

South Dakota One Call Notification Board



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

November 22, 2005

Alex Roades
Qwest Services Corporation
1801 California St.; Room 1130
Denver, Colorado 80202

Kurt Aberson
7118 W Rosemont Lane
Sioux Falls, SD 57106

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on November 18, 2005, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC05-007 filed by Kurt Aberson Company against Qwest Communications.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violation included in this complaint were determined to be as follows:

Complaint OC05-007

Alleged Violation of SDCL 49-7A-8 Location of Underground Facilities - Marking
The Enforcement Committee found that there was probable cause that Qwest Communications had violated SDCL 49-7A-8 by inaccurately locating an underground telephone line on Ticket Number 051010355.

The committee recommends a penalty of five hundred dollars (\$500.00) with four hundred and fifty dollars (\$450.00) suspended on the following conditions:

1. Qwest Communications fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-007 by both parties.
2. Qwest Communications fully complies with the resolution of Complaint OC05-007 by making payment of the fifty dollars (\$50) within thirty (30) days of the issuance of the Order to close Complaint OC05-007.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on the violation alleged in this complaint. Your decision should be reflected on the third page of the attachment with the header "Acceptance or Rejection by Parties. **Please return the signed and dated form prior to the close of business on December 2, 2005 to:**

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of the alleged violation, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation alleged in the rejected complaint. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19..

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. **You are strongly urged to reply to this Notice in the time frame described above and to obtain the advice of counsel should you have any legal questions.**

If you have any procedural questions relative to this complaint, please contact me at 605-339-0529 or by email at exedir@sdonecall.com. I would request that you do not contact any members of the South Dakota One Call Notification Board to discuss this complaint. Since they may be involved in the Chapter 1-26 hearing to resolve of the complaint, they have been advised by legal counsel to not discuss any pending complaint before the Board.

Sincerely,

Larry L. Englerth
Executive Director

ENFORCEMENT COMMITTEE ACTION
OC05-007
Kurt Aberson vs. Qwest Communications

FINDINGS:

OC05-007

Alleged Violation of SDCL 49-7A-8 Location of Underground Facilities - Marking

Allegation is made by Kurt Aberson that Qwest Communications did not accurately mark an underground telephone line at 7118 West Rosemont Lane in Sioux Falls, South Dakota on Verification Ticket Number 051010355.

A response received from Qwest Communications disputed the claim made by Mr. Aberson that the underground telephone line was inaccurately marked but did not provide any documented evidence to support their position.

In reviewing the complaint filed by Kurt Aberson and the response from Qwest Communications, the committee determined the following:

1. Kurt Aberson had a valid ticket that clearly identified the excavation site. On April 11, 2005, a Verification ticket was issued to replace the original Routine ticket which had an inaccurate address entered by the Center.
2. The complaint filed by Kurt Aberson indicated that, in addition to the excavation site identification on the ticket "Mark rear and sides of property", the proposed location for each fence post was also physically identified prior to the notification being made.
3. The complaint filed by Kurt Aberson indicated that after the underground telephone line had been marked, the excavation for the fence post which resulted in the damage to the underground telephone line was changed to extend the distance from the marks to a distance greater than 18 inches.
4. The complaint filed by Kurt Aberson indicated that, in digging the fence post that caused the damage to an underground telephone line, a separate underground cable television line was also damaged.
5. The complaint filed by Kurt Aberson indicated that he advised both Midcontinent Communications and Qwest Communications of the resulting damage.
6. The complaint filed by Kurt Aberson indicated that Midcontinent Communications was the first party to arrive at the damage site and in the process of repairing the underground cable television line the original markings for the underground telephone line were removed and were no longer visible when the Qwest technician arrived at the site.
7. The complaint filed by Kurt Aberson included the signature of a neighbor as a witness attesting to all of the above mentioned statements. Mark McMaster, the witness, was assisting in the installation of the fence.
8. The response filed by Qwest Communications indicated that the excavation for the fence post was 17" from the mark for the underground facility. Qwest Communications did not provide any supporting documentation to support the determination of the distance from the mark.

Based on the information noted above, the Committee found that there was probable cause that Qwest Communications had violated SDCL 49-7A-8 by inaccurately marking the underground telephone line on Ticket Number 051010355.

RECOMMENDATION

OC05-007

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found that there was probable cause that Qwest Communications had violated SDCL 49-7A-8 by inaccurately marking the underground telephone line on Ticket Number 051010355.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of five hundred dollars (\$500.00) with four hundred and fifty dollars (\$450.00) suspended on the following conditions:

1. Qwest Communications fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-007 by both parties.
2. Qwest Communications fully complies with the resolution of Complaint OC05-007 by making payment of the fifty dollars (\$50) within thirty (30) days of the issuance of the Order to close Complaint OC05-007.

COMMENTS:

From the documentation provided, Mr. Aberson appeared to have fully complied with the South Dakota statute and administrative rules and had made every effort to resolve the issue put forth in this complaint. While the committee has no authority to determine liability, the lack of supporting documentation provided by Qwest Communications in a complaint that involved damage to an underground telephone facility was of concern to the members of the committee in making the probable cause determination.

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-007

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-007.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON DECEMBER 2, 2005.


SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC05-007

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature – Kurt Aberson

11/27/05

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-007.

Signature – Kurt Aberson

Date

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-007

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-007.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-007. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON DECEMBER 2, 2005.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

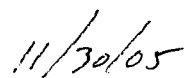
OC05-007

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature - Qwest Communications

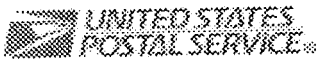


Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-007.

Signature – Qwest Communications

Date



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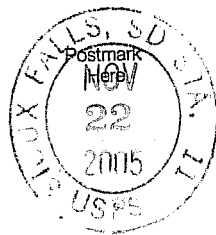
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Alex Roades
(Please Print Clearly) Qwest Services Corporation
1801 California St.; Room 1130
Denver, Colorado 80202

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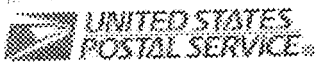
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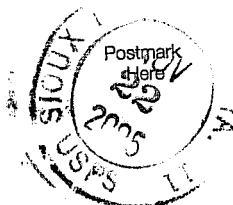
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Kurt Aberson
7118 W Rosemont Lane
Sioux Falls, SD 57106

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