

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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Kansas Corporation
Commission
Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ORDER
24-DPAX-632-PEN

April 2, 2024

Michael Zarrilli
Vice President/ Assistant General Counsel
Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131

This is a notice of penalty assessment for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA) and pipeline safety regulations adopted by the Kansas Corporation Commission. For a full description of the penalty please refer to the order attached to this notice.

IF YOU ACCEPT THE PENALTY: You have been assessed a \$1,000 penalty. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. Checks shall be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (\$1,000) of this proceeding.

IF YOU CONTEST THE PENALTY: **You have the right to request a hearing.** A request for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative from your Company, may electronically file its request for hearing within fifteen (15) days from the date of service of this Penalty Order. A copy of the request for hearing must be provided to the Litigation Counsel, listed below.

IF YOU FAIL TO ACT: Pursuant to K.A.R. 82-14-6(i) and (j), failure to submit a written request for a hearing within fifteen (15) days or, in the alternative, to pay the civil assessment in twenty (20) days from date of service of this Penalty Order will be considered an admission of noncompliance. **Failing to request a hearing or pay the civil assessment may result in further penalties.**

Respectfully,

/s/ Carly R. Masenthin

Carly R. Masenthin, S. Ct. No. 27944
Senior Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
Phone: (785) 271-3265
Email: c.masenthin@kcc.kansas.gov

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Investigation of Charter)
Communications Regarding Violations of the)
Kansas Underground Utility Damage) Docket No. 24-DPAX-632-PEN
Prevention Act (KUUDPA) (K.S.A. 66-1801,)
et seq., and K.A.R. 82-14-1 through 82-14-5))
and the Commission’s Authority to Impose)
Penalties and/or Sanctions (K.S.A. 66-1,151).)

PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, being duly advised in the premises, and after having examined its files and records, finds and concludes as follows:

I. JURISDICTION

1. The Commission has jurisdiction and authority to administer and enforce the Kansas Underground Utility Damage Prevention Act (KUUDPA), as provided in K.S.A. 66-1801, *et seq.* K.S.A. 66-1815 grants the Commission full power and authority to adopt all necessary rules and regulations for carrying out the provisions of K.S.A. 66-1801 through 66-1814.

2. Pursuant to K.A.R. 82-14-6, the Commission may investigate an entity under the Commission’s jurisdiction and order a hearing on the Commission’s own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

3. The Commission is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission. Each violation is subject to a civil penalty, not to

exceed \$25,000, for each day the violation persists, with a maximum civil penalty of \$1,000,000 for any related series of violations.¹

4. Charter Communications (“Charter”) operates as a public utility pursuant to Commission-issued certificates of convenience and necessity.

5. Charter is a statutorily defined Operator who owns or leases underground Tier 1 or Tier 2 facilities, as defined in K.S.A. 66-1802(k), (q), and (r), respectively. Pursuant to K.S.A. 66-1813, which authorizes the Commission to administer and enforce KUUDPA, Charter is subject to the Commission’s jurisdiction regarding compliance with KUUDPA’s obligations (e.g., K.S.A. 66-1806), and may be subject to penalties issued pursuant to K.S.A. 66-1812.

II. ALLEGATIONS OF NONCOMPLIANCE

6. Commission technical staff (“Staff”) submitted to the Commission’s Litigation Division Staff’s Report and Recommendation (including all Exhibits to it, the “Staff’s R&R”), attached as Attachment A and incorporated by reference, on March 14, 2024 recommending a civil penalty of \$1,000 to be assessed against Charter due to Charter’s failure to provide locates at W. 91st in Overland Park, Kansas (the “Excavation Site”) of their underground utilities within the time limits required pursuant to K.S.A. 66-1806.²

7. On December 6, 2023, Staff received a complaint due to Charter’s failure to provide locates within two working days. The complaint was reported seven days after the excavation start date.³

8. Staff subsequently issued Charter a notice of probable noncompliance (“PNC”) on December 14, 2023, notifying Charter of the investigation results.⁴

¹ See K.S.A. 66-1812; K.S.A. 66-1,151; K.A.R. 82-14-6.

² Staff’s R&R, p. 1 (Mar. 14, 2024).

³ See Exhibit 1 of Staff’s R&R.

⁴ *Id.*

9. On January 4, 2024, Staff received a response from Charter agreeing with Staff's findings.⁵

10. KUUDPA requires operators (i.e., public utilities) to provide excavators a "tolerance zone" of the operator's underground facilities in the planned excavation area by marking, flagging or other acceptable method.⁶ Within two working days, beginning after the day on which the excavator provided notice of its intent to excavate, an operator must inform an excavator of the tolerance zone.⁷ If an operator has no facilities in the area of proposed excavation, the operator must notify the excavator no facilities are present before the excavation start date.⁸

11. By failing to provide locates within two working days, Charter Communications was in violation of K.S.A. 66-1806.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Charter Communications because it is an entity subject to the requirements of the Kansas Underground Utility Damage Prevention Act, which the Commission is required to administer and enforce pursuant to K.S.A. 66-1813. Specifically, the Commission finds Charter to be acting as an operator who operates Tier 1 facilities as defined in K.S.A. 66-1802.

13. The Commission finds Charter violated Kansas law governing underground utilities, including provisions of the KUUDPA, as described above, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Charter failed to comply with K.S.A. 66-1806 for the above listed incident.

⁵ See Exhibit 2 of Staff's R&R.

⁶ See K.S.A. 66-1806(a).

⁷ See K.S.A. 66-1806(a).

⁸ See K.S.A. 66-1806(d)(1).

14. The Commission finds a civil penalty is warranted due to Charter's violation of KUUDPA. Specifically, the Commission finds Charter shall be assessed a \$1,000 civil penalty.

15. The Commission finds and concludes Charter shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Because the Commission is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission, the Commission finds the hearing procedure adopted in the Commission's KUUDPA and procedural regulations shall control any subsequent hearings in this matter. Specifically, pursuant to K.A.R. 82-14-6(j), the Commission finds and concludes Charter shall have 15 days from the date of service of this Penalty Order to request a hearing on the matter. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

16. Pursuant to K.A.R. 82-14-6(i), and (j), Charter's failure to pay the assessed civil penalty within 20 days or, in the alternative, request a hearing within 15 days from the date of service of this Penalty Order shall be considered an admission of the noncompliance allegations contained herein.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Charter Communications is hereby assessed a \$1,000 civil penalty for violating the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801, *et. seq.*

B. Pursuant to K.A.R. 82-14-6(j), Charter Communications may request a hearing by electronically filing its request for hearing within fifteen (15) days from the date of service of this Penalty Order, and e-mailing or mailing a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. Hearings will be scheduled only upon written request.

Failure to timely request a hearing shall be considered an admission of noncompliance allegations contained herein and result in a waiver of Charter's right to a hearing. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

C. Pursuant to K.A.R. 82-14-6, if Charter Communications does not request a hearing, the payment of the civil penalty is due in twenty (20) days from the date of service of this Order. Checks shall be made payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. The payment shall include a reference to the docket number (24-DPAX-632-PEN) of this proceeding.

D. Unless a hearing is requested, failure to pay the \$1,000 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Charter Communications, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 04/02/2024



Lynn M. Retz
Executive Director

CRM

ATTACHMENT “A”

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Suzanne M. Balandran, Assistant Supervisor of Pipeline Safety
Leo Haynos, Chief of Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: March 14, 2024

SUBJECT: Docket Number: 24-DPAX-632-PEN
In the Matter of the Investigation of Charter Communications Regarding Violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA) (K.S.A. 66-1801, *et seq.*, and K.A.R. 82-14-1 through 82-14-5) and the Commission's Authority to Impose Penalties and/or Sanctions (K.S.A. 66-1,151).

EXECUTIVE SUMMARY:

As a result of the investigation in Staff's Case Number CK-23-UN-1188, Staff recommends that a civil penalty in the amount of \$1,000 be assessed to Charter Communications (Charter) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Charter failed to provide locates of its underground facilities within the time limits required by K.S.A. 66-1806 at W. 91st in Overland Park, Kansas. Failure to provide locates of their underground utilities within two working days is a violation of K.S.A. 66-1806. Staff issued a Notice of Probable Noncompliance (PNC) to Charter on December 14, 2023, attached here to as Exhibit 1. Charter responded to the PNC on January 4, 2024, as required by K.A.R. 82-14-6 (c), attached hereto as Exhibit 2.

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

Excavating without a One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. Charter did not provide the location at which the excavator could carefully excavate to avoid damage to an underground facility at any depth. Charter failed to comply with the law and warrants the assessment of a civil penalty.

B. Culpability:

Charter is directly liable for its actions in failing to provide a notice of intent before excavating as required by Kansas law.

C. History of noncompliance:

Staff has not issued any Notices of Probable Noncompliance for violations of KUUDPA to Charter in the past two years.

D. Response of excavator regarding noncompliance(s):

Response to the PNC as required by K.A.R. 82-14-6(c) was received by Staff. Charter agreed with Staff's findings. Charter acknowledged that the line was not marked by its contract locator until after the ticket due date.

E. Aggravating/Mitigating Circumstances:

Staff has not determined there to be any circumstances that would cause modification of the \$1,000 recommended penalty amount.

RECOMMENDATION:

Staff recommends a civil penalty be assessed to Charter Communications in the amount of \$1,000 for violating K.S.A. 66-1806.

Company: Charter Communications

Division:

Regulation:

66-1806 (a) Identification of location of facilities; duties of operator;

66-1806 Identification of location of facilities; duties of operator;

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 12/6/2023, KCC received a complaint for ticket #23644610 due for work to begin 11/30/2023. This ticket was reported 7 days and 9 hours and 46 minutes after the excavation start date for the Metcalf Ave street rehab project from W 91st St to W 99th St in Overland Park, Kansas. Prior to the excavation start date, the Operator failed to provide locates for underground facilities.

OPERATOR'S RESPONSE: (Attach verification if needed)

Operator's Authorized Signature: _____ Date: _____

PIPELINE SAFETY USE ONLY:	
Date reviewed: _____	Date reviewed: _____
Chief: _____	Inspector: _____

Inspection Type: One Call Compliance Inspection
Date Inspected: 12/06/2023
Inspected By: CK

**Michael Zarrilli**

Vice President
Assistant General Counsel
(314) 394-9842
Michael.zarrilli@charter.com

January 4, 2024

VIA OVERNIGHT DELIVERY
And email (kccsafetyresponse@kcc.ks.gov)

Kansas Corporation Commission
c/o Leo Haynos
Chief Engineer
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Re: Kansas Corporation Commission (KCC) Investigation # CK-23-UN-1188

Dear Mr. Haynos:

I am writing in response to the Notice of Probable Noncompliance, dated December 8, 2023, regarding Kansas Corporation Commission (KCC) Investigation # CK-23-UN-1188, regarding ticket 23644610.

Upon investigation, Charter Communications (“Charter”) and its contract utility locator USIC confirm that ticket 23644610 was completed after the original due date and the rescheduled due date. The locate request was for an area measuring 5,200 feet and included both sides of a congested city roadway. USIC has experienced a significant increase in such long-scope project tickets in the Overland Park area, as well as nationwide. Such long-scope project tickets, ranging from one quarter to one mile, require the same amount of time to complete as 10 standard tickets, yet both are required to be completed within two working days. Additionally, excavation for a long-scope project can take weeks to complete, yet marking is required for the entire scope of the ticket within two business days, often resulting in the need for remarks and updates, increasing overall ticket volume.

The increase in long-scope project volume has strained USIC’s staffing resources. While the company has invested over \$102 million in recruiting and retaining locate technicians over the past four years, it has encountered the challenges of a tight labor market, as have industries nationwide. In November 2023, USIC increased technician headcount in Kansas 2% over the prior month and continues to work to optimize staffing levels to meet the increased demand driven by the rise in long-scope project work and historic levels of infrastructure investment.

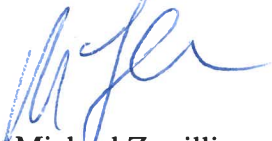
Since the complaint initiating this investigation was filed, USIC has implemented the level of consistent communication and coordination necessary for maintaining the excavation schedules

of long-scope projects with VF Anderson Builders for the Metcalf Ave. street rehab project, as well as its other projects, to prevent project delays and ensure safe digging.

Charter and USIC are committed to full compliance with Kansas law, K.A.R. 82-14-6(c), and to protecting existing infrastructure, excavators, and Kansas communities. Charter thanks the KCC for the opportunity to respond to the Notice of Probable Noncompliance and respectfully requests that it take into consideration USIC's significant investment in increasing its technician headcount and its prompt response in establishing ongoing coordination with VF Anderson Builders to prevent delays to its projects going forward.

Please feel free to contact me at (314) 394-9842 or Michael.zarrilli@charter.com if you have any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Zarrilli', is written over a faint, light blue circular stamp or watermark.

Michael Zarrilli
Vice President
Assistant General Counsel

CERTIFICATE OF SERVICE

24-DPAX-632-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 04/02/2024.

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

MICHAEL ZARRILLI
CHARTER COMMUNICATIONS
12405 POWERSCOURT DR
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michael.zarilli@charter.com

/S/ KCC Docket Room
KCC Docket Room