

RECEIVED
SEP 28 2005
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

09/22/2005

Dear Public Utilities Commission,

I am requesting your assistance. Enclosed I am completing a Complaint against Qwest Communications. I utilized SD One call (#051010355) prior to digging a fence post on my personal residence. The Qwest phone line was not accurately marked. (I dug greater than 18 inches outside the line and still severed the line.) I have requested on 04/30/05 via correspondence to the Qwest claims department that this fee be waived since the lines were not accurately marked. I spoke with Pamela and her supervisor and they refuse to settle this matter in my favor or supply me with proof of negligence.

Enclosed is copies of what I have received regarding this claim and letters that I have sent to Qwest. To date I have receive no documentation or correspondence other than the original bill.

Thank you



Kurt Aberson

Mail completed form to:

PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL AVENUE
PIERRE, SD 57501
ATTN: SOUTH DAKOTA ONE CALL BOARD

COMPLAINT

COMPLETE INFORMATION IS REQUIRED - ADDITIONAL PAGES MAY BE USED IF REQUIRED

ALLEGATION OF PROBABLE VIOLATION(S) OF SOUTH DAKOTA ONE CALL LAWS

I. ACTION REQUESTED BY:

COMPLAINT FILED BY INDIVIDUAL OR BUSINESS* PERSON FILING COMPLAINT: Kurt Aberson

COMPANY Personal Complaint ADDRESS 7118 W. Rosemont Lane PHONE NUMBER 605 361 0408

SIGNATURE OF COMPLAINANT: Kurt Aberson DATE: 09/22/2005 EMAIL ADDRESS: KLABerson@sio.midco.net

*If the complaint is files on behalf of a Company, the person signing this form should have the proper authority to file the complaint.

II. ACTION REQUESTED AGAINST:

NAME OF EXCAVATOR/FACILITY OPERATOR: Qwest Claims PHONE NUMBER: 800 321 4158 Ext 8327

ADDRESS: Qwest Claims 2915 N Classen STE 400 Oklahoma OK 73106

WAS A LOCATE REQUESTED FROM SD ONE CALL? YES NO LOCATE TICKET #: 051010355

START DATE ON TICKET: 04/15/2005

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? YES NO N/A

WERE BURIED FACILITIES EXPOSED BY HAND OR WITH NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? YES NO N/A

III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: Qwest Communications Phone Line OPERATOR OF FACILITY (IF KNOWN): Qwest Communications

OPERATOR ADDRESS: Qwest PO BOX 2348 Seattle WA 98111 PHONE NUMBER: 800 321 4158

DEPTH OF COVER: N/A PRESSURE: NA VOLTAGE: NA NUMBER OF CABLE PAIRS: 2

IV. MARKING

WERE FACILITIES MARKED? YES NO N/A

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES NO N/A

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? YES NO N/A

WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? YES NO N/A

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT?

YES NO

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY?

YES NO

IS THERE AGREEMENT? YES NO IF NO, PLEASE EXPLAIN: The situation was discussed via phone and correspondence. I explained that the line was not marked accurately. I spoke with Pamela at 800 321 4158 Ext8327 and she refused to supply me with proof of my negligence. We are unable to agree on negligence.

V. DAMAGE (IF ANY)

FATALITIES: NA INJURIES: NA LENGTH OF HOSPITALIZATION: NA

ESTIMATED PROPERTY DAMAGE (\$): 95.35 NUMBER OF CUSTOMERS AFFECTED: 1 (Self)

DAMAGED IN: PUBLIC PRIVATE (RIGHT-OF-WAY)

PHOTOS OF THE DAMAGED FACILITY? YES NO

ADDITIONAL INFORMATION: I marked were I wanted my posts to be prior to the lines being marked by SD one call. As a result of the markings I relocated one of my post locations so that the hole would be greater than 18 inches outside of the marked area. Upon digging in this new location I severed the phone line even though I dug greater than 18 inches outside the marked area. This was witnessed by my neighbor Mark McMasters who is and has attested to this fact.

VI. PROBABLE VIOLATION

SPECIFIC STATUE(S) OR RULE(S) THAT WAS VIOLATED: 49-&A-9 Failure to provide timely markings – Inadequate markings – liability

ADDRESS/LOCATION OF PROBABLE VIOLATION: 7118 West Rosemont Lane

DATE/TIME OF PROBABLE VIOLATION 04/15/2005 approx 9:30am CT

HAVE YOU DISCUSSED THIS PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST: YES NO

IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION: Pamela at the Qwest Claims department as well as her supervisor.

DESCRIPTION OF PROBABLE VIOLATION: The marking to identify the Qwest Phone line was not accurately provided. I dug greater than 18 inches from this line and still severed the line. I feel I am not liable since the line was not marked accurately. I have requested proof of negligence be supplied or the bill I received for damages be voided. This was requested in a letter sent 04/30/2005. I have not received any requested documentation to this point. Today, 09/22/2005, I received a phone call from Pamela at Qwest Claims again attempting to collect and she refused to provide me proof of negligence or waive the damages charged.

Type: *** V E R I F I C A T I O N *** Class: VERIFY

Transmit: 04/11/05

At: 1220 CDT

Prepared: 11-APR-05

Time: 1219 CDT By: EBY

Ticket No.: 051010355 REPLACEMENT OF Ticket No.: 050970837

Operators Notified:

M06=/MEC-SIOUX FALLS/ N11=/XCEL ENERGY / SFA=/SIOUX FALLS WTR/
SFC=/MCC SIOUX FALLS/ SFL=/SIOUX FALL-LGHT/ UWS=/QWEST LOCAL-ULS/

Excavator Information:

Caller: KURT ABERSON Phone: 605-361-0408

Excavator: KURT ABERSON
Address: 7118 W ROSEMONT LN
City: SIOUX FALLS, SD 57106
Phone: 605-361-0408 Fax:

Contact: KURT ABERSON Phone: 605-361-0408
Alt. Contact: Phone: 605-331-1641

Location Information:

County: MINNEHAHA City/Village: SIOUX FALLS

Map Ref: 43310-096486 Grids: 2
Exc. Site Address: 7118 W ROSEMONT LN
Nearest Intersection: PANAMA
Type of Work : INSTL PRIVACY FENCE
Work Being Done For: KURT ABERSON
Depth: 2 1/2FT Explosives: N Tunnel/Bore: N
Start Date: 04/13/05 Time: 0800 CDT Duration: 99 DAYS
Meeting Required: N Best Time to Contact: 0800 - 0500
Exc. Site (Marking Instr.): R.O.W.: N TRSQ:

MARK REAR & SIDES OF PROPERTY
GPS Lat/Long:

Remarks:
EXPIRES MAY 04 @ 08:00 CDT
RC 050970837 THIS IS CORRECT ADDRESS

Total Grids: 2
43310-096486, 43310-096488

End Ticket

South Dakota One Call

SEQUENCE NUMBER 0837 CDC = XPR

Type: *** R O U T I N E

*** Class: TRANSMIT

Transmit: 04/07/05

At: 1937 CDT

Prepared: 07-APR-05

Time: 1937 CDT By: LAZ

Ticket No.: 050970837

Operators Notified:

M06=/MEC-SIOUX FALLS/ N11=/XCEL ENERGY / SFA=/SIOUX FALLS WTR/
SFC=/MCC SIOUX FALLS/ SFL=/SIOUX FALL-LGHT/ UWS=/QWEST LOCAL-ULS/

Excavator Information:

Caller: KURT ABERSON Phone: 605-361-0408

Excavator: KURT ABERSON
Address: 7118 W ROSEMONT LN
City: SIOUX FALLS, SD 57106
Phone: 605-361-0408 Fax:Contact: KURT ABERSON Phone: 605-361-0408
Alt. Contact: Phone: 605-331-1641

Location Information:

County: MINNEHAHA City/Village: SIOUX FALLS

Map Ref: 43310-096486 Grids: 2
Exc. Site Address: 7188 W ROSEMONT LN
Nearest Intersection: PANAMA
Type of Work : INSTL PRIVACY FENCE
Work Being Done For: ABERSON
Depth: 2.5FT Explosives: N Tunnel/Bore: N
Start Date: 04/13/05 Time: 0800 CDT Duration: 02 DAYS
Meeting Required: N Best Time to Contact: 0800 - 0500
Exc. Site (Marking Instr.): R.O.W.: N TRSQ:

MARK REAR & SIDES OF PROPERTY

GPS Lat/Long:

Remarks:

EXPIRES MAY 04 @ 08:00 CDT

Total Grids: 2

43310-096486, 43310-096488

End Ticket

RECEIVED
SEP 26 2005
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

09/22/2005

Dear Public Utilities Commission,

I am requesting your assistance. Enclosed I am completing a Complaint against Qwest Communications. I utilized SD One call (#051010355) prior to digging a fence post on my personal residence. The Qwest phone line was not accurately marked. (I dug greater than 18 inches outside the line and still severed the line.) I have requested on 04/30/05 via correspondence to the Qwest claims department that this fee be waived since the lines were not accurately marked. I spoke with Pamela and her supervisor and they refuse to settle this matter in my favor or supply me with proof of negligence.

Enclosed is copies of what I have received regarding this claim and letters that I have sent to Qwest. To date I have receive no documentation or correspondence other than the original bill.

Thank you



Kurt Aberson

09/22/2005

Dear Qwest Claims department,

On 04/30/2005 I mailed a letter (enclosed) disputing a bill that I received for a damaged Qwest Phone line. In this letter I requested that in accordance with the South Dakota statute 49-7A since the marking for the underground Qwest phone line was not marked accurately, that I not be held liable. If I am to be held liable then I requested proof of my negligence to be submitted to me in writing.

Since I did not receive any correspondence showing proof of negligence and did not receive any documentation, I considered this matter closed in my favor.

Today, Thursday 09/22/05, I received a phone message at home and a call at work from Qwest claims department and spoke with Pamela at my place of employment. After requesting proof of negligence to be sent to me she refused and simply stated that I needed to make payment and was not willing to supply me with proof of my negligence. I requested Pamela to stop any collection efforts via phone and requested all communication be made in writing for documentation purposes. As a result of this conversation with the Qwest claims department I am once again requesting that I be supplied with proof of negligence, either a photograph showing my negligence or other documentation that shows I was negligent and thus liable for this claim.

I am also enclosing with this letter a copy of a cmail that was exchanged between myself and Larry Englerth, Executive Director of SD One Call. As instructed I formally requested and am still requesting proof of my negligence.

Also enclosed is a copy of a complaint I am filing with the Public Utilities Commission since I did not get a response to the letter I sent 04/30/05, and have not received proof of negligence as originally requested on 04/30/05. Since I am now receiving collection calls on this matter I am requesting this be resolved in my favor.

Thank you

A handwritten signature in cursive script that reads "Kurt Aberson".

Kurt Aberson

To whom it may concern:

I would like to dispute the billing I received for damaging the Qwest Phone Line while digging a hole for a post adjacent to my house. Damage Claim # 0331058

I utilized South Dakota One call to mark my lines prior to digging and received a confirmation number of #051010355. The lines were marked prior to digging but in one location they were not marked accurately.

I marked where I wanted the holes dug for my poles prior to the line locating being done, after the lines were located utilizing the SD one call I decided to move one of my hole locations farther away from the marked line so that I would be greater than the 18 inches off the marked line. This was witnessed by my neighbor, Mark McMasters, as he assisted in digging the post hole needed for my fence.

On Friday, April 15, 2005 in the morning while digging the posthole, the edge of the posthole digger severed the communication line for the MidContinent Cable Service and the Qwest Phone line. I immediately notified MidContinent and Qwest of the severed lines. MidContinent 1st arrived to repair the Cable line. This repairman further excavated the area around the hole so that a splice of the Cable could be completed. This further excavation created a large enough hole so that the previous line marking indicating the line locations were no longer visible. (MidContinent did not charge a fee for repairing the line)

Later that day the Qwest Repairman arrived and spliced the phone line restoring my phone service.

On Monday, 04/25 I rcvd a bill from Qwest for \$95.35 for repair to the damaged phone line.

I am formally disputing this billing since:

- 1) The hole being dug was greater than 18 inches outside of the marked line. My neighbor Mark McMasters is attesting by signing below that the hole was located greater than 18 inches of the line marking.
- 2) The Quest repairman would have been unable to determine the hole location in accordance with the previously marked lines because of the excavation that was done my the MidContinent repairman when repairing the Cable line earlier in the day.

Please see below: in accordance with the South Dakota statute 49-7A.

§ 49-7A-9. Failure to provide timely location markings -- Inadequate markings -- Liability. If location markings requested by an excavator are not provided within the time specified by § 49-7A-8 or any rule promulgated pursuant to § 49-7A-8, or if the location markings provided fail to identify the location of the underground facilities in accordance with statute and rule, any excavator damaging or injuring underground facilities is not liable for such damage or injury except on proof of negligence.

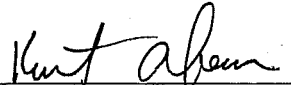
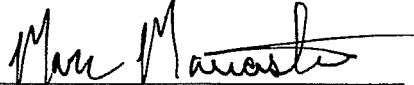
Since the line was not located properly I respectfully request that the fee of \$95.35 be credit and a letter confirming this be sent for confirmation.

Upon receiving the bill from Qwest I contacted via Email the Executive Director of the SD One call (Larry Englerth) : He indicated that: "While the statute does not provide a total exclusion from liability, if the facts are as you presented, Qwest would need to provide proof of negligence."

I again, respectfully, request the fee be credited, if not please provide proof of negligence on my behalf.

Thank you

I here by attest that the post-hole being dug was located greater than 18 inches outside of the line markings and thus feel that there was no negligence while digging this hole.

Kurt Aberson  Mark McMasters 

ACCOUNT NO: SD BF331058
INVOICE DATE: 04-21-2005

INVOICE NO: A902472-

PREVIOUS BALANCE	- PAYMENTS	+ CURRENT CHARGES	+ LATE CHARGE	= NEW BALANCE	AMOUNT DUE	PAYMENT DUE DATE
.00	.00	95.35	.00	95.35	95.35	UPON RECEIPT

DAMAGE DETAIL : BURIED SERVICE WIRE - FENCE EXCAVATION
DATE OF DAMAGE: 04/15/05 CABLE LOCATE WAS ACCURATE
LOCATION : 7118 W ROSEMONT LN, SIOUX FALLS SD

Damage Claim No: 0331058
Mail correspondence to:
Qwest Claims
2915 N. CLASSEN, STE. 400
OKLAHOMA CITY, OK 73106

Contact your homeowner/business/auto liability insurance for coverage.
To pay by Mastercard or VISA, please call 8003214158

SUMMARY OF CURRENT CHARGES

		CHARGES
REPAIR OF SERVICE WIRE	\$	95.35
TOTAL CURRENT CHARGES	\$	95.35

IF YOU HAVE ANY QUESTIONS, PLEASE CALL (800) 321-4158

Return this portion with your payment - please write the invoice # on your check.

ACCOUNT NO: SD BF331058
INVOICE DATE: 04-21-2005

INVOICE NO: A902472-
540414 11902195

NEW BALANCE	AMOUNT DUE	PAYMENT DUE DATE
95.35	95.35	UPON RECEIPT

AMOUNT ENCLOSED: _____

RETURN PAYMENT TO:

QWEST
P.O. BOX 2348
SEATTLE, WA 98111 2348

KURT ABERSON
7118 W ROSEMONT LN
SIOUX FALLS, SD 57106-0000

800 321 4158 Ext 8327 Pamela

One call Tic
#05101035

Aberson, Kurt

From: South Dakota One Call [exedir@sdonecall.com]
Sent: Friday, April 29, 2005 11:58 AM
To: Aberson, Kurt
Subject: Re: Qwest phone line cut

If you have anyone that was there with you when the damage occurred you will want to get a statement from them relative to the date, time, and circumstances surrounding the damage... If the marks are still visible you may want to take a picture of the location.

When you discuss this with Qwest, the statute that supports your position is SDCL 49-7A-9 which is listed below. While the statute does not provide a total exclusion from liability, if the facts are as you presented, Qwest would need to provide proof of negligence.

§ 49-7A-9. Failure to provide timely location markings -- Inadequate markings -- Liability.

If location markings requested by an excavator are not provided within the time specified by § 49-7A-8 or any rule promulgated pursuant to § 49-7A-8, or if the location markings provided fail to identify the location of the underground facilities in accordance with statute and rule, any excavator damaging or injuring underground facilities is not liable for such damage or injury except on proof of negligence.

By statute, the South Dakota One Call Board has no authority to establish liability or support either side in a disputed damage. If this claim cannot be resolved by the parties involved it would probably require small claims court to resolve liability.

If you have additional questions, please feel free to call me at 605-339-0529

Larry Englerth
Executive Director
SD One Call Board

----- Original Message -----

From: "Aberson, Kurt" <kurt.aberson@citigroup.com>
To: <exedir@sdonecall.com>
Sent: Friday, April 29, 2005 9:25 AM
Subject: Qwest phone line cut

I utilized the SD one call and had my lines marked prior to digging posts for a fence.

Address:
Kurt Aberson
7118 West Rosemont Lane
Sioux Falls SD 57106
(605)361-0408 Hph

ON* call #
051010355

When digging my Fence I dug 18 inches outside the marked line but still ended up cutting my Qwest Phone line. I am now being charged \$95.35 for the repair. Since I was 18 inches outside the line when digging am I responsible for paying the repair on this line? How do I go about disputing this charge.

I am at work and do not have the 9 digit conf code with me from when I called.
Can this be looked up and provided to me.

The call to locate was done I believe Friday, 04/08 and they located the lines Tuesday, 04/12. (I may be off a day)

Thank you

Kurt Aberson
New Business-Credit Ops
(605)331-1641

September 23, 2005

RECEIVED
SEP 23 2005
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

#BWNFTZF
#RSP7115872005097#
KURT ABERSON
7118 W ROSEMONT LN
SIOUX FALLS SD 57106-3873



DEMAND FOR PAYMENT
(CMR agent for Qwest)

DATE OF DAMAGE: 04/15/05

Re: DAMAGE CLAIM: BURIED SERVICE WIRE

ACCOUNT #: 00482222

LOCATION: 7118 W ROSEMONT LN
SIOUX FALLS, SD

AMOUNT DUE: \$95.35

Avoid further action by returning this demand with payment of the outstanding property damage claim within 5 working days of this notice.

On behalf of Qwest we are making final demand for the sum indicated above which represents the total amount due for the property damage claim noted.

If any part of this claim is disputed, oral or written explanation must be received along with evidence to support the dispute prior to the expiration of the 5th working day. Failure to comply with this demand may, in fact, lead to further action.

Sincerely,

PAMELA BERDIALES
800-321-4158, Ext. 8327

** Please Detach And Send With Payment **

Client Claim #: 331058
KURT ABERSON
7118 W ROSEMONT LN
SIOUX FALLS SD 57106-3873

CMR Account #: 00482222
Regarding Your
Account With: QWEST
Amount Due: \$95.35
Date: 09/22/05

Amount Remitted \$: _____

QWEST
P.O. BOX 2348
SEATTLE, WA 98111-2348