

**BEFORE THE SOUTH DAKOTA ONE CALL
NOTIFICATION BOARD**

IN THE MATTER OF THE)	ORDER
COMPLAINT AGAINST QWEST)	OC05-007
COMMUNICATIONS)	

On September 28, 2005, the South Dakota Public Utilities Commission received a complaint from Kurt Aberson, Inc. against Qwest Communications. Qwest Communications disputed the allegation of an inaccurately marked cable in the complaint but did provide documentation to support the determination of the distance from the mark.

On November 18, 2005 the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause exists in Docket OC05-007 in regards to the allegation that Qwest Communications has violated SDCL 49-7A-8. The Enforcement Committee recommended a \$500.00 penalty with \$450.00 suspended on the grounds that Qwest Communications fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of Qwest Communications signing the Enforcement Committee Action Agreement and that Qwest Communications fully comply with the resolution of this complaint by making payment of fifty dollars within thirty days of the issuance of this order.

All interested parties agreed with the recommendations of the Enforcement Committee. By November 30, 2005, all interested parties had signed the Enforcement Committee Action Agreement. It is therefore,

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED that upon compliance with the provisions of the Enforcement Committee Action Agreement the docket in this matter shall be closed.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, 49-7A-26.

Dated at Sioux Falls, South Dakota, this 2nd day of December, 2005.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: 

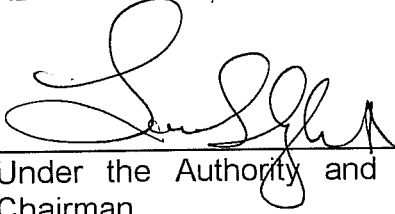
Larry Englerth, Executive Director

Date: December 2, 2005

BY ORDER OF THE SD ONE-CALL BOARD:



KEVIN KOUBA, Chairman



Under the Authority and on Behalf of the
Chairman

LARRY 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.