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**From:** donotreply@sdonecall.com[SMTP:DONOTREPLY@SDONECALL.COM]  
**Sent:** Tuesday, September 30, 2014 11:35:36 AM  
**To:** PUC Docket Filings  
**Subject:** One Call Reply Form  
**Auto forwarded by a Rule**

**1. Complaint Docket Number:** OC14-021

## **2. Respondent Information**

**Complaint filed on behalf of (company name):** Spearfish Forest Products

**Contact Person:** Derek Larsen

**Phone:** 605-645-1197 **Ext:**

**Street Address or PO Box:** PO Box 910

**City:** Spearfish **State:** SD **Zip:** 57783

**Fax:** --

**Email Address:** dlarsen@spearfishfp.com

**Date:** 9/30/2014

**Were you previously aware of these allegations:** No

**Provide detail including whom you spoke with:** I spoke with the technician that fixed the cable, and referred him to the Forest Service. I was not aware there would be a complaint against Spearfish Forest Products

## **3. Basic Facts**

**Do you dispute the alleged violation of SD One Call statute or rule occurred?:** Yes

**If yes, what specifically do you dispute?:** I believe the complaint is inaccurate in describing our activities when the phone line was damaged. We were performing pre-use surface maintenance on a pre existing road template, not road building or new construction. This surface maintenance performed with a grader did not extend more than 1ft below the surface of the road. I would also dispute that we were performing excavation activities. SDCL 49-7A-1 section 4 subsection d clearly exempts "Any road and ditch repair or road and ditch activity that does not extend more than eighteen inches below the surface of the original groundline within the right-of-way." The site where the damage occurred was on the old Tinton road template in the Black Hills National Forest. I was informed by the technician that repaired the damage that this line follows that template for its entire length. The road was built first and the phone line was put in afterwards, making the road surface the original groundline.

**Do you dispute the complainant's statements regarding the intentional or unintentional nature of the alleged violation?:** No

**If yes, please explain:** Century Link is correct it was unintentional.

#### **4. Excavation / Locate Information:**

**Was a locate requested from SD One Call?:** No

**If a locate was requested:**

**Locate ticket #:**

**Start date and time on ticket:**

**Did excavation begin before the start date / time on the ticket?:** NA

**Was a minimum horizontal clearance of 18 inches maintained between a marked facility and mechanical equipment?:** NA

**Were buried facilities exposed by hand or non-invasive equipment prior to excavation?:** NA

**Were facilities marked?:** NA

**Was the marking complete prior to the start time on the ticket?:** NA

**Was the excavation site pre-marked with white paint?:** NA

**Was the facility marked accurately (within 18 inches)?:** NA

**Was there reasonable care to maintain locate marks for the life of project?:** NA

**Did the complainant correctly describe the type of facility involved?:** No

**If not, provide detail:** The complaint is correct in describing the type of utility. The complaint leaves the Depth of Cover section blank in section 4. The depth of cover in this instance was less than 1 foot.

#### **5. Damages:**

**Did the complainant correctly describe the damages that resulted from the alleged violation?:** No

**If no, provide detail:** The complaint is correct as to the damage to the cable; however it is incorrect as to where the damage occurred. We were not operating on private property at the time. We were working on a contract on National Forest land.

**Were damages in public right of way or private property?:** Public

**Did complainant correctly describe how operator service was affected?:** Yes

**If no, provide detail:**

**Was anyone injured as a result of facility damage?:** No

**If yes, provide detail:**

**Length of hospitalization:**

**Were there any fatalities?:** No

**If yes, explain:**

**Other information regarding injuries or damages:**

#### **6. Statutory Violation**

**Do you believe the statutes listed (if any) by the complainant were violated?:** No

**Why or why not?:** I would again like to point out that 49-7A-1 does not include road maintenance in the definition of excavation. As for 49-7A-10 pertaining to liability I will address that in section 9 other information.

#### **Future Compliance:**

**Describe your plans and procedures to ensure compliance with SD One Call statutes and rules:** It has been and will continue to be the policy of Spearfish Forest Products to call SD One Call before performing excavation activities.

#### **Past Violations:**

**Has a complaint been filed against you in the past for SD One Call violations?: No**

**If yes, when was it filed?:**

**Other Information:**

**Please provide any additional information to support your position:** I would like to address some of the special provisions that go along with operating on Federal Lands. Century Link operates on National Forest Land under a special use permit. I have attached a copy of this permit to my response for the committee to read. There are a few specific sections of this permit, and their impact on other National Forest contractors operations that I would like to address. The first is section III Responsibilities Of The Holder. Subsection A. Compliance with Laws, Regulations, and other Legal Requirements states “The holder shall comply with all applicable Federal, State, and local laws, Regulations, and standards...” The Full contents of this section can be found in the attached permit. One of the applicable standards that is contained in this provision is the National Electric Safety Code Rule 352D1. This rule states... “The distance between the top of the cable and the surface under which it is installed (depth of burial) shall be sufficient to protect the cable from damage imposed by expected surface work.” It is expected that other users on National Forest lands be able to perform road maintenance without conflicting with underground utilities. In this instance we were performing routine surface maintenance, had the line been buried deep enough to be in compliance with the special use permit there would have been no issue. I would also like to call your attention to section IV, the Liability section of the Special use permit. Sub section A states “The holder assumes all risk of loss to the authorized improvements.” Also subsection B includes an indemnification clause, which can be found in the attached permit. The liability section of the special use permit does not allow Century Link to seek damages for damage to lines on Federal Lands. I have also attached a statement from the machine operator explaining his actions on the day the damage occurred, as well as an inspection report from the Forest Service of the site. Both of these explain that the depth of disturbance was less than 1ft on a preexisting road template. I would like to finish by addressing Mr. Ousley’s statement that this damage could have been avoided. I believe that this damage would have been avoided had Century Link been operating in compliance with their permit and buried the line to the correct depth.