

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-5035  
of Levi Ochsner, Sutton seeking )  
authority to receive advanced )  
telecommunications service from ) GRANTED  
the Stockham Exchange of )  
Hamilton Telephone Company. )  
Entered: May 21, 2019

BY THE COMMISSION:

By Application filed January 24, 2019, Levi Ochsner, Sutton, Nebraska, sought authority to receive advanced telecommunications service from the Stockham Exchange of Hamilton Telephone Company (Hamilton) rather than from the Sutton Exchange served by Windstream Nebraska, Inc. (Windstream). Notice of the Application appeared in The Daily Record, Omaha, Nebraska, on January 28, 2019.

E V I D E N C E

On March 25, 2019, Windstream filed a letter stating that it did not consent to the boundary change. Pursuant to Neb. Rev. Stat. § 86-135, the Commission held a hearing on April 24, 2019 at the Doniphan Event Center, 103 W Pine Street, Doniphan, Nebraska 68832. The application, response, publication, and hearing notice were entered into the record by the Commission. Mary Jacobson appeared on behalf of Windstream. Pat Shaw testified on behalf of Hamilton, but was not represented by counsel. Shana Knutson appeared on behalf of Commission staff.

Commission exhibits numbered 1 - 11 were offered and accepted. These exhibits included Exhibit 6, consisting of Mr. Ochsner's application, and Exhibit 9, including a letter from Hamilton stating that Hamilton consents to the boundary change, and that it will pay construction and costs for the change.

Mr. Ochsner testified in support of his application.<sup>1</sup> Mr. Ochsner sought a boundary change for his residence located at 32331 Road S., Saronville, Nebraska. He testified that broadband service has become a necessity and the current lack of service has presented a problem for his family.

Mr. Ochsner testified that he lives 4 miles to the north and 6 miles to the west of Sutton, Nebraska.<sup>2</sup> He purchased the property two months ago.<sup>3</sup> His wife teaches online and needs reliable

<sup>1</sup> See Testimony of Levi Ochsner, Hearing Transcript (TR) 47-51.

<sup>2</sup> See *id.* at 47:2-4.

<sup>3</sup> See *id.* at 47:5-10.

internet at home.<sup>4</sup> Currently, he receives service from Hamilton.<sup>5</sup> However it is a fixed wireless service. It generally works adequately, however, he stated, if the weather is not good, the speeds decline.<sup>6</sup>

Mr. Ochsner further testified that Hamilton ran fiber just a half mile north of his house.<sup>7</sup> His desire was to have the fiber optic cable extended to his property.<sup>8</sup>

Upon questioning, Mr. Ochsner testified that he did not have landline phone service.<sup>9</sup> Mr. Ochsner testified he and his wife used cell phones for their voice service.<sup>10</sup> Mr. Ochsner testified he would just be looking for internet service from Hamilton, however, he spoke with Hamilton and understood that he needed a boundary change to receive service from them.<sup>11</sup> He testified that if he is not able to get the boundary change, he would stay with Hamilton's fixed wireless service.<sup>12</sup>

Mr. Brad Hedrick, Regional President of Operations for Windstream for Nebraska, testified in opposition to the application.<sup>13</sup> Mr. Hedrick testified that Windstream does intend to serve these customers with fixed wireless technology and proposes to do that fairly soon. He testified that Windstream planned to have service operational May 6<sup>th</sup> on two sites near Sutton, two sites near Hansen and one near Harvard.<sup>14</sup> He testified that Windstream will start taking qualifying customers and taking orders on that date.<sup>15</sup>

Mr. Hedrick testified their product is a fixed wireless product.<sup>16</sup> While it was predominantly a line-of-sight technology, its vendor uses a beamforming that does allow for some deviation from pure line of sight.<sup>17</sup> For people that live in valleys, Windstream will provide a 35-foot tall telephone pole to mount the antenna on if that is what it takes to get a good fixed wireless signal.<sup>18</sup> Mr. Hedrick testified typically most customers will get

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4 See *id.*

5 See *id.* at 47:11-22.

6 See *id.*

7 See *id.* at 47:23-25.

8 See *id.* at 48:1-7.

9 See *id.* at 48:10-20.

10 See *id.*

11 See *id.* at 49:2-25.

12 See *id.* at 51:1-6.

13 See *Testimony of Brad Hedrick*, TR 55-75.

14 See *id.* at 55:18-25.

15 See *id.*

16 *Id.*

17 See TR 56:4-7.

18 See *id.* at 56:8-12.

100 Mbps down and better than 8 Mbps up, some get as high as 50 Mbps up.<sup>19</sup>

Mr. Hedrick provided the Commission with an update on the Windstream bankruptcy proceeding.<sup>20</sup> He testified Windstream has obtained financing from Citigroup bank.<sup>21</sup> He stated they intend to emerge successfully from Chapter 11.<sup>22</sup>

Windstream has been receiving federal universal service CAF-II funding in some of these areas and Windstream is building these tower sites to meet its CAF-II obligations.<sup>23</sup> Windstream has also applied for state universal service fund support.<sup>24</sup>

Upon questioning, Mr. Hedrick stated that people should not care what the underlying technology is as long as it is fast and reliable.<sup>25</sup> Mr. Hedrick stated that Windstream typically looks at a range of about 4 miles from the tower site to get 100 Mbps. Beyond that the signal does degrade and gets to a lower speed.<sup>26</sup>

Mr. Hedrick further testified that Windstream did encounter some delays.<sup>27</sup> However, he believes the operational date is May 6<sup>th</sup>. Mr. Hedrick also testified they had not reached out to any of the applicants to market the fixed wireless product.<sup>28</sup> Mr. Hedrick stated that if Windstream could not serve a customer with the fixed wireless service or if it did not work in a particular case than Windstream would release them.<sup>29</sup>

Mr. Hedrick testified Windstream does not have any plans to provide wireline network upgrades.<sup>30</sup> He testified that where they will deploy fixed wireless technology, it would be their plan to abandon the copper plant.<sup>31</sup> He affirmed this would be the case even for customers that may still be using the wireline network.<sup>32</sup> He stated they would hope to migrate those customers to fixed wireless service.<sup>33</sup>

19 See *id.* at 56-:13-16.

20 See *id.* at 57:7-8.

21 See *id.* at 57:8-14.

22 See *id.* at 57:15-18.

23 See *id.* at 61:2-11.

24 See *id.* at 60:12-15.

25 See *id.* at 63:5-13.

26 See *id.* at 65:8-17.

27 See *id.* at 65:22 through 66:4.

28 See *id.*

29 See *id.* at 70:1.

30 See *id.* at 71:10-22.

31 See *id.*

32 See *id.*

33 See *id.*

Mr. Pat Shaw, General Manager for Hamilton Telecommunications, testified on behalf of Hamilton. Hamilton's fastest speed tier is 1 Gbps download by 250 Mbps upload.<sup>34</sup> The cost of that service is approximately \$89.95, which is a cost when bundled.<sup>35</sup> Hamilton's second tier would be 250 Mbps download by 50 Mbps upload.<sup>36</sup> Hamilton also offers a 50 Mbps download by 25 Mbps upload plan.<sup>37</sup> Mr. Shaw further testified that for some customers, depending on their location, he can add them to the current permit and Hamilton will get a plow out there and get started. At the latest, he indicated he could have them all served by July.<sup>38</sup>

#### O P I N I O N   A N D   F I N D I N G S

Changes of a local exchange territory are governed by Neb. Rev. Stat. §§ 86-135 to 86-138. Section 86-135 states only upon non-consent of all telephone carriers involved shall the Commission hold a public hearing in the application. With a protest filed by Windstream opposing the proposed boundary change, the Commission held a public hearing on April 24, 2019, in Doniphan, Nebraska.<sup>39</sup>

Hamilton and Windstream are local exchange carriers holding certificates of public convenience and necessity to provide local exchange service in their respective territories. Mr. Ochsner seeks service to his residence, which is located within the boundary of Windstream's Sutton Exchange, and has requested a boundary change so that he may receive advanced telecommunications service from the Stockham Exchange of Hamilton.

Windstream does not consent to the boundary change in question, based upon its plans to deploy a fixed wireless product to its Sutton Exchange, which would allow the Applicant to obtain broadband internet at his residence. Hamilton does consent to the boundary change and is willing to pay related costs.

The Commission finds that, based upon the evidence presented and arguments offered, that the Applicant is not receiving, and will not receive within a reasonable time, advanced telecommunications capability service from Windstream. The Commission notes that given the utility and necessity of access to broadband internet in today's world, even short delays may present

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34 See Testimony of Pat Shaw, TR 75-77.

35 See *id.* at 76:15-24.

36 See *id.*

37 See *id.*

38 See *id.* at 77:11-21.

39 Notice of the hearing was mailed to the interested parties on or around March 19, 2019.

significant inconveniences and challenges to Nebraska residents.

In considering this application, we weigh the testimony offered by Mr. Ochsner and offered by Windstream. The Commission notes the fact that Windstream has been on notice that the Applicant would be seeking advanced telecommunications service since January of this year. The evidence presented in this docket shows that progress has been slow and Windstream has not marketed the service or otherwise contacted the Applicant about its potential service other than to deny his release. While we recognize that Windstream has taken some further steps to prepare to deploy wireless internet service since our last hearing on March 6, 2019, we are also mindful that Windstream has experienced several delays and continues to make promises of service availability on future dates<sup>40</sup> with no specific evidence that the proposed service will work at the Applicant's location.<sup>41</sup> We find Windstream's testimony that it plans to provide advanced telecommunications service to this Applicant within a reasonable timeframe lacks sufficient credibility at this point.

Because Windstream has previously made claims that it would have its broadband service operative only to experience several delays we do not find its testimony relative to the operative date of May 6 to have any credibility.<sup>42</sup> Given the date of the application in this matter and the fact that there has been no subsequent update on Windstream's progress since the hearing, we can only conclude that Windstream is not offering advanced telecommunications service as promised in this hearing. We find the Applicant has not received, and will not receive, advanced telecommunications services within a reasonable period of time from Windstream.

The Commission further finds that the revision of the exchange service area is economically sound and will not impair the capabilities of the telecommunications companies affected by the

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40 See Commission Docket Nos. C-5003, et al., *In the Matter of the Application of Rainforth et al.* (Windstream testifying in early March that the sites would be complete by mid-April).

41 While Windstream stated that the Applicant would be released should Windstream not be able to provide service to a location, that release would require the Applicant to file yet another application for a boundary change, pay the required filing fee, and wait an additional 30-60 days for Windstream's potential consent.

42 See Commission Docket No. C-4960, *In the Matter of the Application of Jason Poppe et al.* (Windstream testifying in May 2018 that service would be available in thirty to sixty days), and C-4973, *In the Matter of the Application of Keith Skrdlant* (Windstream testifying in June 2018 that service would be available in early August). See also Commission Docket No. C-4981, *In the Matter of the Application of Beau Toben* (Windstream testifying in November 2018 that the Doniphan project had been delayed).

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change to serve their subscribers.

The Commission further finds that although the Applicant is willing to pay construction and other costs related to this boundary change, Hamilton has stated its willingness to pay such costs, and this requirement is therefore waived under Neb. Rev. Stat. § 86-136(3).

Being fully advised in the premises, the Commission hereby finds that the requirements of Neb. Rev. Stat. § 86-136 have been met and the Applicant's request should be granted, and the exchange boundaries should be modified to allow the Applicant to receive advanced telecommunications capability service from the Stockham Exchange of Hamilton Telephone Company.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application should be, and it is hereby, granted.

IT IS FURTHER ORDERED that the revised exchange boundaries detailed in Attachment "A" to this Order be, and are hereby made, the official boundaries of the Stockham Exchange of Hamilton Telephone company and the Sutton Exchange of Windstream Nebraska, Inc.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 21st day of May, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Mary Ridd*  
Chair





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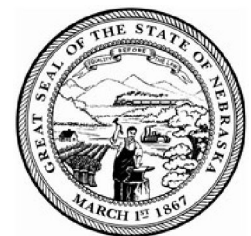
*Philip H. H20*  
Executive Director

*Crystal Snodgrass*  
*Paul Johnson*  
*Don W. H. H. H.*  
*Kim Schram*

Attachment A (1 of 2)

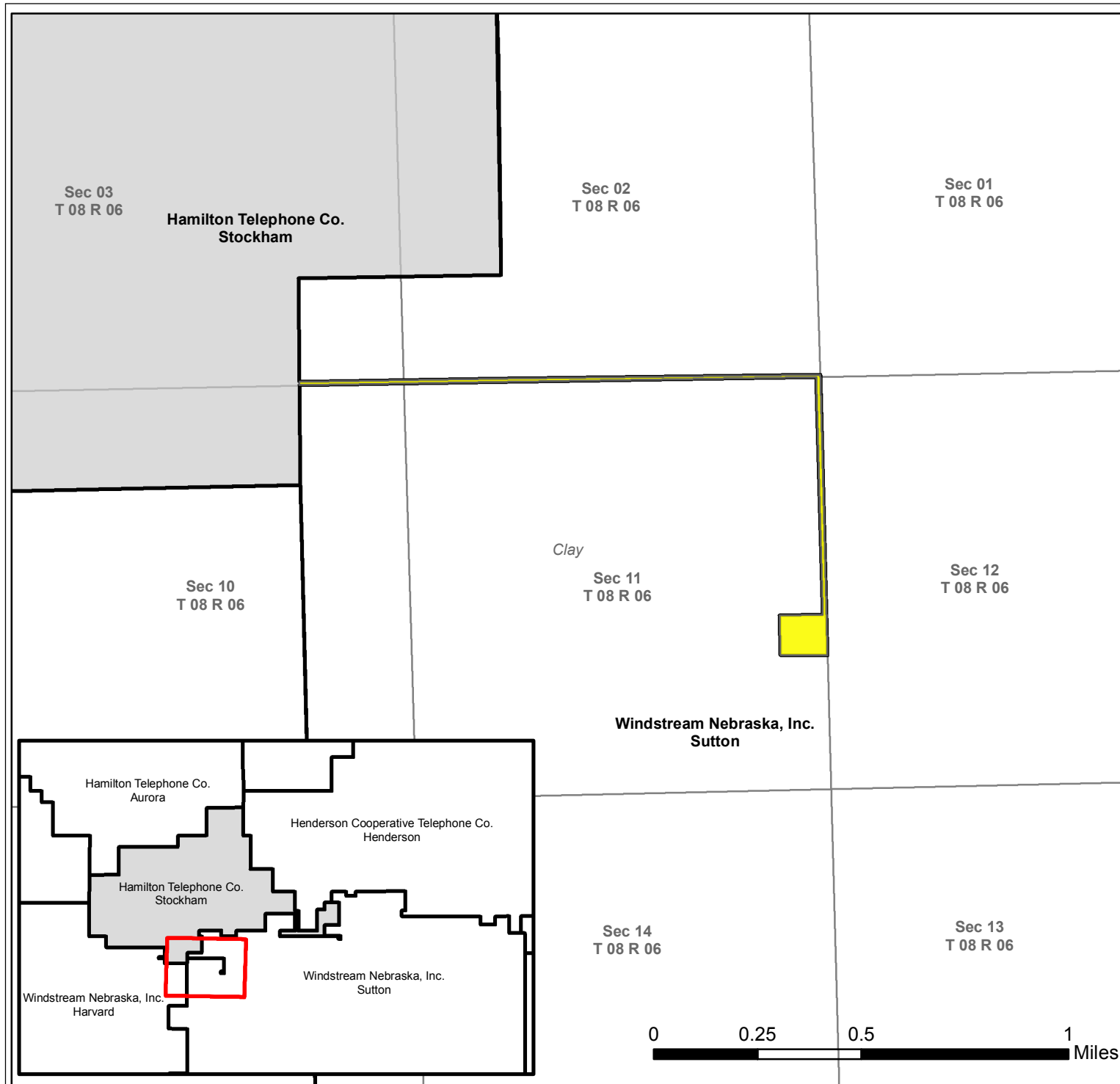
Hamilton Telephone Co.  
Stockham Exchange

-  Area of Change - C-5035
-  New Stockham Boundary
-  New Exchange Boundaries
-  County Boundaries







Doc. Name: 190517\_Ochsner\_BC\_WS\_Hamilton  
Prepared by: NE PSC - Telecommunications

Date: 5/22/2019



Attachment A (2 of 2)

Windstream Nebraska, Inc.  
Sutton Exchange

-  Area of Change - C-5035
-  New Sutton Boundary
-  New Exchange Boundaries
-  County Boundaries



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