

FORM 13
RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas
R. Markley Dennis, Circuit Court Judge

Case No. 2013-CP-10-6019
Appeal, 2016-001035

Jack Powell,

Appellant,

v.

Knology of Charleston Inc.

Respondent,

Record on Appeal

RECEIVED

MAY 31 2017

SC Court of Appeals

Pro se Appellant proposes to include the following in his Record on Appeal.

Pro se Appellant, Jack Powell
1402 Camp Road unit 8-A
Charleston S.C. 29412
(843)952-4762

Mcangus, Goudelock & Courie
735 Johnnie Dodds Blvd.
Mt. Pleasant, S.C. 29464
Attorney, Benjamin Davis
(843)576-2920

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHARLESTON)
)
JACK POWELL)
)
Plaintiff)
)
vs.)
)
KNOLOGY OF CHARLESTON INC.)
Defendant.)

IN THE COURT OF COMMON PLEAS

9TH JUDICIAL CIRCUIT

COMPLAINT

FILE NO.

2013 . CP . 10 . 4019

FILED
2013 OCT 28 AM 9:19
JULIE ARMSTRONG
CLERK OF COURT

The Plaintiff is a resident of Charleston County and reserves all rights to amend this Complaint. The Plaintiff files this complaint against Knology because of the reckless gross negligence exercised when sober and drug free Mr. Powell was walking up the right a way beside Folly road at around 9:00 PM on 6-21-12 and tripped on an unburied cable line in the dark. Mr. Powell was knocked unconscious and injured his head , neck, shoulder and knee.

THEN a lady riding up Folly road spotted Mr. Powell on the side of the road and called 911. The Charleston County EMS eventually applied a neck collar and then transported Mr. Powell to MUSC.

ACCORDING to the S.C. DOT they were not responsible for any injuries sustained at 930 Folly road in front of the Folly Oaks Center because Knology had a reasonable amount of time to discover the hazardous situation and apparently they did not inspect, repair or notify them of the foreseeable harm that could take place to a pedestrian and/or Mr. Powell walking through the area to visit businesses along Folly road. After investigating, the "2" Knology unburied cable lines were exposed for months and running through the front yard of the Folly Oaks Center, for about 30 feet in the right a way. They were connected to a telephone pole that was located about one foot from busy Folly road.

GOOD FAITH effort was made by the Plaintiff to reconcile this matter without legal involvement but was unsuccessful. The Plaintiff and his wife met with the manager of Knology at their Dorchester road location in Charleston S.C. and was offered \$2,900. Then after talking to their legal department, engaging in a telephone interview and then meeting with their special investigator James Budkis for Hartford Insurance in my home. We could not come to a reasonable settlement.

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THEREFORE, because of Knology's reckless gross negligence, breach of duty and negligent supervision of employees and/or subcontractors, they failed to protect Mr. Powell from being knocked unconscious, injuring his neck, shoulder and knee.

AGAIN because of the failure and negligence to repair, bury, notify, warn with signs, cones or rope off the hazardous area, Knology is in fact liable for the emotional harm and pain & suffering that was inflicted upon Mr. Powell because of this reckless gross negligent manner exercised.

GROSS NEGLIGENCE

Knology exercised reckless gross negligence when they did not bury "2" cable lines after connecting the lines to the Folly Oaks Center and then laid the lines on top of the ground running through their front yard. Then Knology laid the lines on top of the ground for about "30" feet in the pedestrian right a way and then connected them to a telephone located about "1" foot from the busy Folly road.

Knology did in fact ignore the foreseeable harm and allowed the unburied cable lines to be exposed in a hazardous manner. This was in fact the causation of the Plaintiff's emotional harm and pain & suffering while being knocked unconscious, and injuring his head, neck, shoulder and knee.

NEGLIGENT SUPERVISION OF EMPLOYEES & SUB-CONTRACTORS

Knology engaged in professional misconduct when they breached the standard of reasonable care by not protecting the pedestrians, customers and the Plaintiff when walking through the right a way to visit businesses along busy Folly road, from foreseeable harm.

ALSO Knology recklessly did not supervise employees & sub-contractors properly and inspect for proper burial of the "2" cable lines at 930 Folly road.

BECAUSE of Knology's professional carelessness and gross negligence the Plaintiff was harmed emotionally and suffered painfully after being knocked unconscious injuring his head, neck, shoulder and knee. Knology is in fact liable for their reckless gross negligent manner.

BREACH OF DUTY

Knology engaged in professional misconduct when breaching the standard of reasonable care when they did not protect the pedestrians and Plaintiff from foreseeable harm. Knology did not properly supervise, inspect, discover, bury, warn with signs, cones or rope off the hazardous area to ensure safety.

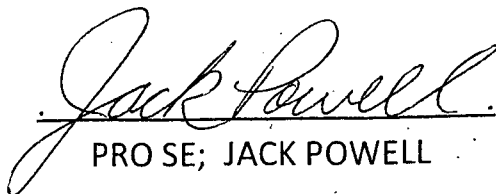
THEREFORE because of the professional misconduct and reckless gross negligence by not properly burying the "2" cable lines the Plaintiff suffered emotional harm and severe physical pain & suffering after being knocked unconscious injuring his head, neck, shoulder and knee.

DAMAGES

THEREFORE because of the reckless gross negligence by Knology the Plaintiff seeks monetary compensation of \$150,000 for the emotional harm and his pain & suffering from being knocked unconscious injuring his head, neck, shoulder and knee.

AND for the Plaintiffs financial losses suffered due to his inability to work because of his injuries.

Respectfully signed on 10-14-13


PRO SE; JACK POWELL

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Jack Powell,
Plaintiff,

vs.

Knology of Charleston Inc.
Defendant.

FILED

2014 DEC -9 PM 3:08

JULIE J. ARMSTRONG
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
9TH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10-6019

PLAINTIFF'S
MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

TO: DEFENDANT, KNOLOGY OF CHARLESTON INC.

PLEASE, take notice that the above named Plaintiff, Pro se, Jack Powell hereby respectfully submits this Memorandum in support of the Motion for Summary Judgment before the Court of Common Pleas, County of Charleston, South Carolina for an order granting Summary Judgment pursuant to Rule 56 (e) of South Carolina Rules of civil Procedure in the above captioned action.

THIS lawsuit was brought by Pro se, Jack Powell against Knology of Charleston Inc. on October 28th, 2013 and now after relevant discovery has been obtained and submitted to the court, there is no genuine issue of fact that exist that could deny the claims of Gross Negligence, Negligent Supervision of Employees & Sub-Contractors and the Breach of Duty.

THEREFORE Pro se, Jack Powell is entitled to Summary Judgment as a matter of law.

FACTUAL BACKGROUND

ON June 21, 2012, around 9:00 PM "56" year old Mr. Powell was walking up the Right of Way at 930 Folly Rd. and tripped on an unburied cable line in the dark. Mr. Powell was knocked unconscious and injured his head, neck, shoulder and knee.

Mr. Powell was noticed lying in the Right of Way by a lady riding up Folly Rd. and was then transported to MUSC by the Charleston County EMS. For hours, Mr. Powell was X-rayed four times where he had disc disease in his neck, rotor cuff disease in his shoulder, osteoarthritis from "2" knee surgeries and needs a complete joint replacement and also his injured forehead. During this time Mr. Powell also had to be given pain medication twice and a pain prescription for his ongoing pain.

SUMMARY JUDGMENT STANDARD

"The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact" Richardson v. The State Record Co. Inc., 499 S.E.2d 824-25 (S.C. Ct App. 1998). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by "showing" that is, pointing out to the [trial] court that there is no absence of evidence to support the nonmoving party's case"" Id. At 825. "The moving party need not support it's motion with affidavits or other similar materials negating the opponent's claim." Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, (S.C. 1994) (nothing where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). "Once the moving party for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton, 659 S.E. 2d at 203.

RELEVANT EVIDENCE DISCOVERED

KNOLOGY DOCUMENTED WORK ORDER

EXHIBIT A

PHONE LOG 08/14/2006, 08:35:AM oquinmi.

States; This citing needs a drop bury. They are being installed today due to an expedite request sales. Please work this ASAP. NOTE; Pete Smith is concerned about a sprinkler system, etc. Staysmayer Inc. @ 930 Folly Rd. Ste. "A" Chas 29412 - RG11 / 1

Drop / from Pole to Meter.

PLAINTIFF ENTERS; Phone log states they are concerned and had an expedited installation for today, ASAP! Knology of Charleston Inc. were already concerned about a sprinkler system and still went forward and connected the lines (note; unit "B" was also connected the same day) to the meter on the left side of the Folly Oaks Center office building. Then the "2" lines were just dropped, not buried and left running through the front yard, then in and across the public Right of Way and connected to the telephone pole about two feet from busy Folly road.

CHARLESTON COUNTY EMS

EXHIBIT B & C

PLAINTIFF SUBMITS, the cable lines were never buried because Mr. Powell tripped over the unburied cable lines in the Right of Way that were connected to units "A" & "B" and injured; his head, neck, shoulder and knee. THEN Plaintiff was transported by ambulance to the MUSC emergency room.

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DOCUMENT REQUEST #12

"Disconnected Service"

EXHIBIT D

12. The customers business names and addresses of each unit at 930 Folly Rd. that the '2" unburied cable lines were contracted to.

DEFENDANTS RESPONSE; 930 Folly Road, Suite/Unit A: Customer: Stasmayer, Inc., c/o Stasmayer Properties Service disconnected 12/1/09 by Knology technician Eugene Walker.

ALSO; 920 Folly Road, Suite/Unit B

Customer; Moms, Monkeys and Mermaids

Service disconnected 6/8/08 by Knology in house technician Eugene Walker.

PLAINTIFF ENTERS; the Defendant did in fact admit their Technician disconnected the service of units A & B. THEREFORE, on 6-8-08 and 12-1-09 Knology's Technician was on site twice where the "2" hazardous unburied cable lines and he did not bury the lines. ALSO , this was about "4" years before Mr. Powell sustained his injuries from the same cable lines connected to units "A" & "B".

PRODUCTION REQUEST # 7 TO DEFENDANT

EXHIBIT E

7. The individual names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. on or after 6-21-12.

RESPONSE: Defendant is in the process of evaluating it's records in an attempt to determine the information and documents responsive to this request, and will supplement

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this response upon reaching it's conclusion.

PLAINTIFF ENTERS; the Defendant is still trying to determine which of their employees repaired, removed or buried the "2" unburied cable lines after 6-21-12.

SOUTH CAROLINA CODE OF LAWS
Title 58 – Public Utilities, Services and Carriers
EXHIBIT F

SECTION; 58-12-10 Installation of cable over or underneath public lands, highways roads or waters. STATES; provided further, that such cable is constructed so as not to endanger the safety of persons or to interfere with the use of these public lands, highways or public roads.

EXHIBIT G

SECTION: 58-12-310 (e)(2) a nonexclusive grant of authority to construct, maintain and operate facilities along, across or on public right of way in the delivery of that service subject to the laws of this state including the lawful exercise of police powers of the municipalities and counties in which the service is delivered.

EXHIBIT H

SECTION 58-12-50. PENALTIES FOR VIOLATIONS; PERSONS WHO MAY BRING SUIT

Any person erecting or maintaining any such cable in violation of the provisions hereof shall forfeit and pay as a penalty therefor the sum of five dollars per day for each day such default continues after he shall have been given thirty days written notice specifically the default or defect in the manner of erection, construction or maintenance

thereof, to be recovered at the suit of any citizen of any county in which such violation occurs.

DOCUMENT REQUEST #6

EXHIBIT I

6. All documents concerning Lee Endicott at your Charleston center who agreed to pay Mr. Powell \$2,900 in front of his wife and was told he would have to wait several weeks to receive the check.

DEFENDANT'S RESPONSE; Defendant objects to this request on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence, that is ambiguous, vague, and as a result, unreasonably burdensome taking into account the needs of the case, the amount in controversy, and the issue.

PLAINTIFF SUBMITS; the Defendant has already admitted to their negligence when their Charleston manager Lee Endicott agreed to pay the Plaintiff \$2,900.

EXHIBIT I.

SCDOT Right of Way Insurance Requirements

Each Occurrence \$1,000,000

CONCLUSION

A. On 8-14-06 the Defendant had an EXPEDITED ASAP order for Unit "A" and also service for Unit "B " was added after it was already stated that there was a concern about a

sprinkler system and did not enter the results/findings about the sprinkler system.

B. The services were discontinued on 6-8-08 for unit A and on 12-1-09 for unit B.

C. On 6-21-12 Mr. Powell tripped over the unburied cable lines beside busy Folly Rd.

that were connected to units "A" & "B".

D. Defendant Admits a payment was offered by their Charleston store manager and the amount in controversy.

PROOF LINES WERE NOT BURIED

EXHIBIT "K"

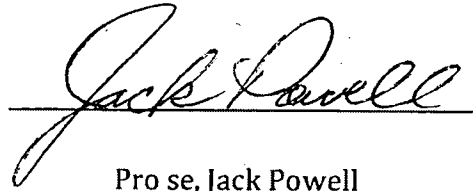
The "2" unburied cable lines of Knology of Charleston Inc. lying in and across the public right of way.

PLAINTIFF SUBMITS; because of the Defendant's failure to protect pedestrian Jack Powell from harm, Knology violated the S.C. Code of Law Section 58-12-10, Section 58-12-310 (e)(2) and Section 58-12-50 and recklessly exercised Gross Negligence, Breach of Duty and Negligent Supervision of Employees & Sub-contractors when failing to bury their lines in the public Right of Way, which rendered Mr. Powell unconscious and injured. These violations and Gross Negligence did in fact cause emotional and physical pain & suffering to the Plaintiff, Jack Powell.

WHEREFORE, Plaintiff, Pro se Jack Powell is entitled to Motion for Summary Judgment pursuant Rule 56 (e) because there is no genuine issue of material fact after the Plaintiff entered relevant evidence from Discovery that verifies this complaint.

THEREFORE; the Plaintiff requests the Honorable Court to rule this Motion to be granted and the Plaintiff be awarded with monetary relief of \$150,000 for his emotional & physical pain and suffering which also includes Attorney fees, Doctor bills, and about "2" months of lost self-employed income.

Dated & Signed on 12-9-14


Pro se, Jack Powell

A

Amdocs CPM - ClearSupport - [Archived Case: 10390786 / Call No C12506049]

File Edit View Desktop New Select Actions Apps Window Help

Corp ID: 7 KNOLOGY OF CHARLESTON Customer No: 742078 Account: 1261482
Street #: ProDi Street Name: FOLLY RD Suite/Apt: A
City: JAMES ISLAND State: SOUTH CAROLINA Zip: 29412 Node/ASP: J05

Contact Name: STASMAYER INC CO STASMAYER PROPERTIES Main Phone: 8437243440 Status: Active
Alt Contact: Alt Phone: Voice Port:

Case Info | Case Res | Schedule History | Prev/Other Cases |

Case Type: INSTALLATION
DROP BURY
DROP BURY

Products Affected:
☐ Analog Cable (A)
☐ Digital Cable (D)
☐ Internet (I)
☐ Fiber (F)
☐ POTS (P)
☐ Modem (M)

IVR Call Type:
Phone: 0 Cable: 0 In: 0
Contact Type: Business
Case Priority: Drop_Bury

History:
*** PHONE LOG 08/14/2006 08:35:13 AM equinn
This call needs a Drop Buy. They are being installed today, due to an expedite request from sales. Please work this ASAP. NOTE: Pete Smith is concerned about a speaker system, etc. Re: Stasmayer Inc.
@ 930 Folly Rd Ste A Chas 29412 - RG111/1 Drop / From Pole to Meter
NOTE: Dene is working this install today for CATV & Modem. We will soon port their dial tone to us as well. If you have any questions pls call either Dene @ 514-3059 or Marianne @ 514-5777. Thank!
*** NOTES 08/15/2006 07:02:05 AM westath Action Type: CSR Note
Sent to Locate service 15 Aug 06. Locate service has by State law 3 business days from date of entry to complete area marking for all utilities. Currently Drop Buy w/o completion dates are approximately 10 business days from date it was sent to Locate service. If a driveway bore is required additional days are needed. - Drop Buy

Activity Log

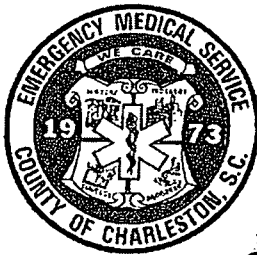
Done

Ready Items: 1 3:37 PM

9

13

K



PRID:19419084 RPT#:0373243

Response District:

Service:Charleston County EMS
 Base:Medic 04
 Unit:M04
 Shift:AB-night
 Tail/Reg:4552
 EMD:Not Known - 17B
 Type of Svc:Scene Unscheduled
 Response Code:Bravo
 Mode to Ref:Lights / Sirens
 Moved Via:Stretcher
 Position:Supine
 Outcome:Transported

Date:June 21, 2012

Team:ALS

Crew 1:Secondary Caregiver

*Antia-Obong, Obot

EMT-P (SC002466)

Crew 2:Primary Caregiver

*Cappellmann, Alma

EMT-I (SC010180)

* designates an ALS Provider

Mode to Rec:No Lights/Sirens

Moved From:Stretcher

Pt. Condition:Not Known

Ref Other Type:Street < 50 MPH
 Location:924 Folly Rd
 Charleston, SC 29412
 Ref. GPS:32.732762, -79.969230

Receiving:Hospital
 Medical University Hospital
 Authority
 Emergency Department
 169 Ashley Ave
 Charleston, SC 29425
 8437922123
 Dest. GPS:32.7854340, -79.9466480

Last Name: Powell First: Jack

Address: 1402 Camp Rd

City: charleston ST:SC Zip:29412

County: Charleston

Citizenship: United States

Phone: (000) 000-0000

DOB: 07/26/1955 SSN: 241-04-8104

Age: 56y Sex: M Weight: 250 lb

Height:

Subscriber: No

Race: White, non-Hispanic

DNR Orders: None

Barriers to Care: None Noted

Billing Information:

None Given

Odometer	Times
Ld Miles: 4.2	Received: 21:32
	Dispatch: 21:34
	EnRoute: 21:36
	At Ref: 21:41
	Leave Ref: 21:52
	At Rec: 21:59
	Available: 22:10
	Med control: 21:55

Notice of Privacy Practices Given:

None

Consent Signed: No

PCS / Medical Necessity Signed: No

Primary Method of Payment: Self Pay

Payment Information

CMS Condition: Not Known

Why Transport Called (CMS): Not Known

Scene Information

Description: Pt was found prone on the side of the road. The bystander that called EMS was on scene with pt.

Patient Belongings: Wallet, left on backboard with pt in ED

Other Agencies: Fire Fire Number: CFD

Chief Complaint (Category: Fall Victim)

neck and back pain

Duration: 15 Minutes

Anatomic Location: Back

ALS Assessment: Not Required

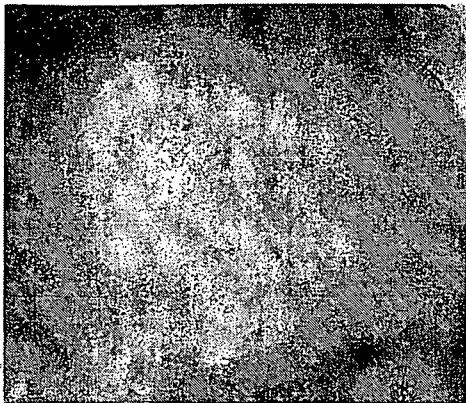
Secondary Complaint

right arm pain

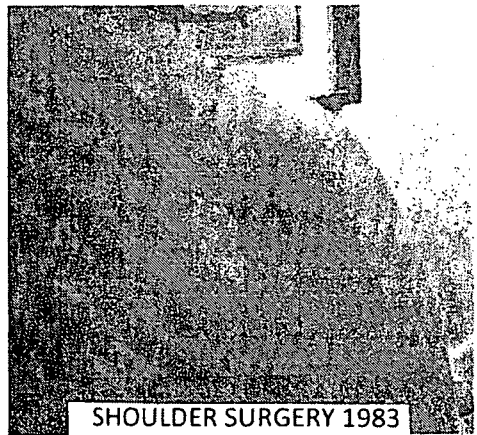
Duration: 15 Minutes

History of Present Illness

C



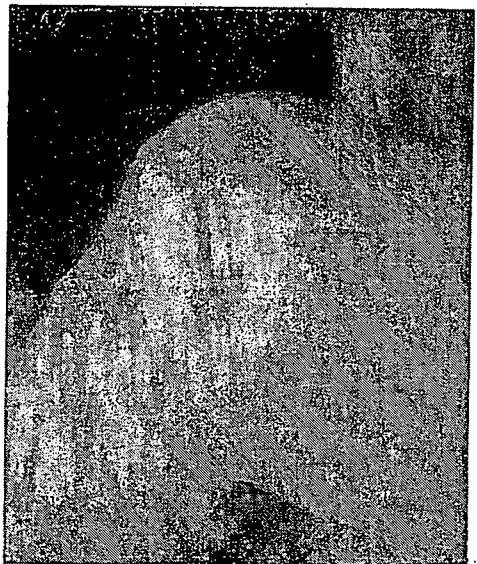
FOREHEAD INJURED WHEN
KNOCKED UNCONSCIOUS



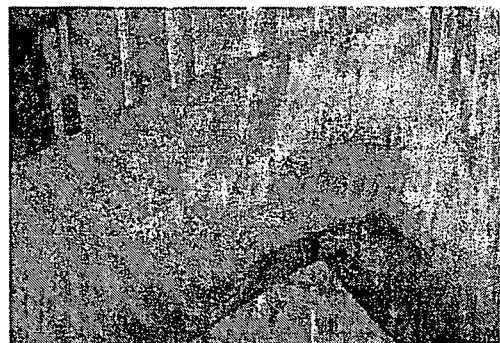
SHOULDER SURGERY 1983
ROTOR CUFF DISEASE



NECK SURGERY 1978, "224" STITCHES
DEGENERATIVE DISC DISEASE
AND DISC OSTEOPHYTE



1ST OPERATION; 1974 WHEN GAMECOCK
FOOTBALL PLAYER; CHRONIC LOOSE BODIES



2ND OPERATION; 1977 AT DUKE. ONE OF FIRST
COMPLETE RECONSTRUCTION. "U" SHAPED
METALLIC DEVICE WITH STAPLED TENDONS TO
BONE, SEVERE "3" COMPARTMENT ARTHRITIS.

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D

12. The customers business names and addresses of each unit at 930 Folly Rd. that the "2" unburied cable lines were contracted to.

RESPONSE:

930 Folly Road, Suite/Unit A: Customer: Stasmayer, Inc., c/o Stasmayer Properties

Service disconnected 12/1/09 by Knology technician Eugene Walker

930 Folly Road, Suite/Unit B

Customer: Moms, Monkeys and Mermaids

Service disconnected 6/8/08 by Knology in house technician Eugene Walker

13. The dates when the customers/clients service was discontinued or terminated with Knology concerning these "2" unburied cable lines at 930 Folly Rd.

RESPONSE: See response 12.

E

7. The individual names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. on or after 6-21-12.

RESPONSE: Defendant is in the process of evaluating its records in an attempt to determine the information and documents responsive to this request, and will supplement this response upon reaching its conclusion.

F

CHAPTER 12.

CABLE TELEVISION

ARTICLE 1.

GENERAL PROVISIONS

SECTION 58-12-5. Purpose; findings and preemption as to cable and video service.

(A) Competition between cable television, satellite, and other providers has promoted and continues to promote additional consumer choices for cable service, video service, and similar services, and the technology used to provide these services is not constrained or limited by municipal or county boundaries. Accordingly, it is appropriate for the General Assembly to review and update the policy of this State with regard to these services. The General Assembly finds that revising the current system of regulation of these services will relieve consumers of unnecessary costs and burdens, encourage investment, and promote deployment of innovative offerings that provide competitive choices for consumers. Additionally, the General Assembly finds that it is in the best interests of consumers for cable and video franchises to be nonexclusive and for requests for competitive cable or video franchises not to be unreasonably refused. The General Assembly further finds that a streamlined policy framework providing statewide uniformity is necessary to allow these functionally equivalent services to compete fairly and to deploy new consumer services more quickly.

(B) After the effective date of this act, no municipality or county may issue a cable franchise pursuant to Section 58-12-30. A municipality or county may continue to enforce existing cable franchises until they expire or are terminated pursuant to Section 58-12-325.

(C) This chapter occupies the entire field of franchising or otherwise regulating cable and video service and preempts any ordinance, resolution, or similar matter adopted by a municipality or county that purports to address franchising or otherwise regulating cable or video service.

HISTORY: 2006 Act No. 288, Section 2, eff May 23, 2006; 2007 Act No. 8, Section 1, eff March 30, 2007.

ARTICLE 2.

FRANCHISING BY MUNICIPALITIES AND COUNTIES

SECTION 58-12-10. Installation of cable over or beneath public lands, highways, roads or waters.

Any cable television company may, upon the approval of the governing body of the city or county, construct, maintain, and operate its cable over or beneath any of the public lands of this State, over, beneath, or along any of the highways or public roads of the State, or over or beneath any of the waters of the State; provided, that cable television companies shall, unless heretofore covered by court decree, where possible and practicable, enter into an agreement with a telephone company or electric power company whereby the cable television company has the right to attach its cables to the poles owned by the telephone company or electric power company, or to bury its cable beneath the ground in conduits owned by the telephone company or electric power company; provided, further, that such cable is constructed so as not to endanger the safety of persons or to interfere with the use of these public lands, highways, or public roads, or the navigation of these waters; provided, further, that the agency charged with the maintenance of these public lands, highways, or public roads, or waters of the State shall require that the cable television company obtain a permit prior to placing its cable over, under, or along these public lands, highways, or public roads, or waters; and, provided, further, that if both electrical and telephone

SECTION 58-12-310. Application for certificate; procedure.

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(C) Within five days of receipt of an application or amended application, the Secretary of State must notify each affected municipality and county of its receipt of the application or amended application and must request from each affected municipality and county: (1) the franchise fee rate imposed on the incumbent cable service provider, if any, as of the date of the application or amended application; (2) the number of public, educational, and governmental (PEG) access channels the municipality or county has activated under the incumbent cable provider's franchise agreement as of the date of the application or amended application; and (3) whether the municipality or county consents to the state-issued certificate of franchise authority sought in the application or amended application and, if such consent is denied, an explanation of the reasons for the denial of the requested consent. The notification must contain a copy of the application of the cable or video service provider including the description of the area to be served.

(D) A municipality or county must respond to a request issued by the Secretary of State pursuant to subsection (C) within sixty-five days of the date of such request. If a municipality or county does not timely respond with the franchise fee rate imposed on the incumbent cable service provider, if any, as of the date of the application or amended application, the franchise fee rate for the applicant in such municipality or county shall be two percent of gross revenue until the county or municipality provides a response and the Secretary of State issues an amended certificate of franchise authority containing a franchise fee in compliance with Section 58-12-330. If a municipality or county does not timely respond with the number of PEG access channels the municipality or county has activated under the incumbent cable provider's franchise agreement as of the date of the application or amended application or with a statement that it has not activated any PEG access channels under the incumbent cable provider's franchise agreement as of such date, the applicant shall not be required to provide any PEG access channels to the municipality or county until the municipality or county provides a response and the Secretary of State issues an amended certificate of franchise authority containing the number of PEG access channels to be provided to the municipality or county in compliance with Section 58-12-370. If a municipality or county denies consent or does not timely indicate its unconditional consent to the state-issued certificate of franchise authority sought in the application or amended application, the Secretary of State shall deny the application or amended application with regard to that municipality or county and shall note on the notice of denial that the reason for the denial was the refusal of the applicable municipality or county to grant consent. If the applicant takes the position that the denial of the application or amended application is actionable, it may seek any appropriate relief under state or federal law in state or federal court, and if the applicant takes the position that the denial of consent by the municipality or county is actionable, it may add the municipality or county denying consent as a party to such action. If the Secretary of State denies the application or amended application under the provisions of this subsection and the affected municipality or county subsequently indicates its unconditional consent to the state-issued certificate of franchise authority sought in the application or amended application, the Secretary of State must promptly issue an amended certificate of franchise authority that includes such municipality or county.

(E) Within eighty days after making the request described in subsection (C), the Secretary of State shall issue the applicant a certificate of franchise authority to operate as a cable or video service provider and the certificate shall contain the following:

(1) a nonexclusive grant of authority to provide cable or video service in the areas set forth in the application;

→ (2) a nonexclusive grant of authority to construct, maintain, and operate facilities along, across, or on public rights-of-way in the delivery of that service, subject to the laws of this State including the lawful exercise of police powers of the municipalities and counties in which the service is delivered;

(3) the franchise fee rate for each municipality or county described in the application in compliance with Section 58-12-330; and

(4) the number of public, educational, and governmental access channels to be provided upon request to each municipality or county described in the application, in compliance with Section 58-12-370.

(F) The certificate of franchise authority issued by the Secretary of State is fully transferable to a successor in interest to the applicant to which it is initially granted, provided that the successor in interest

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Any easement or right-of-way obtained after June 29, 1976, by the State or any political subdivision thereof for the purpose of constructing a highway or public road and any easement or right-of-way obtained by any telephone or electric power company from the owner of any land who had previously granted an easement to this State or any political subdivision thereof for the purpose of constructing a highway or public road upon such land to which the easement or right-of-way relates shall clearly set forth the possibility that the easement or right-of-way may be used in the future by cable television companies for the purposes provided in this chapter.

HISTORY: 1976 Act No. 688 Section 4.

SECTION 58-12-50. Penalties for violations; persons who may bring suit.

Any person erecting or maintaining any such cable in violation of the provisions hereof shall forfeit and pay as a penalty therefor the sum of five dollars per day for each day such default continues after he shall have been given thirty days written notice specifying the default or defect in the manner of erection, construction or maintenance thereof, to be recovered at the suit of any citizen of any county in which such violation occurs, or by the agency charged with the maintenance of the public lands, highways or public roads, or waters of the State. The sum so recovered, after paying therefrom all the expenses incurred in the prosecution of such suit, shall be paid into the treasury of the county in which the violation occurred or, if the violation occurred in more than one county, into the treasury of each county in which the violation occurred on a pro rata basis.

HISTORY: 1976 Act No. 688 Section 5.

SECTION 58-12-60. Damage to private property.

No cable television company may damage private property on which a utility pole is located without just compensation to the landowner for the damage suffered by the landowner's property.

HISTORY: 1976 Act No. 688 Section 6.

SECTION 58-12-70. Underground installations on private property; consent required.

No cable television company may install underground wires or other underground equipment on private property without the written consent of the property owner. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined one hundred dollars.

HISTORY: 1976 Act No. 688 Section 7.

SECTION 58-12-80. Fees payable by companies receiving benefits of grandfather clauses.

Any cable television company which shall receive the benefits of operating under the grandfather clauses contained in this chapter shall pay to the county governing body or municipality the same fees as would be charged to a new franchising company by the county or municipality.

HISTORY: 1976 Act No. 688 Section 8.

SECTION 58-12-90. Channel to be made available to Educational Television Commission.

I

6. All documents concerning Lee Endicott at your Charleston center who agreed to pay Mr. Powell, in front of his wife his doctor bills and was told he would have to wait several weeks to receive the check.

RESPONSE: Defendant objects to this request on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence, that it is ambiguous, vague, and as a result, unreasonably burdensome taking into account the needs of the case, the amount in controversy, and the issues at stake.

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- **OSHA:** Occupation, Safety, and Health Administration
- **PUPS:** Palmetto Utility Protection Service, Inc. (Now DBA SC811)
- RCE:** Resident Construction Engineer
- RME:** Resident Maintenance Engineer
- R/W:** Rights-of-Way
- SCDHEC:** South Carolina Department of Health and Environmental Control
- SUE:** Subsurface Utility Engineering
- TCP:** Traffic Control Plan

Chapter 2: Insurance Requirements

- 2.1. The permit applicant must obtain from a duly qualified insurance company or companies licensed to do business in South Carolina, comprehensive general liability insurance covering claims by Department and third parties for property damages and personal injury, including death, that may arise out of the applicant's work under the permit (whether performed by its own forces or its contractors or agent). This requirement may be satisfied through a self-insurance program for qualified permittees including local government entities. Government entities may also satisfy this requirement through their participation in the State Insurance Reserve Fund. Such insurance shall be issued on an occurrence-based not claims made basis, and in at least following amounts:
- - Each Occurrence - \$1,000,000
 - General Aggregate - \$2,000,000
 - Completed Operations - \$2,000,000
- 2.2. The Applicant shall provide, in a form acceptable to SCDOT, Certificate of Insurance showing SCDOT as a certificate holder and copies of the completed operations endorsements verifying that such insurance has been obtained.

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PCN: 30014201212122006444 DCN: 30014201212122006444003 Received Date/Time: 12/13/2012 7:00:00 AM

930 Folly Rd

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10- 6019
J/A NO.: 2013-CP-10- 13-1

Jack Powell,
Plaintiff,

vs.

Knology of Charleston Inc.
Defendant.

Plaintiff's
Motion to Recuse
Judge Dennis
For Cause

JULIE J. ARMSTRONG
CLERK OF COURT

2015 MAY -6 PM 3:08

FILED

Pro Se; Plaintiff Jack Powell moves to Recuse the Honorable Judge Dennis for engaging a biased and prejudiced attitude towards the Pro se, demonstrated with the following biased rulings and a personal insult by Judge Dennis.

Therefore requesting to cease all overseeing or ruling in any of the above cases including any previous and future Motions including Reconsiderations or Request to Proceed In forma Pauperis. Pro se request the matters to be heard by a Judge other than Judge Dennis pursuant to the doctrine of Johnson v. District Court, 674 P.2d 952 (1984).

On April 1st 2015 at 12:00 p.m., while in the hallway before meeting in Judge Dennis's chambers for a discussion about a trial date. Defendant Attorney Ben Davis had stated that he had put his Memorandum for MSJ in the mail that morning. Plaintiff was only notified of this because he had questioned, what happened to your Memorandum? Plaintiff asked how can I Respond in time when we are going to be in court in the morning at 9:30 and Mr. Davis responded with (shrugged shoulders). A few minutes later I told Judge Dennis about this and he said that it's no big deal because it's just the same issues.

Plaintiff appeared on 7-30-14 before Judge Dennis and he granted Summary Judgment for MUSC because the Plaintiff had not Responded to their Memorandum for Summary Judgment and this was in fact a big deal to Judge Dennis and it was a big deal to

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the Plaintiff because Knology entered different and new evidence in their behalf. The Plaintiff wasn't prepared to defend this tactic because of the ongoing evasive and improper Discovery responses by the Defendant.

On April 2nd 2015 before the Plaintiff's 2nd Motion for Summary Judgment Judge Dennis explains during a Motion to Compel Discovery, that he was going to make some rulings that will shake up Columbia concerning the failure to respond to Discovery, that ties up the Court. Judge Dennis also stated Attorney's receiving Motions on the same day of a hearing was improper and the Plaintiff again states the Memorandum being mailed the day before is also improper.

Then Plaintiff appeared before Judge Dennis concerning my Request for 2nd Motion for Summary Judgment against Knology and Plaintiff explained that the reason that I was denied my 1st SJ was because at the last minute the Defendant stated I hadn't proved 100% they owned the lines was because they haven't properly answered the Discovery and the Supplemental Admit and Production was supposed to be returned before this hearing.

Also the Plaintiff had submitted in his Motion for 2nd Summary Judgment that he had stated to Judge Jefferson that the Defendant did not Respond to his Memorandum and she did not enter a ruling about this non-response and Judge Dennis erred and exercised bias because he did not evoke his same ruling about non-response to the Memorandums. Then Judge Dennis ruled with bias and denied my Motion after ignoring his own statements and Rulings concerning Discovery and Response to Memorandums.

The next case during the Knology MSJ motioned by the Defendant, Judge Dennis asked the Defendant if the cable lines belong to Knology and they responded yes, then Judge Dennis stated that is an issue. Plaintiff had stated multiple times the Defendant has

not returned the Discovery and the Supplemental Admit and Production and Judge Dennis stated that I needed to Compel them and stated I already have in your court on 7-30-14. Then Dennis responded very firmly you need to be careful about what you say in my court and then said he will check and he did. I then stated I have here a document from Mr. Davis where he reminded me that you stated for me to send them Supplemental Discovery, which I did. Judge Dennis stated that I needed to supplement with a few specific Requests and I said there were only a few request made and were supposed to have already been returned. He looked at the Supplemental which included;

#6. All documents concerning Lee Endicott at your Charleston Center who agreed to pay Mr. Powell in front of his wife his Doctor bills and was told he would have to wait several weeks to receive the check.

Plaintiff submitted to Judge Dennis that the documents concerning Knology's manager Lee Endicott weren't produced and Plaintiff and his wife contacted their manager and offered Jack Powell \$ 2,900 for his Doctor bills which proves liability and ownership of the unburied cable lines and the next day the cable lines had been removed.

Then Judge Dennis asked if I had an affidavit concerning this matter and I said no because I was unaware the court would not believe this occurred and the Plaintiff had submitted multiple times the Defendant had not properly responded to Discovery and they were supposed to have already returned the Supplemental Request . Also, the Defendant didn't return the documents, but stated in their Response "the amount was in controversy " that proves this happened and if the Plaintiff had been allowed to Respond to their Memorandum, Judge Dennis would have had the evidence in his hand.

Dennis ruled with bias when requiring the Plaintiff to prove this visit occurred and

the cable lines had been removed when Judge Dennis should have submitted his shaking up Columbia by at least making the proper ruling by requiring the Defendant to produce the Supplemental Requested Discovery which he had in his hand right before he asked the Plaintiff if he had an affidavit concerning this visit which is still unanswered.

#6. All documents concerning Lee Endicott at your Charleston Center who agreed to pay Mr. Powell, in front of his wife his doctor bills and was told he would have to wait several weeks to receive the check.

or

#11. Documents stating dates when Knology or Sub-contractor came to the property at 930 Folly Rd. to bury, repair or remove the "2" unburied cable lines after 6-21-12.

or

#10. ADMIT; after Knology or sub-contractor was notified about the trip and fall injury of Mr. Powell, the cable lines were removed.

or

#15. ADMIT; the cable lines your technician or sub-contractor removed from 930 Folly Road after 6-21-12 belonged to Knology

Judge Dennis erred when he ruled with bias towards the Pro se because of the ongoing, relevant issues that are still in question and unanswered. Judge Dennis also exercised an obvious pattern of contempt by denying the In forma Pauperis litigant to re-file a Complaint that was approved by him originally and later he improperly dismissed. Judge Dennis denied the Plaintiff to proceed after the basically same financial information was submitted.

THIS COMPLAINT MADE TO SOUTH CAROLINA DISCIPLINARY BOARD

I Pro se, Jack Powell submit this complaint against Judge Dennis for making a biased and improper ruling when denying my Constitutional right as an indigent to access the courts to re-file a lawsuit against two companies he previously approved me for In forma Pauperis.

HISTORY

1. On 1-23-15 I re-filed one lawsuit against the Folly Oaks Center; Case #2014-CP-10-3819 and the Marshland Communities LLC., Case #2013-CP-10-5876. Judge Dennis previously approved me for In forma Pauperis in both of these suits, that he himself dismissed recently after denying me the right to enter any evidence in my behalf.
2. On 2-26-15 I called Judge Dennis's office to acquire why he had not ruled on my application for In forma Pauperis, which is usually done within a week.
3. On 3-6-15 I received a call that my application was denied about six weeks after my application was submitted.
4. Judge Dennis previously approved these cases for Pro se, In forma Pauperis Jack Powell with basically the same financial information submitted;

MUSC; Case #2013-CP-10-5351

Carolina Center for Occupational Health LLC.; Case #2013-CP-10-6567

Charleston County Detention Center; Case #2013-CP-10-7125

Charleston County Detention Center; Case #2014-CP-10-1561

Knology of Charleston Inc.; Case #2013-CP-10-6019

Charleston County EMS; Case #2013-CP-10-6566

Marshland Communities LLC.; Case #2013-CP-10-5876

Folly Oaks Center Condominium Unit Owners Association Inc.; #2014-CP-10-3819

EVENTS THAT INFLUENCED THE PATTERN OF BIASED CONDUCT. BEGINNING ON 7-30-14

1. I had been scheduled by the Clerks office to appear with 15 various motions which were mostly compel a response for discovery. I did not know after giving these Defendants 30 days to answer and then having to send them a 10 day notice to answer or I would compel them to court to answer, that I still had to call and basically beg these attorney's to respond properly. Of course during the first case Judge Dennis asked me if I had called them and I said no so he told me to go out in the hallway with all the Defendant's to make arrangements for them to send me my requested discovery.

Later that day during my compel for evasive answers against a local entity, I responded to an answer given by the Defendant which was I have proof right here this was an untruthful answer and Judge Dennis basically stated well, that's their answer which is an improper ruling considering the basis for the hearing. (I'm basically giving you this event from memory which may not be 100% accurate since I can't afford to buy

transcripts of the hearings.)

I did snicker or make a low noise of unbelief after he said this, considering the way he had already treated me that day. What I remember is he angrily asked me if I was laughing at the court and I said no and after I apologized to Judge Dennis he made an inflammatory and insulting remark about and to me which was "I'm laughing at you too" which he was referring to everyone in the court room and caused embarrassment, confusion and apprehension to attempt any furthering of my case because of being shut down and embarrassed again in a public setting.

2. During case 2013-CP-10-5351, Pro se Motion for Reconsideration where he entered the contempt by Judge Dennis. Also, Judge Dennis continued his biased conduct when he improperly cut Jack Powell off and granted Summary Judgment after I began with I had received zero Discovery so far in this case and MUSC attorney Jay Jones had entered an untruthful statement in his Supplemental Motion for Summary Judgment.

Case # 2013-CP-10-5351 stating; I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of my case because of being shut down and embarrassed again in a public setting.

3. During case 2014-CP-10-5876, I was not allowed to speak before Judge Dennis dismissed the 1st case against Marshland Communities.

4. During case 2014-CP-10-3819, I was not allowed to enter any argument, law or ordinances violated by the Folly Oaks Center before Judge Dennis dismissed the 1st case against them.

5. Defendant was Granted MSJ during the case 2013-CP-10-6567, Pro se entered in his Reconsideration; Judge Dennis again exercised a contemptuous attitude towards Pro se, Jack Powell by not allowing him to enter; any evidence, cite cases or engage in the argument of council, enter my jail video where I was being brought into the jail in a wheelchair after I had I been arrested by the MUSC Public Safety for Trespassing at the MUSC emergency room parking lot during discharge because I was unable to get out of my wheelchair because of pain and was later ruled to be a False Arrest.

Then Judge Dennis actually stated that my medical condition wasn't relevant, before I was angrily threatened out of my wheelchair by the Carolina Center for Occupational Health male nurse who was featured with two other couples at a MUSC Alumni party on their official Alumni website.

6. Case #2013-Cp-10-6567 has been Appealed to the S. C. Court of Appeals and listed on the last page of the Notice of Appeal is the same biased attitude and statements were entered as evidence as follows; Judge Dennis displayed contempt towards the Plaintiff and made an inflammatory personal attack by making an insulting statement about and to the Plaintiff in the courtroom which was; "I'm laughing at you too" that caused confusion and apprehension to attempt any furthering of his case because of the fear of being scrutinized and the Pro se was shut down and not allowed to enter any evidence in two cases the same day as the Summary Judgment on 11-5-14.

SUPPLEMENTAL INCIDENT ADDED TO COMPLAINT

On 4-7-15 Pro se, Jack Powell was again improperly Denied his right to proceed In forma Pauperis for the same case; Folly Oaks Center Condominium Unit Owners Association Inc. and Marshland Communities LLC that was submitted with the initial filing of this complaint.

Pro se included in this second denied Motion with a 1040 tax form that verifies that I fall well under the poverty line and it is obvious Judge Dennis doesn't have any respect for the Pro se or the courts procedures.

On 4-1-15 Plaintiff appeared outside of Judge Dennis's Chambers with the Defendant's Attorney and after I had asked, he told me he had put my Memorandum for Motion for Summary Judgment in the mail that morning. I then asked how can I Respond to this since we're supposed to be in court in the morning at 9:30 and he responded with (shrugged shoulders).

When we were in Judge Dennis's office I repeated this to him and he said it's no big deal because it is the just the same issues. Of course the next morning it was a big deal to me because the Defendant entered new evidence in their behalf and they were granted Summary Judgment by Judge Dennis because I had received very few proper Responses to Discovery and the Defendant wouldn't answer certain questions that proves their guilt which would have Denied their MSJ since their Discovery had been unanswered since they were compelled on 7-30-14 for Evasive Responses. I had properly submitted multiple times during the hearing the Defendant had not answered the questions which was an continuation of their improper evasive manner.

This Granted Motion happened about ten minutes after Judge Dennis had given a speech during a Compelled Discovery dispute about how he was going to start shaking up Columbia with his Rulings about failure to Respond to Discovery that ties up the Court and receiving motions on the same day of a hearing were improper. The ongoing failure to Respond in my case was much worse than the one he was giving Columbia his notice and I didn't even receive my Memorandum the day of the hearing.

The contempt for the Pro Se began on 7-30-14 when Judge Dennis insulted me and in case 2013-CP-10-5351 the Defendant was granted Summary Judgment because I did not Respond to their Memorandum and I didn't even know that I was supposed to Respond. If it wasn't a big deal why did he again behave in a biased manner by changing his position and again rule against me, no matter what the circumstances are.

CONCLUSION

Judge Dennis has in fact continued a biased attitude towards me and has acted improperly on several occasions, including this second denial to allow me to proceed with In forma Pauperis against the same two cases he had previously approved.

Unfortunately I've had to mention his bias along with his improper and very appealable rulings and it is obvious that Judge Dennis has displayed contempt towards me. But, I'm a Charleston citizen who has every right to complain about bad attitudes, bad people, file a lawsuit to stop abusive government agencies and I do in fact have the right to my fair day in court. This ruling should be studied, reversed and Judge Dennis should be cited for his abuse of power in the Charleston County 9th District Court.

Appeal to South Carolina Court of Appeals.

Appellant Pro se, Jack Powell enters this Appeal because of the mistakes made by Judge Dennis during the Motion for Summary Judgment that was granted on 11-5-14 to the Carolina Center for Occupational Health in the Charleston County 9th District Court of Common Pleas. Mistakes were made and entered in the Appellant's Response to Motion for Summary Judgment. Also, for the mistakes made during the Plaintiff's Motion for Reconsideration that was denied on 12-1-14 and mistakes made in the Order Granting Summary Judgment on 11-5-14.

1. During the Summary Judgment hearing, Judge Dennis made the mistake of stopping and not allowing the Plaintiff to enter the following;

A. The MUSC Doctor Instructions for "56" year old Plaintiff, Jack Powell. That revealed the true medical condition of the patient and how susceptible he was to the anger of the CCOH male nurse after he read and ignored the report.

B. The Citing of law.

C. The video when the Plaintiff entered the jail in a wheelchair. Reveals medical condition of patient being wheeled into the jail around 3:00 a.m. under the influence of drugs administered by the Emergency Room Doctor

2. Entered in the Order Granting Summary Judgment, Judge Dennis made the mistake of signing the Order because of the following;

A. The Defendant states; "Plaintiff admits that the Defendant's male nurse simply angrily

told Plaintiff to get out of the wheelchair without any actual offer of physical violence.

Plaintiff did not admit to this statement.

3. Judge Dennis made the mistake of granting Summary Judgment when there was a preponderance of relevant evidence entered by the Plaintiff that verified the following cited cases the Appellant Jack Powell tried to enter during the Motion for Summary Judgment hearing on 11-5-14; Brooker v. Silverthorne (1919), Mellen v. Lane (2008), Herring v Lawrence Co. (1952), Jones by Robinson v. Winn Dixie Greenville Inc. (1995) and Papa v. Brunswick (1987).

4. In the Plaintiff's Motion for Reconsideration, Judge Dennis made the mistake of Denying the Motion and the Plaintiff disputes the decision for the following reasons;

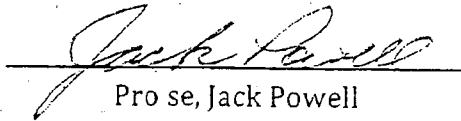
A. Wall, Templeton and Haldrup exercised an aggressive and angry manner towards the Plaintiff during their Deposition and also with attorney Jay Jones of Barnwell & Whaley who was present and was the attorney in the case involving Charleston County Detention Center where this same Appeal occurred on the morning of 6-22-12 and Mr. Jones was writing and sliding notes to the Defendant's attorney, to ask questions. RULE 60 (b) (3)

B. On 7-30-14 Pro se was facing "15" Motions and Judge Dennis displayed contempt towards the Plaintiff and made an inflammatory personal attack by making an insulting statement about and to the Plaintiff in the courtroom which was; "I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of his cases because of the fear of being scrutinized and the Appellant was shut down and not

allowed to enter any evidence during two cases that day. Also, Appellant was shut down and not allowed to enter any evidence in two cases the same day as the Summary Judgment 11-5-14. Plaintiff Jack Powell had made a complaint in his Reconsideration concerning Judge Dennis's contempt towards the Pro se.

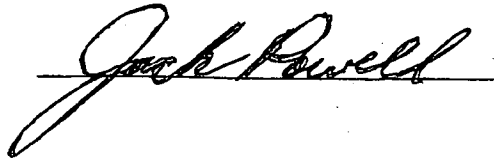
Appellant Pro se, Jack Powell requests the Honorable South Carolina Court of Appeals to Reverse the Decision made by Judge Dennis of the Court of Common Pleas, 9th District for his mistakes rendered because of contempt for Jack Powell.

Dated and Signed on 12-30-14


Pro se, Jack Powell

Wherefore, petitioner respectfully moves that Judge Dennis will remove and disqualify himself concerning any cases or rulings involving Pro Se, Jack Powell.

Dated & Signed on 5-6-15



STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Jack Powell,

vs.

Knology of Charleston Inc.

Defendant.

FILED

2015 MAR -2 PM 4:17

JULIE J. ARMSTRONG
CLERK OF COURT
Plaintiff,
BY 

K
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10-6019

PLAINTIFF'S INFORMAL
REQUEST TO THE COURT
FOR SECOND MOTION FOR
SUMMARY JUDGMENT

Please take notice Plaintiff, Jack Powell hereby respectfully submits this Motion for Second Summary Judgment because of new evidence and a court ordered Supplemental Request which will include conclusive evidence for Plaintiff to Informally Request the Court to reconsider it's ruling and schedule a new hearing. Plaintiff submits this Pursuant Le Francois v Goel (2005) 35 Cal. 4th 1094, 29 Cal. Rptr. 3d 249, the California Supreme Court resolved the question about reconsideration of failed motions for summary judgment Code of Civil Procedure Section 437(c)(f)(2).

Renewed motions are governed by Code Civ. Proc. 1008(b) [Deering's] [Stephen v. Enterprise Rent-A-Car (1991) 235 Cal. App. 3d 806, 816, 1Cal. Rptr. 2d 130; Graham v Hansen (1982) 128 Cal. App. 3d 965, 971, 180 Cal. Rptr. 604].

Summary Judgment was originally denied when Defendant questioned the ownership of the lines and now Plaintiff request the Court to grant another hearing because of new evidence that does in fact verify Knology's ownership of the unburied lines.

Also, Plaintiff will now submit new evidence that Knology violated crucial Charleston City Codes of Safety concerning proper and legal burial of their cable lines.

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NEW EVIDENCE
EXHIBIT A, Paragraph 2
EXHIBITS B, C, D & E

1. **ADMIT #10**, where Defendant admitted they removed their cable lines, "some point and time after the alleged injury" was entered as evidence four times in Plaintiff's Motion to Compel Evasive and Incomplete Responses filed on June 10, 2014. ADMIT #10 turned out to be one of three crucial pieces of evidence missing during the MSJ hearing that verifies Knology owned the unburied cable lines connected to their customers business at 930 Folly Rd, Units A & B and therefore will be properly answered during Plaintiff's Supplemental Request or Plaintiff will request the court to charge the Defendant with Contempt, Pursuant 56 (g) Affidavits Made in Bad Faith.

EXHIBIT A, 1st PARAGRAPH

On Jan. 20th 2015 Plaintiff emailed Defendants Attorney to remind him why he called on Jan 12th 2015. Defendant's Attorney stated he would call Plaintiff back in a couple of days to set up an appointment to come by and get the Discovery Plaintiff had requested in the e-mail on Jan. 9th 2015 and also inquire why he did not send more copies of Production and Admissions.

10. **ADMIT**; After Knology or Sub-contractor was notified about trip and fall injury of Mr. Powell the cable lines were removed or buried.

RESPONSE: The cable lines were removed at some point in time after the date of the alleged injury.

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Plaintiff enters Knology did not deny they were contacted about the Plaintiff's injuries and also they didn't deny they owned the unburied cable lines or removed the lines that were connected to their commercial accounts. Defendant knows exactly what day and time the lines were removed and the name of the Technician who performed this stealth removal. (without notifying their commercial account at the Folly Oaks Center)

EXHIBIT F, Paragraph 1

Defendant submitted Judge Dennis wanted the Plaintiff's Compel Defendant's Production & Admissions requests on 7-30-14 (that were filed as Evasive and Incomplete Responses) to be re-served as a Supplemental Requests.

NEW EVIDENCE, NO.2

PRODUCTION #7. The individual names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. on or after 6-21-12

RESPONSE: Defendant is in the process of evaluating it's records in an attempt to determine the information and documents responsive to this request, and will supplement this response upon reaching it's conclusion.

Plaintiff again submits Knology did not deny that owned or removed the cable lines. Also this Request was made about two months after the Complaint was filed and Defendant evasively did not answer. Now the Defendant has had about eight months to determine the name of the Knology technician who was ordered to drive in their company truck to 930 Folly Road to disconnect the unburied cable lines from their commercial accounts, units A

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& B. The Defendant performed a stealth disconnection while rolling up two cable lines over 100 feet each and disconnecting them from the telephone pole without any notification.

The Defendant was able to respond six months ago with the names of who were supposed to bury the lines back in 8-14-2006 and the Defendant was also able to give the technicians name that disconnected the same services to Units A & B on 6-8-2008 and 12-1-2009. BUT, Defendant states on Production #7 they "have to evaluate it's records" to determine who participated in this stealth removal. The complete and proper Response will be demanded in Plaintiff's Supplemental Admit & Production Request that was mailed on 2-20-15, which is to be properly returned within thirty days. **EXHIBITS G, H, I & J**

NEW EVIDENCE. NO. 3

PRODUCTION 8. Documents of the names of the company or contractor who removed or buried the cable lines on or after 6-21-12 at Folly Rd. and documentation of the work done that day. **DEFENDANT'S, RESPONSE: See Response 7.**

Again the Defendant doesn't respond properly and again Knology doesn't deny the unburied cable lines belonged to them and #8 will be properly answered by 3-22-15.

NEW EVIDENCE. NO. 4

Charleston SCDOT representatives Mr. Molinaroli and Mr. Curry stated to Plaintiff that Knology did not file for a permit to bury cable lines in the right of way.

UNDERGROUND CONDUITS, CABLES AND WIRES IN PUBLIC RIGHT OF WAY
Section 30-14-148 Application; filing of plans and specifications
Charleston City Code Article V11

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Any person duly authorized by the city council to run or lay underground conduits, ducts or pipes for electric conductors, cables or wires and desiring a permit as required in section 30-147 shall file with the department of public service an application therefore, with plans and specifications showing the location , routes and length of the proposed underground conduits, ducts or pipes. Such application shall be filed at least seventy-two (72) hours before the date scheduled for beginning of work, but in an emergency the department of public service shall waive a prior notice.

Section 30-151. Inspection of work by city: access of officials

The work of constructing any underground conduits, or laying any ducts, pipes, electrical conductors, cables wires under this article shall be subject to inspections by the department of public service, who shall have at all times free and unobstructed access to the conduits, ducts or pipes, electrical conductors, or cables for the purpose of making such inspection.

EXHIBIT K

Plaintiff was also instructed on 2-11-15 by Columbia SCDOT representative Linda McDonald to send a Freedom of Information Act to properly acquire these violations in Documented form and the FOIA request was also mailed on 2-20-15.

Also, Plaintiff had stated to Judge Jefferson during the hearing, along with multiple declarations that the Defendant did not respond to his Memorandum for Summary Judgment and also Judge Jefferson did not respond to this statement. Plaintiff submits

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Judge Jefferson may not have heard his statement and Plaintiff now submits this is a possible oversight and is a reason for the court to Reconsider it's Ruling since the Plaintiff recently had a case dismissed by Judge Dennis after he was over whelmed with 15 Motions on 7-30-14. Pro se didn't know he was supposed to Respond to MSJ and Pro se wasn't warned by the Clerks Office of this crucial procedure even after they had scheduled all of these Motions for the same day.

CONCLUSION

Plaintiff submits Defendant continues to exercise evasive tactics by returning copies of Motions that weren't even requested, while failing to properly return the crucial Discovery the Defendant's Attorney agreed to send. Defendant also tries to evade the context of why the Plaintiff originally made contact, which was to acquire the complete ADMIT #10 and copies of Admit & Production which included 7& 8. The Defendant agreed to send these copies and later insinuate they did return Admit & Production, but did not.

EXHIBIT F, 3rd PARAGRAPH

Defendant stated; "As a courtesy, I am reattaching both of your Motions to Compel (one as to my client's responses to your Requests for Admission and the other as to my client's responses to your Request for Production)".

This statement is confusing and the Defendant did not return, send or reattach Admissions or Production. Also, Plaintiff didn't ask for copies of his Motions to Compel.

EXHIBIT I & J

K

By 3-22-15 the Plaintiff will receive the technicians name that removed Knology's unburiel cable lines after they were notified of the Plaintiff's injury on 6-21-12 and documentation of the work they did that day. If the Defendant does not respond properly the Plaintiff will request the Honorable court to find the Discovery Responses admitted and Attorney charged with contempt of court Pursuant Rule 56 (g) Affidavits Made in Bad Faith.

Knology also violated state law when they negligently failed to properly file for a permit to bury the cable lines in the Right of Way. Therefore, Plaintiff submits his new evidence and also the new evidence that will be available by 3-22-15, which will be forwarded to the Court and will also be sufficient for the Honorable Court to grant the Plaintiff's Informal request for a new Hearing and granted Summary Judgment because Plaintiff has proven Knology's ownership of their unburiel cable lines connected to their accounts A & B.

EXHIBIT B

1. ADMIT; your cable lines were connected to the commercial building Folly Oaks Center located at 930 Folly Rd. running through the front yard, up and across the pedestrian right

RESPONSE: Defendant admits that it's cable line or lines were connected to the commercial building located at 930 Folly Road.

If Plaintiff is denied a new hearing, then he submits Discovery is completed and he is therefore ready for a jury trial.

Signed, Filed & Mailed on 3-2-15

Jack Lowell

Exhibit A

Shannon Cerone

From: Jack Powell <carolineschair@gmail.com>
Sent: Tuesday, January 20, 2015 5:10 PM
To: Ben Davis
Subject: Re: Court hearing

①

Ben I called you on Monday 1-12-15 at 4:20 p.m. and you told me you would call me back in a couple of days to set up an appointment for me to come by and get the Discovery I had requested in my e-mail on 1-9-15. It has now been eight days and also you did not send me more copies of Discovery I had asked for, along with other information I had asked for in my E-mail to be returned within ten days. I'm making this request for the last time before I contact the Clerks office about this matter. I assume 24 hours should be sufficient for you to call me and state your position on all of this .

②

On Fri, Jan 9, 2015 at 12:09 PM, Jack Powell <carolineschair@gmail.com> wrote:

This is Pro se, Jack Powell and i'm contacting you about responding properly to ADMIT #14, that you initially denied but reserved the right to supplement it's response following a reasonable opportunity to conduct discovery. Ben you have had a reasonable opportunity (over five months) to conduct discovery and i expect your answers within ten days for #14 and the following; #15, All Documents about procedures and safety standards to be followed by KNOLOGY employees and contractors concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property. You stated "Defendant will make available for inspection and copying these records to Plaintiff at the following location, after sufficiently reasonable advance notice is provided: 735 Johnnie Dodds Blvd. It's been over five months and I would like to come by next week to see these records." #16, Dates of when KNOLOGY or sub-contractors were on the property at 930 Folly Rd. from 1-1-12 to 6-25-12. and your RESPONSE: No Defendant employees visited the property between 1-12-12. and 6-21-12. Defendant reserves the right to supplement or amend this response as discovery progresses. Ben, again you have had over five months to determine when they were on the property between 6-21-12 and 6-25-12 which was also the the time in question that was requested, that you evaded. ALSO, unfortunately for me in court yesterday during my MSJ, about five months ago i had cut up your responses to Admit for preparing a Motion to Compell concerning Evasive Answers to 1, 2, 4, 7, 8, 12, 14 and i misplaced some of the Responses including your RESPONSE #10, that you admitted Knology had removed the cable lines at some point and time after the date of the alleged injury. If you don't mind i would like to get another copy of this Admissions request because i spilled coffee on mine and possibly all the Discovery Responses. I am also re-filing against the Folly Oaks Center and the Marshland Communities since in both cases they were dismissed even though i was not allowed to enter any evidence in my behalf by the same Judge who acted improper when he insulted me in court, 7-30-14. The first Doc.requested Folly Oaks is any other cable company that had service with units A & B after service was disconnected by KNOLOGY on 6-8-08 and 12-1-09 along with other evidence i failed to enter during my MSJ, this will satisfy the Judge next time of who owned the lines. Fortunately your replacement yesterday was treated fairly and I'm looking into the procedure of why my case against MUSC was awarded Summary Judgment because i did not Respond and when i did not know that i had to Respond and i told Judge Jefferson yesterday that you did not Respond and she did not even ask why you did not respond. I will send you a letter and you will receive it Monday, 1-12-15 to verify you received this E-mail that includes my notice to come by your office next week, I will also call you Monday to verify you got this E-mail. Thank you, Jack

On Tue, Jul 29, 2014 at 8:12 AM, Ben Davis <bdavis@mgclaw.com> wrote:

Mr. Powell,

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10- 6019

Jack Powell;

Plaintiff,

PLAINTIFF'S MOTION
TO COMPEL

vs.

Knology of Charleston Inc.

Defendant.

FILED
2014 JUN 10 PM 2:11
JULIE J. HARRIS
CLERK OF COURT

TO: KNOLOGY OF CHARLESTON INC. DEFENDANT.

Plaintiff, Pro Se; Jack Powell, hereby enters this Motion to Compel proper answers for "Request for Admissions" on the grounds the Defendant responded improperly. Plaintiff raised a number of deficiencies and evasive answers that should be considered a "Failure to Answer," Pursuant South Carolina Civil Procedure Rule 37(a)(2) and (a)(3).

DOCUMENTED "EVASIVE" ANSWERS. 1, 2, 4, 7, 8, 12, 14

The PLAINTIFF STATES; Defendants answers were EVASIVE because their information is in fact readily KNOWN & OBTAINABLE AT THE PRESENT TIME, proven by their own answers entered as Responses below;

1. ADMIT; your cable lines were connected to the commercial building Folly Oaks Center located at 930 Folly Rd, running through the front yard, up and across the pedestrian right of way.

RESPONSE: Defendant admits that its cable line or lines were connected to the commercial building located at 930 Folly Road. Defendant has made a reasonable inquiry into the reminder of the allegations set forth in Request 1, but at the present time, the information known or readily obtainable at the present stage of the discovery phase in this action is insufficient to enable either an admission or denial. Defendant therefore denies the reminder, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

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1. PLAINTIFF STATES; RESPONSE #13 by Defendant, service had been "CANCELLED FOR AT LEAST "6" MONTHS".

→ RESPONSE #10, Defendant ADMITS that they "REMOVED THE CABLE LINES" at some point in time after the date of the alleged injury. Reference photo (entered with Complaint) of '2" unburied cable lines and Knology ordered their own employees or contractors to remove their unburied cable lines that were connected to the building at 930 Folly Rd. The lines were connected to a telephone pole, only about a foot from busy Folly Rd. then the lines ran for about "30" feet through the pedestrian right of way and about a "100" feet through the front yard and connected to the left side of the building.

RESPONSE#12, Defendant ADMITS they believed the lines were ORIGINALLY INSTALLED PROPERLY.

AND; Title 58, Public Utilities & Carriers, S.C. Code of LAW Section 58-12-70; NO Cable Telephone Company may INSTALL UNDERGROUND WIRES on private property WITHOUT written CONSENT of property owner. Any person VIOLATING this section shall be deemed GUILTY of a misdemeanor.

2. ADMIT; these "2" unburied cable lines were supposed to be buried.

RESPONSE: Defendant objects to the term "supposed" in Request 2 to the extent it is ambiguous and not reasonably limited in time and scope. Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 2 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

2. PLAINTIFF STATES; Defendants response was Evasive when; SUPPOSE to bury the cable lines is ambiguous when even a lay person understands the Request. ALSO, according to the Knology guidelines, guarantees and Title 58, Public Utilities & Carriers, S.C. CODE of LAW SECTION 58-12-70 they are suppose to bury the cable lines after consent. ALSO; RESPONSE #12, Defendant ADMITS that Knology with INFORMATION and BELIEF that the lines were ORIGINALLY INSTALLED PROPERLY.

4. ADMIT; if Knology had been contacted about the "2" unburied cable lines, these lines would have been properly buried by Knology or sub-contractor.

RESPONSE: Denied. Defendant reserves the right to supplement this response once she and her counsel have had a reasonable opportunity to conduct discovery.

D
K

4. PLAINTIFF STATES; again using Defendants own RESPONSES TO #10, #12 and SC CODE OF LAW Title 58- Public Utilities & Carriers Section 58-12-70 evaded the proper Response.

7. ADMIT; that at least one of these unburied cable lines was lying on top of the ground for at least "2" months.

RESPONSE: Denied. Defendant reserves the right to supplement this response once she and her counsel have had a reasonable opportunity to conduct discovery.

7. PLAINTIFF STATES; Defendants answer was EVASIVE & INSULTING TO CIVIL PROCEDURE when DENYING the cable lines were lying on top of the ground for at LEAST "2" MONTHS when;

DEFENDANTS RESPONSE #13, ADMITS, at least one of the unburied cable lines service was cancelled for at least "6" MONTHS before the incident on 6-21-12.

→ RESPONSE #10, Defendant ADMITS they removed the cable lines after the alleged injury.

Also note: Photos entered into evidence.

8. ADMIT; that unburied cable lines running through the front yard of one of your customers and across a pedestrian right of way could be hazardous to their customers and pedestrians.

RESPONSE: Defendant has made a reasonable inquiry and the information known or readily obtainable by it at the present stage of the discovery phase in this action is insufficient to enable it to either admit or deny this request. Defendant reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

8. PLAINTIFF STATES; Defendants answer was Evasive because they have the information, reports of alleged injury, photo entered into evidence with Complaint, Charleston County EMS taking Plaintiff to MUSC and their own experience as a national company whether unburied cable lines are hazardous considering their own guarantees, guidelines, safety procedures and SC CODE OF LAW Title 58-Public Utilities & Carriers Section 58-12-70. PROVEN also by;

E K
→ RESPONSE #10 Knology ADMITS they removed the cable lines after the alleged injury.

RESPONSE #12 Knology ADMITS BELIEF that the lines were ORIGINALLY INSTALLED PROPERLY.

ALSO, Mr. Powell was investigated by an individual in his home and was questioned by their insurance company back in 2012.

12. ADMIT; according to local laws or procedures these "2" unburied cable lines were supposed to be buried.

RESPONSE: Defendant objects to the term "supposed" in Request 12 to the extent it is ambiguous and not reasonably limited in time and scope. Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 12 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

12. PLAINTIFF STATES; enters evidence same as Request #2.

14. ADMIT; when Knology or your sub-contractor leaves a cable line "unburied" running through the front yard of one of your customers, across a pedestrian right of way, Knology is responsible if someone trips over the line and injures themselves.

RESPONSE: Defendant objects to Request 14 to the extent it is not reasonably limited in time and scope. Subject to and without waving these objections, and with the understanding that Plaintiff intends for the hypothetical scenario set forth in his request to apply to this specific case, Defendant denies Request 14, but reserves the right to supplement its response following a reasonable opportunity to conduct discovery.

→ 14. PLAINTIFF STATES; RESPONSE #10 Defendant ADMITS they removed the cable lines at some point after the alleged injury.

NOTE; Knology removed these lines because they were NOT INSTALLED PROPERLY after they were contacted about an injury/incident and stated their BELIEF the lines were INSTALLED PROPERLY. This Request is not an hypothetical scenario, reference complaint

Jack Powell
January 21, 2015
Page 2

2) Pursuant to Rule 11, SCRPC, Judge Dennis strongly encouraged you to attempt to resolve your motions with opposing counsel in advance of the July 30, 2014 hearings, and in fact, tabled your motions to allow you time to step outside the courtroom into the hallway to conduct negotiations. During our meeting in the hallway, you and I specifically discussed my client's Response to Request for Production No 15. I objected to the Request on the grounds that it was overly broad, and after you and I had the chance to discuss, you ultimately agreed. During the hearing that followed, we placed this agreement on the record with Judge Dennis, who agreed that the appropriate next step would be for you to prepare more narrowly tailored requests and serve them as Supplemental Requests for Production. To date, you've not served the Supplemental Requests for Production. Once you do, I will of course be happy to take steps to gather the appropriate documents in response. Until that point, we will not have the appropriate documents available for review here at my office.

3) My client's Response to your Request for Production No. 16 was deemed appropriate, and it remains our position. To date, I have not discovered any new information that would lead me to amend or supplement this response.

Additionally, I understand from your email that you have misplaced, damaged, or otherwise lost some of the contents of your file. As a courtesy, I am reattaching both of your Motions to Compel (one as to my client's responses to your Requests for Admission and the other as to my client's responses to your Requests for Production).

In conclusion, both of the attached Motions were heard and resolved by Judge Dennis on July 30, 2014. According to your email, you are now re-raising some of the very same issues, and moreover, you are threatening to file additional Motions should I not comply with your demands. I hope this correspondence will now conclusively resolve these issues for you. I have now on two separate occasions been forced to dedicate significant time to addressing these issues, and given that the Court has already resolved them, I feel that is far more than adequate.

I look forward to working with you as the case moves forward, but I cannot continue to revisit these same issues. Should you proceed with refiling your motions, I will be forced to seek appropriate recourse in response.

Very truly yours,



Benjamin B. Davis

BBD/src
Enclosures

13.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON.

G K
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2013-CP-10-6019

JACK POWELL,

PLAINTIFF,

vs.

SUPPLEMENTAL
REQUEST FOR
PRODUCTION

KNOLOGY OF CHARLESTON INC,

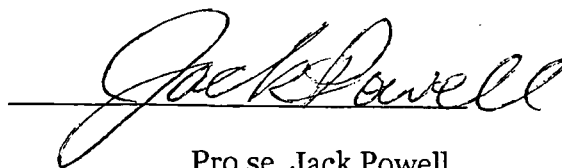
DEFENDANT,

TO: DEFENDANT, KNOLOGY OF CHARLESTON INC.

Pro Se Plaintiff, Jack Powell hereby propounds the following Supplemental Request for Production upon Defendant pursuant Rule 34 of the South Carolina Rules of Civil Procedure. The matters set forth below should be properly returned within thirty (30) days after the service hereof.

Plaintiff therefore propounds upon Defendant pursuant to the South Carolina Rules of Civil Procedure, Rule 36. Matters set forth below will be considered admitted unless the Defendant furnishes a response to the contrary within thirty (30) days after service hereof. Plaintiff will apply to the Court for an order requiring the Defendant to pay the Plaintiff reasonable expenses incurred in that proof, including reasonable attorney fees.

Dated & Mailed on 2-20-15


Pro se, Jack Powell

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PRODUCTION REQUEST

4. All documents of Mr. Powell's taped conversations, letters or correspondence of any kind with Knology, anyone, including your insurance companies.
6. All documents concerning Lee Endicott at your Charleston Center who agreed to pay Mr. Powell, in front of his wife his doctor bills and was told he would have to wait several weeks to receive the check.
7. The individuals names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. on or after 6-21-12.

DEFENDANT'S FIRST RESPONSE

RESPONSE: Defendant is in the process of evaluating it's records in an attempt to determine the information and documents responsive to this request, and will supplement this response upon reaching it's conclusion.

8. Documents of the names of the company or contractor who removed or buried the cable lines on or after 6-21-12 and documentation of the work done that day.

RESPONSE: See Response 7.

11. Documents stating dates when Knology or sub-contractor came to the property at 930 Folly Rd to bury, repair or remove the "2" unburied cable lines after 6-21-12.
15. All documents about procedures and safety standards to be followed by Knology employees and contractors concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I K
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2013-CP-10-6019

JACK POWELL,

Plaintiff,

vs.

SUPPLEMENTAL REQUESTS
FOR ADMIT

KNOLOGY OF CHARLESTON INC.,

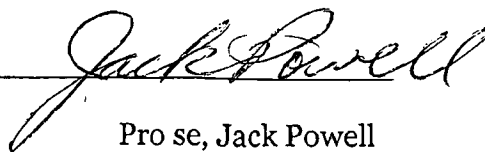
Defendant,

TO; KNOLOGY OF CHARLESTON INC., DEFENDANT

Plaintiff Pro Se; Jack Powell hereby propounds the following Request for Supplemental Responses to Admit upon Defendant that Judge Dennis ordered during Plaintiff's Compel hearing for Evasive and Incomplete on July 30, 2014. Plaintiff submits the Defendant has had more than sufficient time to respond properly.

Plaintiff therefore propounds upon Defendant pursuant to the South Carolina Rules of Civil Procedure, Rule 36. Matters set forth below will be considered admitted unless the Defendant furnishes a response to the contrary within thirty (30) days after service hereof. Plaintiff will apply to the Court for an order requiring the Defendant to pay the Plaintiff reasonable expenses incurred in that proof, including reasonable attorney fees.

Dated & Mailed on 2-20-15


Pro se, Jack Powell

16.

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J K

ADMISSIONS REQUEST

1. ADMIT; your cable lines were connected to the commercial building, the Folly Oaks Center located at 930 Folly rd. and running through the front yard and across the pedestrian right of way.
2. ADMIT; these "2" unburied cable lines were supposed to be buried.
7. ADMIT; that at least one of these unburied cable lines was lying on top of the ground for at least "2" months.
10. ADMIT; after Knology or sub-contractor was notified about the trip and fall injury of Mr. Powell, the cable lines were removed.

Defendant's First Response

RESPONSE; The cable lines were removed at some point and time after the date of the alleged injury

12. ADMIT; according to local laws and procedures these "2" unburied cable lines were supposed to be buried.

RESPONSE: Defendant objects to the term "supposed" in Request 12 to the extent that it is ambiguous and not reasonably limited in time and scope.

Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 12 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

15. ADMIT; the cable lines your technician or sub-contractor removed from 930 Folly Road after 6-21-12 belonged to Knology.

K

FREEDOM OF INFORMATION ACT

2-20-15

I Jack Powell request with the Freedom of Information Act the South Carolina Department of Transportation to return the following within 30 days, because of a priority matter concerning a civil matter.

According to Knology's work order for 8-14-06 and from Discovery they connected services to units A & B at 930 Folly Road and then crossed the right of way with their two lines and connected them to a telephone pole. Jack Powell was told by SCDOT representatives that Knology did not acquire the proper permits for this action.

FOIA REQUEST; I need a copy of the permits that were acquired by Knology or a statement from the SCDOT that Knology did not acquire permits and what state, county and/or city laws or ordinances that were violated by their failure to comply.

Your office will be e-mailed and/or called on Monday the 23rd to verify the delivery of this request and this information should be sent to the following address; Thank you, Jack

1402 Camp Rd. Unit 8-A
Charleston S.C. 29412

(843)952-4762

Dated & Mailed on 2-20-15

Jack Powell

18.

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Jack Powell,

Plaintiff,

vs

Knology of Charleston Inc.
Defendant.

FILED

2015 APR 13 PM 4:32

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10-6019

PLAINTIFF'S
MOTION FOR
RECONSIDERATION

TO: DEFENDANT, KNOLOGY OF CHARLESTON INC.

Pro se, Plaintiff hereby request the Honorable Court to Grant this Motion for Reconsideration on the grounds that Judge Dennis erred in his decision. The Plaintiff has listed below multiple reasons for the Granting of this Reconsideration.

On April 1st 2015 at 12:00 p.m., while in the hallway before meeting in Judge Dennis's chambers for a discussion about a trial date. Defendant Attorney Ben Davis had stated that he had put his Memorandum for MSJ in the mail that morning. Plaintiff was only notified of this because he had questioned, what happened to your Memorandum? Plaintiff asked how can I Respond in time when we are going to be in court in the morning at 9:30 and Mr. Davis responded with (shrugged shoulders). A few minutes later I told Judge Dennis about this and he said that it's no big deal because it's just the same issues.

Plaintiff appeared on 7-30-14 before Judge Dennis and he granted Summary Judgment for MUSC because the Plaintiff had not Responded to their Memorandum for Summary Judgment and this was in fact a big deal to Judge Dennis and it was a big deal to the Plaintiff because Knology entered different and new evidence in their behalf. The Plaintiff wasn't prepared to defend this tactic because of the ongoing evasive and improper Discovery responses by the Defendant, as noted below.

EXHIBIT A

On March 13th 2015 Mr. Davis asked me to continue the scheduling of a jury roster selection for trial, because the time would allow us to tie up some loose ends on some outstanding discovery issues for Discovery. Being a Pro se I try to be fair and agreed because Mr. Davis was stating truthfully about his intentions and he had led me to believe that he was going to properly Respond to my Supplemental Admit & Production Request that was still unanswered since 7-30-14. The Defendant appeared for the Compelled unreturned Production & Evasive Admit and Ben Davis returned the Production in the hallway and Plaintiff later discovered after the Hearing he had not properly included documents and answers that are still unanswered.

A couple of days later during a telephone call, I agreed to postpone the jury selection for the need for more Discovery and the next day on the 16th Ben Davis improperly filed his Motion for Summary Judgment only to evade a proper Response to the Supplemental Admit and Production he had not properly returned and never returned, which Mr. Davis himself had stated; ordered to be submitted by Judge Dennis on 7-30-14.

EXHIBIT B

On Sep. 18th 2014 I sent an e-mail asking what had happened to the Discovery Mr. Davis was going to send me, that was discussed at court on 7-30-14.

EXHIBIT C

On Jan. 9th 2015 Plaintiff sent Defendant an e-mail discussing Discovery and notifying a visit to inspect and copy records which Mr. Davis never allowed. Also, on Jan. 12th Plaintiff e-mailed and asked why the Defendant did not return the call that he stated he would make, concerning unreturned Discovery.

EXHIBIT D

On March 23rd 2015 Mr. Davis returns the Supplemental Requests and states; on July 30th 2014 Judge Dennis presided and denied my motion, but Judge Dennis only heard one Compelled evasive Admit, then denied. The Document request wasn't denied because he returned them in the hallway. But, Davis tries to confuse the facts by stating in my Supplemental Request for Admit and Documents they were simply reasserted no's 4, 6, 7, 8, 11 and 15. No's. 4-11 are still unanswered and Admit 15 is NOT a reassertion from the original Admit request.

EXHIBITS E - H

#15. ADMIT; the cable lines your technician or sub-contractor removed from 930 Folly Road after 6-21-12 belonged to Knology.

The Defendant has continuously exercised a pattern of unreturned Discovery even after being Compelled to court. Admit & Production are still improperly answered and are in fact an issue of unknown and relevant facts that allowed the Defendant to survive the Plaintiff's Motion for Summary Judgment with their last statement which was, the Plaintiff hasn't proven ownership of the lines and the only reason this hasn't been proven is because the Defendant has been allowed to evade proper Responses to Discovery.

Also, Defendant has not submitted one response or statement of any kind denying they owned the cable lines, especially after the Defendant admitted after 6-21-12 manager Lee Endicott was called and the lines were removed. **EXHIBITS I-M** The Admit #10 was submitted five times as evidence in the previous Compelled Evasive Responses.

On April 2nd 2015 before the Defendant's Motion for Summary Judgment Judge

Dennis explains during a Motion to Compel Discovery, that he was going to make some rulings that will shake up Columbia concerning the failure to respond to Discovery, that ties up the Court. Judge Dennis also stated Attorney's receiving Motions on the same day of a hearing was improper and the Plaintiff again states the Memorandum being mailed the day before is also improper.

During the hearing Judge Dennis asked the Defendant if the cable lines belong to Knology and they responded yes, then Judge Dennis stated that is an issue. Plaintiff had stated multiple times the Defendant has not returned the Discovery and the Supplemental Admit and Production and Judge Dennis stated that I needed to Compel them and stated I already have in your court on 7-30-14. Then Dennis responded very firmly you need to be careful about what you say in my court and then said he will check and he did. I then stated I have here a document from Mr. Davis where he reminded me that you stated for me to send them Supplemental Discovery, which I did.

Judge Dennis stated that I needed to supplement with a few specific Requests and I said there were only a few request made and later he asked the Plaintiff if he has proof that Knology owned the lines and I responded I'm unable to prove 100% because they want answer Discovery.

EXHIBIT N

Plaintiff submitted to Judge Dennis that the documents concerning Knology's manager Lee Endicott weren't produced, which proves liability and ownership of the unburied cable lines.

6. All documents concerning Lee Endicott at your Charleston center who agreed to pay Mr. Powell, in front of his wife his doctor bills and was told he would have to wait several weeks to receive the check.

RESPONSE: Defendant objects to this request on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence, that it is ambiguous, vague, and as a result, unreasonably burdensome taking into account the needs of the case, the amount in controversy, and the issues at stake.

Judge Dennis asked if I had an affidavit concerning this matter and I said no. Because I was unaware the court would not believe this occurred. The Defendant had already stipulated that it had happened in their response when they stated; "the amount in controversy.

Also, the Plaintiff submitted to the Court that Knology was breaking the law from day one.

**SCDOT Encroachment Permit
EXHIBIT O**

The District #6 Engineering Administrator's office has advised that they have searched their Encroachment Permit database and find no permits that were issued to Knology in August of 2006.

Knology hasn't returned any documentation to prove this is not a fact. From day one Knology was breaking the law at 930 Folly Road by illegally dropping two of their cable lines in the Right of Way and connecting them to a telephone pole. Any entrance of statements by the Defendant without actual documentation of proof should not be considered and until the Discovery is properly answered in court.

CONCLUSION
EXHIBIT P

A. On 8-14-06 the Defendant had an **EXPEDITED ASAP** order for **Drop** from Pole to Meter for Unit "A" and also service for Unit B was added after it was already stated that there was a **concern** about a sprinkler system and the Defendant did not submit any results about how they resolved the concern or a work order that was submitted by who or if Knology actually ran a digging machine about 100 feet through the front yard and across the right of way. If the Defendant had done so, they would have submitted this crucial evidence during the Plaintiff's Motion for Summary Judgment.

EXHIBIT Q

B. The Defendant Admits The Unburied Cable Lines Belonged To Them.

12. The customer business names and addresses of each unit at 930 Folly Rd. that the "2" unburied cable lines were contracted to.

Unit A was disconnected on 6-8-08 and unit B was disconnected on 12-1-09. Plaintiff submits the lines were abandoned by Knology and they are still responsible for their negligent act of failing to bury and remove their lines after disconnection.

EXHIBIT R

C. On 6-21-12 Mr. Powell tripped over the Drop/Pole to Meter unburied cable lines near the telephone pole, beside busy Folly Road that were still physically connected to the same units "A" & "B".

D. Defendant Admitted liability when their Charleston store manager offered Jack Powell \$2,900 to help pay his Doctor bills and then state the amount in controversy which is another unresolved issue caused by the improperly Responded Discovery.

EXHIBIT S

E. In RESPONSE #'s 7 & 8; Knology did not deny the cable lines belonged to them.

EXHIBIT T

F. The dispute of material fact also exists because of the Production #15.

#15. All documents about procedures and safety standards to be follow by Knology
employees and contractors concerning setting up, burying, connecting, maintaining and
inspecting cable lines on commercial property.

Were never Produced and Plaintiff wasn't allowed to inspect at the Attorney's office.

EXHIBIT C

G. Again crucial issues are unresolved and the Plaintiff was never allowed to come to the Attorney's office at 735 Johnnie Dodds Blvd, to inspect and copy the records. The Defendant is improperly evasive and will not answer Discovery and this is why the Plaintiff was unable to answer Judge Dennis with 100% proof that Knology owned the lines at their account on Folly Road. Also, Plaintiff submitted to Judge Dennis that there was enough evidence for a jury to decide.

EXHIBIT U

H. #16. Dates of when Knology or sub-contractors were on the property at 930 Folly Rd. from 1-1-12 to 6-25-12.

RESPONSE: No Defendant employees visited the property between 1/1/12 and 6/21/12.

Defendant reserves the right to supplement or amend this response as discovery progresses.

I. Defendant evasively changed the question, the 25th not the 21st.

J. After 12 days, Mr. Davis's Memorandum **hasn't** arrived!

PLAINTIFF SUBMITS; Knology recklessly breached their professional duty when they failed to acquire a Encroachment permit and failed to exercise reasonable care and protect pedestrian Jack Powell from harm when they also violated:

South Carolina Code of Laws
Title 58 – Public Utilities, Services and Carriers
EXHIBIT V

SECTION; 58-12-10 Installation of cable over or underneath public lands, highways roads or waters. STATES; provided further, that such cable is constructed so as not to endanger the safety of persons or to interfere with the use of these public lands, highways or public roads.

EXHIBIT W

SECTION: 58-12-310 (e)(2) a nonexclusive grant of authority to construct, maintain and operate facilities along, across or on public right of way in the delivery of that service subject to the laws of this state including the lawful exercise of police powers of the municipalities and counties in which the service is delivered.

EXHIBIT X

SECTION 58-12-50. Penalties for Violations; Persons Who May Bring Suit.

Any person erecting or maintaining any such cable in violation of the provisions hereof shall forfeit and pay as a penalty therefore the sum of five dollars per day for each day such default continues after he shall have been given thirty days written notice specifically the default or defect in the manner of erection, construction or maintenance thereof, to be recovered at the suit of any citizen of any county in which such violation occurs.

EXHIBIT X

SECTION 58-12-70; Underground installations on private property, consent required.

No television cable company may install underground wires or other underground equipment on private property without written consent of the property owner. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined one hundred dollars. Also, Section 58-12- 50, Penalties for violations who may bring suit.

EXHIBIT Y

SECTION 30-151 Inspection of work by city; access of officials.

The work of constructing any underground conduits, of laying any ducts, pipes, electrical conductors, cables of wires under this article shall be subject to inspection by the department of public service, who shall have at all times free and obstructed access to the conduits, ducts or pipes, electrical conductors or cables for the purpose of making such inspection.

Therefore Knology exercised Gross Negligence, Breach of Duty and Negligent Supervision of Employees & Sub-contractors when failing to bury their cable lines that were negligently trespassing across County property and the public Right of Way.

The Defendant broke and/or violated multiple South Carolina & SCDOT laws and exercised an evasive and improper manner when intentionally not answering or returning relevant Discovery. Judge Dennis was informed multiple times the Defendant has not answered properly or they have answered evasively since July 30th 2015 when we appeared before him almost nine months ago. Pursuant Rules 37 (a)(3), 37 (e), 26 (f) and 26 (b)(1)

Judge Dennis erred with his decisions and procedures during the hearing and also allowed the Defendant to continue their improper pattern of Discovery that did in fact

enable the Defendant to be granted Summary Judgment.

The unsuspecting 56 year-old Mr. Powell suffered emotional & physical harm when he tripped over Knology's unburied cable line in the Right of Way and was knocked unconscious when his head violently struck the ground and he suffered a traumatic experience and injured his head, neck, shoulder and knee.

Because of the unanswered and unproduced Discovery the Plaintiff submits the court erred in their decision because of the preponderance of unexplained relevant dispute of material facts.

Ned v Hertz Corp. 356 So. 2d 1074. (La. App. 4 Cir. 1978)

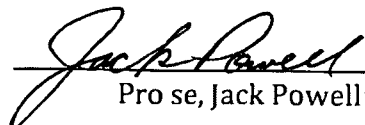
The Burden is met only when the evidence indicates that the Defendants negligence was the most probable or likely cause of the occurrence and that no other factor can reasonably be ascribed as the cause of the incident.

**HURST V. EAST COAST HOCKEY LEAGUE INC. 371
S.C. 33, 37, 637 S.E. 2 D. 560, 562 (2006)**

In order to prove negligence a Plaintiff must show;

1. Defendant owes a duty of care to the Plaintiff.
2. Defendant breached the duty by a negligent act or omission.
3. Defendant's breach was the actual and proximate cause of the Plaintiff's injury.

Signed & Filed on 4-13-15


Pro se, Jack Powell



Jack Powell <carolineschair@gmail.com>

Jack Powell v Knology; Chas CP Jury Roster 2013-6019

1 message

Ben Davis <bdavis@mgclaw.com>

Fri, Mar 13, 2015 at 4:03 PM

To: "Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)" <MDennisLC@sccourts.org>

Cc: "Caroline Crisler, Leonard" <cleonard@charlestoncounty.org>, "Jack Powell (carolineschair@gmail.com)" <carolineschair@gmail.com>

Good afternoon, Lindsey.

I represent the Defendant in the above case, and have cc'd pro-se Plaintiff, Jack Powell. The case appeared on the short list for next week's jury term in Charleston County, and was called at this morning's roster meeting. I had hoped to be able to confer with Mr. Powell in person to discuss a potential consent scheduling order, but Mr. Powell did not attend in person or appear electronically. As a result, the case was added to the roster in the #8 position, but only in anticipation that Caroline or I would hear back from Mr. Powell this afternoon.

Mr. Powell has yet to reply to Caroline's email, so I am unable to speak on his behalf about his readiness for trial. In hopes of obtaining some finality for planning purposes before heading into the weekend, I felt it best to go ahead and express my desire that the case be continued for another 45-60 days. I believe that time would allow us to tie up some loose ends on some outstanding discovery issues, and perhaps would allow time for recently-filed motions to be heard and decided which, depending on the outcome, may preclude the need for trial.

Recognizing again that I am unable to comment on whether or not Mr. Powell would be willing to consent to this request, I am hoping Judge Dennis may be able to provide us with some direction.

Thanks very much.

Ben Davis

**Ben Davis, Attorney**

bdavis@mgclaw.com
735 Johnnie Dodds Blvd. Ste 200
Mt. Pleasant, SC 29464
Main: 843-576-2900 | Direct: 843-576-2920 | Fax: 843-534-0605
VCARD | BIO

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Please consider the environment before printing this email.

62

B
Jack Powell <carolineschair@gmail.com>**Discovery**

2 messages

Jack Powell <carolineschair@gmail.com>
To: bdavis@mgclaw.com

Thu, Sep 18, 2014 at 3:22 PM

This is Jack Powell, what happened to the Discovery you were going to send me that we discussed at court on 7-30-14?

Ben Davis <bdavis@mgclaw.com>
To: Jack Powell <carolineschair@gmail.com>

Thu, Sep 18, 2014 at 3:43 PM

Mr. Powell,

If you will recall, I served you with our responses via hand delivery before the motions hearings. I believe there was some discussion about certain business records you were interested in. The final conclusion was that you planned to prepare and serve amended/supplemental requests for production identifying the records you were interested in obtaining with more specificity. Since that time, I've not received any amended/supplemental requests from you. I can tell you that we have supplemented our discovery responses to you with additional records we have obtained (once on 8/15 and again on 9/3).

Ben Davis

From: Jack Powell [mailto:carolineschair@gmail.com]
Sent: Thursday, September 18, 2014 3:22 PM
To: Ben Davis
Subject: Discovery

This is Jack Powell, what happened to the Discovery you were going to send me that we discussed at court on 7-30-14?

63

C

Shannon Cerone

From: Jack Powell <carolineschair@gmail.com>
Sent: Tuesday, January 20, 2015 5:10 PM
To: Ben Davis
Subject: Re: Court hearing

Ben I called you on Monday 1-12-15 at 4:20 p.m. and you told me you would call me back in a couple of days to set up an appointment for me to come by and get the Discovery I had requested in my e-mail on 1-9-15. It has now been eight days and also you did not send me more copies of Discovery I had asked for, along with other information I had asked for in my E-mail to be returned within ten days. I'm making this request for the last time before I contact the Clerks office about this matter. I assume 24 hours should be sufficient for you to call me and state your position on all of this .

On Fri, Jan 9, 2015 at 12:09 PM, Jack Powell <carolineschair@gmail.com> wrote:

This is Pro se, Jack Powell and i'm contacting you about responding properly to ADMIT #14, that you initially denied but reserved the right to supplement it's response following a reasonable opportunity to conduct discovery. Ben you have had a reasonable opportunity (over five months) to conduct discovery and i expect your answers within ten days for #14 and the following: #15, All Documents about procedures and safety standards to be followed by KNOLOGY employees and contractors concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property. You stated "Defendant will make available for inspection and copying these records to Plaintiff at the following location, after sufficiently reasonable advance notice is provided: 735 Johnnie Dodds Blvd. It's been over five months and I would like to come by next week to see these records. #16, Dates of when KNOLOGY or sub-contractors were on the property at 930 Folly Rd. from 1-1-12 to 6-25-12. and your RESPONSE: No Defendant employees visited the property between 1-12-12 and 6-21-12. Defendant reserves the right to supplement or amend this response as discovery progresses. Ben, again you have had over five months to determine when they were on the property between 6-21-12 and 6-25-12 which was also the the time in question that was requested, that you evaded. ALSO, unfortunately for me in court yesterday during my MSJ, about five months ago i had cut up your responses to Admit for preparing a Motion to Compell concerning Evasive Answers to 1, 2, 4, 7, 8, 12, 14 and i misplaced some of the Responses including your RESPONSE #10, that you admitted Knology had removed the cable lines at some point and time after the date of the alleged injury. If you don't mind i would like to get another copy of this Admissions request because i spilled coffee on mine and possibly all the Discovery Responses. I am also re-filing against the Folly Oaks Center and the Marshland Communities since in both cases they were dismissed even though i was not allowed to enter any evidence in my behalf by the same Judge who acted improper when he insulted me in court, 7-30-14. The first Doc.requested Folly Oaks is any other cable company that had service with units A & B after service was disconnected by KNOLOGY on 6-8-08 and 12-1-09 along with other evidence i failed to enter during my MSJ, this will satisfy the Judge next time of who owned the lines. Fortunately your replacement yesterday was treated fairly and I'm looking into the procedure of why my case against MUSC was awarded Summary Judgment because i did not Respond and when i did not know that i had to Respond and i told Judge Jefferson yesterday that you did not Respond and she did not even ask why you did not respond. I will send you a letter and you will receive it Monday, 1-12-15 to verify you received this E-mail that includes my notice to come by your office next week, I will also call you Monday to verify you got this E-mail. Thank you, Jack

On Tue, Jul 29, 2014 at 8:12 AM, Ben Davis <bdavis@mgclaw.com> wrote:

Mr. Powell,

D

Reply To
BENJAMIN B. DAVIS
Direct Dial: (843) 576-2920
bdavis@mgclaw.com

March 23, 2015

VIA U.S. MAIL

Jack Powell
1402 Camp Road Unit 8-A
Charleston, South Carolina 29412

RE: Jack Powell v. Knology of Charleston Inc.
Civil Action No.: 2013-CP-10-6019 (Charleston)
Date of Incident: June 21, 2012
Carrier Claim No.: YVC KL 99682
MGC File No.: 2071.13109

Dear Mr. Powell:

I am in receipt of captioned documents you have titled as Supplemental Requests for Admit (hereinafter "RFA's") and Supplemental Requests for Production (hereinafter "RFP's"). Despite the fact that you have captioned these as Supplemental RFA's and Supplemental RFP's, it appears you have simply reasserted selections from your original RFA's and RFP's.

Specifically, your Supplemental RFA's simply reassert your original RFA's numbers 1, 2, 7 10, 12, and 15. In response, I would refer you to Defendant's original corresponding responses. As you have referenced, you already challenged the sufficiency of Defendant's Responses via motion, and Judge Dennis presided over the hearing back on July 30, 2014. It appears you have once again misrepresented the outcome of the hearing. Judge Dennis denied your motion.

In regards to your Supplemental RFP's, you have simply reasserted selections from your original RFP's, including numbers 4, 6, 7 8, 11, and 15. In response, I would refer you to Defendant's original Responses to your Requests for Production.

Finally, I am enclosing a copy of my January 21, 2015 correspondence to you, wherein I address these very same issues in more detail.

Very truly yours,

BBD

Benjamin B. Davis

BBD/src
Enclosure

65

#s
10 & 15
were
NOT
included
in
the
hearing

ACTUALLY, IT WAS 1, 2, 4, 7, 8, 12 & 14

NEVER GOT DOCUMENTS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2013-CP-10-6019

JACK POWELL,

Plaintiff,

vs.

SUPPLEMENTAL REQUESTS
FOR ADMIT

KNOLOGY OF CHARLESTON INC.,

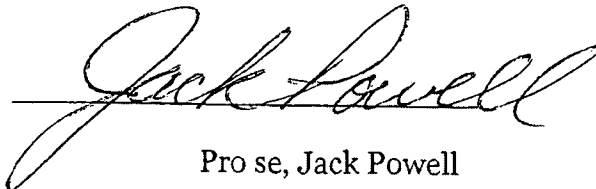
Defendant,

TO; KNOLOGY OF CHARLESTON INC., DEFENDANT

Plaintiff Pro Se; Jack Powell hereby propounds the following Request for Supplemental Responses to Admit upon Defendant that Judge Dennis ordered during Plaintiff's Compel hearing for Evasive and Incomplete on July 30, 2014. Plaintiff submits the Defendant has had more than sufficient time to respond properly.

Plaintiff therefore propounds upon Defendant pursuant to the South Carolina Rules of Civil Procedure, Rule 36. Matters set forth below will be considered admitted unless the Defendant furnishes a response to the contrary within thirty (30) days after service hereof. Plaintiff will apply to the Court for an order requiring the Defendant to pay the Plaintiff reasonable expenses incurred in that proof, including reasonable attorney fees.

Dated & Mailed on 2~~20~~-15


Pro se, Jack Powell

66

ADMISSIONS REQUEST

1. ADMIT; your cable lines were connected to the commercial building, the Folly Oaks Center located at 930 Folly rd. and running through the front yard and across the pedestrian right of way.
2. ADMIT; these "2" unburied cable lines were supposed to be buried.
7. ADMIT; that at least one of these unburied cable lines was lying on top of the ground for at least "2" months.

✓ 10. ADMIT; after Knology or sub-contractor was notified about the trip and fall injury of Mr. Powell, the cable lines were removed.

Defendant's First Response

RESPONSE; The cable lines were removed at some point and time after the date of the alleged injury

12. ADMIT; according to local laws and procedures these "2" unburied cable lines were supposed to be buried.

14. ADMIT; when Knology or sub-contractor leaves a cable line "unburied" running through the front yard of your customer Folly Oaks Center and across the pedestrian right of way, Knology is responsible if someone trips over the lines and injures themselves.

✓ 15. ADMIT; the cable lines your technician or sub-contractor removed from 930 Folly Road after 6-21-12 belonged to Knology.

16. ADMIT;

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SUPPLEMENTAL
REQUEST FOR
PRODUCTION

TO: DEFENDANT, KNOLOGY OF CHARLESTON INC.

Pro Se Plaintiff, Jack Powell hereby propounds the following Supplemental Request for Production upon Defendant pursuant Rule 34 of the South Carolina Rules of Civil Procedure. The matters set forth below should be properly returned within thirty (30) days after the service hereof.

68

H

PRODUCTION REQUEST

4. All documents of Mr. Powell's taped conversations, letters or correspondence of any kind with Knology, anyone, including your insurance companies.

✓ 6. All documents concerning Lee Endicott at your Charleston Center who agreed to pay Mr. Powell, in front of his wife his doctor bills and was told he would have to wait several weeks to receive the check.

7. The individuals names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. on or after 6-21-12.

DEFENDANT'S FIRST RESPONSE

RESPONSE: Defendant is in the process of evaluating it's records in an attempt to determine the information and documents responsive to this request, and will supplement this response upon reaching it's conclusion.

8. Documents of the names of the company or contractor who removed or buried the cable lines on or after 6-21-12 and documentation of the work done that day.

RESPONSE: See Response 7.

✓ 11. Documents stating dates when Knology or sub-contractor came to the property at 930 Folly Rd to bury, repair or remove the "2" unburied cable lines after 6-21-12.

15. All documents about procedures and safety standards to be followed by Knology employees and contractors concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property.

69

I

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10- 6019

Jack Powell,

Plaintiff,

PLAINTIFF'S MOTION

TO COMPEL

vs.

Knology of Charleston Inc.

Defendant.

BY

JULIE J. HARRIS
CLERK OF COURT

2014 JUN 10 PM 2:13

FILED

TO: KNOLOGY OF CHARLESTON INC. DEFENDANT.

Plaintiff, Pro Se; Jack Powell, hereby enters this Motion to Compel proper answers for "Request for Admissions" on the grounds the Defendant responded improperly. Plaintiff raised a number of deficiencies and evasive answers that should be considered a "Failure to Answer," Pursuant South Carolina Civil Procedure Rule 37(a)(2) and (a)(3).

OR #10
↓

DOCUMENTED "EVASIVE" ANSWERS. 1.2.4.7.8.12.14

NOT Production
10-15 & 16
←

The PLAINTIFF STATES; Defendants answers were EVASIVE because their information is in fact readily KNOWN & OBTAINABLE AT THE PRESENT TIME, proven by their own answers entered as Responses below;

1. ADMIT; your cable lines were connected to the commercial building Folly Oaks Center located at 930 Folly Rd, running through the front yard, up and across the pedestrian right of way.

RESPONSE: Defendant admits that its cable line or lines were connected to the commercial building located at 930 Folly Road. Defendant has made a reasonable inquiry into the reminder of the allegations set forth in Request 1, but at the present time, the information known or readily obtainable at the present stage of the discovery phase in this action is insufficient to enable either an admission or denial. Defendant therefore denies the reminder, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

1.

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J

1. PLAINTIFF STATES; RESPONSE #13 by Defendant, service had been "CANCELLED FOR AT LEAST "6" MONTHS".

RESPONSE #10, Defendant ADMITS that they "REMOVED THE CABLE LINES" at some point in time after the date of the alleged injury. Reference photo (entered with Complaint) of "2" unburied cable lines and Knology ordered their own employees or contractors to remove their unburied cable lines that were connected to the building at 930 Folly Rd. The lines were connected to a telephone pole, only about a foot from busy Folly Rd. then the lines ran for about "30" feet through the pedestrian right of way and about a "100" feet through the front yard and connected to the left side of the building.

RESPONSE #12, Defendant ADMITS they believed the lines were ORIGINALLY INSTALLED PROPERLY.

AND, Title 58, Public Utilities & Carriers, S.C. Code of LAW Section 58-12-70; NO Cable Telephone Company may INSTALL UNDERGROUND WIRES on private property WITHOUT written CONSENT of property owner. Any person VIOLATING this section shall be deemed GUILTY of a misdemeanor.

2. ADMIT; these "2" unburied cable lines were supposed to be buried.

RESPONSE: Defendant objects to the term "supposed" in Request 2 to the extent it is ambiguous and not reasonably limited in time and scope. Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 2 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

2. PLAINTIFF STATES; Defendants response was Evasive when; SUPPOSE to bury the cable lines is ambiguous when even a lay person understands the Request. ALSO, according to the Knology guidelines, guarantees and Title 58, Public Utilities & Carriers, S.C. CODE of LAW SECTION 58-12-70 they are suppose to bury the cable lines after consent. ALSO; RESPONSE #12, Defendant ADMITS that Knology with INFORMATION and BELIEF that the lines were ORIGINALLY INSTALLED PROPERLY.

4. ADMIT; If Knology had been contacted about the "2" unburied cable lines, these lines would have been properly buried by Knology or sub-contractor.

RESPONSE: Denied. Defendant reserves the right to supplement this response once she and her counsel have had a reasonable opportunity to conduct discovery.

K

4. PLAINTIFF STATES; again using Defendants own RESPONSES TO #10, #12 and SC CODE OF LAW Title 58- Public Utilities & Carriers Section 58-12-70 evaded the proper Response.

7. ADMIT; that at least one of these unburied cable lines was lying on top of the ground for at least "2" months.

RESPONSE: Denied. Defendant reserves the right to supplement this response once she and her counsel have had a reasonable opportunity to conduct discovery.

7. PLAINTIFF STATES; Defendants answer was EVASIVE & INSULTING TO CIVIL PROCEDURE when DENYING the cable lines were lying on top of the ground for at LEAST "2" MONTHS when;

DEFENDANTS RESPONSE #13, ADMITS, at least one of the unburied cable lines service was cancelled for at least "6" MONTHS before the incident on 6-21-12.

RESPONSE #10, Defendant ADMITS they removed the cable lines after the alleged injury.

Also note: Photos entered into evidence.

8. ADMIT; that unburied cable lines running through the front yard of one of your customers and across a pedestrian right of way could be hazardous to their customers and pedestrians.

RESPONSE: Defendant has made a reasonable inquiry and the information known or readily obtainable by it at the present stage of the discovery phase in this action is insufficient to enable it to either admit or deny this request. Defendant reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

8. PLAINTIFF STATES; Defendants answer was Evasive because they have the information, reports of alleged injury, photo entered into evidence with Complaint, Charleston County EMS taking Plaintiff to MUSC and their own experience as a national company whether unburied cable lines are hazardous considering their own guarantees, guidelines, safety procedures and SC CODE OF LAW Title 58-Public Utilities & Carriers Section 58-12-70. PROVEN also by;

L

RESPONSE #10 Knology **ADMITS** they removed the cable lines after the alleged injury. **RESPONSE #12** Knology **ADMITS BELIEF** that the lines were **ORIGINALLY INSTALLED PROPERLY**.

ALSO, Mr. Powell was investigated by an individual in his home and was questioned by their insurance company back in 2012.

12. **ADMIT**; according to local laws or procedures these "2" unburied cable lines were supposed to be buried.

RESPONSE: Defendant objects to the term "supposed" in Request 12 to the extent it is ambiguous and not reasonably limited in time and scope. Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 12 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

12. **PLAINTIFF STATES**; enters evidence same as Request #2.

14. **ADMIT**; when Knology or your sub-contractor leaves a cable line "unburied" running through the front yard of one of your customers, across a pedestrian right of way, Knology is responsible if someone trips over the line and injures themselves.

RESPONSE: Defendant objects to Request 14 to the extent it is not reasonably limited in time and scope. Subject to and without waving these objections, and with the understanding that Plaintiff intends for the hypothetical scenario set forth in his request to apply to this specific case, Defendant denies Request 14, but reserves the right to supplement its response following a reasonable opportunity to conduct discovery.

14. **PLAINTIFF STATES**; **RESPONSE #10** Defendant **ADMITS** they removed the cable lines at some point after the alleged injury.

NOTE; Knology removed these lines because they were **NOT INSTALLED PROPERLY** after they were contacted about an injury/incident and stated their **BELIEF** the lines were **INSTALLED PROPERLY**. This Request is not an hypothetical scenario, reference complaint

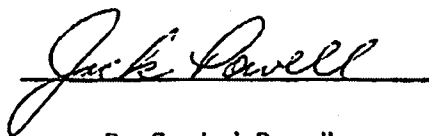
M

2013-CP-10-6019, SC CODE OF LAW Title 58-public Utilities & Carriers Section 58-12-70 and photo of "2" unburied cable lines entered into evidence and Charleston County EMS taking Plaintiff to MUSC.

ALSO, this Request is reasonably limited in time and scope because it is obviously referring to after they improperly installed a line and someone got injured.

PLAINTIFF submits; that the Request is not about time but, whether Knology is responsible for someone tripping and injuring themselves after they left (L E A V E S) a cable line unburied. It is irrelevant whether the customer trips over the line the same day or '6' months later like 6-21-12, which proves this Request was not a hypothetical scenarios.

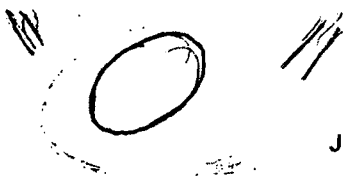
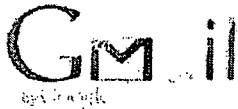
Dated & Signed on 6-10-14

A handwritten signature in cursive script, reading "Jack Powell", is written over a horizontal line.

Pro Se; Jack Powell

- N
6. All documents concerning Lee Endicott at your Charleston center who agreed to pay Mr. Powell, in front of his wife his doctor bills and was told he would have to wait several weeks to receive the check.

RESPONSE: Defendant objects to this request on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence, that it is ambiguous, vague, and as a result, unreasonably burdensome taking into account the needs of the case, the amount in controversy, and the issues at stake.



Jack Powell <carolineschair@gmail.com>

FOIA Request #15-4460, Encroachment Permit, 930 Folly Rd., Charleston

1 message

Tucker, Janet M. <TuckerJM@scdot.org>

Mon, Mar 30, 2015 at 9:57 AM

To: "Carolineschair@gmail.com" <Carolineschair@gmail.com>

The District #6 Engineering Administrator's office has advised that they have searched their Encroachment Permit database and find no permits that were issued to Knology in August of 2006. Therefore, we have no documents in response to your FOIA request.

Janet Tucker

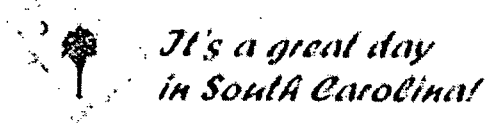
FOIA Officer

SCDOT

955 Park Street

Columbia, SC 29201

(803) 737-0997



76

P



Corp ID:	7	KNOWLEDGE OF CHARLESTON	Customer No:	742078	Account:	1251492	
Street #:		PreDir:	Street Name:	FOLLY RD	Suite/Apt:	A	
City:	JAMES ISLAND	State:	SOUTH CAROLINA	Zip:	29412	Node/ISP:	JOS

Contact Name:	STASMAYER	INC CO STASMAYER PROPERTIES	Main Phone:	8437243440	Status:	Active
Alt Contact:			Alt Phone:		Voice Port:	

Case Info | Case Res | Schedule History | Prev/Other Cases

Case Type

INSTALLATION

DROP BURY

DROP BURY

Products Affected

- ☐ Analog Cable (A)
- ☐ Digital Cable (D)
- ☐ Internet (I)
- ☐ Fiber (F)
- ☐ POTS (P)
- ☐ Modem (M)

IVR Call Type

Lines Affected:

Contact Type:

Case Priority:

Phone:

Cable:

Business

Drop_Bury

Activity Log

History



PHONE LOG 08/14/2006 08:35:13 AM inquiry

This csmx needs a Drop Bury. They are being installed today, due to an expedite request from sales. Please work this ASAP. NOTE: Pete Smith is concerned about a spider system, etc. Re: Stasmayer Inc @ 930 Folly Rd Ste A Chas 29412 - RG11 / 1 Drop / From Pole to Meter

NOTE: Dene is working this install today for CATV & Modem. We will soon port their dial tone to us, as well. If you have any questions pls call either Dene @ 514-3059 or Marianne @ 514-5777. Thanks!

NOTE: 08/15/2006 07:02:05 AM w/attach Action Type: CSR Note

Sent to Locate service 15 Aug 06. Locate service has by State law 3 business days from date of entry to complete area marking for all utilities. Currently Drop Bury w/o completion dates are approximately 10 business days from date it was sent to Locate service. If a driveway bore is required additional days are needed. - Drop Bury

Done

Rems: 1.8 3:17 PM

Kn

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⑦

NOT
ANSWERED

10. Documents of any complaints or concerns made to Knology or sub-contractors concerning the "2" unburied cable lines by Folly Oaks Center, Marshland Communities or anyone else after 1-1-12.

RESPONSE: Based on a thorough search of its corporate records, Defendant did not receive any complaints, notices, or other reports from anyone concerning incidents or accidents that occurred at or around the site of Plaintiff's alleged fall.

NEVER
ANSWERED →

11. Documents stating dates when Knology or sub-contractor came to the property at 930 Folly Rd. to bury, repair or remove the "2" unburied cable lines after 6-21-12.

RESPONSE: See Response 7.

→

12. The customers business names and addresses of each unit at 930 Folly Rd. that the "2" unburied cable lines were contracted to.

RESPONSE:

↓

→

930 Folly Road, Suite/Unit A: Customer: Stasmayer, Inc., c/o Stasmayer Properties

Service disconnected 12/1/09 by Knology technician Eugene Walker

930 Folly Road, Suite/Unit B ←

Customer: Moms, Monkeys and Mermaids

Service disconnected 6/8/08 by Knology in house technician Eugene Walker

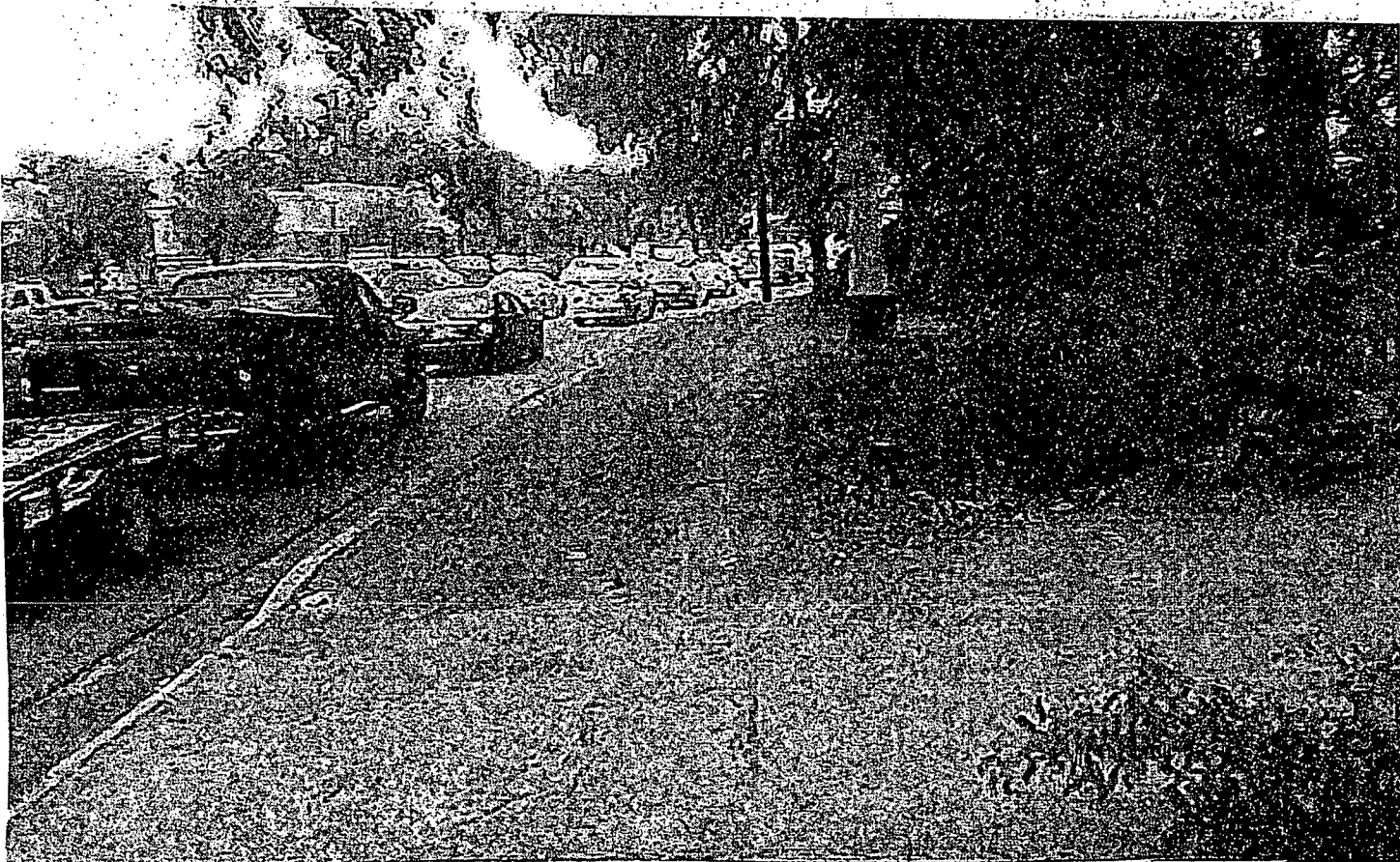
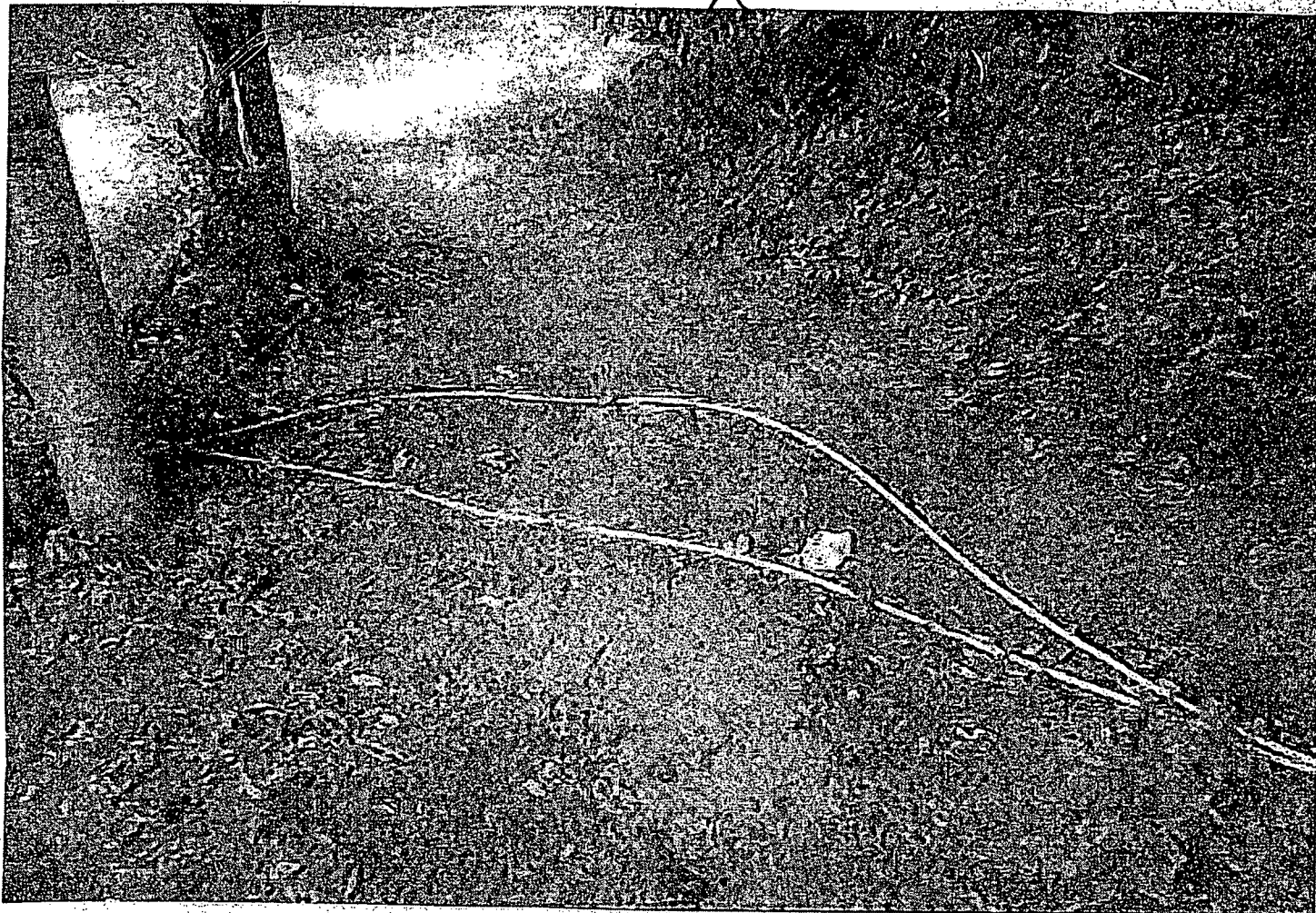
13. The dates when the customers/clients service was discontinued or terminated with Knology concerning these "2" unburied cable lines at 930 Folly Rd.

RESPONSE: See response 12.

14. All guarantees or promises Knology makes to their future and actual clients/customers concerning setup, safety and maintenance to their commercial accounts in Charleston.

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S

→ 7. The individual names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. on or after 6-21-12.

RESPONSE: Defendant is in the process of evaluating its records in an attempt to determine the information and documents responsive to this request, and will supplement this response upon reaching its conclusion.

8. Documents of the names of the company or contractor who removed ~~or buried~~ the cable lines on or after 6-21-12 at 930 Folly Rd. and documentation of the work done that day.

* 6-29
RESPONSE: See Response 7.

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RESPONSE: Defendant objects to this request on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence and that it is unreasonably burdensome taking into account the needs of the case, the amount in controversy, and the issues at stake. Subject to and without waiving these objections, Defendant will make available for inspection and copying these records to Plaintiff at the following location, after sufficiently reasonable advance notice is provided:

735 Johnnie Dodds Blvd

Suite 200

Mt Pleasant, South Carolina

→ 15. All documents about procedures and safety standards to be followed by Knology employees and contractors concerning ~~setting up~~, burying, ~~connecting~~, maintaining and inspecting cable lines on commercial property.

RESPONSE: Defendant objects to this request on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence and that it is unreasonably burdensome taking into account the needs of the case, the amount in controversy, and the issues at stake. Subject to and without waiving these objections, Defendant will make available for inspection and copying these records to Plaintiff at the following location, after sufficiently reasonable advance notice is provided:

735 Johnnie Dodds Blvd

Suite 200

Mt Pleasant, South Carolina

16) Dates of when Knology or sub-contractors were on the property at 930 Folly Rd. from 1-1-12 to 6-25-12.

RESPONSE: No Defendant employees visited the property between 1/1/12 and 6/21/12.

Defendant reserves the right to supplement or amend this response as discovery progresses.

17. All documentation explaining to the customer/client that Knology is or is not responsible for injuries when a customer or pedestrian that is walking in front of their commercial building at 930 Folly Rd. and trips over Knology cable lines, running up through their front yard & across the pedestrian right of way.

RESPONSE: None.

McANGUS, GOUDELOCK & COURIE, LLC



Benjamin B. Davis
Bar No: 74955
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200 (29464)
Mt. Pleasant, South Carolina 29465
(843) 576-2900

ATTORNEYS FOR KNOLOGY OF
CHARLESTON INC.

July 30, 2014

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South Carolina Legislature

South Carolina Law > Code of Laws > Title 58

South Carolina Code of Laws
Unannotated
Current through the end of the 2013 Session

DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2013 session. The unannotated South Carolina Code, consisting only of Code text, numbering, and history, may be copied from this website at the reader's expense and effort without need for permission.

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Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify the Legislative Services Agency at LSA@scstatehouse.gov regarding any apparent errors or omissions in content of Code sections on this website, in which case LSA will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

Title 58 - Public Utilities, Services and Carriers

CHAPTER 12.

CABLE TELEVISION

ARTICLE 1.

GENERAL PROVISIONS

SECTION 58-12-5. Purpose; findings and preemption as to cable and video service.

(A) Competition between cable television, satellite, and other providers has promoted and continues to promote additional consumer choices for cable service, video service, and similar services, and the technology used to provide these services is not constrained or limited by municipal or county boundaries. Accordingly, it is appropriate for the General Assembly to review and update the policy of this State with regard to these services. The General Assembly finds that revising the current system of regulation of these services will relieve consumers of unnecessary costs and burdens, encourage investment, and promote deployment of innovative offerings that provide competitive choices for consumers. Additionally, the General Assembly finds that it is in the best interests of consumers for cable and video franchises to be nonexclusive and for requests for competitive cable or video franchises not to be unreasonably refused. The General Assembly further finds that a streamlined policy framework providing statewide uniformity is necessary to allow these functionally equivalent services to compete fairly and to deploy new consumer services more quickly.

(B) After the effective date of this act, no municipality or county may issue a cable franchise pursuant to Section 58-12-30. A municipality or county may continue to enforce existing cable franchises until they expire or are terminated pursuant to Section 58-12-325.

(C) This chapter occupies the entire field of franchising or otherwise regulating cable and video service and preempts any ordinance, resolution, or similar matter adopted by a municipality or county that purports to address franchising or otherwise regulating cable or video service.

HISTORY: 2006 Act No. 288, Section 2, eff May 23, 2006; 2007 Act No. 8, Section 1, eff March 30, 2007.

ARTICLE 2.

FRANCHISING BY MUNICIPALITIES AND COUNTIES

SECTION 58-12-10. Installation of cable over or beneath public lands, highways, roads or waters.

Any cable television company may, upon the approval of the governing body of the city or county, construct, maintain, and operate its cable over or beneath any of the public lands of this State, over, beneath, or along any of the highways or public roads of the State, or over or beneath any of the waters of the State; provided, that cable television companies shall, unless heretofore covered by court decree, where possible and practicable, enter into an agreement with a telephone company or electric power company whereby the cable television company has the right to attach its cables to the poles owned by the telephone company or electric power company, or to bury its cable beneath the ground in conduits owned by the telephone company or electric power company; provided, further, that such cable is constructed so as not to endanger the safety of persons or to interfere with the use of these public lands, highways, or public roads, or the navigation of these waters; provided, further, that the agency charged with the maintenance of these public lands, highways, or public roads, or waters of the State shall require that the cable television company obtain a permit prior to placing its cable over, under, or along these public lands, highways, or public roads, or waters; and, provided, further, that if both electrical and telephone facilities in an area are underground then the cable television lines in that area shall also be placed underground. This proviso does not give any additional rights to public utilities to grant an easement. Provided, further, that if the cable is located in such a manner so as to constitute an interference with the right of ingress or egress to land that is subject to the easement, the cable television companies shall obtain the consent of the landowner, his heirs, or assigns, from which the original easement was obtained.

HISTORY: 1976 Act No. 688 Section 1; 1983 Act No. 134 Section 1, eff June 17, 1983.

SECTION 58-12-20. Interference with maintenance of public lands, highways, roads or waters; damage to roads or highways.

Whenever the agency charged with the maintenance of such public lands, highways or public roads, or waters of the State deems it necessary to move or remove the poles or underground conduits of such telephone company or electric power company, all cable television cables and appurtenances shall be moved or removed at the cost of the cable television company. Whenever damage results to public highways or roads as a result of operations by a cable television company, such cable television company shall repair the highway or road according to department standards and all cost shall be borne by the cable television company.

HISTORY: 1975 Act No. 688 Section 2.

SECTION 58-12-30. Franchising by counties and municipalities.

(a) The governing body of each municipality and each county in this State shall have the power and authority to regulate the operation of any cable television system which serves customers within its territorial limits by the issuance of franchise licenses after public notice showing the terms of any proposed franchise agreement and public initiation for bids and not inconsistent with the rules and regulations of the Federal Communications Commission.

(2) a written description of the municipalities and a written description of the unincorporated areas of counties to be served, in whole or in part, by the applicant, which written description must be amended by the applicant before the provision of cable or video service within an area not described in a previous application or amendment filed by the applicant. For purposes of this subsection, a map or other graphic representation may supplement, but not substitute for, the written description; and

(3) the location of the principal place of business and the names of the principal executive officers of the applicant.

A holder of a state-issued certificate of franchise authority who seeks to amend the certificate to include additional areas to be served shall file an amended application with the Secretary of State that reflects the new service areas to be served.

However, a holder of a state-issued certificate of franchise authority must begin to deploy cable or video service in each of the municipalities and in each of the unincorporated areas of counties described in subsection (B)(2) within one year of the date of the issuance of the certificate or the certificate becomes null and void. This provision shall not be construed to require deployment of cable or video service throughout the municipalities or the unincorporated areas of the counties described in subsection (B)(2).

(C) Within five days of receipt of an application or amended application, the Secretary of State must notify each affected municipality and county of its receipt of the application or amended application and must request from each affected municipality and county: (1) the franchise fee rate imposed on the incumbent cable service provider, if any, as of the date of the application or amended application; (2) the number of public, educational, and governmental (PEG) access channels the municipality or county has activated under the incumbent cable provider's franchise agreement as of the date of the application or amended application; and (3) whether the municipality or county consents to the state-issued certificate of franchise authority sought in the application or amended application and, if such consent is denied, an explanation of the reasons for the denial of the requested consent. The notification must contain a copy of the application of the cable or video service provider including the description of the area to be served.

(D) A municipality or county must respond to a request issued by the Secretary of State pursuant to subsection (C) within sixty-five days of the date of such request. If a municipality or county does not timely respond with the franchise fee rate imposed on the incumbent cable service provider, if any, as of the date of the application or amended application, the franchise fee rate for the applicant in such municipality or county shall be two percent of gross revenue until the county or municipality provides a response and the Secretary of State issues an amended certificate of franchise authority containing a franchise fee in compliance with Section 58-12-330. If a municipality or county does not timely respond with the number of PEG access channels the municipality or county has activated under the incumbent cable provider's franchise agreement as of the date of the application or amended application or with a statement that it has not activated any PEG access channels under the incumbent cable provider's franchise agreement as of such date, the applicant shall not be required to provide any PEG access channels to the municipality or county until the municipality or county provides a response and the Secretary of State issues an amended certificate of franchise authority containing the number of PEG access channels to be provided to the municipality or county in compliance with Section 58-12-370. If a municipality or county denies consent or does not timely indicate its unconditional consent to the state-issued certificate of franchise authority sought in the application or amended application, the Secretary of State shall deny the application or amended application with regard to that municipality or county and shall note on the notice of denial that the reason for the denial was the refusal of the applicable municipality or county to grant consent. If the applicant takes the position that the denial of the application or amended application is actionable, it may seek any appropriate relief under state or federal law in state or federal court, and if the applicant takes the position that the denial of consent by the municipality or county is actionable, it may add the municipality or county denying consent as a party to such action. If the Secretary of State denies the application or amended application under the provisions of this subsection and the affected municipality or county subsequently indicates its unconditional consent to the state-issued certificate of franchise authority sought in the application or amended application, the Secretary of State must promptly issue an amended certificate of franchise authority that includes such municipality or county.

(E) Within eighty days after making the request described in subsection (C), the Secretary of State shall issue the applicant a certificate of franchise authority to operate as a cable or video service provider and the certificate shall contain the following:

(1) a nonexclusive grant of authority to provide cable or video service in the areas set forth in the application;

(2) a nonexclusive grant of authority to construct, maintain, and operate facilities along, across, or on public rights-of-way in the delivery of that service, subject to the laws of this State including the lawful exercise of police powers of the municipalities and counties in which the service is delivered;

(3) the franchise fee rate for each municipality or county described in the application in compliance with Section 58-12-330; and

(4) the number of public, educational, and governmental access channels to be provided upon request to each municipality or county described in the application, in compliance with Section 58-12-370.

(F) The certificate of franchise authority issued by the Secretary of State is fully transferable to a successor in interest to the applicant to which it is initially granted, provided that the successor in interest files with the Secretary of State an affidavit that complies with the requirements of subsection (B). A notice of transfer must be filed with the Secretary of State and the affected municipalities or counties within ten days of the completion of the transfer. The Secretary of State is neither required nor authorized to act upon the notice.

(G) A holder of a state-issued certificate of franchise authority shall comply with any applicable federal law or regulation addressing a-la-carte programming options.

(H) The certificate of state franchise authority issued pursuant to this article may be terminated by the cable or video service provider by submitting written notice of the termination to the Secretary of State and the affected municipalities or counties. The Secretary of State is neither required nor authorized to act upon such notice.

(I) The state-issued certificate of franchise authority issued pursuant to this article supersedes and is in lieu of any franchise authority or approval required by Sections 58-12-10 and 58-12-30.

(J) The Secretary of State shall keep for public examination a record of all certificates applied for or granted pursuant to the provisions of this article.

(K) The holder of a state-issued certificate of franchise authority shall give written notification to a municipality or county of the date on which it will actually begin providing service in any part of such municipality or county.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

SECTION 58-12-320. Predecessor and successor entities.

(A) For purposes of this article, a cable service provider is deemed to have or have had a franchise to provide cable service in a specific municipality or unincorporated areas of a county if any predecessor entity of the cable service provider has or, after July 1, 2005, had a cable franchise agreement granted by that specific municipality or county.

(B) The terms "predecessor" or "successor entity" in this section shall include, but not be limited to, an entity receiving, obtaining, or operating under a municipal or county cable franchise through merger, sale, assignment, restructuring, or any other type of transaction.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

SECTION 58-12-325. Transfer from county or municipality issued franchise authority to state issued franchise authority.

At the time any certificate of franchise authority is issued by the Secretary of State, the Secretary of State immediately shall post information relating to the certificate, specifically including all municipalities and counties described pursuant to Section 58-12-310(B)(2). At any time on or after the date when the holder of a state-issued certificate of franchise authority gives notice, as required by Section 58-12-310(K), that it is beginning to offer cable or video service in a given municipality or county, any cable service provider serving such municipality or county shall have the option to terminate existing franchises previously issued by such municipality or county and instead offer cable or video service in such municipality or county under a certificate of franchise authority that the Secretary of State shall issue in accordance with the requirements of Section 58-12-310. A cable service provider exercising its termination option shall file a statement of termination with the Secretary of State on a form as required by the Secretary of State and submit copies of such filing with any affected municipalities or counties. Termination of existing franchises is effective immediately upon issuance of a certificate of franchising authority by the Secretary of State granting authority to provide cable or video service in the described municipalities and counties. Upon termination of existing franchises as provided in this section, the cable or video service provided by the provider exercising its termination option is governed by the provisions of this article in those municipalities and counties where the franchises have been terminated. The termination option of this section applies only with respect to municipalities and counties which have been described pursuant to Section 58-12-310(B)(2) by a holder of a state certificate of franchise authority and not with respect to franchises issued by other municipalities and counties.

(b) Six months after June 29, 1976, a cable television system shall not serve customers in any unincorporated area without obtaining a franchise from the county; provided, that a cable television system to which this subsection applies may continue to serve customers after June 29, 1976, if an application for a franchise is filed at least ninety days prior to the date on which such franchise would otherwise be required and the cable television system and the county have, despite good faith negotiations, not been able to reach agreement upon the terms of such franchise.

(c) A county shall not issue a franchise for any area which is within any municipality.

(d) A franchise shall not be required where line extensions of a cable television system do not serve any customers in the unincorporated area through which such lines are extended or where such line extensions are constructed upon private lands or with easements not obtained from any public body.

(e) The governing body of a county shall not deny to any cable television system a franchise for any area in which such cable television system has wires in place on June 29, 1976, or holds a Certificate of Compliance from the Federal Communications Commission. Franchises issued by a municipality or county shall not be inconsistent with the rules and regulations of the Federal Communications Commission.

(f) A franchise shall not be required of a cable television system to erect any tower or transmission cable in an unincorporated area for the purpose of providing service for an incorporated area.

HISTORY: 1976 Act No. 688 Section 3.

SECTION 58-12-40. Easements or rights-of-way to contain provision contemplating use by cable television companies.

Any easement or right-of-way obtained after June 29, 1976, by the State or any political subdivision thereof for the purpose of constructing a highway or public road and any easement or right-of-way obtained by any telephone or electric power company from the owner of any land who had previously granted an easement to this State or any political subdivision thereof for the purpose of constructing a highway or public road upon such land to which the easement or right-of-way relates shall clearly set forth the possibility that the easement or right-of-way may be used in the future by cable television companies for the purposes provided in this chapter.

HISTORY: 1976 Act No. 688 Section 4.

SECTION 58-12-50. Penalties for violations; persons who may bring suit.

Any person erecting or maintaining any such cable in violation of the provisions hereof shall forfeit and pay as a penalty therefor the sum of five dollars per day for each day such default continues after he shall have been given thirty days written notice specifying the default or defect in the manner of erection, construction or maintenance thereof, to be recovered at the suit of any citizen of any county in which such violation occurs, or by the agency charged with the maintenance of the public lands, highways or public roads, or waters of the State. The sum so recovered, after paying therefrom all the expenses incurred in the prosecution of such suit, shall be paid into the treasury of the county in which the violation occurred or, if the violation occurred in more than one county, into the treasury of each county in which the violation occurred on a pro rata basis.

HISTORY: 1976 Act No. 688 Section 5.

SECTION 58-12-60. Damage to private property.

No cable television company may damage private property on which a utility pole is located without just compensation to the landowner for the damage suffered by the landowner's property.

HISTORY: 1976 Act No. 688 Section 6.

SECTION 58-12-70. Underground installations on private property; consent required.

No cable television company may install underground wires or other underground equipment on private property without the written consent of the property owner. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined one hundred dollars.

HISTORY: 1976 Act No. 688 Section 7.

SECTION 58-12-80. Fees payable by companies receiving benefits of grandfather clauses.

Any cable television company which shall receive the benefits of operating under the grandfather clauses contained in this chapter shall pay to the county governing body or municipality the same fees as would be charged to a new franchising company by the county or municipality.

HISTORY: 1976 Act No. 688 Section 8.

SECTION 58-12-90. Channel to be made available to Educational Television Commission.

All cable television companies operating in the State shall make available one six megahertz channel for the transmissions of the South Carolina Educational Television Commission.

HISTORY: 1976 Act No. 688 Section 9; 1990 Act No. 533, Section 1, eff June 4, 1990.

SECTION 58-12-100. Companies to maintain complaint service.

Any cable television company franchised and operating in this State shall maintain a complaint service for the purpose of receiving consumer complaints concerning service or any other matter relating to its operations. The company shall keep written records of complaints received, including the name of the complaining party, the nature of the complaint and the disposition of the complaint. Such records shall be subject to inspection by the governing body which issued the franchise.

HISTORY: 1976 Act No. 688 Section 10.

SECTION 58-12-110. Televising of athletic events.

No institution of higher learning funded by state appropriations shall enter into any contract with a cable television company franchised pursuant to this chapter which gives an exclusive right to the cable television company concerned to televise athletic events in which athletic teams of such institution participate to the exclusion of free television.

HISTORY: 1976 Act No. 688 Section 11.

SECTION 58-12-120. Cable television company and cable television system defined.

The term "cable television company" and "cable television system" as used in this act includes a corporation incorporated under the laws of this State, a corporation incorporated under the laws of another state which has complied with the laws of this State regulating the doing of business in this State by foreign corporations, a general or limited partnership organized under the laws of this State, and a general or limited partnership organized under the laws of another state which has complied with any laws of this State regulating the doing of business in this State by these partnerships.

HISTORY: 1983 Act No. 134 Section 2, eff June 17, 1983.

SECTION 58-12-130. Fee for right-of-way usage; availability of channel to Educational Television Commission; issuance of continuing permits; enforcement.

(A) The Department of Transportation may issue a general continuing permit to each cable television company operating in this State. Upon the reporting by the company of a proposed extension of its cable subject to this chapter and approval of the extension by the department, the permit applies to each extension. This authorization eliminates the necessity of the issuance of a permit for each extension.

Charleston, South Carolina, Code of Ordinances >> - CITY CODE >> Chapter 30 - UTILITIES >> ARTICLE VII. UNDERGROUND CONDUITS, CABLES AND WIRES IN PUBLIC RIGHTS-OF-WAY >>

ARTICLE VII. UNDERGROUND CONDUITS, CABLES AND WIRES IN PUBLIC RIGHTS-OF-WAY

Sec. 30-146. Compliance with article required.

Sec. 30-147. Permit to lay conduits—Required.

Sec. 30-148. Same—Application; filing of plans and specifications.

Sec. 30-149. Same—Issuance; penalty for opening street without permit.

Sec. 30-150. Excavations; length and width; time restrictions; restoration of street surface.

Sec. 30-151. Inspection of work by city; access of officials.

Sec. 30-152. Liability for damage to gas or water mains or sewer connections; bond required.

Sec. 30-153. Authority of city to require duct for fire and police purposes.

Sec. 30-154. Report of underground conduits and wires by owners.

Sec. 30-155. Bond for restoration of street surface required.

Sec. 30-156. Telegraph, telephone and burglar alarm business; construction and maintenance of conduits.

Secs. 30-157—30-170. Reserved.

Sec. 30-146. Compliance with article required.

All persons to whom a permit may be granted for running or laying underground conduits, ducts or pipes for electrical conductors or cables or wires, or who shall be required by law or ordinance to do so, shall comply with the requirements of this article.

(Code 1975, § 18-92)

Sec. 30-147. Permit to lay conduits—Required.

No street, lane, alley, road or public place in the city shall be broken or occupied by any person for the purpose of laying down conduits, ducts or pipes except under a permit from the department of public service, as provided in this article.

(Code 1975, § 18-93)

Cross reference—Licenses, permits and miscellaneous business regulations, Ch. 17

Sec. 30-148. Same—Application; filing of plans and specifications.

Any person duly authorized by the city council to run or lay underground conduits, ducts or pipes for electrical conductors, cables or wires, and desiring a permit as required in section 30-147 shall file with the department of public service an application therefor, with plans and specifications showing the location, routes and length of the proposed underground conduits, ducts or pipes. Such application shall be filed at least seventy-two (72) hours before the date scheduled for beginning the work, but in an emergency, the department of public service shall waive prior notice.

(Code 1975, § 18-94)

Sec. 30-149. Same—Issuance; penalty for opening street without permit.

The department of public service is hereby authorized, upon the filing of the application and plans and specifications required by section 30-148, to grant a permit for the breaking and occupancy of the streets, lanes, alleys, roads and public places as shall be set forth in such application, plans and specifications, subject to the regulations and qualifications of this article. The department of public service shall immediately notify the department of traffic and transportation if the permit will require blocking or diversion of, or interfere with normal pedestrian or vehicular traffic. The opening of any street or public place for such purposes without a permit having been first obtained shall subject such person to punishment as provided in section 1-16 of this Code and the stoppage of the work until such permission is obtained.

(Code 1975, § 18-95)

Sec. 30-150. Excavations; length and width; time restrictions; restoration of street surface.

During the construction or laying down of underground conduits, ducts or pipes, conductors, cables or wires under this article, no street, alley, lane or road or public place shall be opened or roadway broken into for a greater distance than one thousand (1,000) feet at any one time, or opening, and no section of one thousand (1,000) feet shall be kept open for a longer period than ten (10) days. Such opening or trench shall not be of greater width than five (5) feet, except the manholes, and as the work progresses the paving shall be promptly and properly relaid and the street, alley, lane or road put in good condition at the expense of the person constructing the same. For good cause shown the department of public service may extend the time during which such trench may be kept open.

(Code 1975, § 18-96)

Sec. 30-151. Inspection of work by city; access of officials.

The work of constructing any underground conduits, or laying any ducts, pipes, electrical conductors, cables or wires under this article shall be subject to inspection by the department of public service, who shall have at all times free and unobstructed access to the conduits, ducts or pipes, electrical conductors, or cables for the purpose of making such inspection.

(Code 1975, § 18-97)

April 13, 2015

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad Street, Suite 106
Charleston S.C. 29401

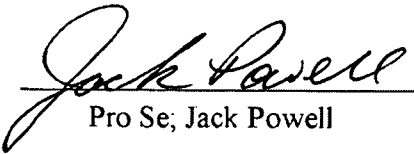
RE: Jack Powell vs. Knology of Charleston Inc.
C/A No.: 2013-CP-10-6019

Dear Julie:

Pro se, Plaintiff Jack Powell hereby submits this Motion for Reconsideration for the
above matter to the Honorable Court.

Thank you for your assistance,

Dated & Signed on 4-13-15


Pro Se, Jack Powell

April 13, 2015

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad Street, Suite 106
Charleston S.C. 29401

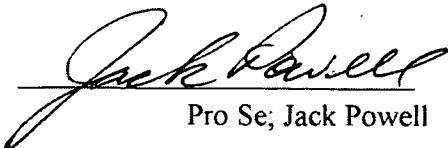
RE: Jack Powell vs. Knology of Charleston Inc.
C/A No.: 2013-CP-10-6019

Dear Julie:

On Friday afternoon, 4-10-15 I called the Clerks office and told the lady I had a problem because I had gone to the library to print out copies of my Motion for Reconsideration in this case and all the libraries were going to be closed today. I told her it stated that I was supposed to file this within ten days. The ninth and tenth day was a Saturday and Sunday and does this rule mean working days and what if your closed when I try to file on the tenth day? She responded I can't give you any legal advice and I responded I'm not asking you what should I do, I'm asking you about the Rules and then I asked for Caroline Leonard. I had to leave a message to explain the situation and asked her to call me. I called back and asked to speak to Don Michelle and had to leave the same message. As of 2:00 p.m. Monday while I'm at the library, I have not received a return call from either. While I'm going through this and filing this Motion, it may be just wasted stressful time and if they would have called back they may have been able to inform of the facts and I may have been able to remedy this. Hopefully my Motion will be accepted.

Thank you for your assistance,

Dated & Signed on 4-13-15


Pro Se; Jack Powell

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JACK POWELL,

Plaintiff,

vs.

KNOLOGY OF CHARLESTON INC.,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-10-6019

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

FILED
2016 APR -6 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER comes before this Court on Defendant's motion for summary judgment. A full hearing on the matter took place on April 2, 2015 at the Charleston County Courthouse. Present at the hearing were Benjamin Davis, Esquire, of McAngus Goudelock & Courie, LLC, representing the Defendant, and Plaintiff Jack Powell, Pro Se. After considering the motion, oral arguments, supporting materials, and legal memoranda submitted, the Court finds that there are no genuine issues of material fact, and that Defendant is entitled to judgment as a matter of law.

Facts

Plaintiff's Complaint alleges causes of action labeled as gross negligence and negligent supervision of employees and subcontractors against Defendant. Plaintiff alleges that he was walking up a right of way beside Folly Road at around 9:00 p.m. on 6-21-12 and tripped on an unburied cable line in the dark. (Compl. ¶ 1.) He alleges he was knocked unconscious and injured his head, neck, shoulder and knee. He alleges the fall occurred at 930 Folly Road in front of the Folly Oaks Center. (Compl. ¶ 3.) Plaintiff alleges that, "After investigating, the two Knology unburied cable lines were exposed for months and running through the front yard of the Folly Oaks Center for about 30 feet in the right of way. They were connected to a telephone pole

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BW08/1

that was located about one foot from busy Folly Road.” (Compl. ¶ 3.)

Plaintiff alleges that Defendant was grossly negligent in failing to breach its duty to supervise employees and/or subcontractors and as a result, failed to protect Mr. Powell from being knocked unconscious and sustaining injuries to his neck, shoulder and knee. (Compl. ¶ 4.) Plaintiff also alleges that Defendant was negligent in failing to repair, bury, notify, or otherwise warn of the hazardous condition. (Compl. ¶ 5.)

Standard

Summary judgment is appropriate if the pleadings and other supporting documents “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(e), SCRPC. In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433,439 (2003). However, an adverse party may not rest upon the mere allegations or denials of his pleadings to withstand summary judgment, but must set forth specific facts showing a genuine issue exists for trial. Rule 56(e), SCRPC. The rule governing summary judgment provides that “supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” Rule 56(e), SCRPC.

A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine. Oblachinski v. Reynolds, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 393, 593 S.E.2d 183, 186 (Ct. App. 2004). Allegations made upon information and

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belief do not meet the "personal knowledge" requirements of Rule 56(e). Dawkins, 354 S.C. at 68, 580 S.E.2d at 438 (2003).

Law/Analysis

Defendant Knology's motion for summary judgment centered around the lack of evidence that it owned or controlled the cables described in Plaintiff's Complaint. Likewise, Knology argued it neither possessed nor had control over the right of way on which the cables rested at any time leading up to the Plaintiff's alleged trip and fall. As a result, Knology argued that it owed no duty to the Plaintiff, and thus, was entitled to summary judgment as a matter of law. Under South Carolina law, one who has no control owes no duty. Miller v. City of Camden, 329 S.C. 310, 314 (1997).

Photographs attached to Plaintiff's Complaint depicted 3 unburied cables in the area of his fall on June 21, 2012. Knology argued that it had no record or evidence whatsoever of ownership or control of any of the 3 cables depicted in the photographs. It also pointed to Plaintiff's Complaint as lacking the specificity as to which of the cables caused his fall. Knology pointed to written discovery it had produced in the case as the only possible record of any installation activities in the vicinity as being back in 2006. Those records also indicate that services to those cables concluded in 2009.

Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the Court is required under Rule 56 to grant summary judgment, if, under the facts presented by the Defendant, it is entitled to judgment as a matter of law. Humana Hospital-Bayside v. Lightle, 305 S.C. 214, 216 (1991). Under the facts presented by Knology, neither owned, installed, controlled, or otherwise had any connection to the cables sufficient to give rise to any duty owed to the Plaintiff.

In defense of the motion, Plaintiff failed to produce any evidence that would support an inference to the contrary. Plaintiff argued that various third party witnesses would be able to support his allegations that the cables belonged to Knology, but failed to submit any supporting affidavits, or their equivalents. An adverse party may not rest upon the mere allegations or denials of his pleadings to withstand summary judgment. Rule 56(e), SCRC.

As an alternative defense, Plaintiff also alleged various deficiencies in Defendant's responses to written discovery, insisting that Defendant was in possession of evidence it owned 2 of the 3 cables. This Court recognizes that summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.'" Id. at 112, 410 S.E.2d at 544. Upon further inquiry, the Court determined that the issues raised by Plaintiff were either (1) originally decided in favor of Defendant during a prior discovery hearing; or (2) never raised through a proper motion. Moreover, discovery in the case had progressed for more than a year. Thus, Plaintiff failed to demonstrate that further discovery would likely uncover additional relevant evidence as to Knology's alleged responsibility for the cables.

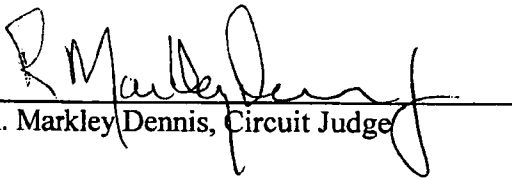
Conclusion

In viewing the evidence and its reasonable inferences in a light most favorable to the Plaintiff, this Court finds no genuine issue as to the material facts and allegations Knology raised in support of its motion for summary judgment, and therefore, as the moving party, it is entitled to a judgment as a matter of law.

It is therefore, ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

Dated: 4/5/16


R. Markley Dennis, Circuit Judge

RMd/s

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
JACK POWELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-CP-10-6019
	)	
KNOLOGY OF CHARLESTON	)	
INC.,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 2, 2015, before The Honorable R. Markley Dennis in Courtroom 4D of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Jack Powell
1402 Camp Road, Unit 8A
Charleston, South Carolina 29412
Appearing Pro Se

Ben Davis, Esq.
McANGUS GOUDELOCK & COURIE
735 Johnnie Dodds Blvd, Suite 200
Mount Pleasant, South Carolina 29465
Appearing for Knology of Charleston, Inc.

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccouris.org

1 THE COURT: The next one is number
2 eighteen, that would be Powell v. Knology.

3 MR. DAVIS: Your Honor.

4 THE COURT: Good morning. Good
5 to see y'all again. All right. You're Jack
6 Powell?

7 MR. POWELL: (Affirmative nod).

8 THE COURT: And you're represent-
9 ing yourself?

10 MR. POWELL: Pro se, (affirmative
11 nod).

12 THE COURT: Thank you, sir. And
13 you are?

14 MR. DAVIS: Ben Davis, Your Honor,
15 here representing Knology.

16 THE COURT: Okay. And we have
17 Motions for summary judgment -- cross Motions
18 for summary judgment. Correct?

19 MR. DAVIS: Yes, Your Honor.

20 THE COURT: Okay, let's deal with
21 -- the first one filed, I'll be happy to hear
22 that one first. I'll be happy to hear from
23 you, Mr. Powell.

24 MR. POWELL: Which one are we
25 talking about?

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1 THE COURT: Your Motion for
2 summary judgment, as to why you should have
3 summary judgment granted.

4 MR. POWELL: In brief consideration
5 of, uh, with, uh, because at that time, Your
6 Honor, ---

7 THE COURT: It's the second
8 Motion, is what's listed.

9 MR. POWELL: I was denied summary
10 judgment because at the last moment the
11 defendant said that I didn't prove that they
12 owned the line one hundred percent.

13 The reason is because in discovery,
14 -- I set this Motion up because discovery was
15 supposed to be returned to me ten days ago,
16 that would have verified the ownership of
17 Knology -- that Knology owned the cable
18 lines. Of course they hadn't returned the
19 discovery that I could present to you now for
20 my reconsideration. They were compelled back
21 in July to give this information.

22 THE COURT: All right, what is
23 your position, Mr. Davis?

24 MR. DAVIS: Your Honor, I've had
25 -- in terms of the discovery, uh, -- well, in

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1 response to Mr. Powell's second Motion for
2 summary judgment or Motion for
3 reconsideration, uh, and the discovery that
4 he referenced, held back in July, uh, both of
5 those Motions were heard and denied.

6 He has, on several occasions since
7 that time, attempted to re-serve the same
8 discovery that we had responded to back in
9 July. I believe that there were two Motions,
10 one on the sufficiency of our Answers -- our
11 responses to Requests to Admit. Those were
12 deemed sufficient.

13 Second, on his Motion for
14 production, Motion to compel requests to
15 produce, there were some issues over
16 objections on those. Those were -- that
17 Motion was resolved as well.

18 So, uh, I believe he is referring to
19 discovery that he has again re-served most
20 recently. I've responded to him indicating
21 that if he'd like to serve supplemental
22 discovery that we'd be happy to respond to
23 it, but otherwise I referred him back to our
24 original Answers from July.

25 THE COURT: Okay.

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1 MR. POWELL: Your Honor, ---

2 THE COURT: Hold on, Mr. Powell --
3 I'm writing. Okay. Yes, sir?

4 MR. POWELL: I think Mr. Davis is
5 trying to confuse the Court.

6 THE COURT: The Court is not --
7 the Court has the file. I'm not confused at
8 all, Mr. Powell. I appreciate your position.
9 Your Motion is a second Motion and it's
10 captioned ---

11 MR. POWELL: He's ---

12 THE COURT: Mr. Powell, I'm
13 talking now. It's my turn. Okay? Mr.
14 Powell, I will let you respond in just a
15 minute.

16 MR. POWELL: Okay.

17 THE COURT: But don't interrupt
18 the Court while I'm about to discuss, because
19 it's part of my ruling -- please.

20 MR. POWELL: Yes, sir.

21 THE COURT: I'm looking at your
22 pleading which was filed March 2nd. It says
23 Plaintiff's Informal Request to the Court for
24 Second Motion for Summary Judgment. That's
25 what you are here for today.

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1 I've looked at Judge Jefferson's
2 Order and I've looked at your Motion for
3 summary judgment that she previously ruled
4 on.

5 There is no basis for this either,
6 so I deny your Motion. Thank you.

7 Now, what other issue do you have?

8 Again, when you're talking -- you're
9 talking about a discovery issue which is not
10 before me. That's the point.

11 If you have some problem that they
12 haven't produced something that you believe
13 that they have or should have, then you have
14 to file a Motion to Produce. I'm really
15 giving legal advice now and I'm prohibited
16 from doing that. But there are just certain
17 -- there is a procedure that you have to go
18 through. You don't get to argue and reargue
19 your Motion to produce in a Motion for
20 summary judgment. It's that simple.

21 MR. POWELL: May I?

22 THE COURT: Yes, sir, now it's
23 your turn.

24 MR. POWELL: We were in court that
25 day in July.

1 THE COURT: I don't need to talk
2 about that. I don't need to talk about that,
3 Mr. Powell.

4 MR. POWELL: Okay. Well, it says
5 right here that you -- he says here in this
6 letter that you said that I needed to
7 supplement these questions. I sent them to
8 him, and he still hasn't returned them. That
9 was ---

10 THE COURT: Mr. Powell -- Mr.
11 Powell, you haven't filed a Motion to compel
12 responses to discovery.

13 MR. POWELL: I have.

14 THE COURT: All right, what --
15 when did you file that?

16 MR. POWELL: Before July 30th.

17 THE COURT: And that -- and that
18 -- let me look through the file. Now, be
19 careful what you're saying, that we didn't
20 have a ruling on that Motion to Compel.

21 Because that's what Mr. Davis just said ---

22 MR. POWELL: There was a ruling.

23 THE COURT: Then it's been ruled
24 on.

25 MR. POWELL: But the production

1 wasn't. He handed me the production in the
2 hallway, and it was never heard in the
3 courtroom. All he handed me was a piece of
4 paper, he didn't give me all ---

5 THE COURT: And have you filed any
6 additional requests?

7 MR. POWELL: Yes, sir. I filed a
8 supplemental request and answered these
9 questions. Right here it is that he received
10 this and was supposed to return the answers
11 as of the 22nd of last month. Then he said
12 that these had been resolved. Well, it
13 hasn't been resolved. He's just handed me
14 the production/answers out in the hallway, is
15 all that he did. He didn't give me the
16 actual information that I asked for in the
17 request, still hasn't.

18 THE COURT: Then you need to be
19 specific as to what it is that you think that
20 he should give you. You haven't done that.

21 MR. POWELL: No, sir, I was very
22 specific.

23 THE COURT: No, sir. I'm telling
24 you that you're going to file a supplemental
25 request that says "I want these" -- 'you've

1 given me A, B and C and I'm entitled to E, D,
2 F. You identify D, E and F, not just 'give
3 me all documents.'

4 MR. POWELL: Well, I've only got
5 four or five in here, specific ones. It
6 wasn't the whole request that I had in the
7 beginning.

8 THE COURT: And which Motion --
9 do you have a copy of the Motion that you are
10 referring to?

11 MR. POWELL: Yes, sir.

12 THE COURT: If you would, pass it
13 up.

14 MR. POWELL: That I sent him.

15 THE COURT: No, sir, let me see
16 the one that you have in your hand right now,
17 that you're relying on.

18 MR. POWELL: (Tenders), ---

19 THE COURT: Thank you. (Upon
20 review), and this is a -- what you've handed
21 me says Supplemental Request for Admit.
22 That's what you are talking about?

23 MR. POWELL: Right, and then there
24 is a second one for ---

25 THE COURT: Just ---

1 MR. POWELL: Yes, sir.

2 THE COURT: Dated and mailed
3 2/20/15. That means in February of this
4 year, correct?

5 MR. POWELL: Right.

6 THE COURT: Correct?

7 MR. POWELL: Right.

8 THE COURT: What I am trying to
9 tell you is that this Motion -- that there is
10 Motion -- you haven't filed any Motion.
11 You've just requested from him. If you think
12 that he hasn't answered, you have to file a
13 Motion to Compel, response to what I'm
14 holding in my hand. That's not before me.
15 That's what I'm trying to tell you.

16 MR. POWELL: Okay.

17 THE COURT: Okay?

18 MR. POWELL: That's all I -- the
19 only point that I was trying to make was that
20 I ---

21 THE COURT: Mr. Powell, he has
22 answered you. You don't think that he has
23 answered you sufficiently. That's where you
24 file a Motion to compel and you set forth
25 specifically what you believe you're entitled

1 to. But that's not before me today.

2 MR. POWELL: I ---

3 THE COURT: Mr. Powell, that's not
4 before me today.

5 MR. POWELL: Okay.

6 THE COURT: So there's no need for
7 us to talk about that.

8 MR. POWELL: Okay.

9 THE COURT: Because all I have is
10 your Motion for Summary Judgment and Mr.
11 Davis' Motion for Summary Judgment. Those
12 are the only two Motions that we have.

13 If you want him to provide something
14 else, you have to file the proper Motion.
15 Okay?

16 MR. POWELL: Okay.

17 THE COURT: Thank you.

18 Mr. Davis, now I will hear you on your Motion
19 for Summary Judgment.

20 MR. DAVIS: Thank you, Your Honor,
21 may it please the Court.

22 THE COURT: Sure.

23 MR. DAVIS: We sent you a
24 memorandum of ---

25 THE COURT: You did and your

1 memorandum is incorporated fully for the
2 purposes of review should that become
3 necessary; just as Mr. Powell's memorandum
4 that he submitted with his Motion is likewise
5 incorporated, as well, for purposes of
6 review.

7 MR. DAVIS: Thank you.

8 THE COURT: Yes, sir.

9 MR. DAVIS: He has, in his
10 Complaint, raised as best I can tell two
11 causes of action against Knology.

12 The first cause of action is
13 negligent supervision, against Knology.
14 It's our position that -- well, first of all,
15 Knology is the only party to the lawsuit.
16 There really is no issue of fact in terms of
17 -- there's really not a fit for a negligent
18 supervision cause of action in the case.

19 I'm sure the court is familiar with
20 the elements of negligent supervision.

21 THE COURT: I am.

22 MR. DAVIS: Knology, again, is the
23 only defendant. Plaintiff has -- neither in
24 his Complaint nor through discovery -- not
25 produced any fact that would suggest that the

1 incident occurred on Knology's land.

2 THE COURT: Well, he has alleged a
3 negligence action on the part of Knology, so
4 it really is ---

5 MR. DAVIS: Yes, Your Honor.

6 THE COURT: Okay. I mean, I --
7 that's not something that you have to defend,
8 really, because you are going to be defending
9 your actions anyway.

10 MR. DAVIS: Okay. Thank you, Your
11 Honor. And the second -- as Your Honor
12 alluded to, the second cause of action that
13 he alleges is gross negligence.

14 On that issue, as I am sure the
15 Court knows, absent a legally-recognized duty
16 the defendant is a negligence action is
17 entitled to judgment as a matter of law, and
18 it's our position that Knology did not owe
19 him any duty in this case.

20 In his Complaint he points to what
21 he describes as a right-of-way that is in
22 front of or adjacent to 930 Folly Road.
23 Knology does not own either what he's calling
24 the right-of-way or the property at 930 Folly
25 Road.

1 Knology produced our records in
2 response to him to indicate that the only
3 installation work that Knology has ever done
4 or the only installation of cable Knology has
5 ever performed in the area was completed
6 August 22nd, 2006.

7 We've also produced discovery to Mr.
8 Powell showing that that installation was for
9 services provided to 930 Folly Road, Units A
10 and B. That the services on Unit A remained
11 active until 2009 and the services on Unit B
12 remained active until 2008.

13 This -- and this is a fall that
14 occurred June 21st, 2012.

15 Knology, again, did not own the
16 land. Back in 2006, the right-of-way was set
17 to change ownership ---

18 THE COURT: I understand all that.
19 Did you put the cable in the right-of-way?

20 MR. DAVIS: There is no evidence
21 that Knology -- that these cables were placed
22 there by Knology. The only chance that they
23 potentially could belong to Knology is this
24 2006 installation that our records show was
25 performed properly.

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1 THE COURT: I understand that but
2 -- it's an issue of fact as to whether it was
3 performed properly, isn't it?

4 MR. DAVIS: But there's no
5 evidence that Mr. Powell -- Mr. Powell hasn't
6 shown any evidence to the contrary. There is
7 essentially no evidence that the cables in
8 the right-of-way belong to Knology, or that
9 Knology had any notice of these cables before
10 this fall in 2012, or notice of any
11 conditions that ---

12 THE COURT: Well, I appreciate
13 that. Notice would be a situation if you
14 didn't put it there, if maybe you were the
15 right-of-way owner but, uh, -- if you
16 installed the cables, you're responsible.
17 Are you not?

18 It's kinda like the lighting case
19 that we tried the end of last year, a trip-
20 and-fall. It'd been there for a long, long
21 time but nobody fell. But then when somebody
22 fell -- the lighting was poor and that was a
23 negligence issue; at least the jury said so,
24 eighty percent responsible on the part of the
25 defendant for not lighting it properly.

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1 So I appreciate that. To me, that's
2 an issue of fact as to -- if there's a -- no
3 question you did work in this area. I mean,
4 you're not denying that?

5 MR. DAVIS: No, Your Honor.

6 THE COURT: Okay. All right, Mr.
7 Powell, what is your position? What proof do
8 you have that Knology is the person (sic)
9 that put in this work, that installed the
10 cables that caused the fall?

11 MR. POWELL: Well, ---

12 THE COURT: Other than *res ipsa*,
13 which we don't recognize.

14 MR. POWELL: Before I get to that,
15 I've got his letter from the South Carolina
16 D.O.T. where Knology did get encroachment
17 permits for ---

18 THE COURT: Listen. I appreciate
19 all of that.

20 MR. POWELL: Okay.

21 THE COURT: I'm asking you, what
22 question -- I assume that is dated back in
23 2006?

24 MR. POWELL: No, I got this last
25 week.

1 THE COURT: No, what is the date
2 of the ---

3 MR. POWELL: It was the same month
4 that they -- back in 2006. August.

5 THE COURT: Okay. Well, that's
6 fine. That's -- the fact that they got an
7 encroachment permit doesn't have a thing to
8 do with this case. Doesn't have anything to
9 do with it.

10 MR. POWELL: Well, they broke the
11 law is what they're saying.

12 THE COURT: Well, I appreciate
13 that.

14 MR. POWELL: Well, okay. Your
15 Honor, as far as me proving one hundred
16 percent -- there again, I was denied the
17 Motion for summary judgment for lack of proof
18 the last time. But it says right here that
19 the ---

20 THE COURT: Well, you were denied
21 summary judgment because there's an issue of
22 fact, not because you hadn't proven anything.
23 Summary judgment doesn't deal with that.

24 MR. POWELL: Well, it's because
25 they brought the last ---

1 THE COURT: Please, let's don't
2 argue that. I asked you a specific question,
3 Mr. Powell. Help me here.

4 MR. POWELL: Okay.

5 THE COURT: What evidence do you
6 have that Knology installed the cables that
7 you tripped on?

8 MR. POWELL: All right. Your
9 Honor, it says right here on their work order
10 that they had -- they had an ASAP work order
11 for that day, they had to get it done that
12 day, ---

13 THE COURT: That day being in
14 2006?

15 MR. POWELL: Yes, 8-14-2006, due to
16 be -- "install today, ASAP" but there was a
17 concern about the sprinkler system.

18 THE COURT: Which was where? Not
19 in ---

20 MR. POWELL: The whole front yard.
21 It's like a hundred feet where they run it,
22 930 Folly Road.

23 THE COURT: Well, I understand
24 that but that's not in the easement, is it?

25 MR. POWELL: No, but that's the

1 reason they didn't bury the lines.

2 THE COURT: All right.

3 MR. POWELL: It says right here
4 that -- in this work order that Mr. Davis
5 gave you, it doesn't say anything about what
6 they did to ---

7 THE COURT: What evidence do you
8 have that this is their cable?

9 MR. POWELL: The only evidence that
10 I have that this is their cable is back in --
11 that, uh, -- that they -- right here it says,
12 'All documents concerning Lee Endicott,
13 Charleston Center (phonetic), who agreed to
14 pay Mr. Powell his doctor's bills and he was
15 told that he'd have to wait several weeks to
16 receive the check.'

17 Then there was the supplement
18 request, 'all documents concerning about when
19 Knology came to the property to remove the
20 lines.'

21 THE COURT: Removed the lines?

22 MR. POWELL: Well, see when they --
23 Your Honor, my wife called ---

24 THE COURT: When did they remove
25 the lines?

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1 MR. POWELL: My wife called the
2 next day after I was injured ---

3 THE COURT: Where is that? Is
4 there an affidavit of this?

5 MR. POWELL: Well, it's in my
6 Complaint also.

7 THE COURT: No, it's not -- is
8 there an affidavit for what you're about to
9 tell me?

10 MR. POWELL: I'm not sure that I
11 know exactly what you mean by an affidavit.

12 THE COURT: Well, until ---

13 MR. POWELL: It's in my Complaint.

14 THE COURT: Well, I'm sure you
15 don't. That doesn't survive the day for
16 summary judgment.

17 MR. POWELL: Okay. It goes -- the
18 fact why I can't say for one hundred percent
19 is because when we went to Knology, the
20 manager -- my wife called Knology the next
21 day and the cable lines were gone.

22 The next day we went to Knology and
23 their manager offered me twenty-nine hundred
24 dollars (\$2,900), told me that it would be
25 several weeks before I'd receive that money.

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1 THE COURT: Okay.

2 MR. POWELL: But, see, now Mr.

3 Davis was telling me yesterday that Lee
4 Endicott doesn't work there anymore and he's
5 never returned the documents in production of
6 what this man did and why he offered me the
7 money and who he said -- I still haven't
8 received the production.

9 THE COURT: Okay. Anything else?

10 MR. POWELL: So there, again, I
11 can't -- without that, I can't say one
12 hundred percent.

13 THE COURT: Okay.

14 MR. POWELL: Even though it's
15 pretty obvious. I think maybe the court gets
16 to decide.

17 THE COURT: Okay. Anything else,
18 Mr. Powell?

19 MR. POWELL: Sir?

20 THE COURT: Anything else?

21 MR. POWELL: I'm sure that there
22 probably is but, see, I had all this laid out
23 to present to you but now I'm thoroughly
24 confused.

25 THE COURT: Well, I -- sorry about

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1 that.

2 MR. POWELL: I ---

3 THE COURT: I've incorporated your
4 memorandum. That's included. I did not see
5 -- and you've indicated that you really don't
6 know what the question of an affidavit is,
7 but there's no affidavit, no statement, no
8 deposition testimony setting forth everything
9 that you've just stated about what transpired
10 with your discussion or your wife's
11 discussion. Correct?

12 MR. POWELL: (No verbal response).

13 THE COURT: There is no affidavit,
14 she has not been deposed and so there's no
15 statement other than your statement; correct?

16 MR. POWELL: I think I've got it in
17 one of my production questions.

18 THE COURT: Oh, I understand that.
19 I'm talking about a sworn statement.

20 MR. POWELL: A sworn statement?

21 THE COURT: Yes, sir.

22 MR. POWELL: That, uh, me and my
23 wife went to talk to the manager?

24 THE COURT: Yes.

25 MR. POWELL: No, there's not a

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1 sworn statement.

2 THE COURT: Thank you, sir. That
3 was one in the golf ball case, a lawyer
4 representing the plaintiff swore that he
5 talked to an expert in California. He put
6 that in an affidavit because he said that the
7 expert told him that there was a violation of
8 the Code. I granted summary judgment because
9 I didn't think that a lawyer's affidavit was
10 sufficient. The Supreme Court reversed me on
11 that because it said that it was an
12 affidavit and, therefore, it created an issue
13 of fact. But I don't have any affidavits
14 here.

15 MR. POWELL: I ---

16 THE COURT: Mr. Powell, I'm about
17 to rule -- your statements are fully
18 contained in the record.

19 MR. POWELL: Okay.

20 THE COURT: Mr. Powell, I gave you
21 a full opportunity to do that. Mr. Davis,
22 your Motion is granted.

23 MR. DAVIS: Thank you, Your Honor.

24 THE COURT: So the case is over.
25 You can appeal this once you get the Order,

1 Mr. Powell, and take it to the Supreme Court.
2 Maybe they will help you out up there.

3 If you (Mr. Davis) will prepare the
4 Order.

5 MR. DAVIS: Yes, sir. Thank you,
6 Your Honor.

7 (HEARING CONCLUDED)

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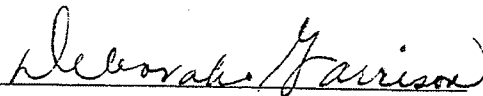
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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

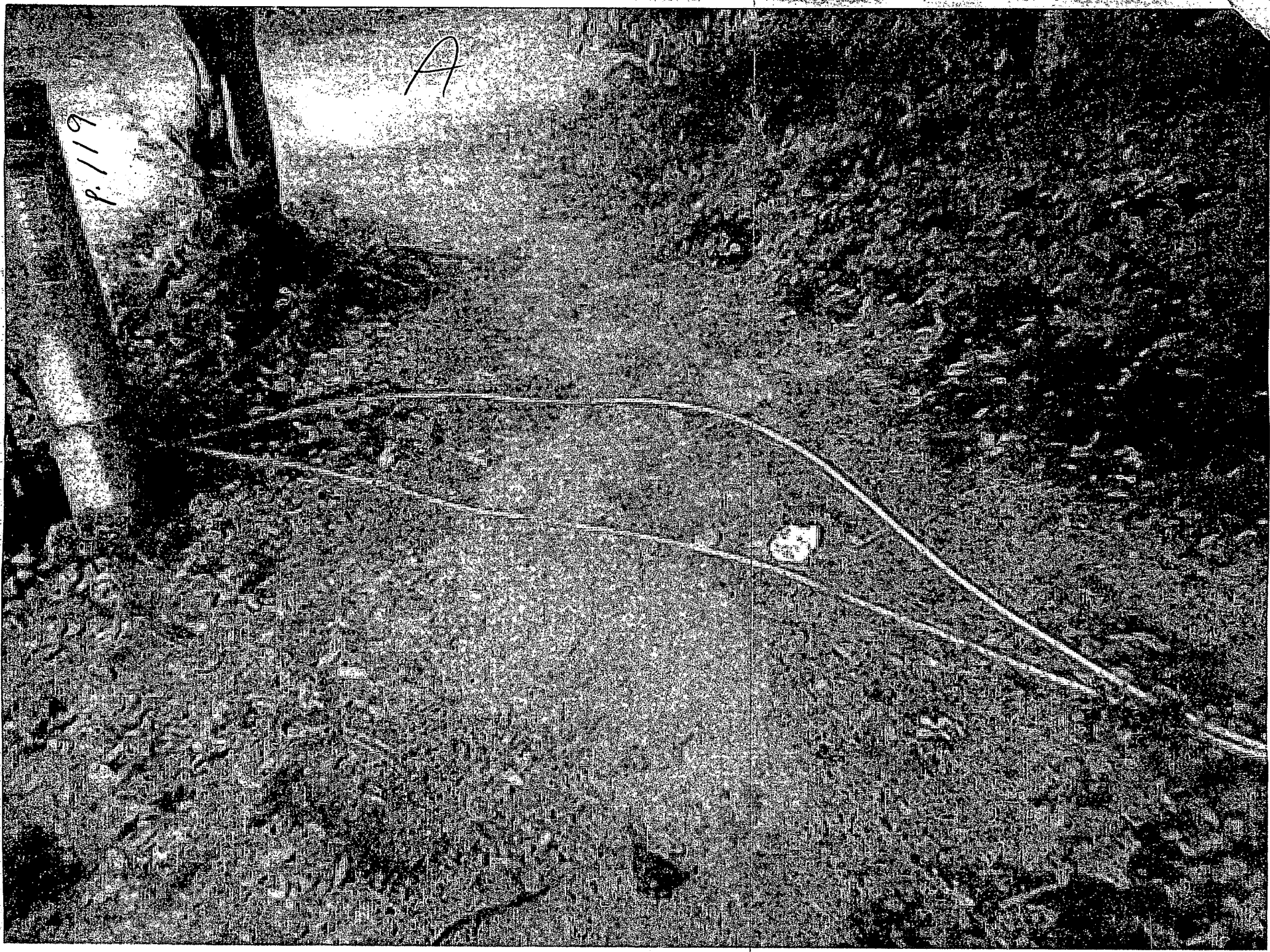
I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on April 2nd, 2015,
before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

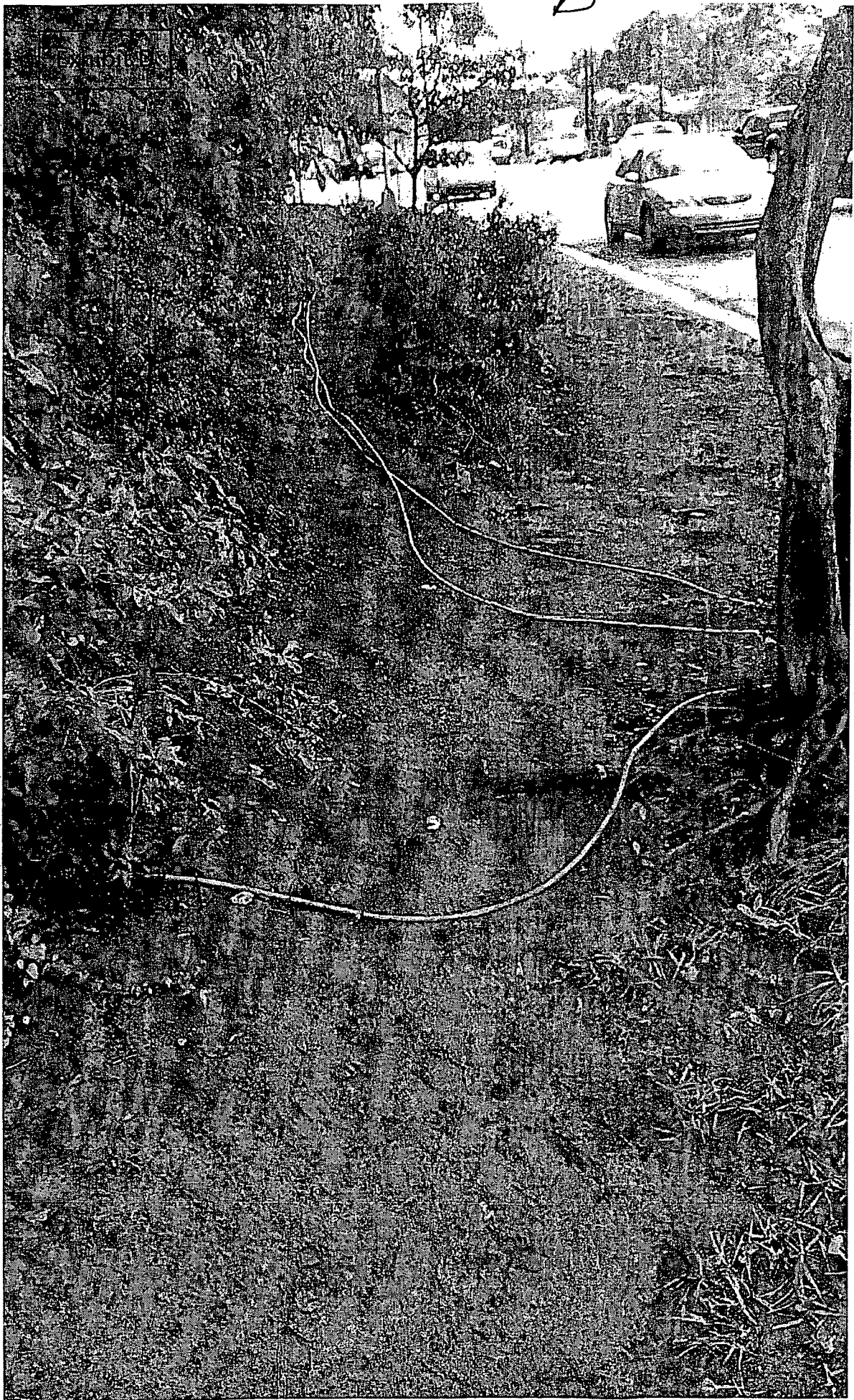
Greenville, South Carolina

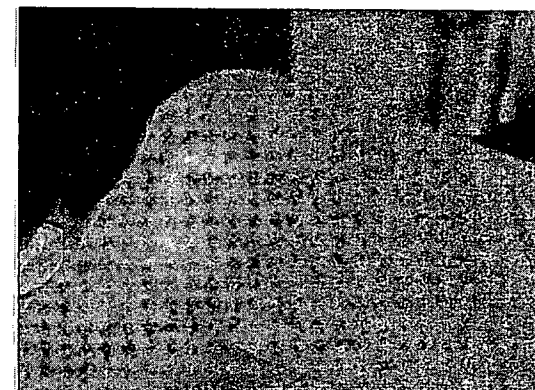


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B





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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Civil Case; 2013-CP-10-6019
Appeal; 2016-001035

Jack Powell, Appellant,

v.

Knology of Charleston Inc. Respondent,

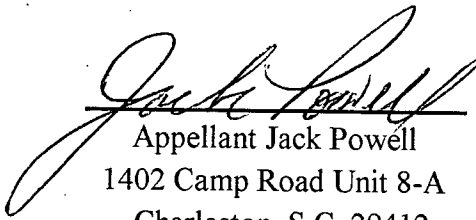
RECORD ON APPEAL CERTIFIED

RECEIVED

MAY 31 2017

SC Court of Appeals

Pro se Appellant Jack Powell hereby certifies that his Record on Appeal contains material proposed to be included in the Appeal and not any other matter that is not relevant.


Appellant Jack Powell
1402 Camp Road Unit 8-A
Charleston, S.C. 29412
(843)952-4762

Mcangus, Goudelock & Courrie
735 Johnnie Dodds Blvd.
Mt. Pleasant, S.C. 29464
Respondent Attorney, Benjamin Davis
(843) 576-2920

III.