection is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

49-23-07. Effect on local ordinances.

A person with a permit for excavation from the state or a local governmental unit is subject to this chapter. This chapter does not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.

NORTH DAKOTA
ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES
www.ndatc.com



1998

INDEPENDENT TELEPHONE COMPANY TERRITORY IN NORTH DAKOTA

ABSARAKA TELEPHONE COMPANY

Absaraka, ND 58002
Mgr: Ann Faught
Phone: 701-896-3404

BEK COMMUNICATIONS

Steele, ND 58482
Mgr: Derrick Bulawa
Phone: 701-475-2361
Website: www.bektel.com

CONSOLIDATED TELCOM

Dickinson, ND 58602
Mgr: Paul Schuetzler
Phone: 701-483-4000
Website: www.ctctel.com

DAKOTA CENTRAL TELECOMMUNICATIONS

Carrington, ND 58421
Mgr: Keith Larson
Phone: 701-652-3184
Website: www.daktel.com

DICKEY RURAL TELEPHONE

Ellendale, ND 58436
Mgr: Bob Johnson
Phone: 701-344-5000
Website: www.drtdel.net

INTER-COMMUNITY TELEPHONE COMPANY

Nome, ND 58062
Mgr: Keith Andersen
Phone: 701-924-8815
Website: www.ictc.com

MIDSTATE TELEPHONE COMPANY

Stanley, ND 58784
Mgr: Ryan Wilhelmi
Phone: 701-628-2522
Website: www.midstatetel.com

MISSOURI VALLEY COMMUNICATIONS

Scobey, MT 59263
Mgr: Mike Kilgore
Phone: 406-783-5654
Website: www.nemontel.net

THE NORTH DAKOTA RURAL TELEPHONE INDUSTRY

- High-Speed Internet in 278 North Dakota rural communities.
- Independent telcos serve 96 percent of North Dakota's geographic territory.
- Over \$1.3 billion total investment in local telecom infrastructure.
- Over \$72 million in payroll for rural residents in 2013.
- Over 39,000 miles of fiber optic cable.
- \$298 million in 2010-2012 construction spending on rural telecom infrastructure.
- 1100 highly trained and educated employees in rural North Dakota communities.

MLGC

Enderlin, ND 58027
Mgr: Tyler Kilde
Phone: 701-437-3300
Website: www.mlgc.com

NEMONT TELEPHONE COOPERATIVE

Scobey, MT 59263
Mgr: Mike Kilgore
Phone: 406-783-5654
Website: www.nemontel.net

NORTH DAKOTA TELEPHONE COMPANY

Devils Lake, ND 58301
Mgr: Dave Dircks
Phone: 701-662-1100
Website: www.gondtc.com

NORTHWEST COMMUNICATIONS

Ray, ND 58849
Mgr: Mike Steffan
Phone: 701-568-3331
Website: www.nccray.com

POLAR COMMUNICATIONS

Park River, ND 58270
Mgr: David Dunning
701-284-7221
Website: www.polarcomm.com

RED RIVER COMMUNICATIONS

Abercrombie, ND 58001
Mgr: Jeff Olson
Phone: 701-553-8309
Website: www.rrt.net

RESERVATION TELEPHONE

Parshall, ND 58770
Mgr: Royce Aslakson
Phone: 701-862-3115
Website: www.rtc.coop

SRT COMMUNICATIONS

Minot, ND 58702
Mgr: Steve Lysne
Phone: 701-858-1200
Website: www.srt.com

UNITED TELEPHONE COOPERATIVE

Langdon, ND 58249
Mgr: Perry Oster
Phone: 701-256-5156
Website: www.utma.com

WEST RIVER TELECOMMUNICATIONS

Hazen, ND 58545
Mgr: Bonnie Krause
Phone: 701-748-2211
Website: www.westriv.com

Page

2
SB 2147
3/23/15

My name is Dean Rustad, operations manager; from Northwest Communications Cooperative (NCC). NCC has been a cooperative since 1951 and currently provides land line telephone, high speed internet and video services to over 5400 customers in Burke County and most of Williams, Divide counties and parts of Mountrail and Ward counties, geographically this covers 5100 square miles. NCC has 3733 miles of fiber, copper and coaxial cable that delivers the aforementioned services to those counties. Currently we have 45 full-time employees to install and maintain the cable plant and to service the communication needs of our cooperative customers. As operations manager I am responsible for the entire facility that brings modern communications to Northwest North Dakota.

The development of the Bakken oil fields has been a boom to our counties and has brought prosperity to our area. It has also brought growing pains that can be difficult to deal with. We have thousands of miles of cable in the ground that needs to be protected against damages from excavators that are building oil pads, installing a variety of pipelines, building roads and the list can go on and on. The ND One call system is a great system for all facility owners to protect their underground assets. With a single call, a contractor can notify existing facility owners as to the location of their work and extent of work to be done. Then the existing owners can identify their facilities with spray paint and marker flags thus allowing contractors to dig safely and not damage existing infrastructure. If the construction lasts longer than 21 days, another "locate" must be conducted to ensure markings are still visible. This process continues every 21 days until the project is complete. Some projects last for months and require multiple locates. If construction is in progress, the owner of existing facilities must continually shoulder the expense of these locates. Our locating costs have increased from \$107,000.00 in 2008 to \$760,000.00 in 2014, a 610% increase. NCC or its contractors performed 22,042 locates in 2012, 18,355 locates in 2013 and 20,226 locates in 2014. On average, about 33% of those locates are re-spots. Current law allows the owner to bill for locates, after one routine locate and one re-spot, if there is no work in progress. The cost of these locates has become a costly burden to NCC, one that inhibits our ability to build out capital projects, such as fiber to the home (FTTH). To finish this fiber build out would provide a communications medium that will be of immense value to farms, business, governmental departments, schools, airports and residences for decades to come.

The passing of Senate Bill 2147 would allow NCC to bill for all locates after the first re-spot. This would allow 42 days for contractors to finish their projects. Why should NCC have to bear the costs on thousands of projects that continue for not just weeks but months and occasionally years (Please refer to last page of handouts)? This is a cost we cannot pass on to our cooperative customers and inhibits our ability to provide the services that NCC was formed to provide. Cooperatives were formed in marginal profit areas and this adds a further burden to an already high cost business. This bill would give some protection against costs that we have no other means to defray.

NCC feels that Senate Bill 2147 would improve the language to protect against costs that are not manageable by any other means. NCC urges a "Do Pass" recommendation on Senate Bill 2147.

NCC stats

Counties Served: Burke, Divide, Mountrail, Ward and Williams

Total Access Lines: 5452 lines. 1722 Business and 3730 Residence

Route Miles Copper: 2341

Fiber: 1392

Total Miles: 3733 (does not include additional miles added or retired in 2014)

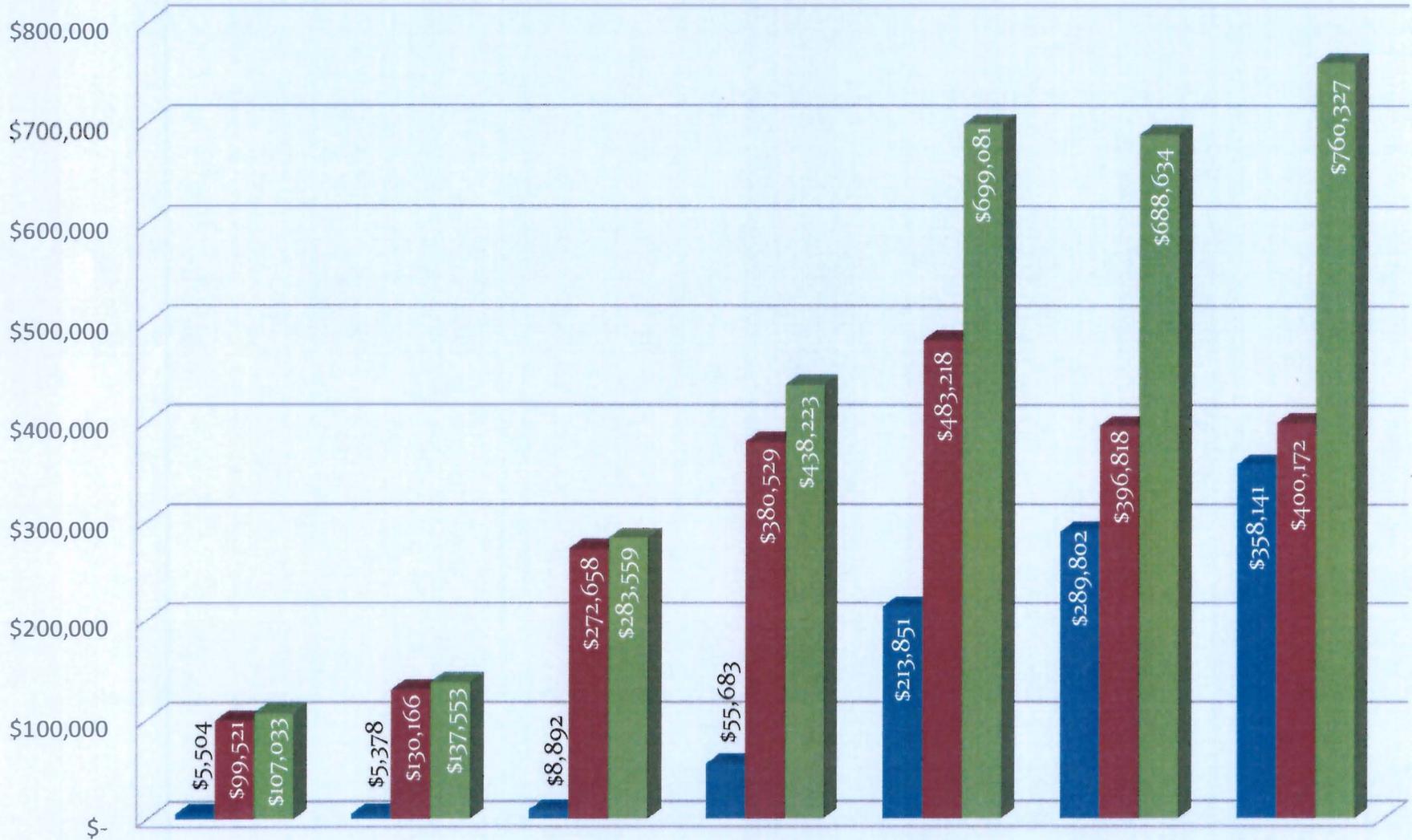
Employees: 45

Square Miles: 5100

Northwest Commur)ions Cooperative
History of Locate Costs

	2008	2009	2010	2011	2012	2013	2014
6423.5 Cable Locating Expense - Fiber	\$ 5,503.67	\$ 5,378.39	\$ 8,891.60	\$ 55,683.08	\$ 213,850.87	\$ 289,802.24	\$ 358,141.34
6423.2 Cable Locating Expense - Copper	\$ 99,521.03	\$ 130,165.62	\$ 272,657.76	\$ 380,528.64	\$ 483,218.47	\$ 396,818.35	\$ 400,171.94
Total Locating Expense	\$ 107,032.70	\$ 137,553.01	\$ 283,559.36	\$ 438,222.72	\$ 699,081.34	\$ 688,633.59	\$ 760,327.28

NCC Locating Costs



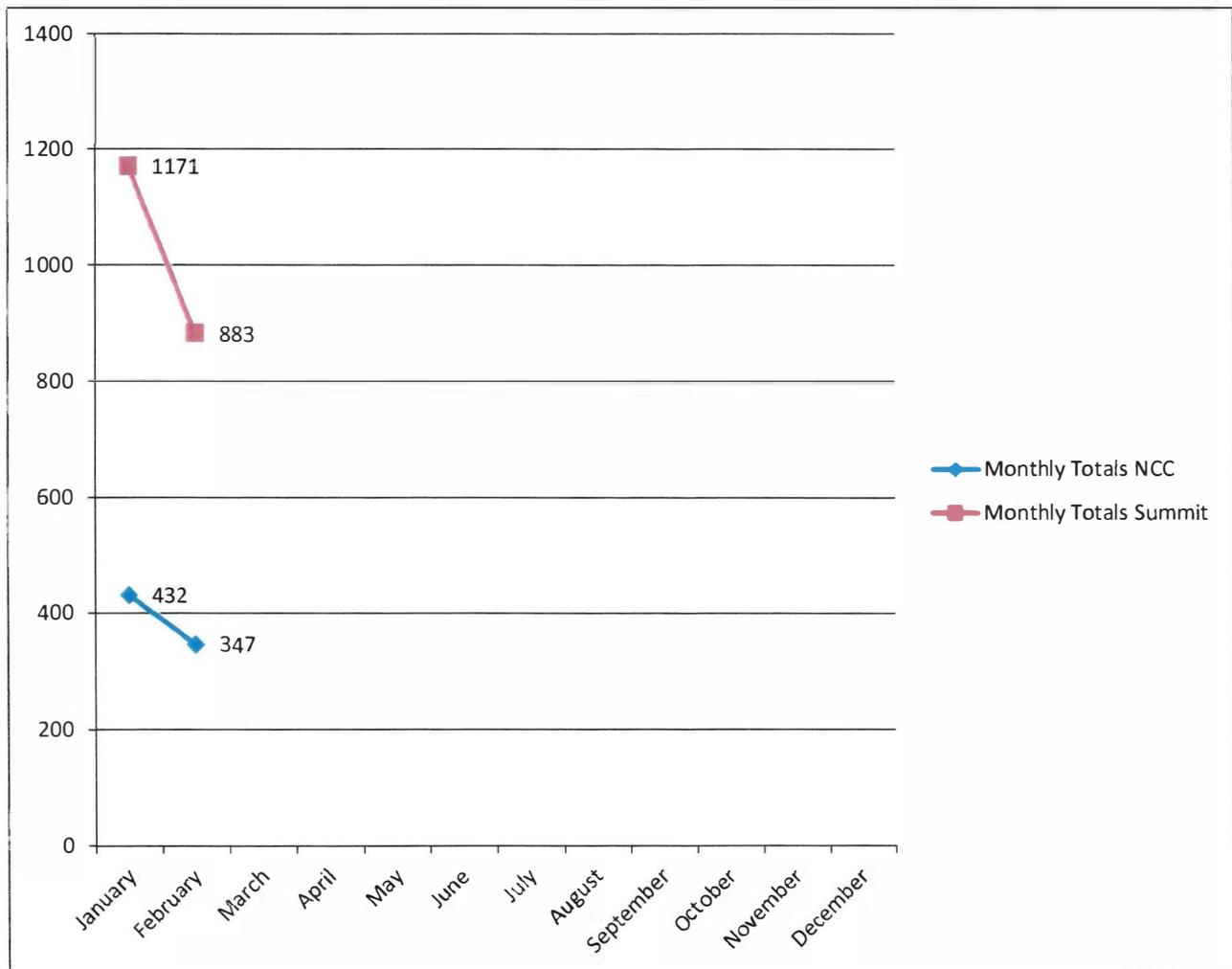
■ Cable Locating Expense - Fiber ■ Cable Locating Expense - Copper ■ Total Locating Expense

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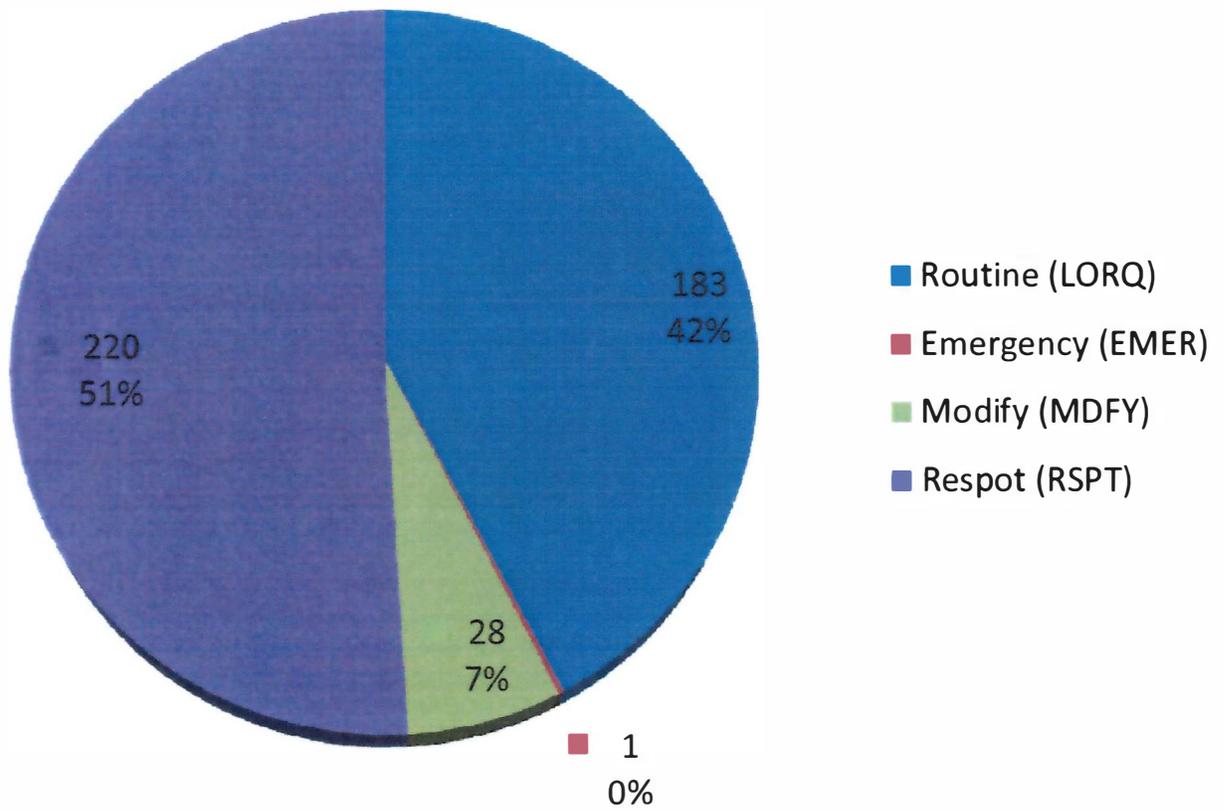
2015 Locate Summary

	Monthly Totals		
	NCC	Summit	
January	432	1171	1603
February	347	883	1230
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

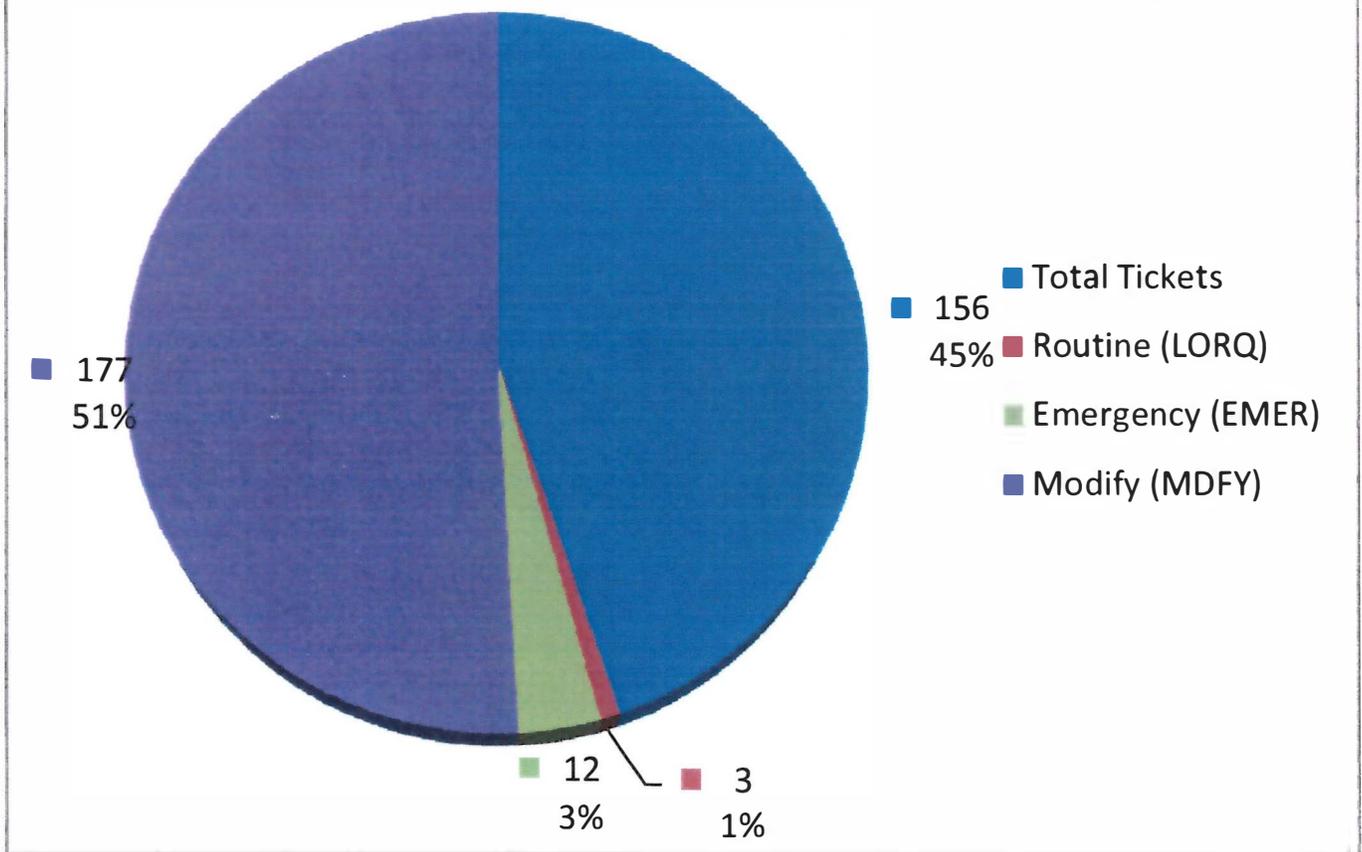
Yearly Total 2833



January 2015 call breakdown by Ticket Type

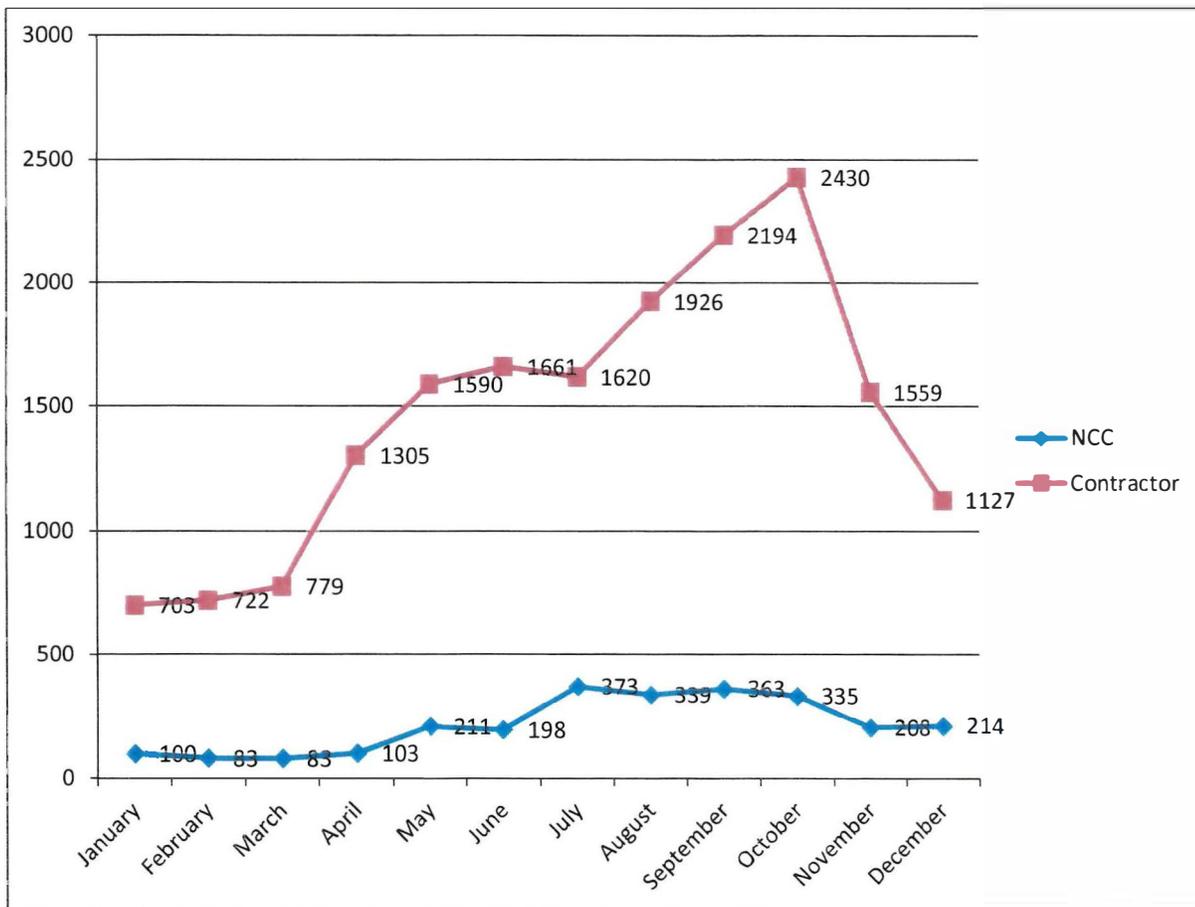


February 2015 call breakdown by Ticket Type

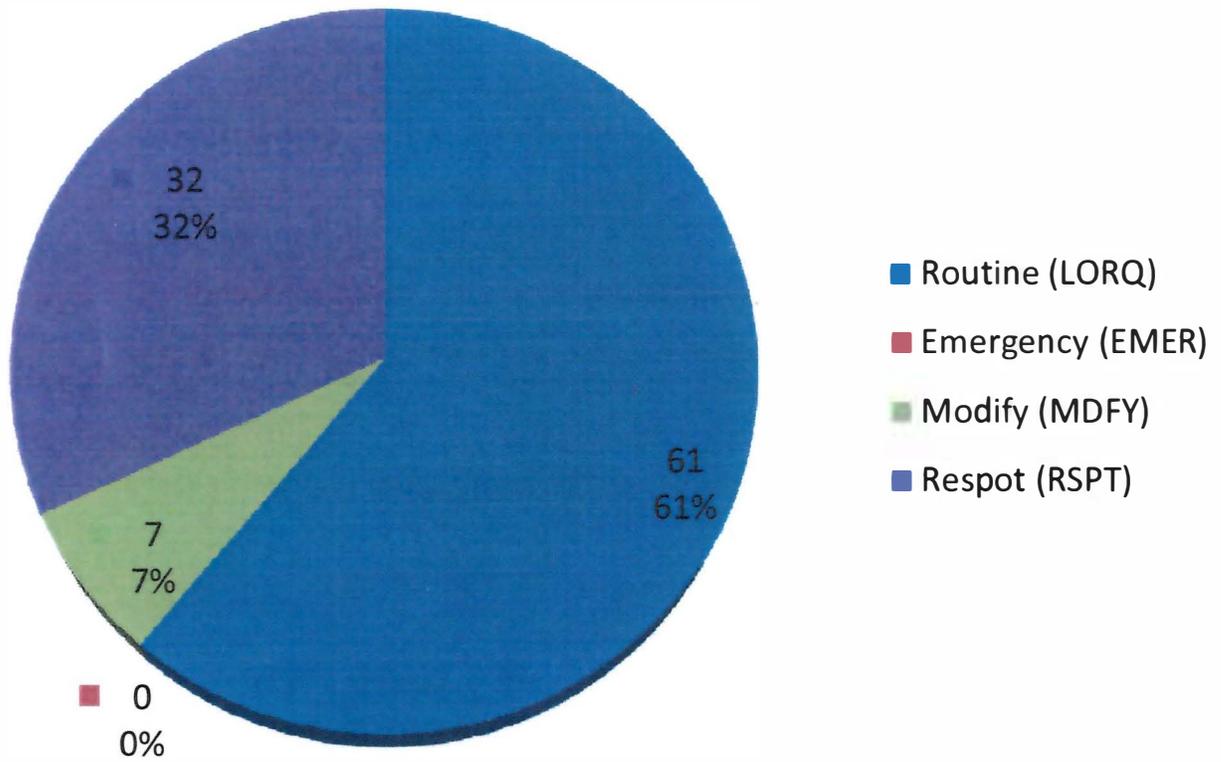


2014 Locate Summary

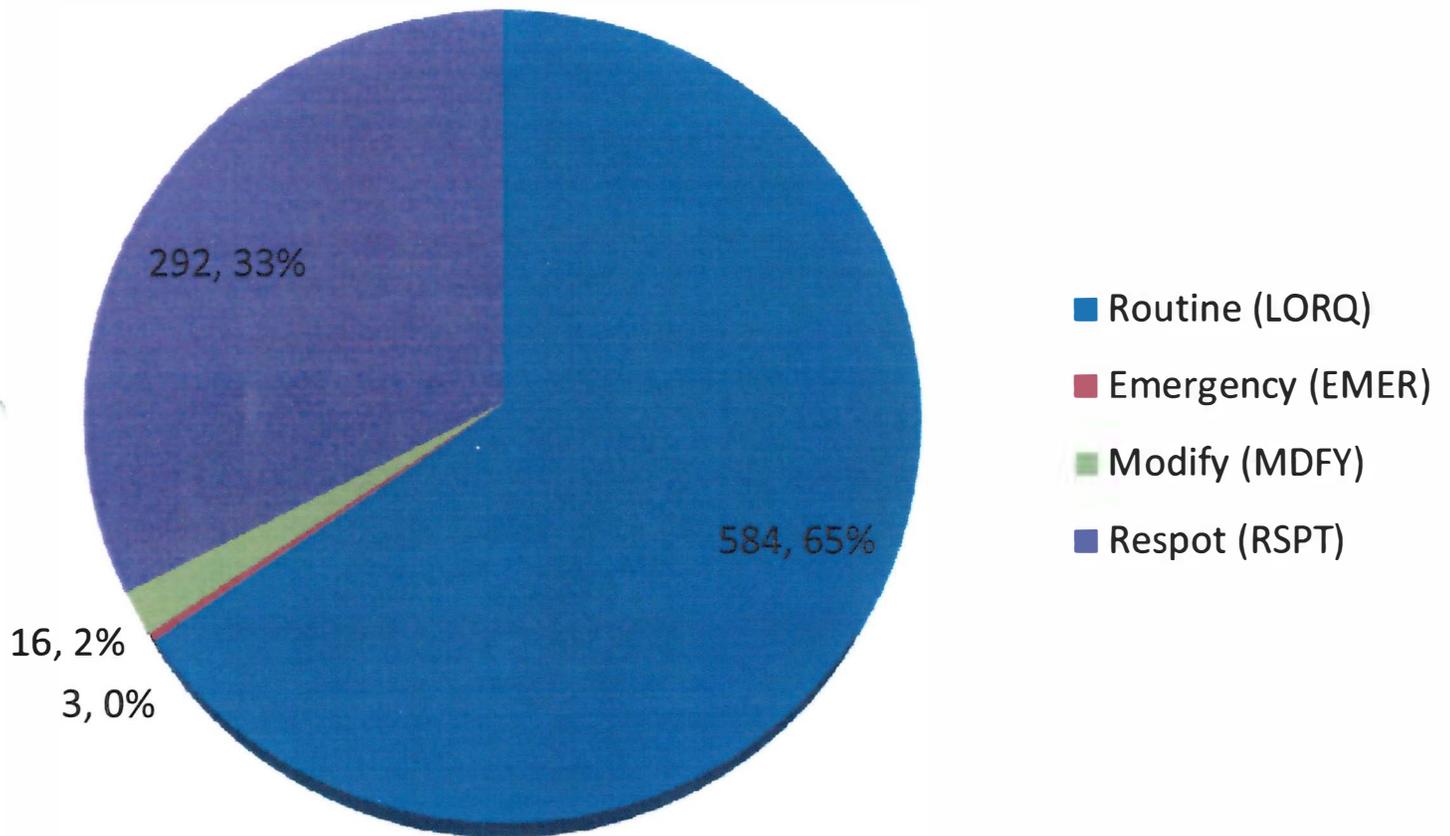
	NCC	Contractor	Monthly Totals		
January	100	703	803		
February	83	722	805		
March	83	779	862		
April	103	1305	1408		
May	211	1590	1801		
June	198	1661	1859		
July	373	1620	1993		
August	339	1926	2265		
September	363	2194	2557		
October	335	2430	2765		
November	208	1559	1767		
December	214	1127	1341	Number of	
		Yearly Total	20226	Respos	7184



January 2014 call breakdown by Ticket Type

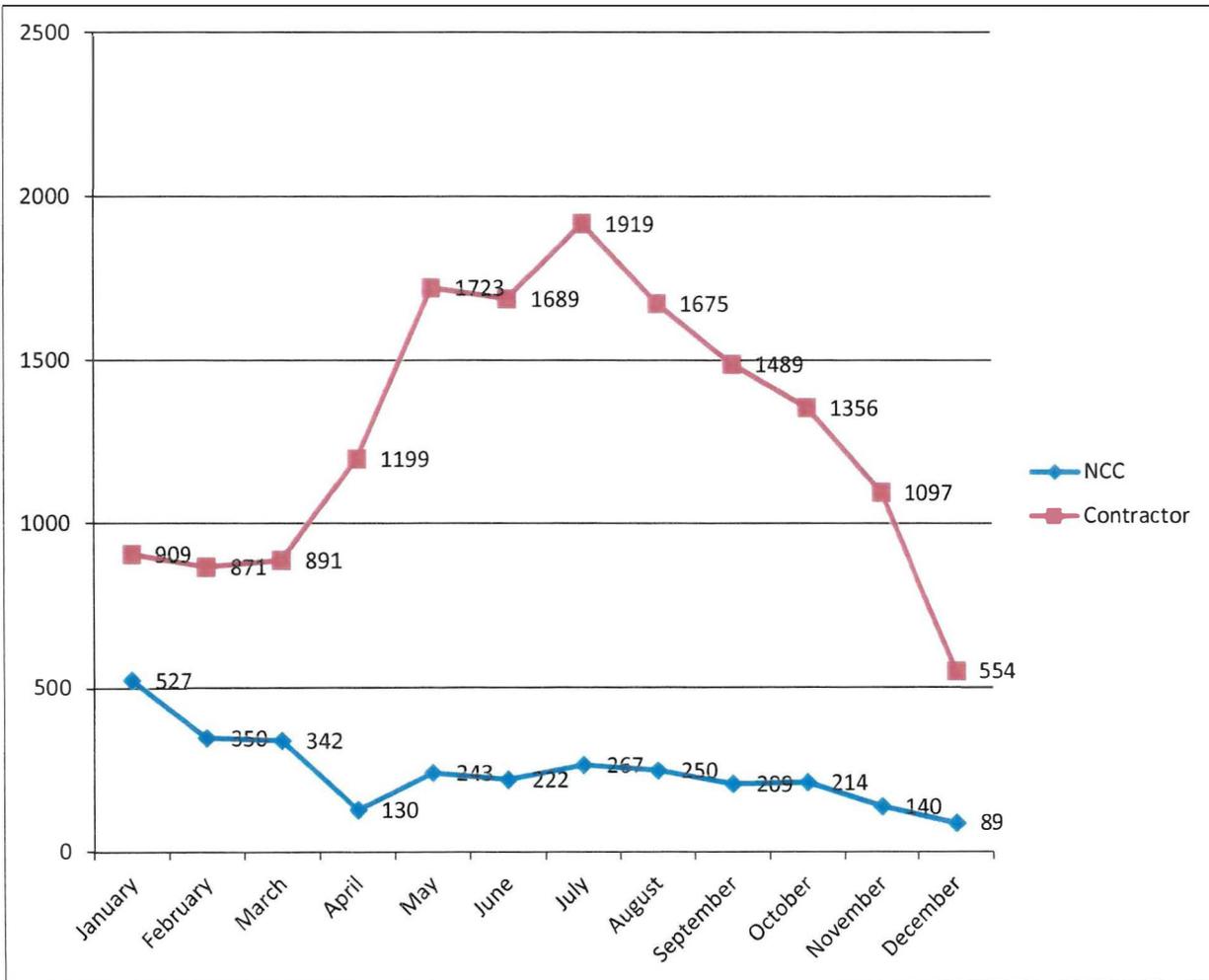


October 2014 call breakdown by Ticket Type

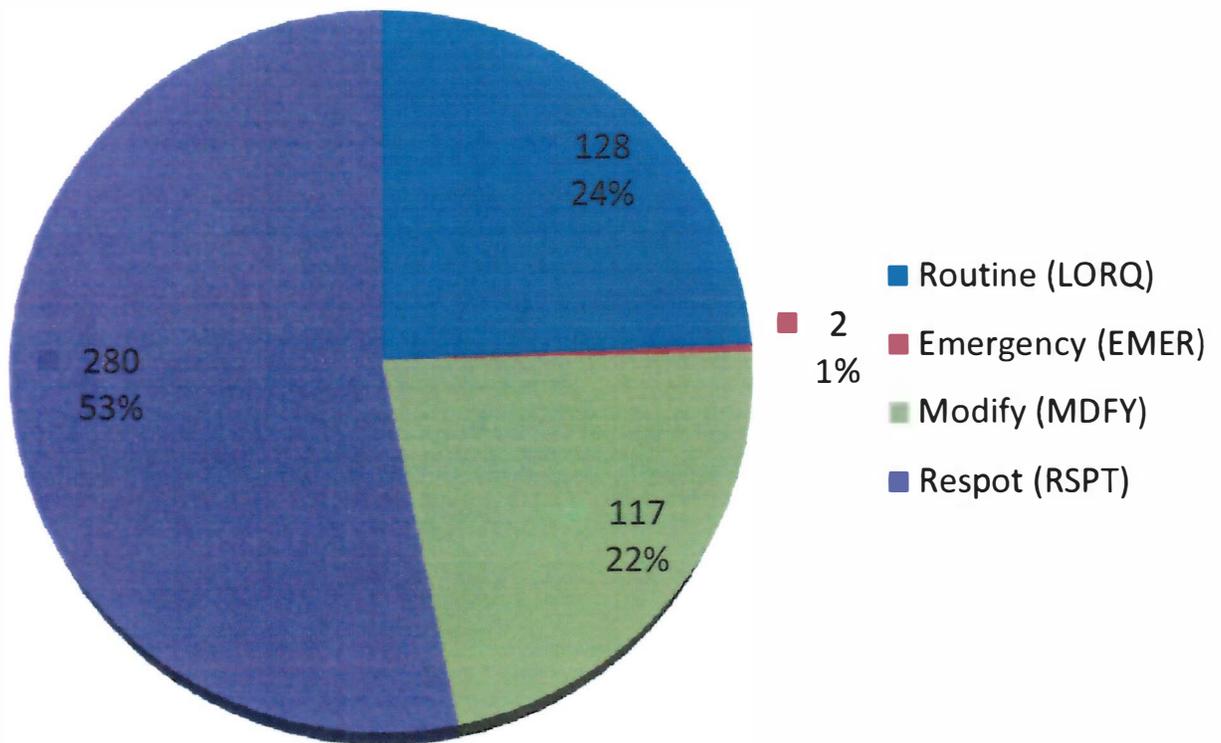


2013 Locate Summary

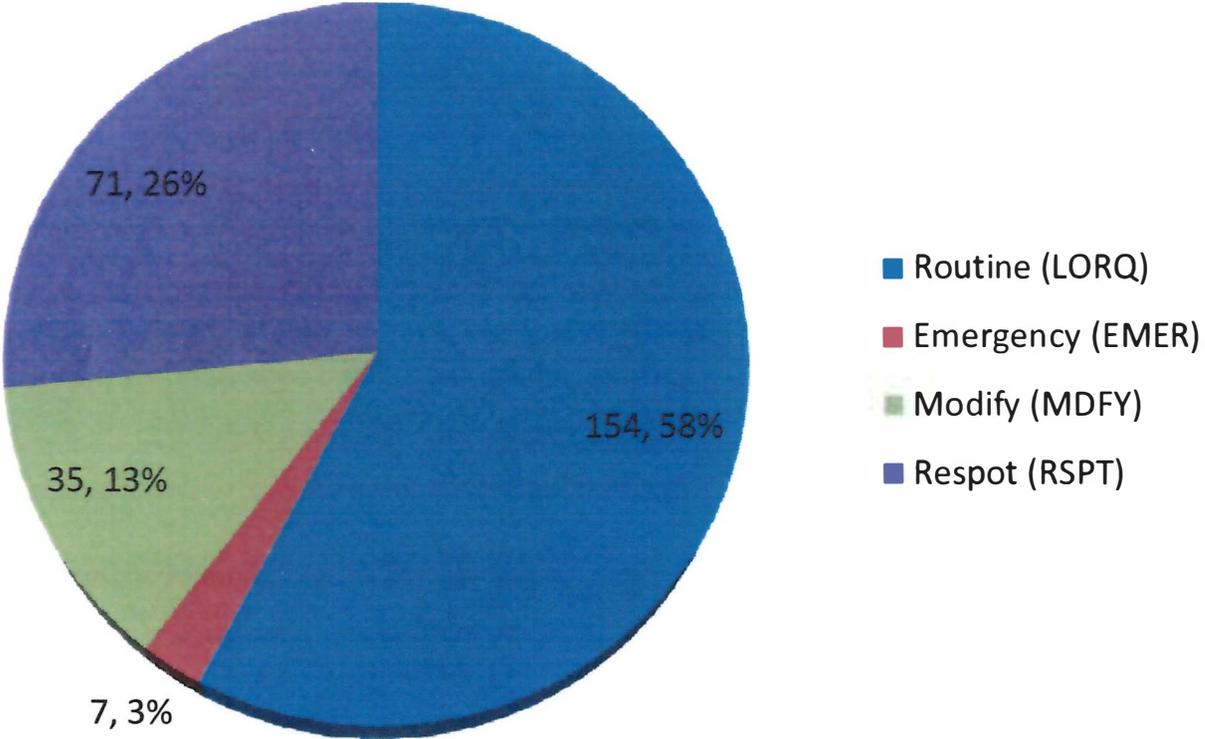
	NCC	Contractor	Monthly Totals		
January	527	909	1436		
February	350	871	1221		
March	342	891	1233		
April	130	1199	1329		
May	243	1723	1966		
June	222	1689	1911		
July	267	1919	2186		
August	250	1675	1925		
September	209	1489	1698		
October	214	1356	1570		
November	140	1097	1237		
December	89	554	643	Number Of	
				Respos	6136
		Yearly Total	18355		



January 2013 call breakdown by Ticket Type



July 2013 call breakdown by Ticket Type

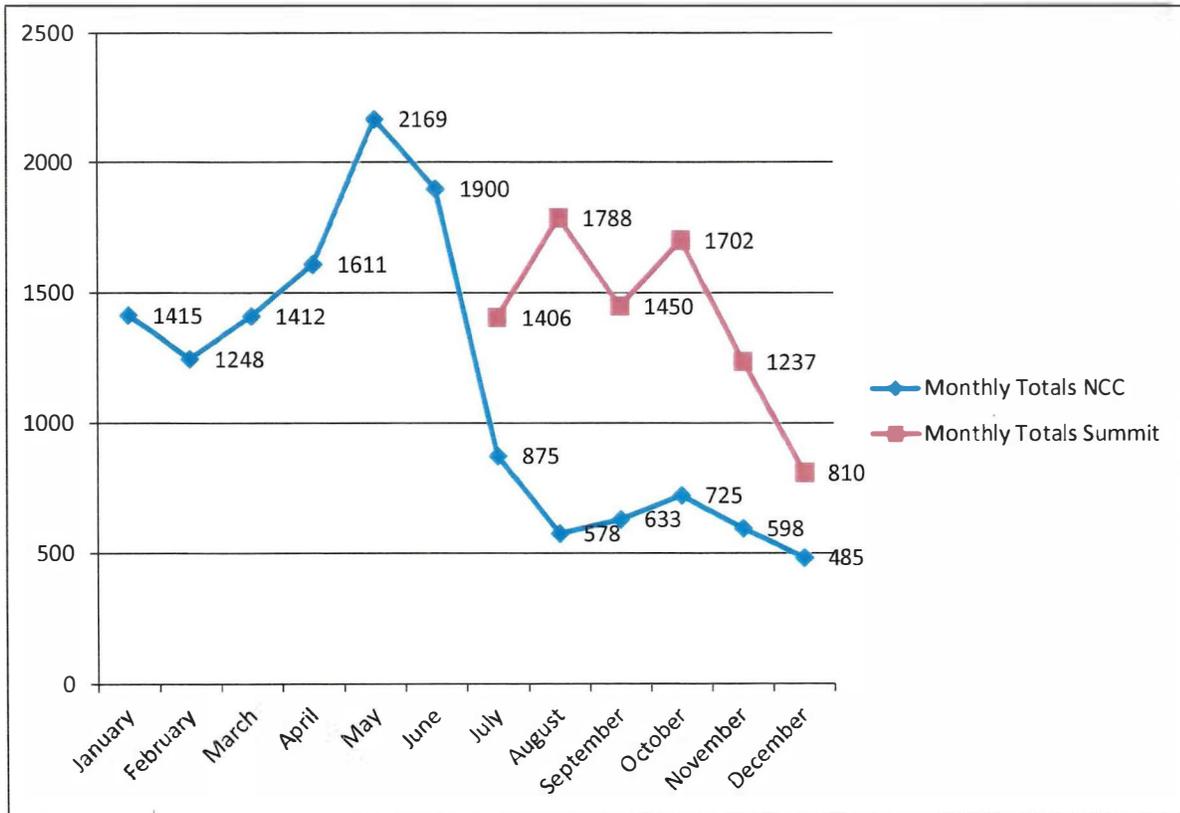


2012 Locate Summary

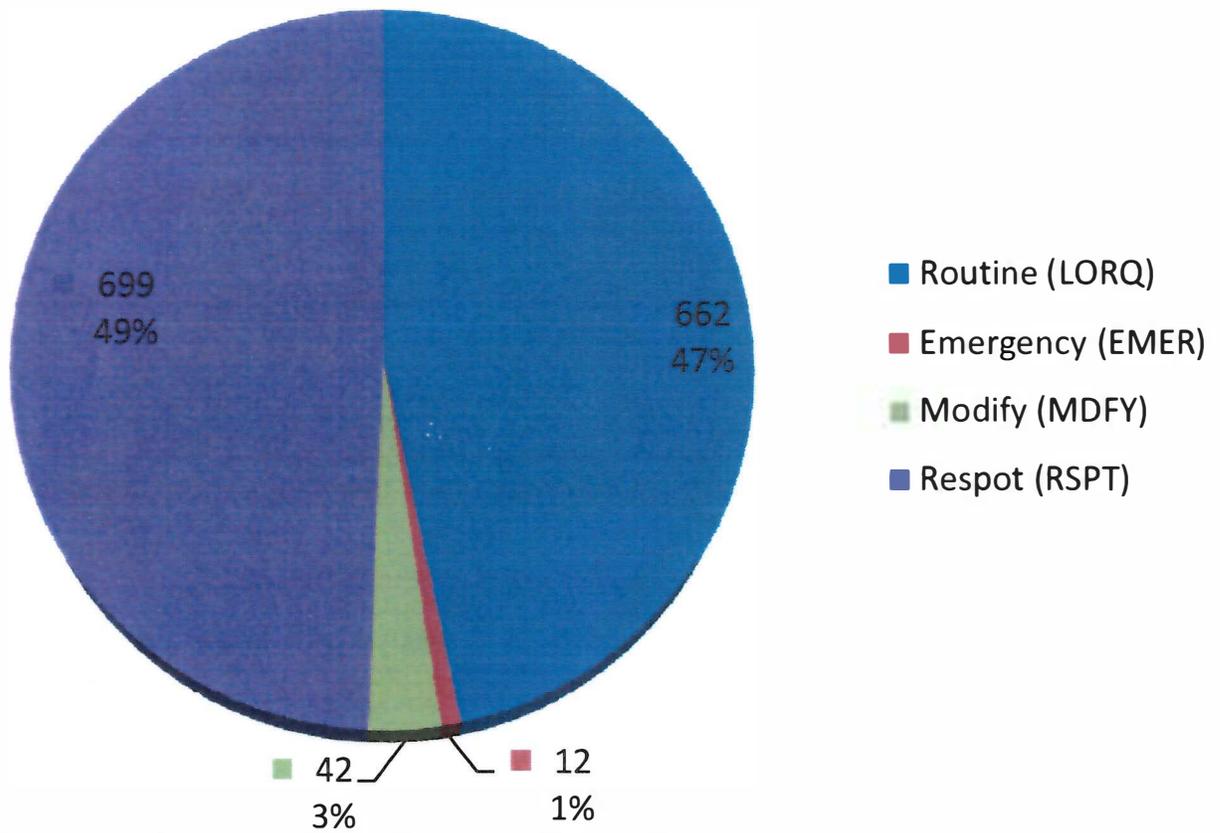
Monthly Totals

	NCC	Summit	
January	1415		1415
February	1248		1248
March	1412		1412
April	1611		1611
May	2169		2169
June	1900		1900
July	875	1406	2281
August	578	1788	2366
September	633	1450	2083
October	725	1702	2427
November	598	1237	1835
December	485	810	1295

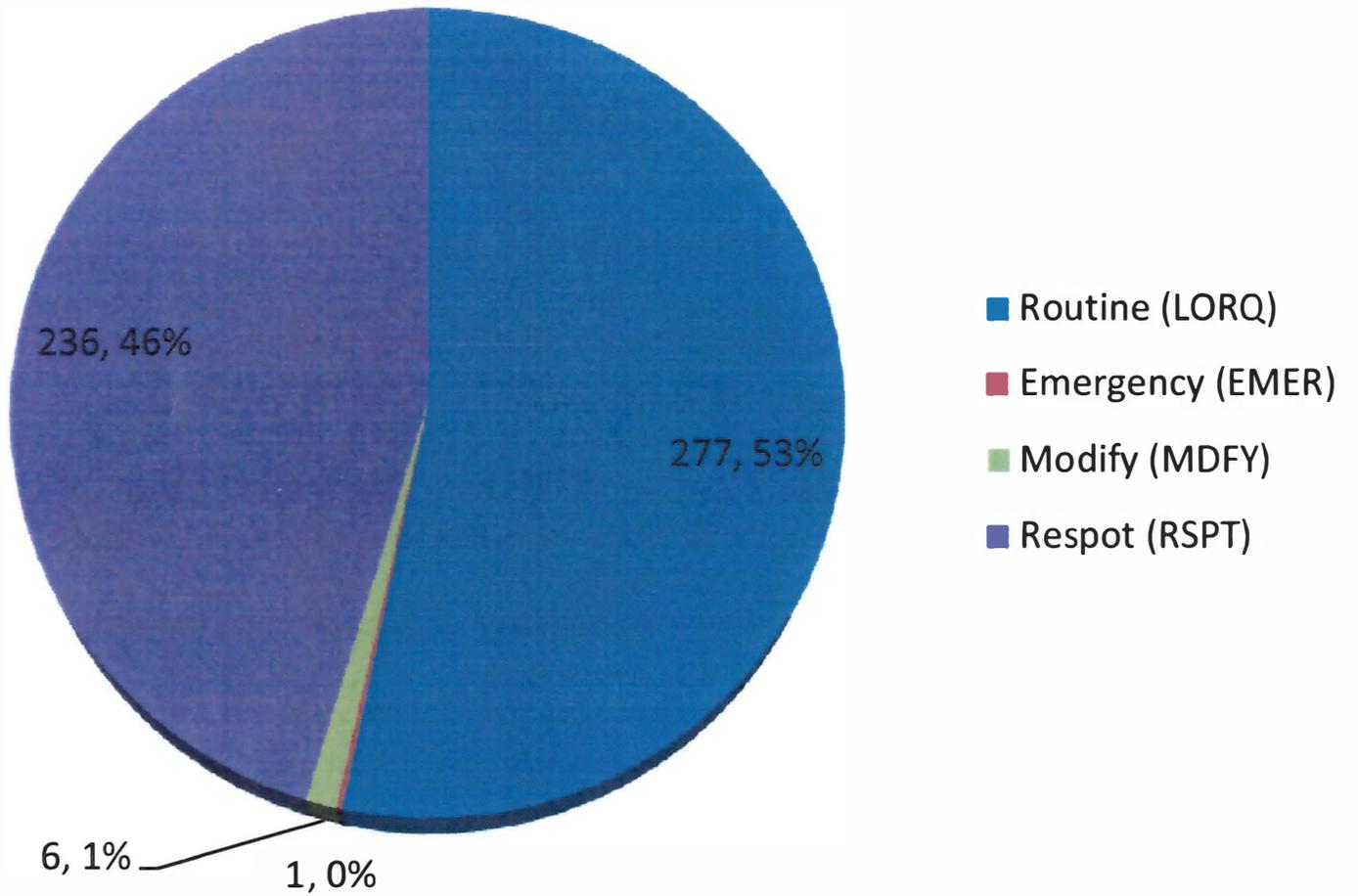
Yearly Total	22042	Number of Respts	7757
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January 2012 call breakdown by Ticket Type



August 2012 call breakdown by Ticket Type



Re-spot Examples

Dates	Costs	Work Description
10/14/2014	\$ 51.00	Pipeline
10/28/2014	\$ 170.00	
11/11/2014	\$ 17.00	
11/25/2014	\$ 17.00	
12/8/2014	\$ 170.00	
12/26/2014	\$ 170.00	
1/9/2015	\$ 170.00	
1/20/2015	\$ 17.00	
2/4/2015	\$ 170.00	
Total	\$ 952.00	

Still in progress

Number of locates **9**

Dates	Costs	Work Description
10/12/2014	\$ 17.00	16" Gas Line
10/24/2014	\$ 17.00	
11/7/2014	\$ 17.00	
11/21/2014	\$ 170.00	
12/5/2014	\$ 17.00	
12/19/2014	\$ 170.00	
1/2/2015	\$ 17.00	
1/15/2015	\$ 17.00	
1/29/2015	\$ 170.00	
Total	\$ 612.00	

Number of locates **9**

Dates	Costs	Work Description
8/11/2014	\$170.00	Install Water line
9/4/2014	\$17.00	
9/9/2015	\$17.00	
9/29/2014	\$170.00	
10/20/2014	\$17.00	
Total	\$391.00	

Number of locates **5**

Dates	Costs	Work Description
6/5/2014	\$ 210.00	12" Poly Gas Line
6/19/2014	\$ 63.00	
7/7/14	\$ 17.00	
7/23/2014	\$ 17.00	
8/8/2014	\$ 17.00	
8/22/2014	\$ 17.00	
9/9/2014	\$ 17.00	
9/23/2014	\$ 17.00	
10/9/2014	\$ 17.00	
10/21/2014	\$ 85.00	
11/5/2014	\$ 17.00	
11/19/2014	\$ 170.00	
12/2/2014	\$ 17.00	
12/16/2014	\$ 170.00	
12/31/2014	\$ 17.00	
1/12/2015	\$ 17.00	
1/26/2015	\$ 170.00	
2/9/2015	?	
Total	\$ 1,055.00	

Still in Progress

Number of locates **18**

Dates	Costs	Work Description
5/8/2014	\$21.00	Digging Contaminated Soil
5/28/2014	\$11.00	
6/16/2014	\$11.00	
7/2/2014	\$11.00	
7/18/2014	\$17.00	
8/6/2014	\$17.00	
8/25/2014	\$17.00	
9/14/2014	\$17.00	
10/2/2014	\$17.00	
10/20/2014	\$17.00	
11/4/2014	\$17.00	
11/20/2014	\$17.00	
12/22/2014	\$17.00	Test pits
1/11/2014	\$17.00	
2/1/2015	\$17.00	
Total	\$241.00	

Still in Progress

Number of locates **15**

Contractor informed Northwest Communications Cooperative that this could take two more years to complete

Senate Bill 2147
Testimony of Kent Blickensderfer
Chairman George Keiser
House Industry Business and Labor Committee
March 23, 2015

Good morning Chairman Keiser and committee members. My name is Kent Blickensderfer and I represent CenturyLink in North Dakota. CenturyLink is the successor company to the former Qwest, US West Communications and Northwestern Bell Telephone Company. Century Link today has a worldwide network with local telecom operations in 37 US states.

I am here today to express our strong support for Senate Bill 2147, as amended in the Senate by the Association for Rural Telecommunication Cooperatives and Independent Companies. Like those companies, CenturyLink has also seen an increase in requests for locates and re-spotting. By limiting the free requests to forty two days worth of located work area, excavators will be encouraged to manage their construction jobs better and not force further costs onto the owners of underground facilities and their customers.

We've heard that only offering two free locates will encourage excavators to break the law to avoid payment for multiple re-spotting requests. I would argue that someone planning or threatening to break the law is no reason not to pass good public policy. When cost causers have no financial disincentive to change their behavior, problems for the cost payer will only worsen.

CenturyLink facilities carry an enormous amount of traffic crucial to the state's commerce and public safety needs. We understand the importance of marking our facilities to keep that traffic safe. What we're asking for is some reasonable accommodation from excavators with respect to repeated location requests. Please give SB2147 with the amendments your careful consideration and a "do-pass" recommendation. Questions?



Utility Shareholders of North Dakota

800-981-5132 www.usnd.org

SB 2147 Testimony in **Opposition**
Carlee McLeod
House Industry, Business, and Labor 3-23-15

Chairman Keiser, members of the committee, my name is Carlee McLeod, and I represent the shareholders of North Dakota's investor-owned utilities. I come before you today to oppose SB 2147. USND is an association representing approximately 3,700 individual members who own stock in investor-owned utilities operating in North Dakota. Those utilities are Xcel Energy, Montana-Dakota Utilities, and Otter Tail Power Company. We depend on strong one-call laws to protect our property and to keep employees safe. This bill threatens that property and those employees by introducing unnecessary confusion into the one-call laws and making the law more onerous to those required to call before digging.

As a reminder, one-call laws were modified during last session in order to relieve the burden of increased development throughout the state while strengthening safety parameters. Those changes were developed and proposed by a large coalition consisting of utilities, telecom, and water, oil, and gas and pipeline facility owners as well as excavators representing large commercial projects, and residential homebuilders. We operated on consensus: if any idea was not supported by the entire group, it did not make it into the resulting bill. As a result, we proposed a bill (passed through your committee and the 2013 legislative body) to do the following:

- Increase the maximum fine for violations to \$25,000;
- Increase the ticket length from 10 days to 21 days;
- Allow for billing for repeated tickets where no excavation had occurred during the first ticket and subsequent respot;
- Allow for billing if a ticket was respotted without modification for an area where excavation had been completed;
- Require additional identification information for the area to be located;
- Strengthen language regarding "meets" between excavators and locators for overly large or complex projects; and
- Place the burden on the excavator to reasonably maintain location markers during the life of a ticket.

During the process of developing that bill, the coalition believed people who did not use the one-call system in good faith should have to pay for the locators' wasted location time, but the idea of shifting all costs to excavators was not an option the coalition entertained. The coalition looked to a best practices group called the Common Ground Alliance to help in developing legislation. The CGA is a national group, with various state chapters. Its focus is damage prevention

and safety through education and community outreach. We ran all of our proposed changes past the ND chapter of CGA in order to get feedback from safety directors and those people actually working out in the field who would be in the direct line of changes to one-call. Through their feedback, the coalition gained confidence that those proposed changes would alleviate location fatigue while strengthening safety controls. Since the 2013 legislation has been in effect, we have addressed one-call changes at each quarterly ND CGA meeting, and we continue to look for ways to strengthen safety controls surrounding underground facilities. I mention the most recent history regarding one-call because the care and effort put into that legislation and one-call in general is in stark contrast to the bill before you. Unlike the 2013 effort, this bill before you comes from one industry to address an issue in one part of the state, but the changes will affect all industries with underground facilities throughout the whole state. If the issues professed by the proponents of SB 2147 exist, a more careful solution needs to be developed that does not compromise safety. This bill is not the answer. This issue needs further study, and since SB 2167, a comprehensive study of the one-call laws, has passed both the House and the Senate, the issue can get the attention it deserves during the interim.

As introduced, SB 2147 sought to allow billing for those “bad actors” on the second location request when no excavation occurred during the first. We opposed that change based on the fact that sometimes, there are good reasons beyond an excavator’s control to require a respot before excavation can occur. However, the bill was amended into the version you see before you to require that all users pay for locates after the first respot, regardless of excavation. This is a dramatic change in the one-call process, and we adamantly oppose the current bill for a variety of reasons which will be explained in my testimony.

SB 2147 would be a shift in the basic philosophy of one-call laws across the country. To the best of my knowledge, no other state transfers the cost of facility location from their owners to others excavating in the area where those facilities exist. CGA best practices guidelines, reviewed and published annually, include the following guideline.

5.31 No Charge for Providing Underground Facility Locations Facility Owner Excavator

Practice Statement:

Upon notification by one call centers, locations of underground facilities are provided by operators at no cost to excavators.

Practice Description:

It is the basic underpinning of the call-before-you-dig process that persons involved in excavation activities receive facility locates at no charge when they contact their local one call center to give notice of intent to excavate. This service is critical to maintaining the communication between

operators and excavators. Call-before-you-dig education and marketing campaigns, such as 811 and those promoted by one call centers and associated industries, advise persons involved in excavation activities, including the public, homeowners, and professional excavators, that the service is provided by facility operators at no charge to the person providing the notice of intent to excavate.

Transfer of costs of protecting facilities to other than facility owner is contrary to basic premise of facility owner/service provider responsibility.

Proponents of this bill have said that the cost of location should belong to the people causing the need for location. In conveying that concept, they mean that the people causing the need for a location are those excavating in the area where a facility is located. However, the need for locating underground facilities exists because those underground facilities exist. An owner of an underground facility chooses where to put its facilities. Those facilities exist because that owner has decided to provide a service in an area of the state of its choice, and at least in the case of utilities, that facility owner has been granted an exclusive right to serve an area at the exclusion of other like entities. Because of that exclusive right, the owner has the responsibility to serve all people in that area with reliability. That responsibility means that the owner bears a burden of protecting its facilities necessary to offer its service. It is disingenuous to transfer that responsibility to others who need to access the ground in any area a facility exists. Further, a facility owner has been given the right to bury its facilities on property of various landowners. By transferring facility owner costs to excavators, a facility owner makes further use of landowners' property more expensive than if no facilities exist, which might be a disincentive for further use of that land, causing harm to the landowner, or a disincentive to grant use of land for future facilities.

As amended, SB 2147 introduces uncertainty into one-call procedures.

This bill holds excavators responsible for the costs of locates past the first two locates. The language does not provide a time period or clarify what qualifies as the first two locates. This responsibility is placed on anyone receiving a locate: contractors, homeowners, agriculture entities, etc. This bill allows location costs to be transferred to anyone: big business or private citizen. As a homeowner, I have at least one project a year requiring me to call 811. Based on last summer's ticket, there are four facilities running through my lot. I'm mindful of locators' time, so I group my yearly digging into one ticket period each summer. Over the past 6 years I've been in my current home, I had sprinklers installed, built a fence, planted 8 trees, built a pergola and dug a paver patio. If this bill were law, would I be billed by each of the four facilities after my first two summers? This bill would allow it. If I protected the markings to the best of my abilities, but a neighbor kid came into my fence and took flags out (as many kids do), would I be billed by each of the four facility owners for having the area remarked because the flags disappeared? This bill would allow it. If so, would I gamble like many property owners do that I remember where the marks were

and dig without calling? Like other property owners, I often think that I know where the facilities exist. If each of the four facility owners I know exist on my lot charged me over \$100 for a locate, and I felt pretty confident that no lines cross where I want to plant my next tree, I might be tempted to gamble. A \$60 dollar tree becomes pretty expensive when over \$400 in locate costs are added to the project. Does the responsibility to pay for a locate request attach to the property? If so, a subsequent homeowner would be billed for a one-call ticket on the first call because the original homeowner used the first two free calls. This bill presents many questions and few answers.

The 2013 legislative changes are working, and they deserve a chance to continue. Numbers show locate requests continue to grow modestly. However, after 2013 legislation passed, respot tickets dropped dramatically because of the increased ticket length. Those numbers inch up, but they are still lower than pre-2013 levels. Further, modified tickets increased in 2103, which shows that excavators are following the law in good faith, mindful of locators' time. They dropped in 2014 as excavators became more aware of the appropriate location area size they could tackle in 21 days. Meets are up as well, which shows that communication has increased between locators and excavators. When entities communicate, they become better accustomed to the other's concerns. Safety is strengthened, and time is respected.

	2012	2013	2014
TOTAL	202,810	210,325	223,805
Routine (requests requiring only one locate)	152,242 75%	156,950 75%	172,388 78%
Modify (requests with modifications)	9,924 5%	22,878 11%	10,258 5%
Respot	38,248 19%	26,693 13%	33,809 15%
Emergency	4,068 2%	4,546 2%	5,050 2%
Meet (onsite meeting between excavator and locator)	34 .02%	798 .4%	802 .4%

Safety always comes first. When the 2013 legislation was proposed, legislators were concerned with safety with the lengthening of a ticket from 10 days to 21 days. In North Dakota, weather can obliterate marks quickly, through no fault of excavators. As a coalition, we assured legislators that the law allows for respots when marks are obliterated—at no cost to the excavator. This bill directly contradicts that assurance. Further, realistically, the changes in SB 2147 will cause some people to gamble and dig without calling 811. Many dig without calling 811 now. It is an ongoing process to educate the public about the

dangers of digging without calling 811, and many people do not comply with the law today. We have gone 3 years without a death caused by direct impact after a no-call hit, but that doesn't mean everyone is calling. The PSC's docket is packed with one-call offenders, and making the process more expensive for those digging will not decrease those offenses. Proponents of this bill have called these safety concerns disingenuous. There is nothing disingenuous about wanting to stop another ND worker from being killed. There is nothing disingenuous about predicting future danger based on current reality. There is, however, something disingenuous in presenting information about increased costs of location without acknowledging the increase in revenue over the same period. Costs rise over time. So do revenues. Increased development in a service area almost always corresponds with an increase in customer base. Protecting facilities is part of the cost of doing business, and those cost with increase along with all other costs. Statewide safety controls should not be diminished accordingly. Please vote no on SB 2147.

Testimony SB 2147
House Industry, Business & Labor Committee
March 23, 2015

Good morning Chairman Keiser and House Industry, Business and Labor Committee. My name is Mark Dougherty and I'm the Membership Service Director for the Associated General Contractors of North Dakota. We are here today in opposition to SB 21247.

Engrossed SB 2147 would require every excavator working in North Dakota and making One Call locate requests to pay each effected utility's locate costs after the second locate request. At this time there are no specifics as to limit of those individual costs as the bill only states "...the excavator is responsible for reasonable costs associated with relocating facilities in that location." This could lead to utilities using the one-call system in North Dakota as a new revenue stream.

The problems this bill is attempting to fix were addressed in the legislation created during the 2011-2013 interim by all stakeholder groups and was passed by the 63rd Legislative Assembly. That legislation is just starting to have an effect on the number and types of relocates and locates respectively required to get the large western projects completed. That legislation should be given more time to come in to full affect and would then negate the need for SB 2147.

Only one other State allows utility operators to charge excavators for locating their facilities when receiving a One-Call locate request and as far as the current manager of their Alaska Digline one-call system knows there have been a hand full of times when a utility has charged an excavator since 1988 when Alaska's one-call law was first introduced. The nationwide position on not charging excavators for making locate requests through a One-Call system is based on the simple premise that when utility operators started putting their facilities underground they took on a responsibility to locate those facilities to protect their property and the safety of the public.

Common Ground Alliance (CGA) a national underground utility damage prevention group formed by the Pipeline and Hazardous Materials Safety Administration to bring underground utility stakeholders together to communicate and work on best practices to assure the underground facilities and the public are protected from damage. CGA is a full consensus group and any best practice approved has to have total agreement from

all stakeholder groups to be included in their best practice guide. CGA's Best Practice 5.31 reads:

"Practice Statement:

Upon notification by one call centers, locations of underground facilities are provided by operators at no cost to excavators.

Practice Description:

It is the basic underpinning of the call-before-you-dig process that persons involved in excavation activities receive facility locates at no charge when they contact their local one call center to give notice of intent to excavate. This service is critical to maintaining the communication between operators and excavators. Call-before-you-dig education and marketing campaigns, such as 811 and those promoted by one call centers and associated industries, advise persons involved in excavation activities, including the public, homeowners, and professional excavators, that the service is provided by facility operators at no charge to the person providing the notice of intent to excavate.

References: Minnesota state statutes, Alberta pipeline 1. TR-2007-06: Amendment approved by the CGA Board on August 8, 2008 - See more at:

<http://www.commongroundalliance.com/best-practices/best-practices-guide/531-no-charge-providing-underground-facility-locations#sthash.TViPA4C8.dpuf>".

The ND House of Representatives has passed (88-3) and the Governor has signed SB 2167 calling for an interim legislative management study of the One Call Excavation Notice System. It is our hope the House Industry, Business and Labor Committee will put SB 2147 on hold and **allow all of the one-call stakeholder groups the opportunity** to work on statutory changes, using the legislative management study proposed in SB 2167, that would benefit the entire State, instead of the single stakeholder group that introduced SB 2147.

We urge you to give a "Do Not Pass" recommendation on SB 2147.

I thank you for the opportunity to testimony and will stand for any questions you may have.

Brenda Elmer

6
3/23/15



Vote **NO** on **SB 2147**
North Dakota House of Representatives

Minnesota/ North Dakota Chapter SB 2147 would require every contractor doing excavation in North Dakota, making One Call locate requests as required by current law, to pay each effected utility's locate costs after the second locate request on a project. The proposal establishes no limits of those costs – it could be in the hundreds to thousands of dollars depending upon the size and scope of a project.

Associated Builders and Contractors of Minnesota & North Dakota and its hundreds of members urge a **NO** vote on SB 2147. We have provided a summary of reasons in support of your **NO** vote and here's why:

Vote NO because:

- The first major problem with this bill is it attempts to open up an agreement reached by **all stakeholder groups** and adopted during the last legislative session in 2013. This compromise was just passed and is just starting to have an effect on the number of relocates. That legislation should be given more time to come in to full affect. There is no premature need for SB 2147.
- The bill is attempting to fix a problem being experienced by utilities in the **oil development area of the state** but instead takes a shotgun approach and changes a process for the whole state. If there is a problem, let's put the clutch in, take a thoughtful approach, and develop potential solutions that do not include **diminishing safety** for those working around utilities and the public.
- **Only one other State in the nation** allows utility operators to shift the cost of protecting their own utilities and infrastructure to excavators working around it. When they place utility facilities underground, utilities must accept the responsibility to locate those facilities going forward for the protection of their own property and the health and safety of the public. We reject the notion that contractors should be financially responsible for protecting the utilities' infrastructure just because the utilities "were there first."
- A national consensus organization of underground facility damage prevention stakeholders, the Common Ground Alliance (CGA), has developed a best practice: **"Upon notification by one call centers, locations for underground facilities are provided by operators at no cost to excavators."** CGA is a group comprised of utility representatives with a minor contingent of contractor excavators and must have full consensus to approve any best practice. The following link is the CGA Best Practice Guide which is used by utilities, excavators and one call boards and other stakeholder groups nationwide involved in the underground damage prevention as a guide to determine if their specific practices are in line with the national norm: <http://www.commongroundalliance.com/best-practices-guide>
- The ND House of Representatives has already passed (88-3) and the Governor has signed SB 2167 calling for an interim legislative management study of the One Call Excavation Notice System. It is our hope the House of Representatives will put SB 2147 on hold and **allow all of the one-call stakeholder groups the opportunity** to work on statutory changes, using the legislative management study proposed in SB 2167, that would benefit the entire State, instead of the **single** stakeholder group that introduced SB 2147.

Please Vote NO on SB 2147

03/25/15

March 23, 2015

Senate Bill #2147 Testimony

Chairman Keiser, Members of the House Industry Business & Labor Committee. Good morning & thank you for the opportunity to testify on Senate Bill 2147.

My name is James Ruud, I am the president & a project manager for Edling Electric. We are an electrical contractor based out of Bismarck. My company does Commercial Work, Industrial Work, Utility Installation Work, and Highway Electrical Work all over ND. A lot of our projects involve trenching, directional drilling, hole auguring & backhoe work.

I am very familiar with the North Dakota One Call system and utilize the call center & work with many utility locators a regular basis. We have a good relationship with these people and act as a responsible contractor.

Senate Bill 2147 is a bad bill for North Dakota Highway contractors and I urge you to provide a do not pass recommendation on this bill. A lot of times a utility company's facility is in an easement on a road ROW. Urban highway projects can be very complex and can take a whole season or even multiple seasons to finish, thus requiring numerous locate requests & re-spot requests through the same stretch of a project.

Take our 2014 New Town Highway 23 & 1804 project for example. It was a road reconstruction project & traffic signal installation at an intersection with heavy traffic & high volume counts. There were multiple utility challenges on the project. The project was split into approximately 5 phases building this intersection. Just to install the underground portion of this traffic signal, it took one trip to adjust a span signal for the traffic control during construction, a second trip to trench in the conduit system, and a third trip to auger & pour the concrete foundations for the signal poles. Each of our trips were over a month apart due to the other companies working on removals, sewer installation, water installation, storm sewer installation, road base work, gravel installation, curb & gutter installation & paving of the new roadway. So each one of my trips required that we call in a locate or a re-spot.

Also, on our this project there were 4 different utility companies with facilities at that intersection, the changes to the law as proposed would have required us to pay each company "reasonable costs" for the third ticket marking in an area. What is a reasonable cost? \$10 / \$500 per company / per request? Who knows, that's debatable & will cause problems.

We cannot be responsible for picking up these costs that we cannot estimate nor necessarily have control over. So, I do not think it is right that this law would authorize a company to bill my company whatever they think is "reasonable" for acting as a responsible contractor digging under a current locate ticket.

There are a variety of things that could warrant a re-spot or re-mark in the same location on a project including.

- Excavation taking longer than the 21 day requirement to operate under a current ticket.
- A weather event that washes marks away.
- Public traffic over the site where an excavation is to take place.
- Another phase of a construction project.
- Another contractor or City maintenance worker excavating at the same area.
- A property owner removing flags or ground maintenance in an area where the excavation is taking place.

As I understand it, no other state allows billing of excavators by a utility company for protection of their facilities. Why are we blazing this trail?

To me, pushing the financial responsibility for the identification of an underground utility on to an excavator is not the way to improve the process. Changing the law to a negative for an excavator could deter the calling in another locate. This could risk damage to the utility companies' facility, sacrifice safety of the excavator's employees, and sacrifice safety to the public.

There is already a system in place in which a utility company can report an irresponsible excavator to the board and they can work with this excavator to educate them and improve their processes.

We work very hard to act responsibly to protect other's facilities by digging with current locate tickets, assisting locators to provide their required identification services, and not wasting anyone's time through the construction process. Therefore I urge you to provide a "Do Not Pass Recommendation" for these proposed changes.

Thank you all for your time and allowing me to express my concerns.



NDLA, H IBL - LeTang, Ellen

From: Dan Lindquist <danlindquist@cableone.net>
Sent: Sunday, March 22, 2015 5:08 PM
To: Dan Lindquist
Subject: Written Testimony SB2147

March 23, 2015

Re: SB 2147

Chairman Keiser and Members of the Industry, Business and Labor Committee, my name is Dan Lindquist and I am the owner of Dan Lindquist Construction, Inc. a residential custom home builder from Fargo. Today I am submitting written testimony as I am unable to appear in front of the committee in regards to SB 2147.

During the process of building a new home, typically 3 to 6 locate requests will be made. The excavators usually make the first call for the sewer/water connections and excavating of footings and foundation. Sometime after the foundation has been poured and the basement is backfilled, trenching companies will call for locates prior to bringing the new utility lines to the house. With the limited choice of meter locations we are given today by the utility providers (typically the meter is placed on the side of the garage near the street); it's becoming more necessary to have a secondary trench to bring the new utility lines from the meter locations to the point where they will actually enter the house. This results in another request. Calls for locates will also be made by landscapers, underground sprinkler contractors, cable/communication contractors, and concrete contractors when installing the city approaches. If a fee is implemented for each additional locate after the second call to an address, it is going to be an expense that will be passed on to the consumer. Will this also apply to the consumer after they occupy their house, if they choose to install a fence and need to call in a locate request? There is also a strong possibility some calls are not going to be made just to avoid the cost. I am quite sure this is not something the utilities and general contractors want to see happen. This legislation seems to be targeting a small segment of contractors in an isolated area of the state, but may have an unintended consequence of punishing the majority of consciences contractors, subcontractors, and ultimately consumers. I would encourage a do not pass recommendation from this committee on SB 2147.

Mr. Chairman and members of the Committee, this concludes my testimony and I appreciate you taking the time to read this. If you should have any further questions you may contact me at 701-261-8230 or at danlindquist@cableone.net. It would be my pleasure to answer any follow-up questions you may have.

Thank you again for your time,

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