

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOGAN TELEPHONE COOPERATIVE, INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2021-00248
)	
EAST LOGAN WATER DISTRICT)	
)	
DEFENDANT)	

SETTLEMENT AGREEMENT

This Agreement is entered into this 13th day of December 2023 by and between East Logan Water District (“the District”) and Logan Telephone Cooperative, Inc. (“Logan Telephone”). (Collectively referred to as “the Parties” and individually referred to as a “Party”).

W I T N E S S E T H:

WHEREAS, on June 17, 2021, Logan Telephone filed a complaint with the Kentucky Public Service Commission (“Commission”) in which it alleged that the District was engaging in the “unreasonable, unsafe, and insufficient practice of repeatedly refusing to locate and mark its water lines for . . . [Logan Telephone] and its contractors” and that such practice resulted in the District’s “inability to furnish adequate, efficient, and reasonable service to . . . [Logan Telephone] as an East Logan customer;”

WHEREAS, in its answer to Logan Telephone’s Complaint, the District denied engaging in any practice that affected the quality of water service provided to Logan Telephone, but stated that “because more than 95 percent of Defendant’s facilities were constructed prior to 2013 and were not required by law to have metallic tracer wire, it is unable to accurately locate those

facilities from field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6);"

WHEREAS, the Parties and the Commission Staff have conducted extensive discovery in this matter; and

WHEREAS, the Parties have engaged in discussions to resolve the issues presented in Logan Telephone's Complaint and to improve communications between them regarding requests for the location of underground facilities;

NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

1. Logan Telephone acknowledges that, since June 21, 2021, the District has undertaken significant actions to improve its ability to locate its underground facilities. These actions include: the purchase of an underground penetrating radar unit; the purchase of an underground wire line locator, and efforts to GIS map its facilities.

2. The District agrees to continue its efforts to improve the accuracy and detail of its system maps, to continue to its contract with ESRI for mapping services for at least two years from the date of this Agreement, and to continue working with Kentucky Rural Water Association to locate and document on its system maps the location of its facilities.

3. The District agrees to continue its membership in Kentucky 811 and to rely upon Kentucky 811's databases to maintain complete, accurate and accessible records of locate requests and the District's responses.

4. The District agrees that all District underground facilities placed into service on or after January 1, 2013 will be treated as **tonable** and locatable from the surface and **will not** be considered or otherwise treated as **untonable**.

5. The District acknowledges and agrees that KRS 367.4909(5), as amended by Chapter 70 of the 2018 Acts of Kentucky, requires it to notify an excavator that an excavation area

has been determined to be an unmapped or untonable project within two (2) working days of the locate request; to respond to the excavator's request within five (5) workdays for a normal locate request, to respond within eight (8) working days for a large project request; to respond within four (4) working days for a fiber-to-the-premises broadband deployment excavation; and as part of its response to mark the location of its facilities.

6. The District acknowledges and agrees that KRS 367.4911(12) relieves an excavator of responsibility for any damages to an underground facility that would have been located if the operator has complied with the operator's duties under KRS 367.4909, except for damages to a person or an underground facility due to negligence or intentional misconduct of an excavator, if the operator fails to mark its facilities after a second notice request.

7. The Parties acknowledge that the District has developed written procedures for responding to locate requests, a copy of which is attached as Exhibit A to this Agreement. Within 21 days of the Commission's approval of this Settlement Agreement and dismissal of Logan Telephone's Complaint, Logan Telephone may submit to the District in writing its comments on these procedures and any proposed revisions thereto. The District agrees that it will incorporate those revisions found reasonable and practical into its procedures. The District agrees that, no later than 21 days after its receipt of Logan Telephone's submission, it will file with the Commission its procedures for Commission review. With its procedures, the District will also submit to the Commission a copy of Logan Telephone's comments and proposed revisions, and the District's written response to each comment and proposed revision. For each proposed revision not incorporated into its written procedures, the District will explain in its response why the proposed revision was not accepted.

8. The District agrees that, for any subsequent revision to its written procedures for responding to locate requests made after the submission required by Paragraph 7 of this

Agreement, it will provide written notice of such revision to Logan Telephone and the Commission within 30 days of making such revision.

9. For each large project conducted by Logan Telephone's contractors, Logan Telephone and its contractor shall meet with District representatives at least ninety (90) days prior to the commencement of the project for a pre-construction conference and inform the District of the project route and the proposed construction schedule for fiber deployment. (For purposes of this Agreement, "large project" has the same meaning as that set forth in KRS 367.4903(18) for "large project request.") The District shall advise Logan Telephone and its contractor of any areas along the project route that are unmapped and proceed to map its facilities in the area. The District shall inform Logan Telephone's contractor whether, based upon the proposed construction schedule presented, the District can meet the expected number of locate requests with its existing resources and within the time set by KRS 367.4909. If the District is unable to meet the expected number of requests within the required time, the District shall state the reasons for its inability and Logan Telephone's contractor and the District shall negotiate in good faith in an effort to reach a solution permitting the District to address the locate requests within the time specified by KRS 367.4909. **Unless an agreement regarding these requests is reached between the District and Logan Telephone's contract, these negotiations will not relieve the District of its responsibility under KRS 367.4909-.4917 to respond to the locate requests within the required time.**

10. Prior to commencing any large fiber optic deployment project, Logan Telephone shall provide the District with the name and contact information for the project contractor's supervisor and primary engineering firm supervisor.

11. The Parties agree that any dispute or question that the District has regarding locate requests for a large fiber optic deployment project should be addressed in the following manner:

Questions or disputes should first be directed to the project contractor's supervisor; if a dispute or question remains, the primary engineering firm supervisor should be contacted; if a dispute or question cannot be resolved with the contractor or engineering supervisor, Logan Telephone's Outside Plant Manager should be contacted to investigate the dispute or question.

12. Logan Telephone agrees that, prior to bringing any complaint to any governmental agency or trade group regarding the District's compliance with KRS 367.4909-.4917, it will first provide written notice of its concerns to the District and allow the District a reasonable period of time to respond in writing to those concerns.

13. Nothing in this Agreement constitutes any admission that the District's prior practices failed to comply with KRS 367.4901-.4917 or constituted an unreasonable, unsafe or insufficient practice related to the delivery of utility service to Logan Telephone or any other customer.

14. The Parties agree that this Agreement represents a fair, just, and reasonable resolution of the issues presented in Case No. 2021-00248 and satisfies the Complaint to the satisfaction of each Party.

15. This Agreement is subject to the acceptance of, and approval by, the Commission. The Parties agree to act in good faith and to use their best efforts to recommend to the Commission that this Agreement be accepted and approved. Each Party commits to notify immediately the other of any perceived violation of this provision so the Party may have an opportunity to cure any perceived violation, and each commits to work in good faith to address and remedy promptly any such perceived violation.

16. If the Commission issues an order adopting this Agreement in its entirety and without additional conditions, each Party agrees that it shall file neither an application for rehearing with the Commission, nor an appeal to the Franklin Circuit Court with respect to such order.

17. If the Commission does not accept and approve this Agreement in its entirety and without additional conditions, then any adversely affected Party may withdraw from the Agreement within the statutory periods provided for rehearing and appeal of the Commission's order by (1) giving notice of withdrawal to the other Party and (2) timely filing for rehearing or appeal.

18. If this Agreement is voided or vacated for any reason after the Commission has approved this Agreement, neither Party will be bound by this Agreement.

19. This Agreement shall in no way be deemed to divest the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

20. This Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns.

21. This Agreement constitutes the Parties' complete agreement and understanding. Any oral statement, representation, or agreement made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into this Agreement.

22. The signatories hereto warrant that they have appropriately informed, advised, and consulted their respective Parties in regard to the contents and significance of this Agreement and based upon the foregoing are authorized to execute this Agreement on behalf of their respective Parties.

23. This Agreement is a product of negotiation, and no provision of this Agreement shall be strictly construed in favor of or against any party.

24. This Agreement may be executed in multiple counterparts.

(This space intentionally left blank.)

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures.

Logan Telephone Cooperative, Inc.

HAVE SEEN AND AGREED:

By: 

Title: Chief Executive Officer

Date: December 13th, 2023

East Logan Water District

HAVE SEEN AND AGREED:

By: *Harris Dobson*

Title: ELWD Chariman

Date: 12/13/2023

EXHIBIT A

PROCEDURES FOR LOCATING UNDERGROUND FACILITIES

DATED: JUNE 30, 2023

1. Determine the location of the proposed excavation and, using field maps or the District's electronic mapping system, determine whether East Logan Water District underground facilities are in the vicinity of location. If no facilities are located in the vicinity, advise requestor that excavation is clear.
2. If East Logan Water District facilities are in the vicinity, travel to the location of excavation.
3. Determine whether East Logan Water District facilities can be located with the line locator. If facilities can be located, go to Step 6.
4. If the underground facility cannot be located using the line locator, ground penetrative radar (GPR) will be used to locate the East Logan Water District facilities. If use of GPR results in location of the underground facility, go to Step 6.
5. If use of GPR proves inconclusive, examine the surrounding area for indicators of the water line's location. Search for Meters, Valves, Air Release Valves, and Ditch lines. Examine the overall topography for a change in topography that suggests a water line is located below. When finding such changes, probe the area for water line until locating the line.
6. Proceed to locate and mark the facilities with paint, chalk, flags, stakes, or any combination thereof. Color of markers should be safety precaution blue. The marked area should be a strip of land whose width is equal to the width of the facility plus 24 inches on each side of the outer limits of the located underground facility.
7. Once determining the location is correct and marking the location, shoot the GPS coordinates of the line. Enter coordinates into electronic mapping system or confirm that accurate location of facility in electronic mapping system.