

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. C-5048
Application of Jerry and	)	
Pamela Huebert, Aurora,	)	
seeking authority to receive	)	ORDER GRANTING APPLICATION
advanced telecommunications	)	
service from the Stockham	)	
Exchange of Hamilton Telephone	)	
Company.	)	Entered: July 30, 2019

BY THE COMMISSION:

On April 22, 2019, an application was filed by Jerry and Pamela Huebert of Aurora, Nebraska ("Applicants"), seeking authority to receive advanced telecommunications service from the Stockham Exchange of Hamilton Telephone Company ("Hamilton") in lieu of service from Windstream Services, LLC ("Windstream"). Notice of the application was published in The Daily Record, Omaha, Nebraska, on April 24, 2019.

E V I D E N C E

On May 28, 2019, Windstream Communications filed with the Commission a letter stating that it did not consent to the boundary change requested in this application.<sup>1</sup> Pursuant to Neb. Rev. Stat. § 86-135, a hearing was held in this matter on July 9, 2019, in the Sutton City Hall, in Sutton, Nebraska, concurrently with the hearing in C-5046. The Applicants appeared without counsel. Blake Johnson appeared on behalf of Windstream. Pat Shaw testified on behalf of Hamilton, but was not represented by counsel. Sallie Dietrich appeared on behalf of Commission staff. Exhibits numbered 1 - 17 were offered and accepted.

Testimony was offered by Pamela Huebert on behalf of the Applicants; by Trent Fellers, Vice President of Government Relations, on behalf of Windstream; and by Pat Shaw, General Manager, on behalf of Hamilton. Each party was afforded an opportunity for cross-examination of the other party.

Pamela Huebert testified that she and her husband requested this application because they have found Windstream's landline telephone service and broadband internet service to be unreliable.<sup>2</sup> Ms. Huebert testified that they currently receive landline telephone service

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<sup>1</sup> Exhibit 9.

<sup>2</sup> Transcript at 43.

through Windstream.<sup>3</sup> Ms. Huebert testified that they previously had internet service from Windstream but found it to be unreliable.<sup>4</sup>

Ms. Huebert further testified that she operates a business from her home, and that their home has had at times had either no telephone service or would experience "a dial tone with crackling."<sup>5</sup> Ms. Huebert testified that one such telephone outage in October 2018 lasted for three weeks.<sup>6</sup> Ms. Huebert estimated that within the past two years, she has experienced service issues with Windstream's telephone service between half a dozen and a dozen separate times.<sup>7</sup> Ms. Huebert testified that her main priority in seeking internet service is reliability rather than speed or price.<sup>8</sup> Ms. Huebert testified that if the boundary change is granted, she intends to seek both telephone and internet service from Hamilton.<sup>9</sup> Ms. Huebert further testified that she has not received any communications from Windstream since filing her application, and has not seen any advertisements for broadband internet from Windstream.<sup>10</sup> Ms. Huebert testified that she would not be interested in receiving internet service from Windstream due to her history of service issues with Windstream.<sup>11</sup>

Windstream then offered the testimony of Trent Fellers, Vice President of State Government Affairs. Mr. Fellers testified that Windstream now offers a fixed wireless internet product in the area where Applicants reside.<sup>12</sup> Mr. Fellers presented Exhibits 11, 12, 13, 14, and 15, consisting of aerial photographs and speed tests relating to the service tower which would serve Applicants. Mr. Fellers testified that the Applicants reside about two and a quarter miles from the tower site.<sup>13</sup>

Mr. Fellers presented Exhibit 16, consisting of an advertising flyer for Windstream's wireless internet service, and testified that it was mailed to customers in Applicants' area on June 25th.<sup>14</sup> Mr. Fellers testified that Exhibit 13 represents the results of a speed test performed on the Applicants' property which demonstrated speeds of approximately 100 mpbs download and 30 mpbs upload.<sup>15</sup> Mr. Fellers testified that the Applicants could expect that speed or better at

<sup>3</sup> *Id.* at 44.

<sup>4</sup> *Id.* at 46.

<sup>5</sup> *Id.* at 44.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 49.

<sup>8</sup> *Id.* at 47.

<sup>9</sup> *Id.* at 49.

<sup>10</sup> *Id.* at 53.

<sup>11</sup> *Id.* at 55.

<sup>12</sup> *Id.* at 57.

<sup>13</sup> *Id.* at 63-64.

<sup>14</sup> *Id.* at 79.

<sup>15</sup> *Id.* at 82.

any time from Windstream's fixed wireless service.<sup>16</sup> Upon questioning, Mr. Fellers was not able to state the service range of the tower which would serve Applicants.<sup>17</sup> Mr. Fellers testified that since the completion of the fixed wireless project, Windstream has had a service quality issue due to an equipment issue that is in the process of being resolved.<sup>18</sup> Mr. Fellers was unable to state when the issue began or whether it had been resolved at the time of the hearing.<sup>19</sup> Mr. Fellers stated that Windstream does not currently offer a Voice over Internet Protocol service through their fixed wireless products.<sup>20</sup>

With regard to service issues mentioned by Ms. Huebert, Mr. Fellers stated that he had been unaware of the landline service issues experienced by Applicants prior to the hearing, and that he would exchange contact information with Applicants to provide them with a "direct line into somebody that could make something happen within the organization."<sup>21</sup> Upon further questioning, Mr. Fellers did not provide specific steps Windstream would take to resolve the outages following the hearing.<sup>22</sup>

Following the hearing, Windstream provided late-filed Exhibit 17, consisting of a document reflecting Windstream's service history for Applicants, a statement as to the geographic range of the tower, the number of customers served by Windstream's fixed wireless towers, and two additional speed tests performed at residences in Bennet, Nebraska.<sup>23</sup> Exhibit 17 showed that service repairs had been performed on the Huebert residence during the timeframe described by Ms. Huebert.<sup>24</sup> Exhibit 17 further stated that Windstream's towers cover a service range of between 4 and 5 miles, and that no customers are currently being served by the tower which would serve the Applicants.<sup>25</sup>

Hamilton then offered the testimony of Pat Shaw, General Manager. Mr. Shaw testified that Hamilton does not object to the application, and is willing to build out service to the Applicants in this docket at no direct cost to them.<sup>26</sup> Mr. Shaw estimated that Hamilton would be able to provide service to the Applicants within

<sup>16</sup> *Id.* at 81.

<sup>17</sup> *Id.* at 83; but see Exhibit 17 at 1 (stating that the tower in question is designed to cover a radius of 4-5 miles).

<sup>18</sup> Transcript at 86-87.

<sup>19</sup> *Id.* at 87.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 72-73.

<sup>22</sup> *Id.* at 88.

<sup>23</sup> See Exhibit 17.

<sup>24</sup> *Id.* at 1.

<sup>25</sup> *Id.* at 1-2.

<sup>26</sup> Transcript at 99.

sixty days or sooner based on the location of Hamilton's current fiber lines in relation to their property.<sup>27</sup> Mr. Shaw testified that if the boundary change is granted, Applicants would have access to landline telephone service.<sup>28</sup>

Mr. Shaw testified that Hamilton intends to offer service options to Applicants at speeds of 1G download / 250 mbps upload for \$89.95 per month, or 250 mbps download / 50 mbps upload for \$64.95 per month, or 50 mbps download / 25 mbps upload for \$49.95 per month.<sup>29</sup> Mr. Shaw further testified that Applicants would be able to receive telephone service at a rate of \$17.95 per line, with the possibility of bundled services.<sup>30</sup> Mr. Shaw testified that Hamilton has not experienced outages on its fiber lines, and that Hamilton attempts to address all outages on the same day they occur within hours.<sup>31</sup>

No further witnesses were called, and the hearing was closed at the conclusion of Mr. Shaw's testimony.

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

Hamilton and Windstream are local exchange carriers holding certificates of public convenience and necessity to provide local exchange service in their respective territories. Jerry and Pamela Huebert seek service to their house, which resides within the boundary of Windstream's Sutton Exchange, and have requested a boundary change so that they may receive advanced telecommunications service from the Stockham Exchange of Hamilton.

Windstream does not consent to the boundary change in question, based upon its statements that Applicants have access to a fixed wireless internet product. Hamilton does consent to the boundary change and is willing to pay related costs.

Nebraska law allows any person to obtain advanced telecommunications capability service from a telecommunications company in the local exchange area adjacent to the local exchange area in which the applicant resides, provided that the applicant is not receiving, and will not receive within a reasonable time, such service.<sup>32</sup> Advanced telecommunications capability service means "high-speed, broadband telecommunications capability . . . that

<sup>27</sup> *Id.* at 99-100. Ms. Huebert estimated that one fiber line installed by Hamilton line is approximately an eighth of a mile from her house. *Id.* at 46-47.

<sup>28</sup> *Id.* at 100.

<sup>29</sup> *Id.* at 92-93.

<sup>30</sup> *Id.* at 93.

<sup>31</sup> *Id.* at 102.

<sup>32</sup> Neb. Rev. Stats. §§ 86-135 - 136.

enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology."<sup>33</sup>

The Commission finds that, based upon the evidence presented and arguments offered, that the Applicants are not receiving, and will not receive within a reasonable time, reasonable advanced telecommunications capability service from Windstream. The Commission finds that while Windstream asserts that it is capable of serving the Applicants with a wireless internet product, the evidence presented does not demonstrate that this product meets the requirements of Neb. Rev. Stat. § 86-103.01. Specifically, the evidence presented in this hearing does not show that Windstream can provide a reliable, high-speed product, or adequate customer service to meet the Applicants' needs.

The Commission makes this finding based on several factors. The Applicants' testimony regarding Windstream's history of landline outages was not refuted, and indeed was corroborated, by Windstream's late-filed Exhibit 17.<sup>34</sup> The Commission further notes that Windstream's past performance in providing service to applicants demonstrates a pattern of slow progress and missed deadlines.<sup>35</sup>

With regard to the evidence submitted in this docket, the Commission notes that Windstream's speed test at the Huebert residence, reflected in Exhibit 13, was performed at a time when the tower would not be busy, with no other customers being served by that tower.<sup>36</sup> Furthermore, Windstream's late-filed Exhibit 17 includes the results of a speed test on the fixed wireless technology, showing download speeds of 28.56 mpbs and upload speeds of 14.25 mpbs.<sup>37</sup> These results are significantly lower than the speeds of 100 mpbs download and 30 mpbs upload Windstream testified it would provide to Applicants with this service. While the Commission appreciates Windstream's submission of evidence in this docket regarding progress on the fixed wireless project, the history of missed deadlines

<sup>33</sup> Neb. Rev. Stat. § 86-103.01.

<sup>34</sup> See Exhibit 17 at 1 (listing service history to Huebert Family, including service history in September and October of 2018); Transcript at 44-45 (Ms. Huebert describing a three-week outage in October 2018).

<sup>35</sup> See Commission Dockets. Nos. 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); C-4973, *In the Matter of the Application of Keith Skrdlant* (Windstream testifying in June 2018 that service would be available in early August); C-4981, *In the Matter of the Application of Beau Toben* (Windstream testifying in November 2018 that the Doniphan project had been delayed); C-5018, *In the Matter of the Application of Eugene Griess* (Windstream testifying in April 2019 that the Hansen project would be operational by May 6, and that they would be taking customers on that date).

<sup>36</sup> See Exhibit 17 at 2.

<sup>37</sup> *Id.* at 4.

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combined with unrefuted, ongoing landline and internet service issues forces the Commission to conclude that Windstream cannot provide reliable or adequate service of either type to its customers.

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 Applicants are 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 Applicants' request should be granted, and the exchange boundaries should be modified to allow the Applicants 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 Application No. C-5048 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 Services, LLC.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 30th day of July, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Crystal Lucades*  
*Don Williams*  
*Tim Schram*

*Mary Rudi*  
Chair

ATTEST:

*Michael S. H.*  
Executive Director

# Attachment A (1 of 2)

## Hamilton Telephone Co. Stockham Exchange

-  Area of Change - C-5048
-  New Stockham Boundary
-  New Exchange Boundaries
-  County Boundaries



Doc. Name: 190710\_Huebert\_BC\_WS\_Hamilton  
Prepared by: NE PSC - Telecommunications

Date: 7/10/2019

Hamilton Telephone Co.  
Stockham

Sec 36  
T 09 R 06

Hamilton

Sec 31  
T 09 R 05

**C-5048**

C-5007

Windstream Nebraska, Inc.  
Sutton

Hamilton Telephone Co.  
Stockham

Henderson Cooperative Telephone Co.  
Henderson

Clay





Windstream Nebraska, Inc.  
Sutton

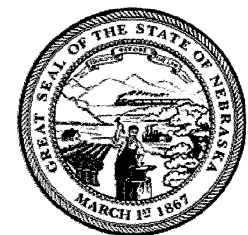
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Attachment A (2 of 2)

Windstream Nebraska, Inc.  
Sutton Exchange

-  Area of Change - C-5048
-  New Sutton Boundary
-  New Exchange Boundaries
-  County Boundaries



Doc. Name: 190710\_Huebert\_BC\_WS\_Hamilton  
Prepared by: NE PSC - Telecommunications

Date: 7/10/2019

Hamilton Telephone Co.  
Stockham

Sec 36  
T 09 R 06

Hamilton

Sec 31  
T 09 R 05

C-5048

C-5007

Windstream Nebraska, Inc.  
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Hamilton Telephone Co.  
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Henderson

Clay

Sec 06  
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Windstream Nebraska, Inc.  
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