

LAW OFFICES
RITER, ROGERS, WATTIER, & BROWN, LLP

Professional & Executive Building
319 South Coteau Street
P. O. Box 280
Pierre, South Dakota 57501-0280

Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
John L. Brown
Margo D. Northrup

Telephone:
605-224-5825
605-224-7889
Facsimile:
605-224-7102

OF COUNSEL
Robert D. Hofer
E. D. Mayer

FAX COVER SHEET

DATE: 09/15/06
DELIVER TO: Patty Van Gerpen
FAX NUMBER: 773-3809
FROM: Margo D. Northrup
RE: 0C06-003 – Motion in Limine

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET:

MESSAGE FROM SENDER:

Attached for filing is a Motion in Limine in the above-referenced matter Docket No. 0C06-003. We have mailed the original to your office.

Thank you,

Margo

This facsimile contains information that (a) may be legally PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) is intended only for the use of the Addressee named below. If you are not the Addressee or the person responsible for delivering this to the Addressee, you are hereby notified that reading, copying or distributing this facsimile is prohibited. If you have received this facsimile in error, please telephone us immediately and mail the facsimile back to us at the above address. Thank you.

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

**IN THE MATTER OF THE COMPLAINT) MOTION IN LIMINE
FILED BY VALLEY TELECOMMUNI-)
CATIONS COOPERATIVE, INC.)
HERREID, SOUTH DAKOTA, AGAINST) OC06-003
BRUCE MACK, LEOLA, SOUTH DAKOTA)**

COMES NOW, Petitioner Valley Telecommunications Cooperative, Inc., ("Valley"), by and through its attorney, Margo D. Northrup of Riter, Rogers, Wattier and Brown, LLP, and moves that the South Dakota One Call Board ("One Call Board") grant an Order barring any questions, opening statements, argument, testimony, or evidence on any of the areas listed below:

1. That Bruce Mack be barred from introducing testimony and a recorded audio tape in reference to a call with a Customer Service representative of the One Call Center dated April 21st and May 4th, 2006. The conversation with the Customer Service Representative occurred subsequent to the excavation activity alleged in OC06-0030, and is not relevant to this proceeding. Further, any determination made by the Customer Service representative is an improper legal interpretation and not binding on the One Call Board.

2. That Bruce Mack be barred from introducing testimony in reference to an easement on the property described in the Complaint. Existence of an easement on this property is not relevant to this proceeding.

Argument and Authorities

All excavators have a duty to provide notice of excavation by calling the One Call Notification Center at least forty-eight (48) hours (excluding Saturdays, Sun-

days, and legal holidays of the State of South Dakota) prior to commencement of the excavation. Upon failure to notify the One Call Center "any excavator damaging or injuring the underground facilities is strictly liable for all damage proximately caused thereby". (emphasis added). SDCL §49-7A-10. Thus, the actions by Valley are not relevant to the duty placed upon Mr. Mack under the South Dakota One Call Chapter. SDCL§ 19-12-12.

WHEREFORE, Valley requests that this Motion in Limine be granted.

Dated at Pierre, South Dakota, this 15th day of September, 2006.

RITER, ROGERS, WATTIER & BROWN
L. L. P.

By Margo D. Northrup
Margo D. Northrup
319 South Coteau
P. O. Box 280
Pierre, SD 57501
Tel. 605-224-5825
Fax. 605-224-7102
*Attorney for Valley Communications
Cooperative, Inc.*

Certificate of Service

The undersigned, attorney for Valley Telecommunications Cooperative, Inc. hereby certifies that a true and correct copy of the foregoing "Motion in Limine" was served by mail on 15th day of September, 2006 upon:

Mr. Bruce Mack
11510 362nd Avenue
Leola, SD 57456

Ms. Kara Van Bockern
Attorney for One Call Board
500 East Capitol
Pierre, SD 57501
Telephone: 605-73-3201


Margo D. Northrup