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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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BEFORE THE SOUTH DAKOTA

ONE CALL NOTIFICATION BOARD

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

OC06-003

=====

Transcript of Proceedings
September 20, 2006

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BEFORE THE ONE CALL NOTIFICATION BOARD

Chairman Jerry Schroeder	Rod Cundy
Todd Chambers	Pat Gilligan
Kevin Kouba	Ed Anderson
Bleau LaFave	Paul Lowe
Doug Larson	Terry Larson

BOARD STAFF

Kara Van Bockern
Karen Cremer

APPEARANCES

MARGO D. NORTHRUP,
RITER, ROGERS, WATTIER & BROWN, Attorneys at Law,
319 South Coteau, Pierre, South Dakota 57501,
appearing on behalf of East River Electric and
Basin Electric;

BRUCE MACK,
11510 362nd Avenue, Leola, South Dakota 57456,
appearing pro se.

ORIGINAL

Reported by Carla A. Bachand, RMR, CRR

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1 TUESDAY, SEPTEMBER 19, 2006

2 EXHIBITS:

3 (Valley Exhibit Nos. 1 through 5 marked for
4 identification.)

5 CHAIRMAN SCHROEDER: I would like to welcome everybody
6 here. I would ask that everybody turn off their cell phones if
7 they haven't. Then we will proceed here. We will begin the
8 hearing for Docket OC 06-003 in the matter of the complaint
9 filed by Valley Telecommunications, Herreid, South Dakota
10 against Bruce Mack, Leola, South Dakota, regarding failure to
11 notify the One Call Center before excavation, in violation of
12 SDCL 49-7A-5, and failure to notify Valley Telecommunications
13 or the One Call Notification Center of the damage to
14 underground cables, in violation of South Dakota CL 49-7A-12.

15 The time is approximately 1:30 p.m., the date is
16 September 19th, 2006, and the location of this hearing is room
17 412, State Capitol, 500 East Capitol, Pierre, South Dakota.
18 I'm Jerry Schroeder, I'm the chairman of the board. Other
19 board members present are Terry Larson, Doug Larson, Paul Lowe,
20 Bleau LaFave, Ed Anderson, Kevin Kouba, Rod Cundy, Pat
21 Gilligan, Todd Chambers. I'm proceeding over the hearing.
22 This hearing was noticed pursuant to board's notice of hearing
23 issued August 24th, 2006.

24 The issues at this hearing shall be whether Bruce Mack
25 violated SDCL 49-7A-5 by commencing excavation without

1 providing advance notification to the One Call Center, and the
2 second item is whether Bruce Mack failed to notify Valley
3 Telecommunications or the One Call Notification Center of
4 damage, in violation of SDCL 49-7A-12. Also at issue shall be
5 whether penalties shall be imposed by the board pursuant to
6 SDCL 49-7A-18 and/or 49-7A-19, and if so, what those penalties
7 shall be.

8 All parties have the right to be present and to be
9 represented by an attorney. All persons so testifying will be
10 sworn in and subject to cross-examination by the parties. The
11 board's final decision may be appealed by the parties to the
12 State Circuit Court and the State Supreme Court. Kara Van
13 Bockern will act as the board's counsel. She may provide
14 recommendations, rulings on procedural and evidentiary matters.
15 The board may overrule its counsel's preliminary rulings
16 throughout the hearing. If not overruled, the preliminary
17 rulings will become the final rulings. I will now turn the
18 hearing over to Ms. Van Bockern.

19 MS. VAN BOCKERN: Good afternoon, I'm Kara Van
20 Bockern, I'm a staff attorney with the Public Utilities
21 Commission and also present is Karen Cremer, also a staff
22 attorney with the Public Utilities Commission. And at this
23 time I'd ask the parties to make their appearances, please.

24 MS. NORTHRUP: This is Margo Northrup from Riter,
25 Rogers, Wattier and Brown representing Valley

1 Telecommunications Cooperative, Incorporated.

2 MR. MACK: I'm Bruce Mack, representing myself.

3 MS. VAN BOCKERN: Great. And if you would like to go
4 through your list of witnesses at this time.

5 MS. NORTHRUP: The witnesses for Valley will be Drew
6 McQuarie, Bob Schuetzle and possibly John Tormoehlen.

7 MR. MACK: My witness will be my uncle, Derald Mack.

8 MS. VAN BOCKERN: I know we are in the process of
9 getting some exhibits copied for you. Margo, would you like to
10 mark those exhibits with the court reporter before we get
11 started?

12 MS. NORTHRUP: That's fine. My exhibits are actually
13 already marked.

14 MS. VAN BOCKERN: Okay. We will wait for the rest and
15 then we can mark those when they come up. Would the parties
16 like to make opening statements?

17 MS. NORTHRUP: I would, but as a preliminary matter, I
18 have two issues that I wanted to bring to the attention of this
19 committee. I had a motion in limine that I filed on Friday
20 that I would like to have a ruling on before the hearing
21 starts, and also we are willing to dismiss the second part of
22 this hearing, the question on whether or not he did not contact
23 Valley and let them know about the damage. We are willing to
24 dismiss that second issue and just proceed on the first issue.

25 MS. VAN BOCKERN: Okay. Would you like to make an

1 argument on your notion in limine to start with?

2 MS. NORTHRUP: I filed a motion in limine on two
3 separate issues. The first is asking for a motion in limine or
4 not to allow Mr. Mack to make reference to a customer service
5 call that was made to the One Call Center dated April 21st and
6 a second call on May 4th, 2006. It's my understanding that he
7 plans to introduce information or a transcript of this hearing.
8 I am making this motion because I don't think that it's
9 relevant. This call happened after the cable cut occurred and
10 it should not have any bearing on relevance on whether or not
11 he had a duty to call the One Call Board before that.

12 The second issue that we are requesting is that in
13 some of the pleadings that we have, there was a mention to
14 whether or not Valley had a valid easement. I don't think that
15 that is an appropriate issue, it's not relevant to the matter
16 of whether or not Bruce Mack should have called the One Call
17 Center before he started excavation. So we are asking that
18 neither one of those issues be mentioned or included as a part
19 of this hearing.

20 MS. VAN BOCKERN: Mr. Mack, would you like to make
21 argument to include those I assume?

22 MR. MACK: Yes, I'd like to include them. Number one,
23 I think the board should hear all the facts. If they determine
24 after they hear all these facts that they aren't relevant, then
25 they don't have to use them. But I think after they hear them,

1 they will see relevance. It shows a pattern. This tape, it
2 was after the fact, it shows a pattern to phone calls before
3 the fact. I wouldn't have them here if I didn't think they
4 were relevant. They have tried to block me from even getting
5 these tapes any which way they could. It's just been a
6 nightmare all the way through.

7 As far as easements, I'd like them to at least hear
8 the way Valley is doing business with their easements. I
9 realize South Dakota One Call Board has no jurisdiction over
10 easements, but I think they would like to see this and hear
11 this, just for their own personal knowledge into the future.
12 We are working with state representatives on new laws. This
13 way they know if this could be a good law or a bad law for
14 future, knowing how some of these companies are doing business
15 out there. It won't take long, but I think it would be really
16 good for you guys to know. It won't take long. If you don't
17 think it's relevant, well, then don't make it part of your
18 decisions, but please take a look at it.

19 MS. VAN BOCKERN: As I understand it, there are two
20 separate phone calls that you have recorded maybe a transcript
21 of.

22 MR. MACK: I have a transcript of one, it's only like
23 five lines of one page that's even relevant. The rest of it is
24 names and addresses and things like that.

25 MS. VAN BOCKERN: Do you know if that was the first

1 phone call made or the second?

2 MR. MACK: That was the first phone call made that I
3 have a transcript of. It's a legal transcript of it, they are
4 making copies of it. It's very short.

5 MS. VAN BOCKERN: As I understand for the record, too,
6 some of the board members have previously heard that first
7 phone call; is that correct?

8 MR. TERRY LARSON: Yes.

9 MS. VAN BOCKERN: Some of the board members have. For
10 that reason, because some of the board members have already
11 heard this phone call, I will allow the transcript for call one
12 only. Call two will be excluded, as nobody has heard call two,
13 correct? So I will allow that transcript for call one. And as
14 for the easement, because we don't have jurisdiction over
15 easements, I'm going to exclude evidence of easement for now.

16 Okay, now, would you like to proceed with opening
17 statements? As a second preliminary matter, are you okay, Mr.
18 Mack, if we do dismiss that second portion of the complaint,
19 not notifying of the damage?

20 MR. MACK: Well, as long as the board is aware that
21 this will come up in my, you might say my opening statement,
22 but the way Valley Telco is going about dealing with this
23 matter with me, yes, I'm okay if they release it, but they had
24 no reason to file it in the first place.

25 MS. VAN BOCKERN: The dismissal of the second portion

1 would have no effect on the legitimacy of the complaint and you
2 will have --

3 MR. MACK: I want to be able to talk about that, just
4 so they can see the way that they are going about strong arming
5 me.

6 MS. VAN BOCKERN: With that, I understand the parties
7 have stipulated to the fact that the second portion of the
8 complaint will be dismissed. Correct?

9 MS. NORTHRUP: Correct.

10 MS. VAN BOCKERN: Now we can go ahead with opening
11 statements.

12 MS. NORTHRUP: Thank you. As I said, I'm here
13 representing Valley Telecommunications, which I will refer to
14 as Valley throughout this proceeding. This stems from a cable
15 cut, a fiberoptic cable cut that occurred in Valley's territory
16 on April 9th, I believe, of this year, April 9th, 2006 at
17 approximately 11:30 am. Valley was notified by some of their
18 subscribers that they didn't have any telephone service or any
19 cable service and so Valley, the evidence will show that Valley
20 went out, they found this cable that had been cut. It was some
21 extensive damage, it took them a long time to get it fixed and
22 a lot of their customers were out of service for a good portion
23 of the day.

24 We are going to -- the evidence will show that One
25 Call was not called prior to this excavation by Mr. Mack, that

1 the work that he had done meets the definition of what needs --
2 or when One Call needs to be notified, and pursuant to the
3 statute, this caused a great inconvenience to the customers of
4 Valley and there's a big safety and public interest concern
5 because a lot of these people don't have good cell phone
6 service and without their land line service, they have no
7 access to 911, which is a very concerning incident for Valley.

8 That will conclude my -- I guess at the end of this we
9 will be asking that this board impose an appropriate fine so as
10 to set an example that something like this wouldn't happen
11 again in Valley's territory. Thank you.

12 MS. VAN BOCKERN: Thank you. Mr. Mack.

13 MR. MACK: I'm here representing myself today as a
14 farmer. I'm not an attorney. I don't have an attorney here
15 because I can't afford an attorney. Any attorney I talked to
16 wanted \$10,000 to even look at this mess. I'm here because I
17 know what I've been taught in the past by the South Dakota One
18 Call. I'm here because I know what common sense is. I don't
19 know or did not know at that point what all the laws were. I
20 am definitely aware of One Call, but after you take a look at
21 the pictures, see the evidence, I feel that you will agree that
22 there's no common sense in anything that Valley did really in
23 any of this.

24 We will get into how many people were out of phone
25 service. I realize a lot of people were without cable TV but

1 phone service, we will discuss that later. My uncle is here
2 with me. He was there at the site. Together we will take you
3 through the procedure of letting Valley know as quickly as we
4 possibly could on a Sunday. Realize this was a Sunday morning
5 when this took place. Understand it would have been a whole
6 lot easier for me to pay the \$200 fine imposed upon me a month
7 and a half ago by this board than it would be to drive 150
8 miles down here today and give up my day when I should be
9 getting ready for soybean harvest. But I'm here because I know
10 what's right and what's wrong. At that point I didn't know
11 what the law says, I know what it says now, but hopefully you
12 can see all of this when it's said and done and make your
13 decisions accordingly.

14 MS. VAN BOCKERN: And with that, we will call our
15 first witnesses. Margo, if you would like to call your first
16 witness.

17 MS. NORTHRUP: Thank you. I would call Drew McQuarie.
18 Thereupon,

19 DREW MCQUARIE,
20 called as a witness, being first duly sworn as hereinafter
21 certified, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. NORTHRUP:

24 Q. Would you please introduce yourself?

25 A. I'm Drew McQuarie, the local area coordinator in the

1 Ipswich area.

2 Q. And how long have you been in that capacity?

3 A. About four and a half years.

4 Q. I'm going to draw your attention to April 9th of this
5 year. Were you working that day?

6 A. I wasn't on call, but I did get a call to come help
7 with a fiber splice.

8 Q. You weren't actually working, you were on call; is
9 that what you said?

10 A. Correct, yep.

11 Q. Thank you. What time of the day did you get this
12 call?

13 A. It was about 12 o'clock.

14 Q. And I guess why don't you tell me what you did first.

15 A. After I got a call from Terry Schaffer, our CO tech
16 out of Herreid, I drove up to Leola, found out where the splice
17 or where the cut was at and when I got there, Allen Aman, the
18 local area coordinator up there, was already at the scene.

19 Q. When you got to the scene, why don't you describe what
20 this area looks like. Is this a pasture? I think there's some
21 testimony from the complaint that this is a dam. Can you
22 describe the area?

23 A. Yeah, it was a field, it looked like just like a trout
24 field. There was nothing in it, though, at the time, and there
25 was a dam, it would have been on the south side of the fiber

1 cut.

2 Q. Okay. I'm going to show you what's been marked as
3 Exhibit 2, 3, 4 and 5, which, Kara, I don't have copies of.
4 First look at Exhibit 2. Can you tell us what that is?

5 A. This is an aerial view of it looks like where our
6 cable was at compared to the county road and how many feet off
7 it looks like the center of the line is and it shows kind of
8 the direction of the dam, which is actually at an angle going
9 off to the southwest.

10 Q. Okay, could you look at Exhibit No. 3 and tell this
11 board what that is?

12 A. This one is showing, it's a picture from the north
13 looking to the south and this is actually showing how much dirt
14 was taken away at the time before the cable was hit or at the
15 time the cable was hit and kind of the depth of it and the
16 cable route that we took at the time.

17 Q. Would you describe what the next picture is and what
18 exhibit number that is?

19 A. Okay, Exhibit 4, that is a view looking from the south
20 up to the north and it shows our cable route and kind of how we
21 stayed on the bottom side of the dam before we got to the north
22 edge, where we had to go cut in towards the dam.

23 Q. Okay, and why don't you let us know what the last
24 picture is.

25 A. This is another picture from the north looking south

1 showing the area and the depth of the dam that was taken off at
2 the time.

3 Q. And are all of these photos true and accurate
4 representations of the scene that you saw?

5 A. Yes.

6 MS. NORTHRUP: I would move admission of Exhibit 2, 3,
7 4, 5 and 6.

8 MR. MACK: May we see those?

9 MS. NORTHRUP: Yes.

10 MS. VAN BOCKERN: Do you have any copies of those at
11 all?

12 MS. NORTHRUP: I don't.

13 COURT REPORTER: I think it's just through Exhibit 5.

14 MS. NORTHRUP: 2 through 5, thank you.

15 MS. VAN BOCKERN: Do you have any objection to the
16 pictures?

17 MR. MACK: Well, yeah. Those pictures were taken
18 after the cable had been removed out of this dam, dirt
19 embankment and cable reburied and stuff. My pictures will show
20 them with the backhoe there digging it, much, much accurate
21 pictures than these. Because here we did a lot more dirt work
22 for them to get their cable out of there and everything else,
23 so we dozed a lot of dirt out for them to get this cable out of
24 there.

25 MS. VAN BOCKERN: The board will take note of that and

1 weigh the evidence accordingly. You can proceed.

2 MS. NORTHRUP: So they are admitted?

3 MS. VAN BOCKERN: Yes.

4 EXHIBITS:

5 (Valley Exhibit Nos. 2 through 5 received into
6 evidence.)

7 Q. (BY MS. NORTHRUP) Now that these are admitted, I want
8 you to look at that exhibit on top there and identify what
9 exhibit number that is.

10 A. Exhibit No. 3.

11 Q. Okay, and from that picture, are you able to tell how
12 deep Mr. Mack had excavated from those pictures?

13 A. On it would be the right side of the picture, it shows
14 like the top of the dam area that he did take away.

15 Q. And approximately how deep was that?

16 A. I believe about three feet.

17 Q. So at the time that you actually got on the scene, can
18 you tell me what you first did?

19 A. When we first got there, Allen Aman, he was already
20 locating the north end of the cut and I helped him -- I helped
21 him finish that and then when he was done, I went into -- I
22 grabbed the locator and went to the Leola office to hook onto
23 the south end of the fibers so I could start locating the south
24 end of the cut there, and while I was in there, I called an
25 emergency one call in so we could get the other utilities out

1 there to locate their stuff. And then when I got back out
2 there, I just started locating the cables.

3 Q. So how long did it take you to locate the cables?

4 A. I would say probably about a half hour.

5 Q. Okay, what did you do after that?

6 A. After I was finished locating, there's Terry Schaffer
7 from Herreid and David Schaeffbauer, a local area coordinator
8 from Herreid, they were down there already and they started on
9 splicing, so I helped Allen Aman dig up and expose the rest of
10 the cable.

11 Q. How long of a process was this?

12 A. This took several hours with our own ditch witch.

13 Q. Okay. At the time that you arrived on the scene, did
14 you know who was responsible for the cable cut?

15 A. Not right when I showed up. After a while, Mr. Mack
16 here, he showed up so then I figured it was his property.

17 Q. Were you involved in splicing the cable?

18 A. Yes, I was.

19 Q. Can you explain that process, what you had to do?

20 A. After you expose the cable, you cut off the sheath and
21 you pretty much strip it down just to the glass fibers in there
22 and then you put it into -- we have a trailer that we put it
23 into and we have a fusion splicer that we put -- after we
24 cleaned it up and put it into the fusion splicer and then it
25 fuses it together and then we put it inside of a splice case.

1 Q. Okay, and from your experience from working with
2 Valley, do you work on these cable cuts or have you worked on
3 these cable cuts before?

4 A. Me myself I didn't, but we did have training on it I
5 suppose about a month before.

6 Q. Mr. Mack, in some of the pleadings, has designated or
7 has described this area as a roadway or a passageway. Do you
8 think that that's a fair characterization of this land?

9 A. No.

10 Q. And why do you say that?

11 A. To me it looks like it's just a dam area just a block
12 from the water, you know.

13 Q. And how far -- go ahead. How far was this where the
14 cable cut occurred, how far was that from the actual roadway or
15 the highway?

16 A. I would say around 130 feet or so from the
17 right-of-way.

18 MS. NORTHRUP: I have no further questions at this
19 time.

20 MS. VAN BOCKERN: Do you have some cross-examination
21 for the witness?

22 MR. MACK: I got a couple questions for you.

23 CROSS-EXAMINATION

24 BY MR. MACK:

25 Q. Number one, the pictures you have got, these were

1 taken after the fact, correct?

2 A. I do believe so.

3 Q. Everything had already been buried down.

4 A. Yeah.

5 Q. When we moved this cable, do you remember me coming
6 with a bulldozer and having to move a bunch of dirt away so we
7 could pull that cable out of that dam instead of digging it all
8 out with a backhoe?

9 A. Yes.

10 Q. Is that possibly where you are referring to the three
11 feet at, is where I had to come in at an angle with a dozer and
12 doze all that dirt out?

13 A. By these pictures, yes.

14 Q. Not necessarily right where the cable hit was, you are
15 looking at the bank basically from the straight east looking
16 west where I dozed with the dozer.

17 A. This would be from the -- I think from the north,
18 north looking south.

19 Q. Okay, yeah, depending on which picture you are looking
20 at. If these are brought into evidence, I'd like to show him
21 some of these pictures and have him kind of see if they look
22 more like it at the time of the hit you might say. Or else I
23 can bring him up later after these are brought into evidence.

24 MS. VAN BOCKERN: You could mark those pictures as
25 evidence now and you could introduce them at this time if you

1 would like.

2 MR. MACK: How many sets of copies of these pictures
3 do we have?

4 MS. VAN BOCKERN: Fourteen copies.

5 MR. MACK: Enough to go around. I'd like to bring in
6 as a series of probably about eight pictures here. It does
7 appear that the lower right hand picture on the front page,
8 people, is upside down and that's one that we are going to
9 refer to quite a bit, is the lower right hand page. So you
10 have to flip it over to see it.

11 MS. VAN BOCKERN: If you could mark your original
12 pictures with the court reporter and if you could show Margo,
13 Ms. Northrup a copy of your pictures to inspect.

14 EXHIBITS:

15 (Mack Exhibit Nos. 1 through 7 marked for
16 identification.)

17 MS. NORTHRUP: Can I have a minute with my witness to
18 look at these pictures? We were not provided these before the
19 hearing. I want to have him take a look at them beforehand.

20 MR. MACK: I've got two copies of the originals here.
21 They show quite a bit better than the photocopies.

22 MR. DERALD MACK: They are a lot better than the
23 photocopies.

24 MR. MACK: They are identical sets, different orders
25 here. We can go through and mark these if you want.

1 (Discussion held off the record.)

2 MR. MACK: While everyone is studying these pictures,
3 we can go through and label our pamphlets the same as the
4 evidence pictures. Okay, evidence No. 1 is your upper right
5 hand corner of page number one.

6 MS. VAN BOCKERN: Let's clarify the number of that
7 exhibit. Is it Exhibit No. 1?

8 MR. MACK: Yeah, he's got the originals, but we
9 transferred these. No. 2 is the one that's upside down in the
10 lower right hand -- left hand corner of page number one. You
11 have to flip your pages over. I may have you folks off here.
12 No. 3 is now No. 1. No. 3 is now No. 1. No. 3 is in the upper
13 right hand corner of the first page. We will find No. 1 here.

14 MS. VAN BOCKERN: Let's start over again just to be
15 sure we are all clear. I'm sorry. The upper right hand
16 corner.

17 MR. MACK: Upper right hand corner of page number one
18 is No. 3 picture, is No. 3 evidence. Lower left hand --

19 MS. VAN BOCKERN: The upside down picture.

20 MR. MACK: Is No. 2.

21 MS. VAN BOCKERN: Upper left hand corner, page one.

22 MR. MACK: Upper left hand corner is No. -- you know
23 what they did here, they duplicated some pictures, I think, on
24 the photocopies. To me No. -- what did they do here?

25 MR. ANDERSON: Lower left and lower right appear to be

1 the same picture except they are flipped.

2 MR. MACK: We have 14 pictures here and only seven, so
3 it is going to get confusing here.

4 MS. VAN BOCKERN: We can cross out the upside down
5 photo and the bottom right hand picture is Mr. Mack Exhibit No.
6 2.

7 MR. MACK: They appear to be the same picture.

8 MS. VAN BOCKERN: Exactly, so we will go with the
9 picture that's right side up, bottom right hand corner is Mack
10 Exhibit 2. Are we taking the exhibits sequentially or does
11 each party have their own set of numbered exhibits?

12 COURT REPORTER: Yes, they have their own set.

13 MS. VAN BOCKERN: Mack Exhibit, what's next, No. 4?

14 MR. MACK: Let's start in the upper right hand corner
15 of page number one where you see the yellow tractor on the
16 right-hand side of the picture. That is picture No. 3,
17 evidence picture No. 3, upper left hand corner of page one.
18 And upper right hand corner of page one, these are actually the
19 same picture, you just don't see the yellow tractor, now that I
20 look at it. They are the same picture, you just don't see the
21 yellow tractor. So we don't really need right hand page, upper
22 right hand page of page number one.

23 MS. VAN BOCKERN: The top portion of the page is Mack
24 Exhibit 3, the bottom portion of page one is Mack Exhibit 2.
25 Page number two.

1 MR. MACK: Page number two, we have to determine
2 what's here. That appears to be Exhibit No. 1.

3 MS. VAN BOCKERN: I think again we have got doubled up
4 on this page, too. Looks like kitty corner they are the same
5 picture.

6 MR. MACK: Yep.

7 MS. VAN BOCKERN: We have two pictures to identify on
8 this page. How about the picture with the white truck?

9 MR. MACK: I believe that is also picture No. 1 on
10 that page, upper right hand and lower left hand are, I believe,
11 the same picture, just zoomed in a little bit further. Either
12 way, they show the same thing so we can eliminate them. Not
13 necessarily all my pictures show different things here.

14 MS. VAN BOCKERN: We are going to eliminate upper left
15 hand, lower right hand on page two.

16 MR. MACK: Upper left hand. We want to keep one of
17 those two in. None of those are real crucial to my case. None
18 of these pictures are.

19 MS. VAN BOCKERN: What number is then the picture with
20 the white truck in it?

21 MR. MACK: In evidence, 1 or 3, they both show the
22 white truck, strictly depending upon where you are at.
23 According to the distance from the camera to the small pile of
24 dirt, it appears to be Mack evidence No. 1.

25 MS. VAN BOCKERN: It is upper left hand and lower

1 right hand, No. 1. We will do the flip flop of that, the upper
2 right hand, lower left hand, they appear to be the same picture
3 as well.

4 MR. MACK: Yes, they do and they appear to be evidence
5 No. 4.

6 MS. VAN BOCKERN: And page three. Again we have got
7 doubled up photos, the top and the bottom, so the top pictures
8 on page three.

9 MR. MACK: Top picture would be No. 6, left and right
10 pages on that page would both be No. 6.

11 MS. VAN BOCKERN: The bottom of page three.

12 MR. MACK: Would be No. 7.

13 MS. VAN BOCKERN: Again these look like the same
14 photo, the final page.

15 MR. MACK: Yep, and that's No. 5.

16 MS. VAN BOCKERN: Okay. Any objections from Ms.
17 Northrup?

18 MS. NORTHRUP: No objection.

19 MS. VAN BOCKERN: The photos are admitted and can be
20 used now in your examination of the witnesses, Mr. Mack.

21 EXHIBITS:

22 (Mack Exhibit Nos. 1 through 7 received into
23 evidence.)

24 Q. (BY MR. MACK) As we were talking about, these appear
25 to be more of the time of the hit, correct?

1 A. Yes.

2 Q. After the fact, this is more what it looked like when
3 you pulled up down there with the backhoe.

4 A. Yes.

5 Q. Looking at picture No. -- let's go to No. 2 first.

6 A. Okay.

7 Q. Compared to I don't remember which evidence picture it
8 was, where you thought it looked like about three feet of
9 embankment had been moved, does this appear to be very similar
10 to what you see on the left hand side of your picture of No. 2
11 before we moved the dirt away to expose the cable, which is
12 underneath the red flags marking it out?

13 A. You want to word that again?

14 Q. Okay. In one of the pictures you talked about where
15 it looked like about three feet of dirt had been moved, the
16 three foot high embankment had been moved. What I want to know
17 is if that is the same place where the dirt is still in place
18 in my picture No. 2. What I'm trying to do is show the board,
19 and I'll show them later in these pictures, where the cable is
20 only buried right at 16 inches deep.

21 MS. NORTHRUP: Objection, I'm going to object to him
22 testifying during his asking questions of this witness.

23 MS. VAN BOCKERN: Be sure you do keep your -- keep
24 your questioning just simply questions at this time.

25 Q. (BY MR. MACK) On the left hand side of picture No. 2,

1 did we have to move a bunch of dirt with the bulldozer to get
2 into the cable so we could expose the cable out of the dirt?

3 A. Yes.

4 Q. Roughly how deep was the dirt there that we had to
5 move to get into that cable good?

6 A. By the looks of this picture, it looks like, oh,
7 there's I'd say about three feet above the cable that's
8 sticking out of the ground right now.

9 Q. Well, we have other pictures and we could do a little
10 measuring here, but right now does it look like on the left
11 hand side of picture No. 2 where the bulldozer went in deeper
12 than the actual cable at this point, the cable being roughly
13 two and a half feet in front of where the bulldozer dug in?

14 A. Yes.

15 Q. Okay, the cable, help me out if I'm wrong, appears to
16 be the little shiny item sticking up about in the center of the
17 dam.

18 A. Correct.

19 Q. Okay. You said this appeared to just be a farm field.
20 Have you been with Valley long enough to spend much time going
21 north of Leola in the past five years?

22 A. Not a whole lot.

23 Q. Okay. Were you aware that this was a pasture up until
24 six months before this or a year before this?

25 A. No.

1 Q. Not aware it was all fenced in and was separate?

2 A. No.

3 Q. Were you aware that -- how can I say this -- you
4 stated that this dam blocked up water. Are you aware that this
5 dam, prior to this, had big washouts through it where it
6 wouldn't be able to hold any water?

7 A. Again, no.

8 Q. The day that we were fixing these cables, I was there
9 most of the day with you guys, correct?

10 A. After while, yes.

11 Q. Right away I wasn't present.

12 A. I don't believe so, I don't remember seeing you.

13 Q. Do you remember seeing my uncle?

14 A. Yes.

15 Q. I guess I don't -- you said you had training about a
16 month before this for fiberoptic splicing, correct?

17 A. Yes.

18 Q. Had you ever spliced fiberoptic on your own without
19 any trainers or anyone except Valley Telco people before this?

20 MS. NORTHRUP: I will object to this question as being
21 relevant to this proceeding.

22 MS. VAN BOCKERN: Sustained. The training held prior
23 to splicing, irrelevant to the moving of dirt.

24 MR. MACK: My argument is she asked him about there
25 being trained in different things and I am just clarifying when

1 their training was and how it took place.

2 MS. VAN BOCKERN: Again, feel free to object if you
3 feel something is irrelevant as it's being asked.

4 Q. (BY MR. MACK) When you were splicing this cable and I
5 was there, there was yourself and three other employees,
6 correct?

7 A. Correct.

8 Q. Any recollection of anybody saying anything about,
9 well, you get to be our guinea pig, we just bought this trailer
10 and just got this machine, first time we ever did this?

11 A. No.

12 Q. Don't remember that at all?

13 A. I didn't hear it.

14 Q. Back to when this was a pasture and this dam would be
15 able to hold water, I'd have to have an aerial map of the total
16 quarter to show you, but what is one way of getting from one
17 side of a creek to the other side of a creek if you are in a
18 pasture than to cross over on a passageway above the water?

19 A. I would go around it on the county road personally.

20 Q. Depending upon where the gates are, if that was
21 capable. If there is no gates capable, you would probably have
22 to be able to cross over on this dam and use it as your own
23 private road to get from one side of the creek to the other
24 side of the creek.

25 MS. NORTHRUP: I am going to object. He can't testify

1 to what he would use his property as.

2 MS. VAN BOCKERN: Sustained. Feel free to argue those
3 points when you call yourself as a witness, but at this time
4 please keep it to just questions.

5 MR. MACK: I have no more questions. Just a second.

6 Q. (BY MR. MACK) Picture No. 3.

7 A. Okay.

8 Q. Explain to me the orange flags that you see in that
9 picture and what they are representing and where they are going
10 and what they are doing.

11 A. By the looks of this, the flags are there locating the
12 fibers that we had already located before we started exposing
13 it and it shows that it's going up the side of the dam bank it
14 looks like to the top of it.

15 Q. Can you speculate why that they may have went through
16 that dam bank?

17 MS. NORTHRUP: Objection, relevance.

18 MS. VAN BOCKERN: A response to the objection.

19 MR. MACK: Response to the objection, at this point
20 the other two copper cables that are present on this property,
21 roughly one being on the left hand side on picture No. 1, on
22 the left hand side of the white pickup in the picture and one
23 probably on about the right-hand side of the picture, somewhere
24 in that area, or one in the center of the pickup and one to the
25 left of the pickup a little ways aren't present. They hadn't

1 marked those cables yet at this point. I'm trying to show the
2 board that Valley turned or the engineering firm turned and
3 went through this dam at the last minute so they didn't hit one
4 of their own fiber or one of their own copper cables.

5 MS. NORTHRUP: If I could respond to that, I guess the
6 reason I feel that this is not relevant is it's not relevant
7 where Valley had these cables, it was whether or not Bruce Mack
8 had a duty to call One Call beforehand. So it doesn't really
9 matter which way they went or where they were at, so that's why
10 I objected as to relevance.

11 MS. VAN BOCKERN: I'm going to sustain that objection.

12 MR. MACK: I have no more questions for him at this
13 time. Maybe a little bit later.

14 MS. VAN BOCKERN: Any questions from the board?

15 MS. NORTHRUP: I have a few redirect questions, if I
16 may.

17 REDIRECT EXAMINATION

18 BY MS. NORTHRUP:

19 Q. It will probably be easier for me to ask my questions
20 from here so I will try to talk into the microphone. I would
21 like to walk through these pictures and why don't you explain
22 what it is that you are seeing and what's significant about
23 these pictures and we will start with Exhibit No. 3. I think
24 Mr. Mack asked you specific questions about that. But does
25 this picture show actually where the cable cut occurred?

1 A. No.

2 Q. So it doesn't show how deep the area was right at the
3 cable cut?

4 A. No.

5 Q. I'm going to show you Exhibit 2. Can you tell me what
6 that shows?

7 A. That's a view from the north looking south again and
8 that's actually where the cable was cut on the dam area.

9 Q. And I think you testified earlier, but can you point
10 out the easiest point in this picture where it can show how
11 deep it was actually excavated down from where the ground level
12 would have been?

13 A. It looks like it would be the second flag in there,
14 you can see a little bit of the cable at the base of where he
15 took the dirt out.

16 Q. I'm going to show you Exhibit 4. Can you tell me what
17 that picture represents? If you can't tell, that's fine, too.

18 A. I believe that's the -- it shows the cable route again
19 on the dam area.

20 Q. I'll show you Exhibit 5. Can you explain what that
21 is?

22 A. This is a view, I believe it's a view from the east
23 looking west and it shows the cable cut at the base of the dam
24 area there again and it shows the cable route.

25 Q. Approximately does it show how deep the cut would have

1 been or how deep the cable would have been?

2 A. Yes.

3 Q. What was that?

4 A. It looks to be about three feet.

5 Q. Okay. I'm going to show you 7, same thing, can you
6 just explain a little bit about what you see in that picture?

7 A. It shows the route of the cable up on the dam again.

8 Q. That's fine. How about this one, No. 6, is there
9 anything significant in that picture you want to testify to?

10 A. No.

11 Q. And is there anything in 1?

12 A. Just showing the cable route again.

13 Q. So I believe from your testimony earlier, when you
14 arrived on the scene and you found the cable cut, is it my
15 understanding that you have to dig back both ways to expose the
16 rest of the cable?

17 A. Correct.

18 Q. And were you part of that process?

19 A. Yes.

20 Q. Okay, and when you were digging back from where the
21 actual splice occurred, how deep did you have to dig to reach
22 the rest of the cable that at that point was unexposed?

23 A. Around three feet again.

24 MR. NORTHRUP: Okay. Thank you. I have no further
25 questions.

1 MS. VAN BOCKERN: I do have a request from the board,
2 Ms. Northrup, if we could see those exhibits that you
3 introduced earlier, if we could pass them around.

4 MS. NORTHRUP: Sure.

5 MS. VAN BOCKERN: Any recross of the witness on the
6 stand right now, Mr. Mack?

7 MR. MACK: Not at this time.

8 MS. VAN BOCKERN: Would you like to call your next
9 witness, then.

10 MS. NORTHRUP: Sure. At this time I would like to
11 call Bob Schuetzle.

12 Thereupon,

13 BOB SCHUETZLE,
14 called as a witness, being first duly sworn as hereinafter
15 certified, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. NORTHRUP:

18 Q. Would you please introduce yourself, since I obviously
19 mispronounced your last name?

20 A. My name is Bob Schuetzle. I'm the plant manager with
21 Valley Telco, I have been the plant manager with Valley for
22 about 16 years. I've been employed with the company for 32.

23 Q. Are you familiar with the policies of Valley in
24 reference to buried fiberoptic cable?

25 A. Yes, I am.

1 Q. Can you explain what is the standard depth that Valley
2 buries these cables?

3 A. We run in private right-of-way like this, we run our
4 fiber as a rule a minimum of 30 inches deep. Preferably we
5 even try to be a bit deeper than that, but try to keep it at a
6 minimum of 30.

7 Q. Did you inspect this property after the cut had been
8 repaired?

9 A. Yes. I was over there about on Tuesday following the
10 cut on Sunday.

11 Q. Were you able to tell, in your opinion, did Valley
12 follow its policies?

13 A. Yes.

14 Q. Mr. Mack has identified this area as a roadway or a
15 passageway. Can you explain to the board the layout of this
16 and whether or not you think that's a fair characterization of
17 where the cable cut occurred?

18 A. No, I do not think it is a fair estimation of the
19 property. I am a little bit more familiar with the property
20 than maybe Drew was.

21 Q. Why don't you go ahead and explain then what the
22 layout is of this property.

23 A. From what I have remembered over the years, having
24 been in Leola a fair amount of time over those years, Mr. Mack
25 I believe is right, I can remember that being a pasture at one

1 time and I believe just in the last year or two I think he has
2 decided to farm that ground, and it had been worked, the whole
3 pasture area there had been tilled and I think in the process
4 of leveling this dam, then, is when the incident occurred.

5 Q. Okay, and you mentioned that you are familiar with
6 this property. Do you know when this cable or this fiber
7 optics would have went into this property?

8 A. It was plowed in 1997.

9 Q. As far as -- to your knowledge, did Mr. Mack know that
10 these underground facilities were under the property?

11 A. I would assume he did, yes.

12 Q. Are you familiar with the procedure Valley uses to
13 locate cables?

14 A. Yes.

15 Q. Does Valley work with the One Call Center?

16 A. Yes. Yes, we do.

17 Q. Can you explain to me the process that Valley uses
18 when someone would call in and get a locate request?

19 A. If myself would call in as a contractor, I would place
20 a call to One Call, dial their 800 number, give them all the
21 specific information that they ask for and then Valley as a
22 utility, One Call will turn around and fax us a copy of the
23 person calling in to have a one call, they will fax us a hard
24 copy of that. We then will get it to the appropriate exchange
25 and to the local area coordinator and get the location taken

1 care of.

2 Q. So after this cable cut occurred, did you go look into
3 your logs and see if Mr. Mack had made a call to One Call or
4 made a locate request?

5 A. Yes, I did.

6 Q. And was there any locate requests made?

7 A. No, there was not.

8 Q. How many customers or how many Valley customers were
9 affected by this outage?

10 A. We had about 31 telephone customers were taken out of
11 service by this cut and about 468 cable TV customers lost
12 service because of the cut, too.

13 Q. Approximately how long were these customers without
14 service?

15 A. Our best guess was probably 10 to 11, possibly 12
16 hours, 10 to 11 hours would be an accurate figure, I believe.

17 Q. And how many manhours were dedicated by Valley into
18 fixing the cable cut?

19 A. Well, on Sunday, according to the guys' time sheets,
20 and we have copies of them, they put in about 12 hours on
21 Sunday trying to get this repaired and then two of our
22 gentlemen went back on Monday because we got done or they got
23 done fixing this about between 10:00 and 10:30 at night. We
24 went back the following day to cover everything up. We didn't
25 want to backfill everything in the dark and make sure all our

1 splices were good and everything.

2 Q. I want to direct your attention to Exhibit 1, which is
3 right in front of you. Can you tell me what that is?

4 A. That is a bill that we submitted to Mr. Mack for the
5 charges incurred in taking care of the splice that was cut on
6 April 9th.

7 Q. And what did it cost to do that?

8 A. \$7,373.10.

9 Q. And this is a true and accurate copy of the bill that
10 was sent?

11 A. Yes, it is.

12 MS. NORTHRUP: I would move Exhibit 1 into admission.

13 MS. VAN BOCKERN: And Mr. Mack, if he can examine the
14 exhibit. Any objection?

15 MR. MACK: No.

16 MS. VAN BOCKERN: Exhibit 1 is therefore admitted.

17 EXHIBITS:

18 (Valley Exhibit No. 1 received into evidence.)

19 Q. (BY MS. NORTHRUP) Could this damage have been
20 prevented if Mr. Mack would have called One Call, in your
21 opinion?

22 A. Yes, it could have.

23 Q. What is it that Valley is asking this board to do?

24 A. Well, I guess we would appreciate or feel that -- we
25 feel Mr. Mack was in violation of the law and I guess we would

1 like to see the fine that was imposed stand and that we be paid
2 for the damages incurred in this cable cut.

3 MS. NORTHRUP: I have no further questions. I guess
4 just to clarify, we are not asking this board to award damages.
5 Thank you.

6 MS. VAN BOCKERN: Do you have a cross-examination for
7 the witness?

8 MR. MACK: I have a few questions.

9 CROSS-EXAMINATION

10 BY MR. MACK:

11 Q. Explain to me what engineer notes are.

12 A. Engineer notes?

13 Q. Yes. Engineer notes.

14 A. Notes taken by engineers, I guess.

15 Q. Okay, are there any engineer notes from the time that
16 this fiberoptic cable was plowed in on this certain location?

17 A. Not that I'm aware of, no.

18 Q. Do you know who Tom Heibel is?

19 A. Yes.

20 Q. Would you tell me -- explain to me who Tom is and the
21 position he holds or held?

22 A. Tom is a former director from Leola for Valley
23 Telephone for many, many years.

24 Q. And what position did he hold on the directors board?

25 A. He was for the most part of it the chairman of the

1 board.

2 Q. For numerous years?

3 A. Yes.

4 Q. He explained to me that there was such a thing as
5 engineer notes on all digging on all property at all times.

6 MS. NORTHRUP: I am going to object to this as being
7 hearsay. This gentleman is not here to testify himself.

8 MS. VAN BOCKERN: Do you have any written
9 documentation?

10 MR. MACK: No, I don't.

11 MS. VAN BOCKERN: I'm going to sustain that objection.

12 Q. (BY MR. MACK) You testified earlier that 31 people
13 were out of phone and 400 odd people were out of television.

14 A. To the best of my knowledge, yes.

15 Q. Was there actual phone traveling through this
16 fiberoptic or was there just electricity traveling through with
17 a wire hooked onto this fiberoptic that fed a substation
18 further north?

19 A. Well, the fiberoptic cables, it's an electronic signal
20 that feeds to an SAI site that then turns around and turns it
21 into voice traffic that takes it out to our customers.

22 Q. Okay. So if there was electricity in separate wires,
23 not fiberoptic, going up to your distribution point, these 31
24 people would have had phone?

25 A. Say that again now.

1 Q. Object if you want here. I know the day they were
2 digging this in, they were telling me that the fiberoptic is
3 only for television at this point, there is two electrical
4 wires here that send juice to like a substation further north
5 that powers everyone's phones in that area.

6 A. No, there were actually two fiberoptic cables cut. In
7 one of these fiberoptic cables it's a composite fiberoptic
8 cable that carries power that helps feed the site, so to speak,
9 so when that cable of course is severed, the glass carries the
10 transport of the signals from this SAI site back to the CO and
11 the copper power connectors in that cable help fire the site,
12 keep it live, that's where it gets its power from.

13 Q. Okay. Do you know a rough geographical area of where
14 these phones went out at?

15 A. It would have been north and east of the cut.

16 Q. To state line, to county line type idea?

17 A. Well, our exchange runs roughly eight or ten miles
18 north of Leola, and to the northeast it probably runs 13 or 14
19 miles, roughly.

20 Q. All these phones you think would have been out of
21 service?

22 A. Yes, I know they would have been out of service. They
23 were out of service.

24 MR. MACK: That's all the questions I have at this
25 time.

1 MS. VAN BOCKERN: I'll ask for any questions from the
2 board and then, Ms. Northrup, you can do any redirect. Any
3 questions?

4 MR. CUNDY: I have a question.

5 EXAMINATION

6 BY MR. CUNDY:

7 Q. Was there one fiber with different sheaths inside that
8 were cut or two separate fibers that were cut?

9 A. Two separate fibers, our toll fiber which feeds our
10 entire ring and carries our toll and our video on, and a
11 subscriber cable that was plowed at the same time that goes out
12 and feeds our rural area, so there was two fiberoptic cables.

13 Q. But plowed at the same time?

14 A. Yes, same trench, everything.

15 MR. MACK: I do have one more question.

16 MS. VAN BOCKERN: You can -- we can reserve that for
17 your recross, so just if you can wait a few minutes. Thanks.
18 Any further questions from the board? Ms. Northrup.

19 REDIRECT EXAMINATION

20 BY MS. NORTHRUP:

21 Q. As a follow-up, did Valley receive calls from
22 customers stating that they were out of service?

23 A. I believe that's how we were first notified, that we
24 were starting to get trouble calls coming saying phone service
25 was disrupted, yes.

1 MS. NORTHRUP: Thank you. I have no further
2 questions.

3 MS. VAN BOCKERN: Okay, then as a recross, did you
4 want to introduce another exhibit?

5 MR. MACK: If they do want to see the evidence, what I
6 found that come out of the ground that day, for anybody that
7 wants to see it. I don't know exactly what it is myself.

8 MS. VAN BOCKERN: Why don't we let the -- Ms. Northrup
9 inspect and the witness inspect it and we can introduce it into
10 evidence.

11 MR. MACK: I did have a couple more questions.

12 MS. VAN BOCKERN: We will wait and get this admitted
13 and then you can go ahead.

14 THE WITNES: That's a copper cable.

15 MR. MACK: Is that an abandoned cable, then?

16 THE WITNESS: I guess --

17 MS. NORTHRUP: Can we get this either admitted or not
18 admitted into evidence?

19 MS. VAN BOCKERN: Any objection?

20 MS. NORTHRUP: I would just object on the basis of
21 foundation. I'm not sure where this cable came from, what time
22 frame, anything like that.

23 MR. MACK: No problem whatsoever. I don't need it.

24 MS. VAN BOCKERN: Okay. Then the Exhibit 8 has been
25 withdrawn and is denied.

1 COURT REPORTER: It was never marked.

2 MS. VAN BOCKERN: It's not admitted. You can proceed
3 with your questions.

4 RECROSS-EXAMINATION

5 BY MR. MACK:

6 Q. Have you ever had anyone else through the years hit
7 this fiberoptic cable?

8 A. Yes.

9 MS. NORTHRUP: Objection, relevance.

10 MS. VAN BOCKERN: If you could express the relevance,
11 Mr. Mack.

12 MR. MACK: I guess what the relevance is, I'd like
13 these 10 people sitting here for the One Call Board to get a
14 true, true, true picture of what I'm going through with Valley
15 Telco. I'd like them to see what I have been fighting and how
16 I have been fighting it and like them to know all the facts to
17 help make their decisions on this.

18 MS. VAN BOCKERN: Because the decision in this case is
19 restricted to these particular set of facts, I'm going to
20 sustain the objection.

21 Q. (BY MR. MACK) Have you ever --

22 MS. NORTHRUP: I would ask that his response be
23 stricken from the record. I think that the witness made a
24 response before you had overruled the objection or sustained
25 the objection, so I would ask that be stricken.

1 MS. VAN BOCKERN: Okay.

2 Q. (BY MR. MACK) Have you ever brought charges through
3 the South Dakota One Call Board against anyone else?

4 MS. NORTHRUP: Objection, relevance.

5 MS. VAN BOCKERN: Would your argument be the same
6 regarding that?

7 MR. MACK: Basically the same, yes.

8 MS. VAN BOCKERN: Again I'm going to sustain the
9 objection based on the same reasoning, that this decision is
10 based upon this set of facts only.

11 MR. MACK: I guess I have no more questions at this
12 time.

13 MS. VAN BOCKERN: Anything further from the board?
14 Would you like to call -- you have one more witness?

15 MS. NORTHRUP: Actually, I think I'm going to reserve
16 my final witness as a rebuttal witness if we need it, so that
17 would be the end of our case-in-chief.

18 MS. VAN BOCKERN: Mr. Mack, if you would like to call
19 your first witness, whether that's you or your uncle.

20 MR. MACK: Myself.

21 MS. VAN BOCKERN: You can take the stand and be sworn
22 in.

23 Thereupon,

24 BRUCE MACK,
25 called as a witness, being first duly sworn as hereinafter

1 certified, testified as follows:

2 MR. MACK: Good evening, people of the One Call Board.
3 I'd like to send around another copy of the evidence pictures
4 you have in your hands, just a whole lot clearer than the
5 photocopies you have. I'm going to send half each way here.
6 I'd ask you to take particular close attention to No. 5. We
7 are going to refer to that one quite a little bit and also No.
8 2. They are both closeup shots of the fiber sticking out of
9 the ground.

10 MS. VAN BOCKERN: You can proceed, Mr. Mack.

11 MR. MACK: Just wanted you to see those a little bit
12 better. Like I said in my opening statement, folks, I'm here
13 to try to get this all straightened out. I'm not enjoying
14 this, this isn't what I do. I farm. That's all that I do. My
15 uncle took these pictures that day. Thank God he did. I had
16 asked that any of you that would want, I've got micrometers and
17 magnifying glasses to take and measure, I've got a flag from
18 Valley Telco pulled out at the site and a tape measure to
19 measure this flag with the tape measure, take a micrometer,
20 measure the flag on the picture to the best of your ability,
21 try to hold that to where you think the cable is exposed in the
22 ground and to the top of the dirt that's directly above it,
23 take into consideration the bulldozer rolls dirt out both sides
24 when it's pushing dirt and make your own determination on how
25 many inches you think this cable is in the dirt.

1 We have heard testimony that they believe it's three
2 feet. Yeah, I believe there's a three-foot bank out there in
3 their evidence pictures from where the bulldozer took and dozed
4 dirt out for them to get their cable out of this dam. If
5 anybody would like to do that, I've got a couple magnifying
6 glasses, a couple mikes. My uncle will testify in a little
7 while that we feel this is roughly 16 inches under the dirt.
8 We were there, we stepped up over the dam, we walked all over
9 it, you can see footprints where they set cables. We were all
10 there all day. I guess Drew testified, I don't know where I
11 was when he first got there, maybe I was there, maybe I wasn't,
12 I don't remember, but we were all around there all day.

13 The reason I did not call South Dakota One Call before
14 I started leveling this is understand in 1988 I went into a
15 custom manure hauling business, had payloaders, truck mounting
16 manure spreaders and I ran all over North Dakota, South Dakota,
17 Minnesota, Montana scooping up manure out of farmers' yards and
18 spreading it in their fields. We had a lot of farmers that had
19 lots that were all hollowed out, said, can you go scoop up my
20 dugout mound, load it up, haul it in and pack it into my lots
21 where it belongs, try to rebuild my lots for me. Sure. That's
22 when I first heard of South Dakota One Call.

23 I remember talking to a gentleman when I was doing
24 that, he said, you call South Dakota One Call? And I said, who
25 are they? This was 20 years ago. And he told me, so I called

1 them and I said, who are you and where do you belong in my life
2 and what are your charges? They explained to me they are a
3 free service for anyone that's excavating dirt. I said, well,
4 how this came up was I'm hauling away a dugout mound, scooping
5 up the dirt and hauling it away. Oh, if that's all you are
6 doing, you don't have to call us. You are working above mother
7 nature's grade, not a problem.

8 I do remember calling them several different times,
9 but one time that does particularly stand out in my mind is I
10 gave away some rock piles off of a field, not this field, a
11 total different field, and the county was hauling away the rock
12 piles and they said, call South Dakota One Call, we are going
13 to load up these rock piles and haul them away. So I called
14 South Dakota One Call, again, talked to them about I am
15 scooping up the rock piles, hauling them away. Well, there's
16 nothing for us here, you are above ground, you know, so after
17 the fact, certainly in that process I learned, I'm working
18 above ground, I'm working with dirt or things that have been
19 moved by man before, I'm good to go.

20 After the fact, after the date of the hit, I did call
21 South Dakota One Call and I did visit with them, and this is
22 what they talked about earlier, this motion. I'd like to bring
23 this into evidence. What it is is a transcribed copy of my
24 phone call with South Dakota One Call, roughly five days,
25 something like that, after the fact. There is a copy for each

1 one of you. We have the actual audiotape. If you feel you
2 need to hear it or want to hear it, we can play it. But
3 there's three sentences in here that would save us 20 minutes
4 of listening to a bunch of other stuff that I'd like to refer
5 to.

6 MS. VAN BOCKERN: Would you like to inspect the
7 transcript prior to --

8 MS. NORTHRUP: I would. I'll also make a formal
9 objection, renew my objection with the similar arguments from
10 my motion in limine. I don't think this is relevant on whether
11 or not Mr. Mack should have called One Call or whether he had
12 the duty to do so. And any determination made by this person
13 is not something that's binding on this board.

14 MS. VAN BOCKERN: Sure, and again, for the same
15 reasoning, I am going to deny the motions because several
16 members of the board have already heard it, have already -- are
17 already aware of the conversation that was being held, so
18 impossible at this time to keep it from the board. Thank you.
19 And that needs to be marked as Exhibit 8, I believe.

20 EXHIBITS:

21 (Mack Exhibit No. 8 marked for identification.)

22 MS. VAN BOCKERN: We will let Ms. Northrup view it and
23 I will admit it.

24 MR. MACK: So Ms. Northrup knows, this was transcribed
25 by an insurance legal transcriptionist with an original copy

1 that I got from South Dakota One Call. She did sign it on the
2 back to the best of her knowledge that this was correct and
3 accurate.

4 MS. VAN BOCKERN: That exhibit is -- Exhibit 8 is
5 admitted and if you would like to pass copies around.

6 EXHIBITS:

7 (Mack Exhibit No. 8 received into evidence.)

8 MR. MACK: So much of this isn't even relevant. To
9 save time and different things, you may read it all if you
10 want, we can give you time, but in the areas that I have marked
11 out here kind of in yellow on page number one, it is self-
12 explanatory, people, I can read it to you, you can read it
13 yourselves. This is from Mark at South Dakota One Call telling
14 me that as long as I am working above mother nature's grade, I
15 don't have to call South Dakota One Call. We talked about it
16 being law. They are going to argue and have argued he's not --

17 MS. NORTHRUP: I am going to object real quick. Sorry
18 to interrupt you. I'm not sure exactly which lines he's
19 talking about and I think that the transcript probably speaks
20 for itself, so I don't know if he would rather read the lines
21 that he is referring to or that he wants the board to pay
22 attention to, and any argument he has he can bring at the end
23 of the hearing.

24 MS. VAN BOCKERN: I am going to sustain that. If you
25 could point out what lines it is and then the board can read it

1 or can listen to you read it and can weigh the evidence
2 accordingly.

3 MR. MACK: Okay. We are going to start mid page on
4 page number one with a question. It starts, well, now, this
5 dirt has already been disturbed. This is piled up dirt by man.
6 Answer, okay, yeah, if you are not actually digging, then you
7 shouldn't need to have the lines marked out, but if you're
8 using heavy equipment, it might be a good idea just. Question,
9 by law. Answer, so we show that you are not being over a line
10 that might, you know, collapse on you. Question -- these
11 aren't really quite question and answers, but question, okay,
12 but by law, I don't have to call as long as I'm not getting
13 into you might say mother nature's grade. Answer, yeah, if
14 you're just, like, moving a pile of earth to another spot,
15 there shouldn't be a problem there.

16 All I'm doing here, folks, is reconfirming that's why
17 I made this call, reconfirming what I was taught back when I
18 first found out what South Dakota One Call was all about,
19 reconfirming what I was taught when I called when the county
20 wanted to haul away these rock piles, reconfirming other times
21 when I called them with manure hauling. One time, I don't
22 remember where I was, I think I was around Wessington Springs,
23 South Dakota, with a payloader scooping up manure and I hit a
24 power cable, not a farmer's power cable, a big power cable with
25 the payloader and the farmer was worried and I was worried and

1 they come out and they spliced the cable and said, no, the
2 cattle had hollowed out the dirt and everything else, and then
3 I talked to that power company, wherever I was, about One Call.
4 No, you are just scooping manure, don't worry about it, you are
5 working above, here the cattle chewed it out, we should have
6 been watching our lines better.

7 I'm just doing what seems to be right. I feel that
8 these lines were improperly placed. Now, yes, by the law, I
9 may have been excavating dirt, but I was also just going by
10 what I was taught, told again afterwards. We look at these
11 pictures, I'm not so sure that Valley was doing things or the
12 engineering firm was doing things right when they plowed that
13 cable in there. Instead of I believe you have an overhead hand
14 drawn picture in your packets from before showing where their
15 copper cables were placed. They took the easy way out of this
16 deal.

17 MS. NORTHRUP: Objection. I object to this line of
18 testimony as being relevant to the proceeding.

19 MS. VAN BOCKERN: Again, an argument regarding the
20 relevance, Mr. Mack.

21 MR. MACK: The same ones I had, just want these guys
22 to understand and know.

23 MS. VAN BOCKERN: Again, because we are restricted to
24 this set of facts specifically regarding the dirt, the cable,
25 I'm going to sustain that.

1 MR. MACK: Well, all I can do is refer back to my
2 phone conversation, then. If this is what you guys have been
3 taught from your previous experiences with the One Call
4 situation, I think you would have made the same decision I did.
5 It's just -- it's dirt above, you know, above natural grade.
6 If we want, we can get into the pictures, if anyone thinks they
7 have good eyesight, I got a magnifying glass, to please take
8 evidence picture No. 2 or any of the other ones, No. 5, take a
9 micrometer here, we don't have to know how to read them, we
10 just have to know on there take it times how many inches we
11 measure the flag to be, your math and this micrometer and a
12 magnifying glass, I think you are going to come up with right
13 at 16 to 17 inches of dirt over top of the cable. It's a
14 guessing game where the cable is protruding from the dirt, it's
15 a guessing game on how much dirt is boiled over off the
16 right-hand side of the bulldoze, but I hope you can see that
17 there's not three feet of dirt over this by any means.

18 MS. VAN BOCKERN: And if you are finished at this
19 time, I will let Ms. Northrup do a cross-examination.

20 MS. NORTHRUP: Thank you.

21 CROSS-EXAMINATION

22 BY MS. NORTHRUP:

23 Q. Mr. Mack, so I am clear, you are not disagreeing or
24 you are not stating that this wasn't excavation as the
25 definition of South Dakota law requires.

1 A. No, not in the least.

2 Q. You will agree with me that you were scraping dirt or
3 moving dirt?

4 A. I was -- you can look at it any which way you want. I
5 was reshaping a passageway, a private passageway.

6 Q. And you have characterized this as a pile of dirt.
7 This was actually a manmade dam; isn't that correct?

8 A. Yeah, a manmade pile of dirt to block up water, yeah.

9 Q. So it was a manmade dam, and how long has this dam
10 been there?

11 A. As near as we can figure, somewhere in the early to
12 mid thirties, we think it was like a WPA project.

13 Q. So it's not a fair characterization to say that you
14 had just moved this dirt from one side of the field to the
15 other side of the field.

16 A. No.

17 Q. Thank you. And you would agree with me that you
18 weren't tilling the land, this wasn't for farming or gardening
19 purposes.

20 A. Most definitely for farming purposes, most definitely.

21 Q. I guess not for tilling purposes.

22 A. No, I can't say that.

23 Q. You would characterize this as tilling the land?

24 A. This is one of the processes of making this land,
25 tilling, yes, I mean, how do you think this dirt got black on

1 top of this dam?

2 Q. Do you usually till the rest of your property with a
3 large excavator?

4 A. Same thing I have just finished up planting winter
5 wheat with yesterday, the same tractor, the same dozer, that
6 dozer out front. I cross a real rough spot in my field, I will
7 set it down, level it out and keep right on going.

8 Q. So you are not -- you would agree with me that this
9 wasn't -- you weren't digging in a cemetery --

10 A. No.

11 Q. -- is that correct? You weren't digging in a planned
12 sanitary landfill.

13 A. Nope.

14 Q. And this wasn't actually a public right-of-way.

15 A. No, it was a private right-of-way. It was a private
16 passageway.

17 Q. So you would consider it -- I guess why don't you
18 explain to me what you mean when you say it's a private
19 passageway.

20 A. Okay. It's the only way -- before the fence was taken
21 out of this quarter of land, it was fenced into several fields
22 and pastures, it was the only way of getting from one side of
23 the pasture to the other side of the pasture to be able to
24 follow a lane down into another portion of the pasture when it
25 was wet.

1 Q. And so when you were done, this embankment or this
2 pile that you would drive over was planning on being flat,
3 right?

4 A. No, not flat. Just leveled down so we can get up and
5 over it.

6 Q. Okay. So I guess how much difference would there be
7 in the original grade from what you foreseen the final project
8 to be?

9 A. Say that again, please.

10 Q. Well, what I understand that you have testified to is
11 that it was kind of a mound --

12 A. Uh-huh.

13 Q. -- that you were knocking over so that it would be
14 flat. So from the top of that mound to the rest of the sides
15 where it was going to be flat, you have testified that it
16 wasn't going to be exactly flat, how much of a difference is
17 that going to be?

18 A. I'm going to guess by looking at the pictures, at the
19 deepest point, three and a half feet at its deepest point. The
20 dirt is probably three and a half feet high from what I had
21 soil conservation come out, look at the soil, look at the lay
22 of the land, they did this quite some time ago, long before we
23 even sprayed it to kill the pasture or anything, to see if I
24 could take this dam out and if I could, where dirt should go,
25 where it came from, just determine what's what and what they

1 thought, so I was in compliance with their programs. And he
2 give me rights to do whatever I wanted, but I would say in the
3 center of this, roughly three and a half feet to four feet, and
4 of course mother nature's soil comes up, the dam pretty much
5 comes across, the dam actually climbed with mother nature some,
6 the dam has settled down, you know, somewhat.

7 Q. Okay. So you said three and a half feet
8 approximately?

9 A. I would say something like that. It's actually still
10 present. I have not did any more with it since then. I
11 planted my soybeans out and around this. I left ten acres out
12 of production and I'm scared to death to go back in there.
13 What the heck else can I find in there? What else did these
14 guys put in there? I don't know.

15 Q. You are not -- would you agree with me you did not
16 call South Dakota One Call before that, that's not an issue in
17 this case, correct? You did not call and specifically request
18 a locate on this property.

19 A. Correct.

20 Q. And when you testified earlier that you called One
21 Call in the past and asked if you needed to get a locate when
22 you moved one pile of dirt to another place or one pile of
23 manure to another place, those calls were not specific to this
24 incident.

25 A. Correct.

1 Q. So it had been a number of years since you had
2 actually called One Call.

3 A. No, not a number of years. It wasn't that many years
4 ago that the county came to haul away some rock piles.

5 Q. So it wasn't in the months preceding this?

6 A. No, not in the months preceding, no. Within a year
7 or so.

8 Q. When you called this person, the customer service
9 representative at the South Dakota One Call, you didn't provide
10 him any pictures or he didn't have any firsthand knowledge of
11 this property, did he?

12 A. No. This is the first time I believe I have ever
13 talked to that individual.

14 Q. And so anything that he would have said was based on
15 your characterization of what the property would be; is that a
16 fair statement?

17 A. Yeah, I don't think I misrepresented it.

18 MR. NORTHRUP: Thank you. I have no further
19 questions.

20 MS. VAN BOCKERN: Any questions from the board? Then
21 if you would like to clarify anything else, Mr. Mack, feel
22 free.

23 EXAMINATION

24 BY MR. CHAMBERS:

25 Q. Could I ask a couple questions? Picture No. 7, there

1 is some excavation maybe about to begin or had begun there.

2 A. Okay.

3 Q. Were they excavating there where the fiberoptic cable
4 is at?

5 A. Correct, that's Valley's backhoe and their man walking
6 there.

7 Q. Okay, so is he standing over the damaged cable at that
8 time does it look like?

9 A. I don't know exactly where he's at. Well, yeah, he's
10 back on the other side.

11 MR. DERALD MACK: He's probably standing right there
12 where the cable was damaged.

13 A. But understand this dam, I wish I had a picture of it
14 before he started, has settled. Everything tapers up, the dam
15 tapers up. We believe it was built with horse and little trip
16 scrapers.

17 Q. (BY MR. CHAMBERS) So from where that man was
18 standing, you had driven on that dam I guess, is that what the
19 purpose of this dam was, to hold back water and also to get
20 from one side of the field to the other?

21 A. From one side of the creek to the other when it was
22 all fenced in as pasture.

23 Q. So the dam was actually kind of used as a roadway as
24 well as to hold back water?

25 A. Yeah, it's the only way you would get -- it's hard to

1 explain, but there was roughly, what, 20, 25 acres of pasture
2 and then there was a little lane 16 feet wide of pasture, it
3 narrowed up, went back to another portion of this quarter of
4 land, opened back up, there was another 20 acres back in there
5 that had been fenced out. Back when that ground was broke who
6 knows when, that was what their capabilities of farming were.
7 Now days we are coming in, we are cleaning things up and we are
8 leveling things off and we are farming. I pull a 50-foot air
9 seeder that I can reach out into these wet spots a long ways
10 versus when this was put in. When it was put in, they had
11 10-foot farm equipment.

12 Q. So when I look at picture No. 7 and where that man is
13 standing and I go to picture No. 5 and kind of envision him
14 standing there where that cable is cut, would you say that the
15 elevation is the same in No. 5 as No. 7?

16 A. No, I know where you are headed here. I would say he
17 was, from the right hand flag on picture No. 5, he would be
18 about that far away from the dam, because these pictures were
19 taken within just like 20 seconds of each other, 30 seconds,
20 took some pictures, moved over here, went over there and took
21 some pictures, and if you look, you don't see in picture No. 5
22 any of his excavated dirt, the clay pile, you only see, you
23 know, bulldozer work you might say. If you go to picture
24 No. --

25 Q. No. 2 would show some excavation or pile.

1 come up when you are on the stand, but just the witness at this
2 time.

3 A. It was bought somewhere in '65-ish.

4 Q. (BY MR. KOUBA) That answered my question. My next
5 question would be I think in previous testimony Mr. Schuetzle,
6 if I pronounced that correctly, indicated that that cable was
7 put in there in 1997.

8 A. I believe you are correct with that, yes.

9 Q. Were you aware that there was cable across that
10 land --

11 A. No.

12 Q. -- when it was put in?

13 A. I mean, they come through there so quick, you know.
14 Yeah, it's five miles an hour with a bulldozer, it takes them
15 12 minutes to get across a quarter of land.

16 Q. I was curious if you were aware that it was in there.

17 A. In 1997 I had nothing to do with this ground. I have
18 my own farm and they have their own.

19 MS. VAN BOCKERN: Any further questions or
20 clarification? All right, would you like to call your next
21 witness?

22 MR. MACK: Sure, I'd like to call Derald Mack.

23 Thereupon,

24 DERALD MACK,
25 called as a witness, being first duly sworn as hereinafter

1 certified, testified as follows:

2 MR. MACK: I appear to be missing four pictures that
3 went around. Those are the evidence set. They may be in my
4 stuff here yet. We can proceed without them, we can use a set
5 of these.

6 DIRECT EXAMINATION

7 BY MR. MACK:

8 Q. Let's talk about that day that we were working north
9 of Leola and the cable was hit. Were you there that day when
10 the cable was hit?

11 A. I was there after dinner. I went to church and had
12 dinner and come out there and started running the dozer.

13 Q. And you were there until what, 6 o'clock that evening?

14 A. Well, not later than 6:00.

15 Q. 5 o'clock that evening?

16 A. Yeah.

17 Q. So you had a chance to see firsthand where this cable
18 had been hit, where it was exposed, everything else?

19 A. Yes.

20 Q. Okay. Would you be interested in taking a micrometer
21 and trying to measure one of these flags and see if you can
22 determine where the edge of the bank is?

23 A. No, I won't. I won't try it.

24 Q. You don't know if your eyes are good enough, okay. In
25 your opinion, roughly how deep do you think the cable was

1 buried where it was hit?

2 A. Well, when they come up over the bank, where they come
3 up on that slant, the bank was running like that, you come up
4 on the slant up over on top, it wasn't very deep, that's all I
5 can say. I didn't measure it, there's no way it could have
6 been that deep.

7 Q. What do you think the thoughts -- if you look at
8 picture No. 3 of my evidence, you see the line of flags turning
9 and going up through that bank?

10 A. Yes.

11 Q. Would you speculate what you think any reasons of that
12 would be? Why, if it was okay for them to go through that
13 bank, that they would have intersected that bank, turned and
14 went along it for a while, why didn't they just go on through
15 it?

16 MS. NORTHRUP: I'm going to object to this question as
17 relevant.

18 MS. VAN BOCKERN: Again what is your argument?

19 MR. MACK: It's the same thing. I think they are
20 getting an idea, it doesn't matter.

21 Q. (BY MR. MACK) Let's go to -- where is Valley's
22 evidence? I'd like you to take a look at Valley's evidence
23 picture No. 3. Which direction do you appear that picture is
24 looking?

25 A. We are looking south.

1 Q. Basically --

2 A. Telling by the trees, standing on the north side of
3 the dam, the cut.

4 Q. On the left hand side of that picture, how high do you
5 think that dirt looks there, just by the size of the flags and
6 everything else?

7 A. I'm trying to see why the flags come up the side.

8 Q. Well, let me restate that. On picture No. 3, will you
9 agree that this is where the cable lays currently and that is
10 where the dirt was moved with the bulldozer to assist them to
11 take the cable out of the dam?

12 A. Yeah, I follow it now, right. Allen would have to dig
13 the bank to get to it.

14 Q. Does that appear, when you compare that picture to
15 Mack evidence picture No. 5, does that appear anywhere close to
16 the same height of dirt?

17 A. Yeah, you can see just a little bit of where the side
18 was dozed on the left hand side, the path of the dozer.

19 Q. Well, if you look at Mack evidence picture No. 2, you
20 see all of that side. Would you agree that No. 5 and No. 2
21 were taken at the same time and it was before the side of that
22 dirt had been dozed away to expose that cable?

23 A. Well, looking at it, it looks like it.

24 Q. And Valley's pictures appear to be after a rain, which
25 would you agree we didn't have any rain that day?

1 A. No rain.

2 Q. It must have been a day or two later. I don't know if
3 I have any more questions at this time. Oh, I do, too.
4 Explain to me a little bit, like you were earlier, when exactly
5 do you think that this land came into the Mack family?

6 A. When it came in?

7 Q. Yeah, roughly what year did that land come into the
8 Mack family?

9 A. Well, I generally try to put that with something else.
10 I'm trying to put it with some year, what else we had done.
11 I'd say it's at least been 30 years, as I was saying before.
12 That's just in the neighborhood.

13 Q. Okay. In 1997 when this cable was dug in, was I
14 farming with this land or with Mack brothers at all? Was I
15 present on this land at all in that time?

16 A. No.

17 Q. I had my own farm, my own land, doing other places,
18 other ways?

19 A. Yes.

20 Q. It's just been the last, well, the last 12 months,
21 basically that I started farming this land; does that sound
22 accurate?

23 A. Yep, we farmed it a year ago, my brother and I farmed
24 it a year ago, brother and I farmed together and we farmed it
25 in '05, yeah, he had it in '06.

1 Q. And in 1997 was I farming any ground even relatively
2 close to this property?

3 A. No.

4 Q. So I didn't probably travel that road daily unless I
5 was going to see my parents or something.

6 A. No.

7 Q. If you want to take a look at Valley's evidence
8 picture No. 2, which is an aerial or satellite view, you can
9 see where the cable is marked out, correct?

10 A. Right.

11 Q. You can see where it curves roughly from 104 feet,
12 well, from 96 feet to 154 feet set back from the highway.

13 A. Yep, that's what they say. It shows it in I suppose
14 it's feet.

15 Q. Yeah, it's marked with the single mark. Why do you
16 suppose that is?

17 A. Well, they are going around that dam dike on the 96
18 feet.

19 Q. Okay.

20 A. Then when they got -- they couldn't bury beside the
21 dike, or I call it a dike, a dam because there was a cable
22 right beside it, another buried cable and there was not room
23 between that dam and that cable to get through, so they went up
24 over top.

25 Q. And in your remembering of this dam, owning the ground

1 for 30 odd years, going by it every day on your way to farm
2 other ground, was there a lot of difference in the dam from
3 where the cable intersected the dam to where it -- where they
4 actually crossed into the dam and the contour of the ground the
5 way it laid?

6 A. In height?

7 Q. In height and angle of approach and everything else.

8 A. Well, you got lower in the center, you come down off
9 of a knoll and you went back up again.

10 Q. Yeah, but if they intersected the dam roughly at this
11 point right here, was there a lot of difference compared to
12 where they crossed at this point, where they actually crossed
13 into the dam?

14 A. In height?

15 Q. Uh-huh.

16 A. Well, just the drop, the slope of the ground.

17 Q. Okay. Have you ever run a bulldozer?

18 A. Yep.

19 Q. When you drive a bulldozer and you drive over
20 something, if it may be a ridge of dirt or a log, does the
21 bulldozer drive the front tires over and drive the back tires
22 over and keep driving or does it drive up and then tilt over?

23 A. Right, you go up and you come back down like this.

24 Q. It will climb up and it will nose over.

25 A. Right.

1 Q. So anything that that bulldozer does, the dozer is
2 sticking out the front or anything you had sticking out the
3 back would be exaggerated drastically when the bulldozer noses
4 or we say noses over.

5 A. If you don't bring that dozer up when you start down,
6 you are going to put a deep gouge in. I think most of them --

7 MS. NORTHRUP: I object to this line of questioning
8 because I'm not sure where it's heading.

9 MS. VAN BOCKERN: If you could explain.

10 MR. MACK: Where it's heading is I am trying to show
11 that when the bulldozer crossed over this dam, when it went
12 over the edge of that dam, the hook on the back of that dozer
13 comes up, because when that teeters over, it has no -- it isn't
14 like a tractor where the front tires drive over and then the
15 back tires, it goes so far and when the weight is right, it
16 tilts over. When it tilts over, the back of that bulldozer
17 comes up.

18 A. The tracks on the bulldozer.

19 MS. VAN BOCKERN: And how does this relate to --

20 MR. MACK: It relates to how deep that cable was and
21 how that cable could be that shallow in the area it is if that
22 bulldozer nosed over something or the edge of the dam in this
23 area. We don't know if they plowed this in from north to south
24 or south to north when they brought it through, but if it went
25 over dirt, the hook can come up.

1 MS. VAN BOCKERN: Are you finished with this line of
2 questioning, then?

3 MR. MACK: I'm not finished with that line of
4 questioning. We need your ruling.

5 MS. VAN BOCKERN: I still don't see how it relates to
6 where the cable is located within the dirt. You have made your
7 point that there's a mound, but I don't see how it relates.

8 A. You are talking about the cable layer.

9 MR. MACK: Yep.

10 A. The outfit that's laying the cable.

11 MR. MACK: If he comes along a level ground and hits
12 an embankment, when he comes up, he's like this and the back
13 being where he's putting the cable in, this red part is now
14 deeper. When he crosses over, he's now level. When his front
15 end goes down, his back end comes up and his -- when his front
16 end goes down, his back end comes up, the back end is where the
17 cable is being plowed from, it raises up.

18 MS. VAN BOCKERN: Because we can't estimate where that
19 would place it in the mound of dirt, I'm going to sustain the
20 objection.

21 MR. MACK: Okay. I don't think I have any more
22 questions at this time.

23 MS. VAN BOCKERN: Ms. Northrup, any cross-examination?

24 CROSS-EXAMINATION

25 BY MS. NORTHRUP:

1 Q. Sir, you mentioned that your family has been farming
2 this area for a long time period and have owned this property
3 for quite a while; is that true?

4 A. My brother has. He owned that quarter. Him and I
5 owned the quarter right beside it.

6 Q. So were you or someone in your family aware that
7 Valley had put this fiberoptic cable in?

8 A. Yep.

9 MS. NORTHRUP: I have no further questions.

10 MS. VAN BOCKERN: Any questions from the board? Any
11 clarification, Mr. Mack?

12 MR. MACK: Not at this time.

13 MS. VAN BOCKERN: Any further witnesses? That then
14 closes the record and we will look for a motion from the board.

15 CHAIRMAN SCHROEDER: I'm going to ask for a motion to
16 go into executive session.

17 MR. KOUBA: So moved.

18 MR. LOWE: Second.

19 CHAIRMAN SCHROEDER: All in favor say "aye."

20 (Motion approved unanimously.)

21 MS. VAN BOCKERN: In that case the board will remain
22 in this room and we will ask that all others please leave. And
23 we will reconvene after the board has sufficient time to
24 discuss.

25 (Whereupon, the hearing was in recess at 3:25 p.m.,

1 and subsequently reconvened at 3:45 p.m., and the following
2 proceedings were had and entered of record:)

3 CHAIRMAN SCHROEDER: I'd like to have a motion to come
4 back in from executive session.

5 MR. KOUBA: So moved.

6 MR. CHAMBERS: Second.

7 CHAIRMAN SCHROEDER: We have a motion and second, all
8 in favor say "aye."

9 (Motion approved unanimously.)

10 CHAIRMAN SCHROEDER: Now I would like to have a motion
11 on the order that we have just discussed.

12 MR. DOUG LARSON: I make a motion that the board finds
13 that there is sufficient evidence that Bruce Mack has violated
14 SDCL 49-7A-5 by commencing excavation at township 126 north,
15 range 67 west, section 5, southeast quarter, without providing
16 advanced notification to the South Dakota One Call system as
17 required by statute. The board assesses a penalty of \$500 with
18 \$300 suspended on the following condition. Bruce Mack fully
19 complies with SDCL 49-7A and ARSD article 20:25 for 12 months
20 and Bruce Mack fully comply with the resolution of complaint
21 OC06-003 by making payment of \$200 within 30 days of the
22 issuance of the findings of fact, conclusions of law and final
23 order.

24 MR. CHAMBERS: Second that.

25 CHAIRMAN SCHROEDER: We have a motion and second. All

1 in favor say "aye."

2 (Motion approved unanimously.)

3 CHAIRMAN SCHROEDER: Motion carried.

4 MR. KOUBA: I will make a motion to adjourn.

5 CHAIRMAN SCHROEDER: We have a motion to adjourn.

6 MR. DOUG LARSON: Second.

7 CHAIRMAN SCHROEDER: All in favor say "aye."

8 (Motion approved unanimously.)

9 (Whereupon, the proceedings were concluded at 3:46

10 p.m.)

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STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 21st day of September 2006.

Carla A. Bachand

Carla A. Bachand, RMR, CRR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2012.