

DESCRIPTION OF PROBABLE VIOLATION:

Pass Experience has taught me that S.D. one call did not have to be called when working with dirt that had been moved by man before. On date in question, I was just moving dirt that had been placed by man above ground level as I have done the past 25 years.

Against all common sense we uncovered a cable owned by Valley in the middle of a pile of dirt only 16" deep (about 16" above natural grade. Later we figured out why, Valley took the simple way of laying cable and NOT THE PROPER way. (See Att. Drawing) (photos upon request)

My complaint is that past Experience has taught me that I did not have to call S.D. one call from previous calls to them. NOV Valley Telecommunication says that by Law I was bound to call S.D. one call. So after the fact (Reference 4-21-06 4:10 pm - Mark - SD one call Reference 5-04-06 locate ticket # 010240598) I called S.D. one call and was told what I already knew, that I was not bound to call for moving dirt that had been placed by man above ground level.

I thought S.D. one call was the governing body ~~now~~ now Valley thinks they ARE.

Also: The Easement that is in place only allows for poles and overhead lines and states Nothing About buried Cable. (see Attached Letter)

RECEIVED

JUN 21 2006

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Bar Mark

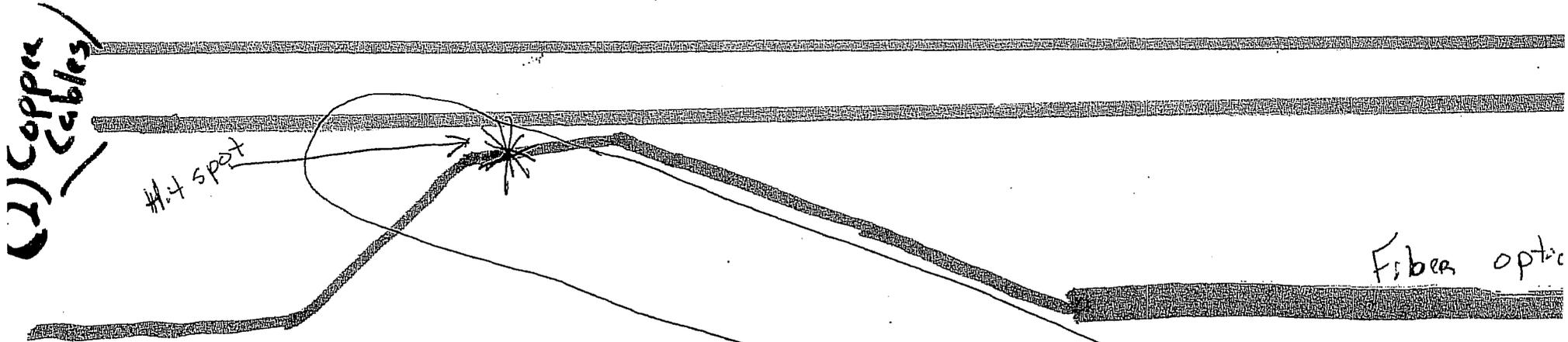
#2) In Responce to not notifying of damage to
underground Fiber Cable at T126, R67W, Sec 5, SE quarter.

Upon noticing damage, I immediately drove to
Service tech, Allen Aman's House, only to find he was at
a Church meeting, according to one of his children.
I returned $\frac{1}{2}$ hour later to find that he was still at a
Church meeting. Shortly there after we met the
Leola service tech on the Road in Route to the damaged Cable.
I did Everything possible in a timeley manner on a
Sunday to Notify Valley.

Ben Mark

* McPherson Co Road # 19 *

← ROAD DITCH →



North

* While plowing in the Fiber optic cable Valley Intersected the Embankment, they turned and Followed the Embankment until they got to their own Copper cable — instead of Crossing their own cable they turned a gain and just ~~went~~ went through the Dirt Embankment and then started back at an angle across the field to disired set Back and Continued.

note this dirt Embankment has not Been able to Hold Back any more than 3" of water for about 30 years.

question If it was OK for them to go through the Embankment why did they turn and start to try to go around the End??

Bruce Mack
11510 362nd Ave
Leola, SD 57456

May 14, 2006

Valley Telecommunications Cooperative Association, Inc.
P.O. Box 7
Herreid, South Dakota 57632

ATTENTION: General Manager John Tormoehlen & Valley Telecommunications Board
Members

REGARDING: The unearthing of buried cable on April 9, 2006 and associated BILL
Invoice 23-06 dated April 24, 2006.

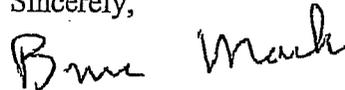
The following issues need to be addressed before any settlement can be reached.

1. Easement- The easement was never updated and legal counsel opinion is that the easement does not cover buried cable. (See attached Easement)
2. South Dakota One Call- Not bound by State Law to call, only highly recommended to call when working with manmade dirt embankments.
 - a. reference 4-21-06 4:10 PM Mark -South Dakota One Call
 - b. reference 5-04-06 Locate Ticket Number #061240598
3. Excavation- Definition of excavation from SDCL 49-7A states that " except road and ditch maintenance that does not extend below eighteen inches of original roadgrade or ditch flowline within the road right-of-way." (Dam was a private road/passageway as clarified and defined by Public Utilities Commission (PUC)(See attachment)
4. South Dakota One Call-A call was made to South Dakota One Call on May 4, 2006 to locate all cables, used and/or abandoned. (Locate Ticket Number #061240598)
5. Cable Location- As of May 13, 2006, Valley Telecommunications had located the fiber optics cables and another copper cable. The remaining abandoned cable has not been located as requested. (Because of not knowing the whereabouts of the abandoned cable my operation has been put on hold.)

6. Bill- Bruce Mack to Valley Telecommunications for helping to clear the way by dozing dam to allow for buried cable removal.(see attached Bill)
7. Question- What is Valley Telecommunications going to do with the above items 1 through 6?
8. PUC Complaint-Complaint to be filed with the PUC against Valley Telecommunications for burying fiber cable on dam embankment and burying cable without proper easements.
9. If legal interpretation of Easement agrees with Judge's legal opinion, this entire issue needs to be resolved.
10. Why did the bill from Valley Telecommunications not reflect the following items?
 - a. Since this was Valley Telecommunications first experience with splicing fiber optics cable, why did it not reflect on the hours billed for labor?
 - b. If the cable would have been located before the dirt was removed, then Valley Telecommunications would have been responsible to move the cable before any dirt was removed.

I am very disgusted with the way Valley Telecommunications has handled the situation and allowed it to digress to this point.

Sincerely,



Bruce Mack

cc: PUC Attention Doug Wegeman
Finley Engineering

Attachments: Copy of Easement
Bill from Bruce Mack
Definition of Excavation SL 1993 ch 346

APPROVED

RIGHT-OF-WAY EASEMENT
VALLEY TELEPHONE COOPERATIVE ASSOCIATION, INC.

KNOW ALL MEN BY THESE PRESENTS, THAT Albert Gisi of Leola, S. Dak. for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant unto Valley Telephone Cooperative Association, Inc., a corporation, of Herreid, South Dakota, and to its successors and assigns, the right to enter upon the lands of the undersigned, situated in the County of McPherson, State of South Dakota, and more particularly described as follows:

SE 1/4-5-126-67

and to place, construct, operate, repair maintain relocate and replace thereon and in or upon all streets, roads or highways abutting said lands, a telephone transmission or distribution line or system, and to cut and trim trees and shrubbery to the extent necessary to keep them clear of said telephone line or system and to cut down from time to time all dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling.

In granting this easement it is understood that at pole locations, only a single pole and appurtenance will be used, and that the location of the poles will be such as to form the least possible interference to farm operations, so long as it does not materially increase the cost of construction.

The undersigned agrees that all poles, wires and other facilities, including any main service entrance equipment, installed on the above described lands at the Cooperative's expense shall remain the property of the Cooperative, removable at the option of the Cooperative upon termination of service to or on said lands.

The undersigned covenants that he is the owner of the above described lands and that the said lands are free and clear of encumbrances and liens of any kind or character except:

It is further understood that, whenever necessary, words used in this instrument in the singular shall be construed to read in the plural and that words used in the masculine gender shall be construed to read in the feminine.

In Witness Whereof; the undersigned has set his hand and seal this 16 day of Jan. 16, 1959.

Signed, sealed and delivered in the Presence of: Albert Gisi Signature
George Brockel Leola So Dak Address
Herreid So Dak

STATE OF _____)
COUNTY OF _____) SS.

On this the _____ day of _____, 19____, before me personally appeared _____, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to me that they executed the same for the purposes therein contained.
In Witness Whereof I hereunto set my hand and official seal.

Notary Public
My Commission Expires _____

STATE OF SOUTH DAKOTA,)
COUNTY OF CAMPBELL) SS.

On this the 30 day of JANUARY, 1959, before me personally appeared George Brockel, personally known to me to be the same person whose name is subscribed to the above instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in Campbell County, South Dakota; that he was present and saw Albert Gisi, personally known to him to be the signer of the above instrument as a party thereto, sign and deliver the same; and heard him acknowledge that he executed the same and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said Albert Gisi.

(G. W. RENZ Notary Public)
(South Dakota)

C. W. Renz
Notary Public, South Dakota
My Commission Expires May 5, 1966

Filed for record May 25, 1970, at 10:00 o'clock A. M., recorded in Book 1 E page 128

By _____ Deputy Violet Hoffmann Register of Deeds

BILL

From:

BRUCE MACK
11510 362ND AVE
LEOLA, SD 57456

MAY 14, 2006

To:

VALLEY TELECOMMUNICATIONS COOPERATIVE ASSOCIATION, INC.
P. O. BOX 7
HERREID, SD 57632

DOZER WORK FOR VALLEY TELECOMMUNICATIONS IN ASSISTING CABLE SPLICE (12 ½ hours @ \$122.43)	\$1530.38
(State rate)	

LABOR (19 ¼ hours @ \$81.59, 2 men)	1570.61
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TOTAL AMOUNT DUE THIS BILL-NET 30 DAYS	<u>3100.99</u>
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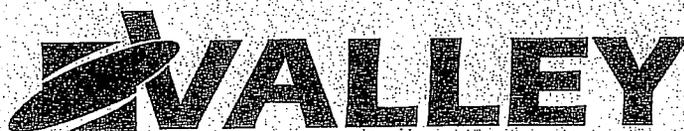
49-7A-1. Definition of terms. Terms used in this chapter mean:

- (1) "Board," One-Call Notification Board;
- (2) "Emergency," an occurrence which demands immediate action to prevent significant environmental damage or loss of life, health, property, or essential public services including the reerecting of critically needed traffic control signs or devices;
- (3) "Excavation," any operation in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives, and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving, except tilling of soil and gardening to a depth of twelve inches and the tilling of soil for agricultural purposes to a depth of eighteen inches, road and ditch maintenance that does not extend below eighteen inches of original roadgrade or ditch flowline within the road right-of-way, digging in a cemetery, or digging in a planned sanitary landfill;
- (4) "Excavator," any person who performs excavation;
- (5) "Member," any member of the one-call notification center;
- (6) "One-call notification center," the statewide one-call notification center established by § 49-7A-2;
- (7) "Operator," any person who operates an underground facility;
- (8) "Person," an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation, and includes the employer of an individual;
- (9) "Underground facility," any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, fiber optics, cablevision, electric energy, oil, gas, hazardous liquids, or other substances including pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments.

Source: SL 1993, ch 346, § 1; SL 1994, ch 351, § 132; SL 1994, ch 354, § 1.

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■ TELECOMMUNICATIONS
■ COMMUNICATIONS, INC.

May 31, 2006

Bruce Mack
11510 362nd Ave.
Leola, SD 57456

Re: Bruce Mack Cut Cable

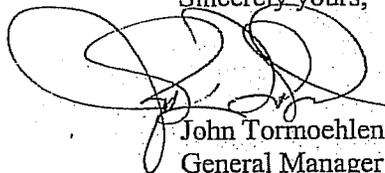
Dear Mr. Mack:

As you are aware, I am the General Manager of Valley Telecommunications Cooperative Association, Inc. ("Valley"). This letter is written as a follow-up to a bill Valley sent to you on or about April 24th, 2006, in the amount of \$7,373.10 for repair of a cable cut that occurred in McPherson County on April 9, 2006 (See Attachment A). It is Valley's position that you were responsible for this cable cut because you failed to provide notice of the proposed excavation to the SD One Call Center ("One-Call") pursuant to the requirements of SDCL § 49-7A-5. I write this letter to respond to your letter dated May 14, 2006 and to provide formal demand of the amounts owed to Valley.

Valley has a valid easement in place on this property and the owner of the property was aware that there were underground facilities on this property. You have stated that excavators are not bound by state law to call when working with manmade dirt embankments, but I do not find this provision in state law. SDCL § 49-7A-5 provides that One-Call must be contacted, "prior to any excavation" (emphasis added). Although you argue that this was not an excavation, it clearly meets the definition of SDCL § 49-7A-1. These cables were buried below 30 inches and do not meet the exception you cited.

All excavators have a duty to provide notice of excavation by calling the One-Call notification center at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays of the state) prior to commencement of the excavation. This was not done. State law further states, "any excavator damaging or injuring the underground facilities is strictly liable for all damage proximately caused thereby" (emphasis added). SDCL § 49-7A-10. Thus you are liable for the damages caused by failing to call One-Call and accordingly we make formal demand of you in the amount of \$7,373.10. If we do not have payment from you within thirty (30) days of this letter it is Valley's intention to take appropriate legal action.

Sincerely yours,



John Tormoehlen
General Manager

INVOICE

VALLEY TELECOMMUNICATIONS COOPERATIVE ASSOCIATION, INC.



P.O. BOX 7.
HERREID, SOUTH DAKOTA 57632

Phone No. (605) 437-2615 Fax No. (605) 437-2220



Date April 24, 2006

In Account With Bruce Mack
11510 362nd Ave
Leola, SD 57456-7201

INVOICE NO.
23-06
Please refer to the above
number when making
remittance

Description	Total
Repair of cable cut on April 9, 2006 (2 fiber cables)	
Fiber splice kits (2 @ \$813.45)	\$1,626.90
Fiber splice trays (4 @ \$69.40)	277.60
Encapsulant (2 @ \$50.00)	100.00
Labor (61.5 hours, 4 employees)	5,017.50
Sales tax	351.10
TOTAL AMOUNT DUE THIS INVOICE - NET 30 DAYS	\$7,373.10

COPY

Make Check Payable to "Valley Telecommunications Cooperative" and Forward to Above Address