

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BLUE JAY COMMUNICATIONS, INC.	)	
<hr/>	)	
ALLEGED VIOLATION OF UNDERGROUND	)	CASE NO. 2019-00278
FACILITY DAMAGE PREVENTION ACT	)	

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on January 24, 2020 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on January 24, 2020.

A copy of this Notice, the certification of the digital video record, and hearing log have been served upon all persons listed at the end of this Notice. Parties desiring to view the digital video recording of the hearing may do so at <https://youtu.be/NvtAb5PvW-Q>.

Parties wishing an annotated digital video recording may submit a written request by electronic mail to [pscfilings@ky.gov](mailto:pscfilings@ky.gov). A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 4<sup>th</sup> day of February 2020.



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Kent A. Chandler  
Executive Director  
Public Service Commission of Kentucky

Blue Jay Communications, Inc.  
7500 Associate Ave  
Brooklyn, OHIO 44144

John M Williams  
Williams Kilpatrick PLLC  
3151 Beaumont Centre Circle  
Suite 375  
Lexington, KENTUCKY 40513

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

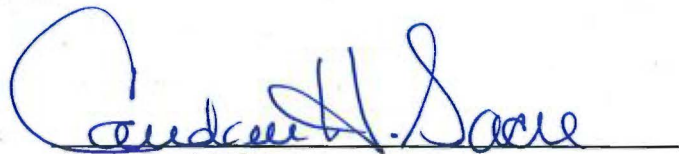
BLUE JAY COMMUNICATIONS, INC. –	)	CASE NO.
ALLEGED VIOLATION OF UNDERGROUND	)	2019-00278
FACILITY DAMAGE PREVENTION ACT	)	

CERTIFICATION

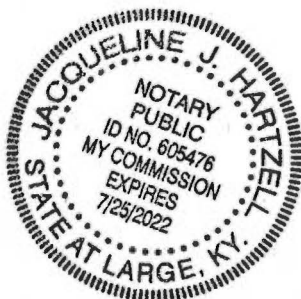
I, Candace H. Sacre, hereby certify that:

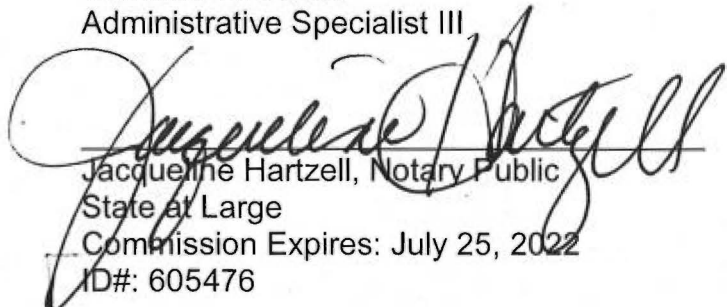
1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on January 24, 2020. The Formal Hearing Log is included with the recording on January 24, 2020;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of January 24, 2020; and
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of January 24, 2020 and the time at which each occurred.

Signed this 3<sup>rd</sup> day of February, 2020.



Candace H. Sacre  
Administrative Specialist III



  
Jacqueline Hartzell, Notary Public  
State at Large  
Commission Expires: July 25, 2022  
ID#: 605476



## Session Report - Detail

24Jan2020

### Damage Prevention Act

Date:	Type:	Location:	Department:
1/24/2020	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Judge: Michael Schmit

Clerk: Candace Sacre

Event Time	Log Event	
9:01:26 AM	Session Started	
9:01:29 AM	Chairman Schmitt Note: Sacre, Candace	We are now on the record. This is the Kentucky Public Service Commission. My name is Michael Schmitt. I am Chairman of the Commission, Vice Chairman Robert Cicero is not here this morning but will be watching this proceeding, which is streamed live over the Internet, and he will participate in any decision in any of the cases that are heard today. Dr. Talina Mathews, our third Commissioner, has recused herself in all cases involving alleged violations of KRS 367.4901, et seq.
9:02:05 AM	Chairman Schmitt Note: Sacre, Candace	This morning, we are here for the purpose receiving evidence in three cases, 2019-00159, Bruce Hubbard; 2019-00156, Keith Gutterman; and 2019-00278, Blue Jay Communications, Inc.
9:02:27 AM	Chairman Schmitt Note: Sacre, Candace	At this time, is Mr. Hubbard and Mr. Gutterman present, or is anyone present on their behalf?
9:02:37 AM	Chairman Schmitt Note: Sacre, Candace	I see no one in the hearing room at this time. Counsel, please identify yourself for the record, Ms. Frederick, and tell us, have you heard from either of these parties?
9:02:52 AM	Staff Atty Frederick PCS Note: Sacre, Candace	Yes, Mr. Chairman, Tina Frederick for the Commission's Division of Inspections. We have heard from Mr. Keith Gutterman. He has informed us that he will be unable to attend the hearing today and, in a voicemail that he left last evening, requested a continuance.
9:03:09 AM	Chairman Schmitt Note: Sacre, Candace	Has there been a problem? I think Mr. Gutterman's case has been on the docket several times.
9:03:18 AM	Staff Atty Frederick PSC Note: Sacre, Candace	It has, and Mr. Gutterman was served on the 8th day of November by the Bullitt County Sheriff, so he was aware that there was a proceeding. But the Scheduling Order that actually gave the date and time of the hearing was sent to the wrong address. When that was discovered by Filings, they overnighted a Scheduling Order to him that he received earlier this week.

9:03:43 AM	Chairman Schmitt Note: Sacre, Candace	What I'd like for you to do is, we'll continue the hearing in Mr. Gutterman's case until February 28, 2020. I think that's the next hearing date. But I would like to ensure that Mr. Gutterman actually gets the Notice of the hearing and that receipt of Notice is somehow documented by a return receipt or some method because I think this is the third time that Mr. Gutterman hasn't arrived or appeared at the hearing. And, if he has not filed a response to the Initiating Order, which he obviously received, I think Mr. Gutterman was offered a compromising mitigation of the penalty of \$250, so he hasn't denied. In fact, I see in the record he apparently has admitted damaging the line and not providing notice as per 8-1-1. So I empathize with Mr. Gutterman, but, on the other hand, I want to make sure that he's either here on February 28, that his case has either been resolved by settlement - because I think we need to move forward and get this off the docket.
9:05:07 AM	Staff Atty Frederick PSC Note: Sacre, Candace	I agree, and, yes, Mr. Chairman, we will resissue a Scheduling Order with that February date, and we'll make sure that proof of service is filed into the record for that.
9:05:16 AM	Chairman Schmitt Note: Sacre, Candace	Thank you. Have you heard anything from Mr. Hubbard. I think he's - Bruce Hubbard, he's been on the docket before, and I think perhaps previously there was not evidence of service of summons. But the file appears to indicate that Mr. Hubbard has been served, is that correct?
9:05:36 AM	Staff Atty Frederick PSC Note: Sacre, Candace	
9:05:37 AM	Chairman Schmitt Note: Sacre, Candace	Yes, Mr. Chairman, he has been served
9:05:44 AM	Staff Atty Frederick PSC Note: Sacre, Candace	And do you have any reason to believe that he has not received notice of the hearing this morning?
9:05:47 AM	Chairman Schmitt Note: Sacre, Candace	No, I have no such reason.
9:05:49 AM	Chairman Schmitt Note: Sacre, Candace	And he hasn't called in or contacted you?
9:06:06 AM	Chairman Schmitt Note: Sacre, Candace	All right. We'll begin taking evidence in Mr. Hubbard's case in absentia if he doesn't appear in a few minutes, but we'll move on to the next case of 2019-00278, Blue Jay Communications, Inc.
9:06:10 AM	Atty Williams Blue Jay Note: Sacre, Candace	Mr. Williams, will you, please, for the record, identify yourself and your client?
9:06:15 AM	Chairman Schmitt Note: Sacre, Candace	Yes, sir. John Williams of Lexington, Kentucky. I'm the attorney for Blue Jay Communications, Inc.
9:06:16 AM	Atty Williams Blue Jay Note: Sacre, Candace	It's good to see you, Mr. Williams.
9:06:18 AM	Chairman Schmitt Note: Sacre, Candace	Good to see you again, Mr. Schmitt.
9:06:20 AM	Staff Atty Frederick PSC Note: Sacre, Candace	And on behalf of Staff?
		Tina Frederick on behalf of the Commission's Division of Inspections.

9:06:42 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Williams, I understand the parties have executed a Stipulation of fact upon which it has been agreed that the case will be decided, is that correct?
9:06:56 AM	Atty Williams Blue Jay Note: Sacre, Candace	Yes, sir, the parties got together yesterday with the attorneys on the phone, and we hashed out what we think are the material facts. And we determined that we're in agreement as to those facts, and that it's really a legal question at this point.
9:07:10 AM	Chairman Schmitt Note: Sacre, Candace	Ms. Frederick, is that correct?
9:07:12 AM	Staff Atty Frederick PSC Note: Sacre, Candace	Yes, Your Honor, that is accurate.
9:07:14 AM	Chairman Schmitt Note: Sacre, Candace	I'd like to ask a couple of questions, and we could either do it by revised stipulations or just agreement here, if that's possible, if the parties agree.
9:07:25 AM	Chairman Schmitt Note: Sacre, Candace	At the time the line was impacted, did the line contain natural gas, and did natural gas escape into the environment?
9:07:33 AM	Atty Williams Blue Jay Note: Sacre, Candace	It is my understanding that it did.
9:07:37 AM	Chairman Schmitt Note: Sacre, Candace	I haven't seen any other list, so I don't know. Is this the first alleged violation of Blue Jay of the Act, or has Blue Jay had other incidents?
9:07:50 AM	Atty Williams Blue Jay Note: Sacre, Candace	It's my understanding this is the first alleged violation. Is that correct?
9:07:54 AM	Chairman Schmitt Note: Sacre, Candace	Is that correct?
9:07:55 AM	Staff Atty Frederick PSC Note: Sacre, Candace	That is correct. The first and the only, to date.
9:07:58 AM	Chairman Schmitt Note: Sacre, Candace	All right. Thank you.
9:08:00 AM	Chairman Schmitt Note: Sacre, Candace	I understand, Mr. Williams, that you probably would like a briefing schedule?
9:08:04 AM	Atty Williams Blue Jay Note: Sacre, Candace	Yes, sir, I think it would be helpful.
9:08:06 AM	Chairman Schmitt Note: Sacre, Candace	How much time would you like?
9:08:08 AM	Atty Williams Blue Jay Note: Sacre, Candace	If we could have three weeks, I think that would be an adequate amount of time.
9:08:11 AM	Chairman Schmitt Note: Sacre, Candace	All right. I'll calculate - I don't know what three weeks is. Let's see. That would be, like, February 14th, end of business day?
9:08:26 AM	Atty Williams Blue Jay Note: Sacre, Candace	I think that would be plenty of time.
9:08:27 AM	Chairman Schmitt Note: Sacre, Candace	February 14th, and then, Mr. Frederick, how much time would you like? You can have the same amount of time or shorter or whatever.
9:08:35 AM	Staff Atty Frederick PSC Note: Sacre, Candace	The same amount of time.

9:08:37 AM	Chairman Schmitt Note: Sacre, Candace	Since the burden is on the Staff, you'd be 21st, 28th, that would be March 6th, and then is five days enough for a reply brief?
9:08:49 AM	Atty Williams Blue Jay Note: Sacre, Candace	Yes, sir.
9:08:51 AM	Chairman Schmitt Note: Sacre, Candace	We'll enter an Order later this morning that establishes the briefing schedule.
9:08:57 AM	Chairman Schmitt Note: Sacre, Candace	All right. Is there anything further, Mr. Williams or Ms. Frederick, that you'd like to bring to the attention of the Commission?
9:09:02 AM	Atty Williams Blue Jay Note: Sacre, Candace	Just a question. With the burden falling on the Inspections office -
9:09:07 AM	Chairman Schmitt Note: Sacre, Candace	They ought to file the first brief.
9:09:09 AM	Atty Williams Blue Jay Note: Sacre, Candace	They'll brief first, and then we'll brief?
9:09:10 AM	Chairman Schmitt Note: Sacre, Candace	Yeah, that's right, so we just switch it, and you'll file the first brief, and Mr. Williams will file the second brief, and then you'll get five days for the reply, okay?
9:09:19 AM	Atty Williams Blue Jay Note: Sacre, Candace	No, sir.
9:09:20 AM	Chairman Schmitt Note: Sacre, Candace	Anything further?
9:09:22 AM	Chairman Schmitt Note: Sacre, Candace	In that case, then insofar as Blue Jay Communications, Inc., case is concerned, counsel, you may be excused, if you choose.
9:09:33 AM	Atty Williams Blue Jay Note: Sacre, Candace	Thank you, Mr. Chairman. Good to see you again.
9:09:41 AM	Chairman Schmitt Note: Sacre, Candace	All right. We'll start a new hearing, I guess, a new tape on Mr. Hubbard.
9:09:52 AM	Session Ended	



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