

**BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD**

<b>IN THE MATTER OF THE COMPLAINT FILED</b>	)	<b>NOTICE OF HEARING</b>
<b>BY VALLEY TELECOMMUNICATIONS,</b>	)	
<b>HERREID, SOUTH DAKOTA, AGAINST BRUCE</b>	)	<b>OC06-003</b>
<b>MACK, LEOLA, SOUTH DAKOTA</b>	)	

On May 25, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by Valley Telecommunications, Herreid, South Dakota (Valley), against Bruce Mack, Leola, South Dakota (Mack). According to the complaint, Mack struck two 8 fiber cables while operating a bulldozer to push an old embankment of a stock dam to level the land so it could be farmed. The complaint alleged Mack: 1) failed to notify the one-call center before excavating in violation of SDCL 49-7A-5, and 2) failed to notify Valley or the one-call notification center of the damage to the underground cables in violation of SDCL 49-7A-12.

Pursuant to SDCL 49-7A-23 and 49-7A-24, a copy of the complaint was forwarded to Mack by U.S. mail confirmation sent on May 26, 2006, advising him that he must file an answer in writing by June 16, 2006. The mail confirmation indicates that Mack signed for the notice on May 27, 2006. Mack filed an answer to this complaint on June 21, 2006. Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Jerry Schroeder, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on July 13, 2006. Pursuant to SDCL 49-7A-25, based on the complaint filed by Valley, the Panel determined by unanimous vote that there had been violations of the statutes as alleged in the complaint.

Pursuant to SDCL 49-7A-27, a copy of the Panel's recommendations was sent to the parties. The Board has not received an acceptance or rejection of the Panel's recommendations from Valley or Mack.

The Board finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-5, 49-7A-8, 49-7A-10, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive, and SDCL Chapter 1-26.

A hearing shall be held on September 19, 2006, at 1:30 p.m. in Room 412, State Capitol, 500 East Capitol, Pierre, SD. All persons testifying will be subject to cross-examination by the parties.

The issues at the hearing shall be: 1) whether Mack violated SDCL 49-7A-5 by commencing excavation without providing advance notification to the one-call center; and, 2) whether Mack failed to notify Valley or the one-call notification center of the damage in violation of SDCL 49-7A-12. Also at issue shall be whether penalties shall be imposed by the Board pursuant to SDCL 49-7A-18 and/or 49-7A-19, and, if so, what those penalties shall be.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Board will consider all evidence and

testimony that was presented at the hearing. The Board will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Board shall determine whether Mack violated any statute or rule of the Board, and, if so, whether any penalties shall be imposed.

The Board's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please call 1-800-781-7474 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 24 day of August, 2006.



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#### CERTIFICATE OF SERVICE

I hereby certify that copies of Notice of Hearing were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 24 day of August, 2006.

Mr. Bob Schuetzle  
Valley Telecommunications  
102 Main Street  
Herreid, SD 57632

Mr. Bruce Mack  
11510 362<sup>nd</sup> Avenue  
Leola, SD 57456

Ms. Margo D. Northrup  
Attorney at Law  
Riter, Rogers, Wattier & Brown, LLP  
P. O. Box 280  
Pierre, SD 57501-0280



Kara Van Bockern  
Attorney for the One Call Board