



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2024-005

TO: Mayor and Council

FROM: Garrett Lam
Assistant City Attorney 

DATE: March 25, 2024

MEETING: April 23, 2024

RE: Damage claim of
Southwestern Bell Telephone Company
dba AT&T Oklahoma
1010 Pine 6W-P-02
St. Louis, MO 63101-3099

Submitted in the amount of \$2,185.84.

RECOMMENDATION: Denial

BASIS OF CLAIM: Southwestern Bell Telephone Company, dba AT&T Oklahoma alleges on October 29, 2023, the City of Lawton damaged a 50 pair cable when they were digging up the City's water main for repair at 2327 E. Gore Boulevard, Lawton, Oklahoma. Southwestern Bell is claiming damages in the amount of \$2,185.84 for labor and material costs to repair the cable.

DATE OF DAMAGE: October 29, 2023

FACTS: According to Water Distribution records, on October 28, 2023, at approximately 4:00 a.m., the City of Lawton, Water Distribution night crew received a call from emergency dispatch reporting water flooding the street and parking lot in front of the Apache Casino, 2327 E Gore Boulevard, the caller indicated a possible pipe burst. The night crew classified the water main break and repair as an "emergency", and emergency locates were called in to identify any underground utilities prior to the excavation pursuant to the Oklahoma Underground Facilities Prevent Act. According to the Water Distribution crew, the locates appeared to be accurate and the crew remembers the digging was to the side of locate marks. None of the crew members had any knowledge of striking the cable. While looking at the pictures provided from AT&T, the entire area was flooded with water. With the flooding and quantity of water within the digging area it is a possibility that the crew did not know that they struck the cable. The crew completed the repair on October 28, 2023, and backfilled the area on October 30, 2023. Normally, if the crew has knowledge of striking a cable, the dig site is left open for the contractor to repair. In

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this case, the crew was not notified that they struck an AT&T cable until the claim's investigator contacted them for a meeting on April 3, 2024. According to OKIE, City of Lawton is the only contractor that called for locates in this area during the time frame that the cable was damaged.

LEGAL BASIS FOR DENIAL OF CLAIM: Negligence is defined as the failure to exercise ordinary care to avoid injury to another's person or property. Pursuant to Title 51 O.S. §151 *et seq.*, municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. Negligence is never presumed, and the burden of proving negligence and that it was the proximate cause of the harm complained of, is on the complaining party. Oklahoma Ry. Co. v. Ivery, 204 P.2d 978 (Okla. 1949).

The repair of the City water main was clearly an emergency that required prompt attention. Even in this emergency event, the City of Lawton attempted to avoid underground utilities by calling in locates. However, the attempt to avoid underground utilities was not successful and the City struck the line without realizing because of the chaotic flood conditions. Under the Underground Facilities Damage Prevention Act (UFDPA), Oklahoma Statutes, Title 63, Section 142.6(C), exempts excavator from liability when making an excavation in an emergency situation.

It appears the City took all precautions necessary to repair the water main and the City was not negligent in this matter. In addition, an exemption from strict liability has been provided in the UFDPA. It is therefore recommended that this claim be denied.

GARRETT LAM
ASSISTANT CITY ATTORNEY


Mincie Beamesderfer, CP
Claims Investigator