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

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

**IN THE MATTER OF THE COMPLAINT FILED)
BY VALLEY TELECOMMUNICATIONS,)
HERREID, SOUTH DAKOTA, AGAINST BRUCE)
MACK, LEOLA, SOUTH DAKOTA)
)
)**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW;
NOTICE OF ENTRY OF
ORDER
OC06-003**

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 did not receive an acceptance or rejection of the Panel's recommendations from either Valley or Mack.

A hearing was held as scheduled on September 19, 2006 at 1:30 p.m. (CDT) in Room 412 of the State Capitol Building located at 500 East Capitol Avenue in Pierre, South Dakota. Valley Telecommunications was present and represented by counsel. Mr. Mack was present and not represented by counsel. Valley Telecommunications presented evidence through the testimony of Drew McQuarie and Bob Schuetzle. Mr. Mack presented evidence through his own testimony and that of Derald Mack. The issues at the hearing were: 1) whether Mack failed to notify the one-call center before excavating in violation of SDCL 49-7A-5, and 2) whether Mack failed to notify Valley or the one-call notification center of the damage to the underground cables in violation of SDCL 49-7A-12. The parties stipulated and agreed to dismiss Issue 2 above. The only issue decided then was whether Mack failed to notify the one-call center before excavating in violation of SDCL 49-7A-12.

At the conclusion of the hearing, a motion was made by Doug Larson, a Board member present at the hearing. Doug Larson moved that based on the testimony and the evidence submitted Bruce Mack did violate SDCL 49-7A-5 by commencing excavation in the SE¼ of Section 5, Township 126 North, Range 67 West (2 ½ miles north of Leola on County Highway 19) without providing advance notification to the South Dakota One Call System as required by statute. Todd Chambers, Board Member, provided a second to the motion. Chairman Jerry Schroeder called for discussion on the motion. There was no discussion and a vote was taken of all the members present. There was a unanimous vote by all the members of the Board present at the hearing in support of the motion. Those members present at the hearing for the vote included: Todd Chambers, Kevin Kouba, Bleau LaFave, Doug Larson, Rod Cundy, Pat Gilligan, Ed Anderson, Paul Lowe and Terry Larson. Having considered the evidence of record and applicable law, the Board makes the following

FINDINGS OF FACT

1. On May 25, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board received a complaint filed by Valley Telecommunications, Herreid, South Dakota, against Bruce Mack, Leola, South Dakota. 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.
2. Valley presented evidence and exhibits to the Board through the testimony of Drew McQuarie (McQuarie), a local area coordinator in the Ipswich area and Bob Schuetzle the Valley Plant Manager. Mack presented evidence and exhibits to the Board through his own testimony and that of Derald Mack.
3. Valley received notice on April 9, 2006 of a cable cut, and service outage for many of its customers. McQuarie was the technician sent by Valley to repair the damaged cable. TR at 11-12. Mack was present while Valley performed repairs. Id. at 16. Further, Mack admits he owns the property where damage occurred. Id. at 59.
4. Although Mack did not own the property at the time the fiber optics cable at issue was installed in 1997. Id. at 34. The fiber optics cable ran through a dam located on the property now owned by Mack. Id. at 34. The dam had been present on the property since the 1930s. Id. at 52.
5. Mack was moving earth with heavy equipment when he hit the cable and the cable was cut. Mack was not tilling, gardening, nor was he maintaining a ditch or road. Mack admits he was excavating. Id. at 52-53.
6. In the course of Valley's investigation, it discovered no valid locate ticket for the excavation work Mack performed on his property. Id. at 34. Mack admits he did not have a valid locate request, as he did not believe one was needed to level the dam wherein the cable was located. Id. 47-50.
7. The Board finds the testimony credible and further finds that sufficient evidence exists to indicate that Mack did not properly provide prior notification to the One Call System prior to excavation in violation of SDCL 49-7A-5.

CONCLUSIONS OF LAW

1. 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.
2. SDCL 49-7A-5 provides in part that, "No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation..."

3. The Board finds that there is sufficient evidence to find that Bruce Mack violated SDCL 49-7A-5 by failing to provide notice to the one-call notification center prior to excavating in the SE¼ of Section 5, Township 126 North, Range 67 West.
4. The Board assess a penalty of five hundred dollars (\$500) with three hundred dollars (\$300) suspended on the following conditions: (i) that Bruce Mack fully complies with SDCL 49-7A-5 and ARSD 20:25 for twelve months, and (ii) that Bruce Mack fully complies with the resolution of the Complaint in Docket OC06-003 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of these Findings of Fact, Conclusions of Law and Final Order.

It is therefore

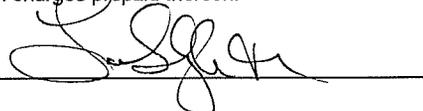
ORDERED, that the Board finds that Bruce Mack did violate SDCL 49-7A-5; and it is

FURTHER ORDERED, that Bruce Mack fully comply with the Enforcement Committee's Findings of Fact and Conclusions of Law and penalty recommendations.

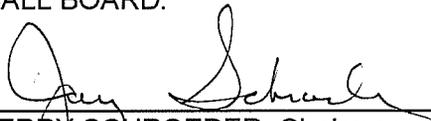
NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 28th day of September, 2006. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

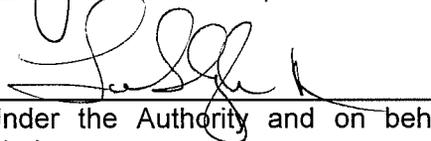
Dated at Sioux Falls, South Dakota, this 28th day of September, 2006.

<p>CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: </p> <p>Date: September 28, 2006</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE SOUTH DAKOTA ONE-CALL BOARD:



 JERRY SCHROEDER, Chairman



 Under the Authority and on behalf of the Chairman

LARRY ENGLERTH, Executive Director