

Call Once: Updating Locates Systems For Today's Broadband Deployments

Communications infrastructure, unlike some other types of infrastructure, changes and is rebuilt with each new generation of technology. Fiber (and other broadband) networks must be strung on utility poles or buried underground in protective conduit. Like any other construction project that involves excavation, this work triggers the need for owners of existing underground infrastructure to mark the location of underground infrastructure before digging begins. This process, known as utility location or “locates,” shields property and the public from safety hazards by preventing damage to underground electrical, gas, water, sewer, and communications lines.

Utility location regimes are carefully designed to prevent damage to property and protect public safety by engaging multiple stakeholders. Before digging, excavators must call the state 811 “Call Before You Dig” service or One Call clearinghouse to request that utility location be performed in a planned excavation area. Owners of underground infrastructure are then notified through the locates notification system of the planned excavation and must locate and mark all of their underground facilities within a specified time frame. An excavator hitting an unmarked utility may require (and divert the resources of) a community’s public safety first responders such as police and firefighters. Service disruptions and costly repairs may also result.

All stakeholders must cooperate to prevent damage of property and protect public health and safety by keeping the utility location process operating as designed. This document explains several specific challenges that a community and infrastructure owners may experience in conjunction with an increased volume of location requests from the rapid deployment of new fiber networks. It also shares several recommendations to help stakeholders prepare for this “new normal” during the deployment of those networks.

The Critical Role of the Locates Regime

State locating regimes center on the state’s 811 “Call Before You Dig” service or One Call clearinghouse. An excavator is typically required to inform the relevant One Call clearinghouse of any planned excavation work at least two days but no more than two weeks in advance of the work, depending on the jurisdiction.¹ The clearinghouse serves as a statewide communication system that receives and records every notification of planned excavation and disseminates that information to owners of underground infrastructure. Once owners of underground

¹ The precise window varies by jurisdiction. *See, e.g.*, CAL. GOV'T CODE § 4216.2(a)(1) (West 2015) (requiring between 2 working days and 14 calendar days' notice); GA. CODE ANN. § 25-9-6(a) (West 2015) (requiring 48 hours' notice); 220 ILL. COMP. STAT. 50/4 (2014) (requiring between 48 hours and 14 calendar days' notice); KAN. STAT. ANN. § 66-1804(a) (2014) (requiring between 2 working days and 15 calendar days' notice); MO. REV. STAT. § 319.026 (2015) (requiring between 2 and 10 working days' notice); OR. ADMIN. R. § 952-001-0050 (2015) (requiring between 2 and 10 business days' notice); TEX. UTIL. CODE ANN. § 251.151(a) (2015) (requiring between 48 hours and 14 days' notice).

infrastructure are notified by the clearinghouse of the planned excavation, they must mark the location of all underground facilities within a specified timeframe.²

State authorities have a legal obligation to enforce the excavation notification and utility location rules.³ The enforcement mechanisms and authority vary by jurisdiction. Excavators claiming that an owner of underground infrastructure has failed to timely locate its facilities may file a complaint with a state agency, and agencies may impose penalties.⁴ State attorneys general or other officials may also bring enforcement actions.⁵

Given the stakes, safety and damage prevention are more important than speed of deployment of new networks. In light of this concern, even though some jurisdictions allow excavators to proceed with digging even if a requested locate is not completed within the allotted time,⁶ excavators often elect not to do so.

Adapting The Locates Regime to Modern Technology

Increased network deployment activity means an increase in utility location requests, which impacts the locating regime. The increased demand will be measured in most communities in years. Such demand can lead to breakdowns in the locates process. Whether it is the result of incomplete, inaccurate or delayed locates, the community is left at risk whenever the locating regime does not operate as designed.

² The timeframe varies from state to state, but owners often have a 48-hour window in which they must complete all required locates. *See, e.g.*, CAL. GOV'T CODE § 4216.3 (within 2 working days, excluding weekends and holidays); GA. CODE ANN. § 25-9-7 (48 hours); 220 ILL. COMP. STAT. 50/10 (within 48 hours or by the date of the planned excavation, whichever is later); KAN. STAT. ANN. § 66-1806(a) (two working days); MO. REV. STAT. § 319.030 (2 working days); OR. ADMIN. R. § 952-001-0070 (2 business days / 48 hours); TEX. UTIL. CODE ANN. § 251.157 (within 48 hours or a time agreed to by the owner and excavator).

³ *See Damage Prevention in Your State*, COMMON GROUND ALLIANCE, <http://commongroundalliance.com/map/> (last visited Feb. 7, 2015).

⁴ *See, e.g.*, GA. CODE ANN. § 25-9-13(g), (i); 220 ILL. COMP. STAT. ANN. 50/11(e), (j); KAN. STAT. ANN. § 66-1806(h).

⁵ *See, e.g.*, CAL. GOV'T CODE § 4216.6(b); MO. REV. STAT. § 319.045.

⁶ When a locate is not performed on schedule, some jurisdictions permit an excavator to begin digging (although some states require a “no response” ticket be filed first, to give the owner another chance to perform). *See, e.g.*, KAN. STAT. ANN. § 66-1806(f) (authorizing excavator to proceed in absence of required location); MO. REV. STAT. § 319.030 (requiring a “no response” ticket before the excavator may proceed without a locate). Proceeding without a locate under these rules, however, does not absolve the excavator of all potential liabilities should damage result from the excavation. *See, e.g.*, KAN. STAT. ANN. § 66-1806(f); MO. REV. STAT. § 319.030. And it certainly does not protect the public from the risk posed by digging blindly.

New broadband providers and underground infrastructure owners certainly have a central role to play in ensuring an efficient and effective locates system. Broadband providers, for example can provide an overview of deployment plans to help owners of underground infrastructure allocate resources and ensure adequate staffing at the appropriate times and places and develop a close working relationship with both those infrastructure owners and the local One Call System. Underground infrastructure owners can, in turn, prepare themselves for increased volume and complexity of upcoming locates work and actively work with their vendors to comply with all rules and ensure that each part of the locating regime serves its intended function.

At the same time, city and state governments have a critical role to play as stewards of the overall system:

- ***Permitting and Other Fees.*** Cities that own underground utilities may want to perform an analysis and update of permitting fees to make sure they can cover the added expense of hiring additional locators. Owners should *not*, however, be allowed to charge excavators for performing locates. Doing so would violate the “basic underpinning of the call-before-you-dig process that persons involved in excavation activities receive facility locates at no charge when they contact their local One Call center.”⁷ Unscrupulous or extremely budget-sensitive excavators would have an incentive to avoid calling in locate requests in the first place, in order to avoid paying for locates—risking public safety. All members of the community should be incentivized to call; this includes not just excavators planning large projects, but also homeowners planning small projects, like a fence installation or planting a tree.
- ***Participating in the System as Designed.*** Cities should also work to ensure that each part of the locating regime serves its intended function. Cities should encourage the appropriate use of no response tickets and positive responses, and consistently prioritize safety and public health when developing local policies that relate to utility marking activities.
- ***Requiring Positive Responses.*** To the extent that city or state government is engaged in reform of the statewide utility location regime, it should consider instituting a positive response requirement that would require owners to inform excavators of the status of each locate request, even if no underground facilities are present.⁸ Such a practice would

⁷ See *Best Practices 12.0, Common Ground Alliance (Mar. 2015)*, <http://commongroundalliance.com/best-practices-guide> at § 5.31.

⁸ Compare, e.g., GA. CODE ANN. § 25-9-7(c) (requiring “[e]ach facility owner or operator, either upon determining that no [underground facilities are] present on the tract or parcel of land or upon completion of the designation of the location of any [underground facilities], shall provide this information . . . [no later than] the second business day following receipt [of the request].”); 220 ILL. COMP. STAT. 50/10 (requiring an owner of underground facilities who receives notice of excavation “but does not own or operate any underground utility facilities within the proposed excavation or demolition area described in the notice” to notify the excavator within 48 hours or by the requested date and time in the notice, whichever is

promote certainty in the locating regime, preventing inadvertent damage to infrastructure and risk to public safety.

later, unless the excavator has waived the right to such notification); MO. REV. STAT. § 319.026 (requiring an underground facilities owner or operator who receives notice of planned excavation and who “determines that he or she neither owns or operates underground facilities in or near the area of excavation” to “inform the excavator that the owner or operator has no facilities located in the area of the proposed excavation” within two working days by way of one of a list of acceptable communication methods), *with* KAN. STAT. ANN. § 66-1806 (requiring an operator of “tier 1” facilities who has “no underground facilities in the area of the proposed excavation” to “notify the excavator that it has no facilities in the area of proposed excavation” before the excavation date in one of several specified ways, but not imposing a similar requirement on operators of “tier 2” or “tier 3” facilities).