

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-5036
of Adam Hayman, Doniphan seeking)
authority to receive advanced) GRANTED
telecommunications service from)
the Doniphan Exchange of Hamilton)
Telephone Company.) Entered: May 21, 2019

BY THE COMMISSION:

By Application filed February 6, 2019, Adam Hayman, Doniphan, Nebraska, sought authority to receive advanced telecommunications service from the Doniphan Exchange of Hamilton Telephone Company (Hamilton) rather than from the Hansen Exchange served by Windstream Nebraska, Inc. (Windstream). Notice of the Application appeared in The Daily Record, Omaha, Nebraska, on February 11, 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 7, consisting of Mr. Hayman'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. Hayman testified in support of his application.¹ Mr. Hayman sought a boundary change for his residence located at 7501 W. Lepin Road, Doniphan, Nebraska. He testified that broadband service has become a necessity and the current service has presented a problem for his family.

Mr. Hayman testified he lives 6 to 8 miles west of Doniphan in Alda.² Currently, he has wireless internet through Allo.³ Previously, he had service from KGIS which provided him with wireless internet

¹ See Testimony of Adam Hayman, Hearing Transcript (TR) 51-55.

² See *id.* at 51:17-20.

³ See *id.* at 51:21-23.

service.⁴ He stated he has a number of trees on his property.⁵ He testified that whenever there is inclement weather or just a windy day, his signal is really bad.⁶ He needs internet for his business operations.⁷ He has a construction company and he needs reliable internet for scheduling purposes.⁸ He also uses internet to connect with his family.⁹

Mr. Hayman further testified he is aware that Windstream was in the process of building a tower and obtaining zoning for it.¹⁰ However, he is pretty sure that the service would be more wireless which is not what he is looking for.¹¹ Mr. Hayman stated that Hamilton is about a mile east of his house and Hamilton advised him that he would need a boundary change if he wanted fiber internet service through them.¹² Mr. Hayman testified he does not currently have landline service from Windstream.¹³ He would take both voice and internet service from Hamilton if offered.¹⁴

Upon questioning, Mr. Hayman testified that the only contact he received from Windstream was the letter withholding consent of the boundary change.¹⁵ He tried to contact Windstream at the Hastings office, however there was no answer. This was in the middle of the workweek at about 2 o'clock in the afternoon.¹⁶

Mr. Brad Hedrick, Regional President of Operations for Windstream for Nebraska, testified in opposition to the application.¹⁷ 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 6th on two sites near Sutton, two sites near Hansen and one near Harvard.¹⁸ He testified that Windstream would start taking qualifying customers and taking orders on that date.¹⁹

⁴ See *id.* at 51:23 through 52:5.

⁵ See *id.*

⁶ *Id.*

⁷ See *id.* at 52:6-12.

⁸ See *id.*

⁹ See *id.* at 52:12-16.

¹⁰ See *id.* at 52:17-22.

¹¹ See *id.*

¹² See *id.* at 52:23 through 53:2.

¹³ See *id.* at 53:10-13.

¹⁴ See *id.* at 53:13-21.

¹⁵ See *id.* at 54:5-8.

¹⁶ See *id.* at 54:8-22.

¹⁷ See *Testimony of Brad Hedrick*, TR 55-75.

¹⁸ See *id.* at 55:18-25.

¹⁹ See *id.*

Mr. Hedrick testified their product is a fixed wireless product.²⁰ 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.²¹ 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.²² Mr. Hedrick testified typically most customers will get 100 Mbps down and better than 8 Mbps up, some get as high as 50 Mbps up.²³

Mr. Hedrick provided the Commission with an update on the Windstream bankruptcy proceeding.²⁴ He testified Windstream has obtained financing from Citigroup bank.²⁵ They intend to emerge successfully from Chapter 11.²⁶

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.²⁷ Windstream has also applied for state universal service fund support.²⁸

Upon questioning, Mr. Hedrick stated that people should not care what the underlying technology is as long as it is fast and reliable.²⁹ 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.³⁰

Mr. Hedrick further testified that Windstream did encounter some delays.³¹ However, he believes the operational date is May 6th. Mr. Hedrick also testified they had not reached out to any of the applicants to market the fixed wireless product.³² Mr. Hedrick stated that if Windstream cannot serve a customer with the fixed wireless service or if it does not work in a particular case than Windstream would release them.³³

Mr. Hedrick testified Windstream did not have any plans to provide wireline network upgrades.³⁴ He testified that where

20 Id.

21 See TR 56:4-7.

22 See id. at 56:8-12.

23 See id. at 56-:13-16.

24 See id. at 57:7-8.

25 See id. at 57:8-14.

26 See id. at 57:15-18.

27 See id. at 61:2-11.

28 See id. at 60:12-15.

29 See id. at 63:5-13.

30 See id. at 65:8-17.

31 See id. at 65:22 through 66:4.

32 See id.

33 See id. at 70:1.

34 See id. at 71:10-22.

Windstream deploys fixed wireless technology, it would be their plan to abandon the copper plant.³⁵ He testified this would be the case for customers that may still be using the wireline network.³⁶ They would hope to migrate those customers to fixed wireless service.³⁷

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.³⁸ The cost of that service is approximately \$89.95, which is a cost when bundled.³⁹ Hamilton's second tier would be 250 Mbps download by 50 Mbps upload.⁴⁰ Hamilton also offers a 50 Mbps download by 25 Mbps upload plan.⁴¹ 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.⁴²

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.⁴³

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

35 See *id.*

36 See *id.*

37 See *id.*

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

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

40 See *id.*

41 See *id.*

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

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

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 significant inconveniences and challenges to Nebraska residents.

In considering this application, we weigh the testimony offered by Mr. Hayman 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 February 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 dates⁴⁴ with no specific evidence that the proposed service will work at the Applicant's location.⁴⁵ 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.⁴⁶ 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.

44 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).

45 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.

46 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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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 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 Doniphan 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 Doniphan Exchange of Hamilton Telephone company and the Hansen Exchange of Windstream Nebraska, Inc.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Crystal Knudsen
Paul J. [unclear]
Don [unclear]
Tim Schram





Mary Riddie
Chair

ATTEST:

Michael [unclear]
Executive Director

Attachment A (1 of 2)

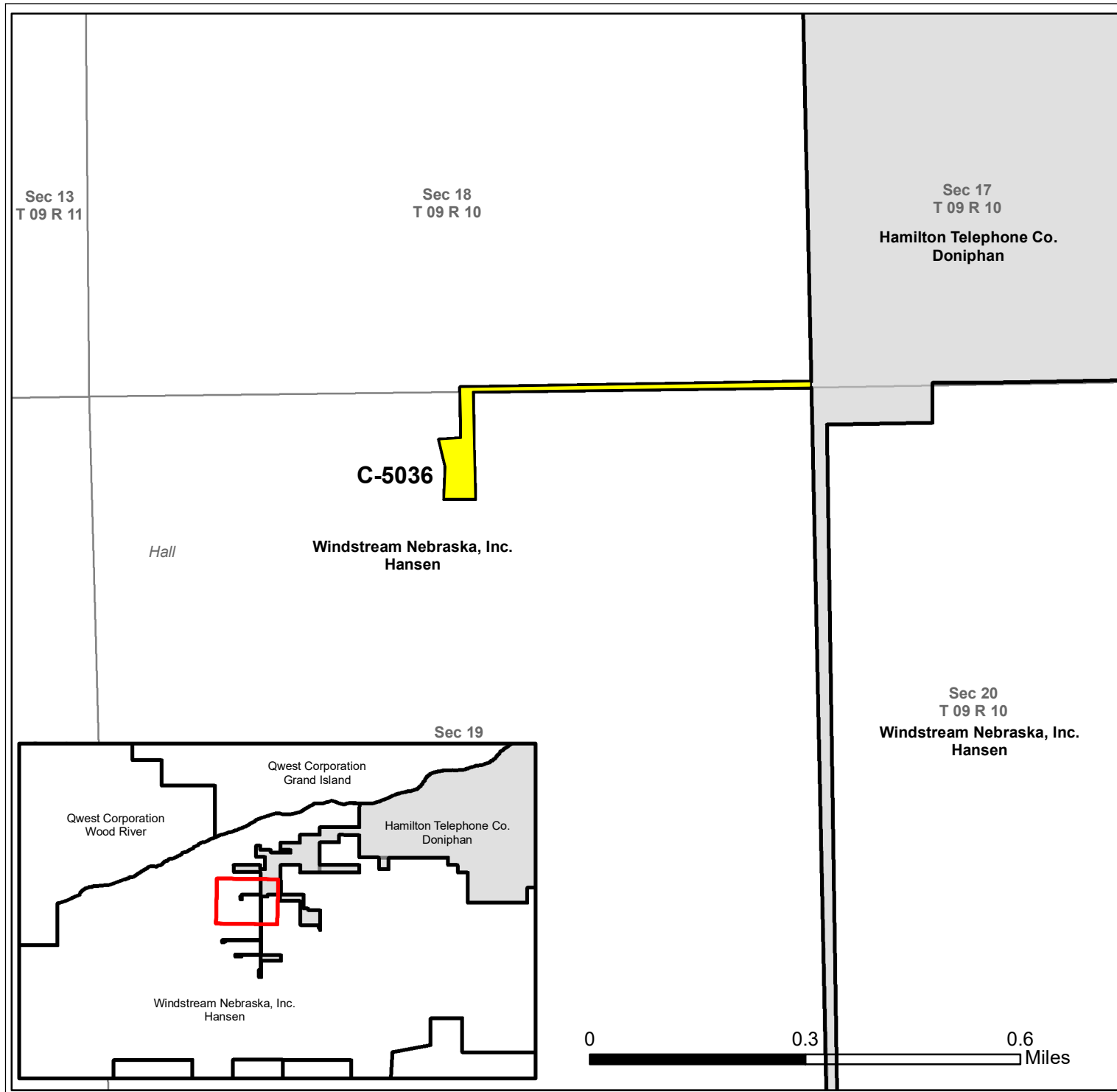
Hamilton Telephone Co.
Doniphan Exchange

-  Area of Change - C-5036
-  New Doniphan Boundary
-  New Exchange Boundaries
-  County Boundaries







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Prepared by: NE PSC - Telecommunications

Date: 5/21/2019



Attachment A (2 of 2)

Windstream Nebraska, Inc.
Hansen Exchange

-  Area of Change - C-5036
-  New Hansen Boundary
-  New Exchange Boundaries
-  County Boundaries



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Prepared by: NE PSC - Telecommunications

Date: 5/21/2019

