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The following Transcript of Proceedings  
was taken at the AmericInn Conference Center,  
312 Island Drive, Fort Pierre, South Dakota, on the  
23rd day of April, 2024, commencing at 11:00 a.m.; before  
Cheri McComsey Wittler, a Registered Professional  
Reporter, Certified Realtime Reporter, and Notary Public  
within and for the State of South Dakota.

1 ADMINISTRATIVE LAW JUDGE: We will be on the  
2 record. And I will bring this meeting of the  
3 South Dakota One Call Notification Board to order.

4 This is a contested case hearing before the  
5 One Call Notification Board. It is April 23, 2024. We  
6 are here at the AmericInn meeting room at Ft. Pierre  
7 South Dakota at 11:00 a.m., the time, date, place noticed  
8 for this hearing.

9 This public hearing was published and advertised  
10 on April 17 of 2023 [sic]. The hearing is in person and  
11 is available to view over videoconference.

12 Before we begin, I would like Codi Gregg to take  
13 roll call, if she would, of the board members.

14 MS. GREGG: Board members in attendance in the  
15 room, we will do that first.

16 Mark Meier.

17 CHAIRMAN MEIER: Here.

18 MS. GREGG: Ryan Barr.

19 MR. BARR: Here.

20 MS. GREGG: Kay Braaten.

21 MS. BRAATEN: Here.

22 MS. GREGG: Lloyd Rave.

23 MR. RAVE: Here.

24 MS. GREGG: Loren Beld.

25 MR. BELD: Here.

1 MS. GREGG: Jim Wedin.

2 MR. WEDIN: Here.

3 MS. GREGG: And Jake VanDewater.

4 MR. VANDEWATER: Here.

5 MS. GREGG: Online we have Brad Wenande.

6 MR. WENANDE: Here.

7 MS. GREGG: And Jim Scoll.

8 Sorry, Jim. You're on mute, but I do see you  
9 there.

10 Absent from our board of directors today is  
11 Steve Barnett and Scott Wiese.

12 ADMINISTRATIVE LAW JUDGE: With that, a quorum  
13 is present for this hearing today.

14 The hearing is in the matter of the complaint  
15 filed by Accurate Locating Services, LLC against Cable  
16 Communications Services for an incident occurring on  
17 July 24 of 2023 at 1416 in Boxelder, South Dakota.

18 On December 19, 2023, the One Call Board  
19 Enforcement Panel met in regards to this matter. The  
20 complaint was brought by Accurate Locating Services  
21 against Cable Communications Services. The Enforcement  
22 Board voted to dismiss the complaint due to lack of  
23 evidence of violation of rule or statute.

24 Accurate Locating Services disagreed with the  
25 board's conclusion and requested this hearing on

1 January 15. Accurate Locating Services is present today  
2 and is represented by attorney Lora Waeckerle. Cable  
3 Communications is present today and is represented by  
4 attorney Jess Pekarski. The board today is represented  
5 by attorney Cody Honeywell.

6 I am Catherine Williamson. I'm with the Office  
7 of Hearing Examiners. I will be conducting this hearing.  
8 The decision in this matter will be made by the One Call  
9 Board. Written findings and conclusions of law will be  
10 prepared after the hearing.

11 For the record, this matter was continued from  
12 the original March date, and Accurate has just retained  
13 counsel. And they probably have a motion here today.

14 I will go through the issues for today. It's  
15 whether the Cable Communications failed to maintain  
16 markings from a locate completed by Accurate Locating and  
17 to be aware of underground facilities along those  
18 markings; and, if Cable Communications had such a  
19 failure, whether penalties shall be imposed by the board  
20 pursuant to state rule or state law; and, if so, what  
21 will those penalties be.

22 All parties were noticed for this hearing, and  
23 the requirement for any exhibits to be shared was noticed  
24 in advance. The burden of proof is on Petitioner in this  
25 matter.

1           And I will ask the attorneys if they have any  
2 motions at this point in time.

3           MS. WAECKERLE: Yes, your Honor. Would that be  
4 appropriate?

5           ADMINISTRATIVE LAW JUDGE: That would be  
6 appropriate. That is fine.

7           MS. WAECKERLE: Okay. Do you mind if I sit  
8 down?

9           ADMINISTRATIVE LAW JUDGE: I do not mind.

10          MS. WAECKERLE: Okay. Thank you.

11          Thank you very much. My name is Lora Waeckerle.  
12 I represent Accurate Locating Services and Dana Fetch.

13          I appreciate what an imposition it was to gather  
14 today. I can tell you that I've represented Accurate  
15 Locating Services for a little over 72 hours. I was out  
16 of state when I agreed to assist her. And my reasoning  
17 was she had communicated to me that she would not be able  
18 to present evidence in support of her complaint without  
19 an attorney because she operates with an LLC. And when I  
20 saw the access to justice issue I couldn't help but jump  
21 in, even though I knew there was a possibility we'd have  
22 an evidentiary hearing today 72 hours after agreeing to  
23 represent her.

24          I don't have a fee agreement with her even  
25 yet. That's how early our attorney-client relationship

1 is.

2 Ms. Fetch, when she sat down with me, indicated  
3 that she had had some struggles getting an attorney to  
4 represent her. That's very consistent with my  
5 understanding of the Rapid City market. Right now it's  
6 hard to find lawyers. And given the fact that she was in  
7 a frustrating position, I was hopeful that I could  
8 continue it and hopefully give her a little more due  
9 process than a 72-hour prep session. It was rough. And  
10 I appreciate that it's frustrating for everyone, not just  
11 me.

12 But I did do everything in my power to get  
13 prepared today. That included basically not sleeping  
14 last night to get exhibits ready. Accurate Locating  
15 Services does object to the proceeding on the grounds  
16 that I view that my client's due process rights will be  
17 violated because she was unable to act.

18 So it wasn't a situation where she was  
19 neglectful. It was more a situation where she couldn't  
20 find somebody who had the authority to put on evidence on  
21 her behalf.

22 So, obviously, I would refer and defer to my  
23 motion to continue, which I filed yesterday. But this is  
24 a quasi-judicial proceeding, and so due process would  
25 apply to it. And so although we do object and we stand

1 on that objection, I do have an exhibit list and witness  
2 lists that I can serve and I do have exhibits prepared  
3 and ready to give the board if it elects to overrule my  
4 objection and have an evidentiary proceeding today.

5 I will represent that it's not my practice to  
6 give exhibit lists and witness lists on the date of  
7 hearings, but I will also represent that it was not  
8 physically possible for me to get the exhibit list put  
9 together until early this morning.

10 So that's the basis of my motion. And combined  
11 with my affidavit and the motion, the written motion that  
12 I filed yesterday.

13 Thank you.

14 ADMINISTRATIVE LAW JUDGE: Thank you.

15 I did receive the motion to continue and the  
16 affidavit of Ms. Waeckerle, and they are placed in the  
17 record.

18 Mr. Pekarski, do you have any objection to this  
19 motion or comment?

20 MR. PEKARSKI: As far as an objection to the  
21 motion for continuance, yesterday we stated in our  
22 response to counsel we have no objection to the  
23 continuance at that time. However, we wanted to take  
24 into account our witnesses' time, having to appear today,  
25 and a consideration for how we're going to schedule, if



1 we're going to schedule it moving forward.

2           Second, we'd also like it noted for the record  
3 that this is the second continuance. So 60 days has  
4 expired, meaning there was time the first time to look  
5 for counsel as well. There was time and a deadline to  
6 submit exhibits and information and evidence to support  
7 her case.

8           Those times have expired before she ever  
9 requested a continuance. I would like that noted for the  
10 record. We'd make an objection to supplemented evidence  
11 or anything else at this point in time because that  
12 expired prior to any request for a continuance. We  
13 believe the record should stand with what she presented.

14           We'd make an alternative motion that the case be  
15 dismissed for failure to present any evidence at this  
16 point in time.

17           ADMINISTRATIVE LAW JUDGE: Okay. Thank you.

18           Anything in rebuttal? I'll give one more shot.

19           MS. WAECKERLE: Okay. Thank you.

20           I would again urge the board not to restrict my  
21 client's ability to present evidence, as I do believe  
22 given the fact that she was unable to submit anything on  
23 April 8 due to the lack of a law license that she was  
24 restrained in a way that I believe it would violate the  
25 constitution and the due process clause to restrict her

1 ability to put forth evidence because this is a  
2 quasi-judicial proceeding.

3 And in the event that our exhibits are not  
4 accepted by the board as affirmative evidence, I would  
5 ask the opportunity to proffer any evidence I have with  
6 me today for the purposes of an appeal to the Circuit  
7 Court.

8 ADMINISTRATIVE LAW JUDGE: Anything?

9 MR. PEKARSKI: Nothing further, your Honor.

10 ADMINISTRATIVE LAW JUDGE: Okay. Thank you very  
11 much.

12 Because the board is here today, I'm going to  
13 leave this up to the board to determine whether this  
14 matter will be continued or not. And, with that, I'd ask  
15 that they go into executive session to make such a  
16 determination.

17 So if we could clear the room and put the two  
18 members that are on Zoom into a separate room and have  
19 that room broadcast in here. And we'll be off the record  
20 at this time.

21 (The board meets in executive session at 11:12 a.m.)

22 (The board comes out of executive session at 11:32 a.m.)

23 ADMINISTRATIVE LAW JUDGE: And we will come out  
24 of executive session. There was not a vote to go in so  
25 there's not a vote to come out. The board is meeting

1 again. The quorum is still present. No votes were taken  
2 during executive session.

3 Is there a motion from the board?

4 CHAIRMAN MEIER: I'd like to make a motion of  
5 continuance.

6 ADMINISTRATIVE LAW JUDGE: Is there a second?

7 MR. BELD: I will second that.

8 ADMINISTRATIVE LAW JUDGE: Second by Mr. Beld.

9 Any comments on that motion? Or we can take a  
10 roll call at this point in time.

11 Seeing no comments from the board, we'll take a  
12 roll call.

13 Mr. Barr.

14 MR. BARR: Aye.

15 ADMINISTRATIVE LAW JUDGE: Mr. Beld.

16 MR. BELD: Aye.

17 ADMINISTRATIVE LAW JUDGE: Ms. Braaten.

18 MS. BRAATEN: Aye.

19 ADMINISTRATIVE LAW JUDGE: Mr. Meier.

20 CHAIRMAN MEIER: Aye.

21 ADMINISTRATIVE LAW JUDGE: Mr. Rave.

22 MR. RAVE: Aye.

23 ADMINISTRATIVE LAW JUDGE: Mr. Scoll.

24 MR. SCOLL: Aye.

25 ADMINISTRATIVE LAW JUDGE: Mr. VanDewater.

1 MR. VANDEWATER: Aye.

2 ADMINISTRATIVE LAW JUDGE: Mr. Wedin.

3 MR. WEDIN: Aye.

4 ADMINISTRATIVE LAW JUDGE: Mr. Wenande.

5 MR. WENANDE: Aye.

6 ADMINISTRATIVE LAW JUDGE: All board members  
7 present have voted.

8 The motion to continue is granted. The board  
9 believed it was fair and reasonable. There's a  
10 difficulty in this state of finding attorneys. And when  
11 an attorney is required by an LLC, it is even more  
12 difficult sometimes.

13 So the next meeting for the 911-- or the One  
14 Call -- 911? -- the One Call Notification Board is  
15 July 10.

16 CHAIRMAN MEIER: The 11th.

17 ADMINISTRATIVE LAW JUDGE: The 11th is the  
18 meeting, but we would have the hearing on Wednesday,  
19 July 10, at 1:00 p.m.

20 Evidence deadlines will be extended to June 14.  
21 The motion to deny evidence is overruled. Evidence and  
22 witness lists are due to the board and myself by June 14.

23 MR. PEKARSKI: Just for clarification if I  
24 could.

25 ADMINISTRATIVE LAW JUDGE: Yes.

1 MR. PEKARSKI: I assume we can supplement our  
2 evidence and resubmit it?

3 ADMINISTRATIVE LAW JUDGE: Yes. Absolutely.  
4 Supplementation is fine.

5 Anything further from the parties?

6 MR. PEKARSKI: The only other matter I have,  
7 your Honor, is by chance could we have it set up so I  
8 could play our pictures? They come out way better off of  
9 the computer than they do on actual print because the  
10 pixels are better off the computer, and they're easier to  
11 see.

12 ADMINISTRATIVE LAW JUDGE: Yes. We can have  
13 that available at the next hearing. If you could send  
14 them to -- well, you'll send them to Codi Gregg or Mandy  
15 Benson and work with the office staff, and they can be  
16 able to pull those up via Zoom or share their screen.  
17 And we can do that so the board can see them more  
18 clearly.

19 And if you have any witnesses, they can also  
20 appear via videoconference at that time so they do not  
21 have to be present.

22 Parties have to be present. If they are  
23 essential witnesses to the matter, they have to be  
24 present at the hearing. Nonessential witnesses -- I  
25 mean, that's on you if they can't appear. If there's

1 technological issues, I can't control that. So the  
2 matter will not be continued due to a nonessential  
3 witness not being able to appear by Zoom.

4 Any other questions?

5 MS. WAECKERLE: Thank you, your Honor. I just  
6 want to extend my thank you to the board. I recognize  
7 that this is not ideal for you folks, and I appreciate  
8 you giving my client the opportunity to present her  
9 case.

10 ADMINISTRATIVE LAW JUDGE: Noted. Thank you.

11 Anything further?

12 MR. PEKARSKI: Nothing further, your Honor.

13 ADMINISTRATIVE LAW JUDGE: Anything from the  
14 board before we conclude?

15 Seeing and hearing none, this matter will be in  
16 adjournment. We will conclude, and we'll see you in  
17 July. Thank you.

18 (The hearing is concluded at 11:37 a.m.)

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STATE OF SOUTH DAKOTA)  
  
COUNTY OF SULLY )

:SS CERTIFICATE

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 23rd day of April, 2024, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 30th day of April, 2024.

/s/ Cheri McComsey Wittler  
Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

<b>/</b>	<b>account</b> [1] - 8:24 <b>ACCURATE</b> [1] - 1:3	<b>aye</b> [9] - 11:14, 11:16, 11:18, 11:20, 11:22, 11:24, 12:1, 12:3, 12:5	<b>CHERI</b> [1] - 15:5 <b>Cheri</b> [4] - 1:25, 2:5, 15:17, 15:18	<b>D</b> <span style="float: right;">1</span>
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