

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4960
of Jason Poppe, Brooke Marshall,)
Eugene Griess, Cole Schelkopf,)
Craig Griess, Ron Nuss, Lon)
Ochsner, Kristin Jerred, Jerry) GRANTED IN PART,
Huebert, Isaac Schelkopf, Aurora,) DENIED IN PART
Sutton and Saronville seeking)
authority to receive advanced)
telecommunications service from)
the Stockham Exchange of Hamilton)
Telephone Company.) Entered: July 10, 2018

BY THE COMMISSION:

On November 27, 2017, applications were filed by Jason Poppe, Brooke Marshall, Eugene Griess, Cole Schelkopf, Craig Griess, Ron Nuss, Lon Ochsner, Kristin Jerred, Jerry Huebert, and Isaac Schelkopf, of Aurora, Sutton, and Saronville, Nebraska, seeking boundary changes to receive advanced telecommunications service from the Stockham Exchange of Hamilton Telephone Company ("Hamilton"), rather than the Sutton Exchange of Windstream Nebraska, Inc. ("Windstream"). Notice of the application was published in The Daily Record, Omaha, Nebraska, on December 13, 2018.

On January 22, 2018, Hamilton notified the Commission it would consent to the boundary changes. On February 1, 2018, Windstream notified the Commission it would not consent to the boundary change as it intended to deploy broadband and serve applicants "within a reasonable time." An order scheduling this matter for hearing was issued April 3, 2018, and notice was provided to all interested parties. Hearing was held at the Sutton City Hall on May 23, 2018.

EVIDENCE

Three of the Applicants provided live testimony at this hearing, Isaac Schelkopf, Jason Poppe, and Craig Griess. Mr. Schelkopf testified first.

Currently, Mr. Schelkopf receives internet service through Superior iNet out of Edgar, Nebraska.¹ He described his current service as somewhat inconsistent. The service appears to be a fixed wireless service which is affected by seasonal changes.² Mr.

¹ Hrg. Transcr. (May 23, 2018) 8:10-12.

² Id. at 8:12-18 (Mr. Schelkopf explained the service came from a tower in town and that it was "through the air," which would indicate a fixed wireless set up.)

Schelkopf further testified he was unaware of any services offered by Windstream in the area.³ Mr. Schelkopf further testified he was seeking this boundary change because Hamilton has indicated they would bring fiber lines to customers in the area and believed that would be better, more reliable service.⁴

On examination by the Commissioners, Mr. Schelkopf testified his family is seeking service that would enable them to stream television. He is unfamiliar with what the speeds are that he currently receives, but knows his current service is unable to facilitate that level of service.⁵ Windstream asked Mr. Schelkopf if he knew what speed he receives from Superior iNet. Mr. Schelkopf testified they pay for five (Mbps) and that higher speeds are available for purchase. However, "when the signal is bad, it doesn't matter what speed you pay for."⁶

Next, Jason Poppe offered testimony in support of his application. Mr. Poppe indicated he currently receives service through HughesNet. Mr. Poppe operates a small business which relies on the internet for billing and ordering materials.⁷ Mr. Poppe further noted he has young children who rely on the Internet for school. Upon questioning by Commissioner Landis, he stated that their needs for speed are likely to increase as they get older.⁸ Lastly, Mr. Poppe testified he anticipates that their needs will continue to grow as technology changes.⁹ Windstream declined to ask any questions of Mr. Poppe.¹⁰

Craig Griess was the final applicant to offer testimony in support of the boundary changes. Mr. Griess testified he also has service through Superior iNet, with a speed of 10 Mbps. However, he indicated the service was not much of an improvement from when they had a speed of three megabits.¹¹ Mr. Griess further testified his children also rely on their internet service for schoolwork.¹² If the children are on their devices, Mr. Griess indicated he and his wife would be unable to do anything that required an internet connection.¹³

Commissioner Johnson inquired as to what the cost will be with Hamilton. Mr. Griess indicated it would cost approximately ninety dollars per month, including landline service.¹⁴

³ Id. at 8:19-22

⁴ Id. at 8:25-9:3

⁵ Id. at 9:21-10:5

⁶ Id. at 11:8-16

⁷ Id. at 13:4-8 and 15-17

⁸ Id. at 13:9-11; 15:11-24

⁹ Id. at 16:4-12

¹⁰ Id. at 16:20

¹¹ Id. at 17:11-13

¹² Id. at 17:14-17

¹³ Id. at 17:18-20

¹⁴ Id. at 17:23-18:4

Commissioner Landis questioned Mr. Griess on what if any contact he has had with Windstream. Mr. Griess testified he has neither contacted nor been contacted by Windstream regarding any available services in the area.¹⁵ Windstream declined to ask any questions of Mr. Griess.¹⁶

Brad Hedrick testified on behalf of Windstream. Mr. Hedrick is the President of Operations for Windstream in Nebraska.¹⁷ Mr. Hedrick testified the company has been refocusing on small and medium markets. The service out of Sutton currently connects to Hastings and Lincoln on a ring-protected network.¹⁸ Mr. Hedrick indicated that Windstream does use fiber to the premises, but mainly in larger, more urban communities.¹⁹ Mr. Hedrick testified that Windstream intends to deploy a fixed wireless system which would cover all ten of the Applicants and would operate with higher speeds than their current fixed wireless products. Mr. Hedrick stated nine of ten Applicants would receive 100 Mbps down and 8 Mbps up speeds, while the tenth would receive 75 Mbps down and 8 Mbps up.²⁰

Mr. Hedrick testified the product would not be susceptible to interference or harsh weather conditions.²¹ Windstream intends to deploy this product in several markets across Iowa and Nebraska to meet its CAF II Federal Obligations.²² Windstream has applied for partial funding from the Nebraska Universal Service Fund to assist with some of these projects. However, Mr. Hedrick testified Windstream intends to move forward with this project whether or not they receive the funding, with service available within the next 30-60 days.²³

Windstream intends to place one 100 foot tower near their office and one 75 foot tower approximately 8 miles north of town near the residences of the Applicants.²⁴ Mr. Hedrick indicated similar projects in Oklahoma and Iowa have worked well and there have been no latency problems.²⁵ This service would cost consumers seventy dollars per month with lower speed options available. Windstream has not advertised this service within the community to date.²⁶

¹⁵ *Id.* at 18:6-15

¹⁶ *Id.* at 19:4

¹⁷ *Id.* at 21:1-2

¹⁸ *Id.* at 21:14-22; 22:18-20.

¹⁹ *Id.* at 23:17-19

²⁰ *Id.* at 23:24-24:-7

²¹ *Id.* at 24:10-11

²² *Id.* at 25:9-16

²³ *Id.* at 25:17-25

²⁴ *Id.* at 26:15-17

²⁵ *Id.* at 28:4-17

²⁶ *Id.* at 29:6-15.

Commissioner Landis expressed concern that carriers like Windstream are waiting until there are complaints or other companies agree to serve underserved consumers before taking action.²⁷ Mr. Hedrick testified first that Hamilton could provide this service without the boundary change as a CLEC, but he believes they want the Federal Universal Service Funds attached to these individuals.²⁸ Mr. Hedrick went on to explain that the delay is because Windstream has added 1500 sites to its network in 2018 and plans to add 20,000 nodes next year. Windstream cannot get service to all rural areas at the same time, so, "sometimes it is a matter of the squeaky wheel does get prioritized ahead."²⁹

Commissioner Landis further questioned why there has been no advertising to let customers know service will be available.³⁰ Mr. Hedrick stated that information is not available to customers until the system is up and running. A customer could call in now, and the service representative would only see that they are not eligible for the level of coverage they are seeking.³¹

Commissioner Ridder inquired what the range of service would be with the two towers Mr. Hedrick described. Mr. Hedrick explained there would be approximately a 20-25 square mile range, or 5 miles each direction from the towers.³² Mr. Hedrick did acknowledge that fixed wireless signals get weaker the further out they are from the towers. However, he asserts the coverage will still meet the levels he described.³³

Because seven of the ten Applicants were not present for the hearing, the Commission recessed the hearing to determine whether there were options for the remaining Applicants to participate. On May 25, 2018, the Commission sent a letter to all interested parties. The Commission requested any party who was not present at the hearing but wished to pursue their application to submit a letter explaining their current level of service and what they wished the Commission to consider. The letter warned that failure to contact the Commission or submit additional information could result in dismissal of their applications. Applicant Brooke Marshall submitted one such letter. No additional letters were received. On June 13, 2018, Windstream filed an objection to any such letters being considered.

On July 6, 2018, the Hearing Officer issued an order accepting Ms. Marshall's letter as a late filed exhibit, overruling Windstream's objection, and closing the record. Ms. Marshall's

²⁷ *Id.* at 29:23-30:7

²⁸ *Id.* at 30:20-31:3

²⁹ *Id.* at 31:11-23

³⁰ *Id.* at 32:16-19

³¹ *Id.* at 32:21-33:3

³² *Id.* at 34:2-9

³³ *Id.* at 34:13-21

letter indicated her family had previously used Mainstay out of Henderson. However, the service was so poor that Ms. Marshall discontinued that service. Currently, her family uses wireless hotspots through their Verizon phones. This service is also inconsistent. They have lived in this location for seven years without reliable internet. As their children age, their need for more reliable internet are increasing as well.³⁴

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. All ten Applicants reside 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 Telephone Company.

Changes of a local exchange territory are governed by Neb. Rev. Stat. §§ 86-135 - 86-138. Section 86-135 states that only upon non-consent of all telephone carriers involved shall the Commission hold a public hearing in the application. A hearing was properly held on May 23, 2018. §86-135 further requires the Commission to consider the circumstances of each customer applying for the boundary change as well as the impact on any affected telecommunications company.³⁵

The Commission is permitted to grant an application, in whole or in part, if the evidence establishes:

- (1) That such applicant is not receiving, and will not within a reasonable time receive, reasonable advanced telecommunications service in the local exchange area in which the applicant resides;
- (2) That the revision of the exchange service area to grant the application is economically sound, will not impair the capability of any telecommunications company affected to serve the remaining subscribers in any affected exchanges, and will not impose an undue and unreasonable technological or engineering burden on any affected telecommunications company; and,
- (3) That the applicant is willing and unless waived by the affected telecommunications company, will pay such construction and other costs and rates as are fair and equitable and will reimburse the affected telecommunications company for any undepreciated

³⁴ Late Filed Exhibit 8. (Filed June 5, 2018. Admitted July 6, 2018).

³⁵ Neb. Rev. Stat. §86-135(2)-(3) (Reissue of 2012).

investment in existing property as determined by the Commission. The amount of any payment by the Applicant for construction and other costs associated with providing service to the applicant may be negotiated between the Applicant and the affected telecommunications company.³⁶

Applicants Jason Poppe, Isaac Schelkopf, and Craig Griess provided live testimony regarding their current levels of service. Each testified they currently receive service from other carriers. The service has long been inadequate to meet their needs. Applicant Brooke Marshall provided evidence via written statement regarding her current level of service. Ms. Marshall receives Internet service only through a mobile hotspot which has proven insufficient. Each of these four successfully showed they lack sufficient advanced telecommunications service currently.

Windstream did testify they will be providing fixed wireless service within 30-60 days of the hearing. However, multiple applicants have experienced fixed wireless service and found it to be unsatisfactory. Further, Windstream has had notice of these Applications since December 2017. As of the date of the hearing, no construction had been started to make this project a reality. While Mr. Hedrick claims service will be available within thirty to sixty days, no definitive plans for construction were identified. On questioning by the Commission Staff, Mr. Hedrick stated construction would begin within 30 days.³⁷ As Ms. Marshall stated in her letter, she has lived in her home for seven years and Windstream has not provided service in that time. Without a showing that the project is actually underway, the Commission finds that reasonable Advanced Telecommunications service will not be available within a reasonable amount of time.

Section 86-136(2) is also satisfied. The revision of the boundaries for Ms. Marshall, Mr. Poppe, Mr. Craig Griess, and Mr. Isaac Schelkopf appear to be economically sound and will not impose undue technological burdens. The Hamilton Telephone Company stated in its January letter that they were willing and able to serve all of the Applicants. Given Windstream's fixed wireless model, there would be no effect on their service if these four Applicants were to be served by Hamilton. The boundary changes will not affect Windstream's ability to serve the remaining subscribers, either. Mr. Hedrick testified Windstream intends to move forward with this project whether or not the Commission approves its application for universal service grant funds. The project would serve approximately 150 subscribers. Windstream did not present any evidence that the loss of any of the Applicants would affect the viability of the project. The number of

³⁶ Neb. Rev. Stat. §86-136 (Reissue of 2012)

³⁷ Hrg. Trancr. May 23, 2018, 38:16-19

applicants is quite small compared with the total subscribers to be served.

The final element, §86-136(3), requires applicants be willing to pay associated construction costs, other costs and rates, and any undepreciated investment in existing property as determined by Commission. However, Hamilton has already agreed to provide fiber to the home service to the Applicants at no direct cost for construction or installation. No additional evidence was presented regarding any costs by any of the parties. The Commission finds no financial obligations for construction and installation for the Applicants.

Therefore, the Commission finds that the Applications of Brooke Marshall, Isaac Schelkopf, Craig Griess, and Jason Poppe are in the public interest and should be granted. The remaining six applicants: Eugene Greiss, Cole Schelkopf, Ron Nuss, Lon Ochsner, Kristen Jerred, and Jerry Huebert failed to appear and failed to submit supplemental information at the request of the Commission. As such, applications of these six parties should be denied.

The Commission staff has modified the Windstream local exchange map to show the boundary change to the Sutton Exchange. A copy of the exchange map with the proposed revisions are attached as Attachment "A" to this Order and hereby incorporated for reference. If Windstream has objections or changes to the proposed boundary map, it has until August 10, 2018, to contact the Commission with said objections or changes. If the Commission receives no objections or changes from Windstream by close of business on August 10, 2018, the boundary map will be modified as proposed in Attachment "A".

It is the expectation of the Commission that the two carriers involved in the boundary change shall collaborate in good faith to ensure that the transition of the customer's service from one carrier to the other shall be as seamless as possible.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-4960 is hereby granted in part and denied in part as described above.

IT IS FURTHER ORDERED that on or before August 10, 2018, the parties to this docket shall contact the Commission with any concerns or proposed modifications regarding the boundaries depicted in Attachment "A" to this order. If no such objection is received from Windstream by close of business on the above-listed date, the boundary as shown in Attachment "A" to this Order shall be the official boundary of Windstream.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 10th day of July, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Crystal Broadus

Tim Schwan

//s//Frank E. Landis

//s//Mary Ridder

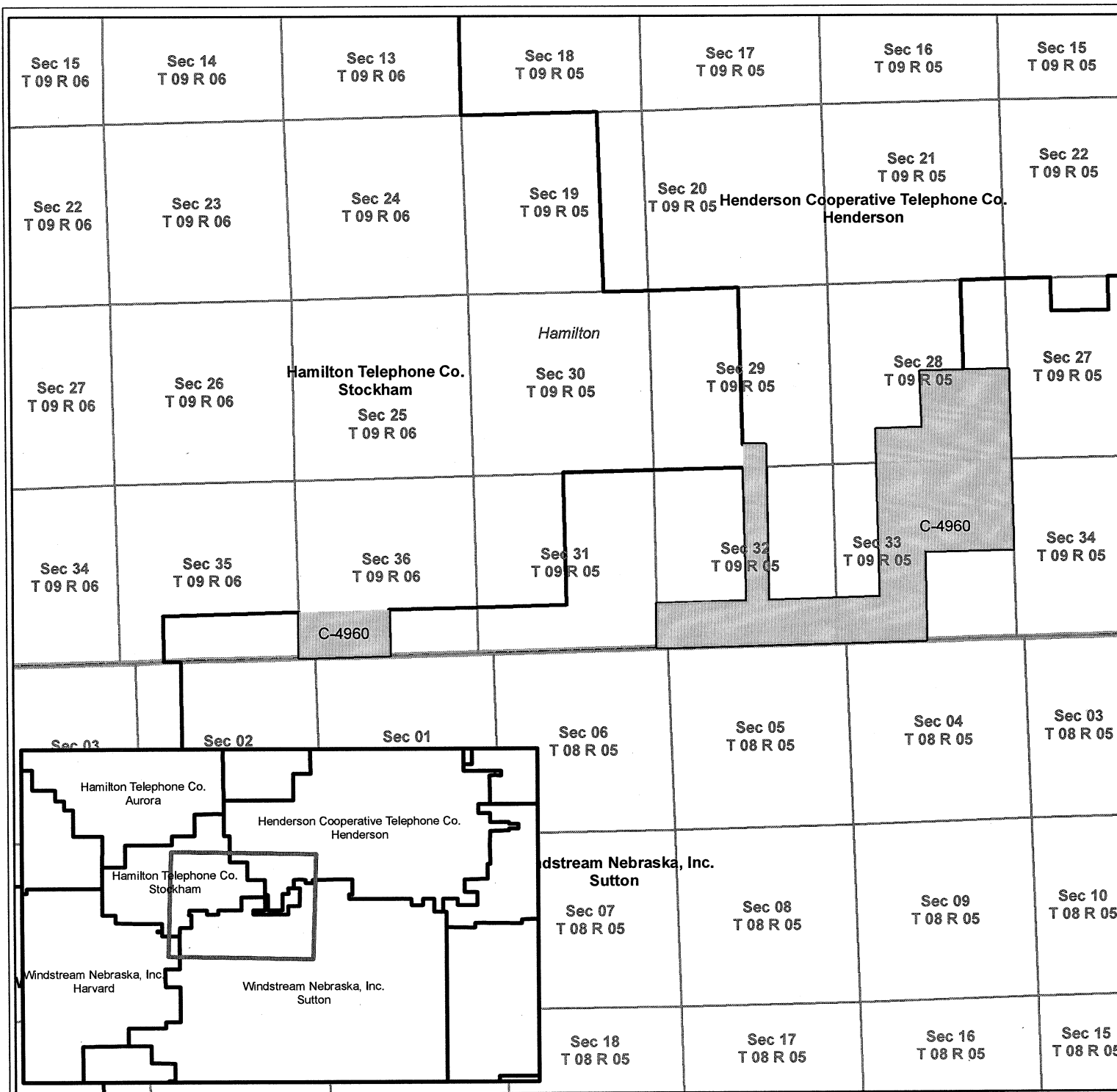
Mary Ridder

Chair

ATTEST:

Shawn Kiger




Deputy Director



Attachment A

**Hamilton Telephone Co.
Stockham Exchange**

**Windstream Nebraska, Inc.
Sutton Exchange**

-  Areas of Change
-  Exchange Boundaries
-  County Boundaries



Doc. Name: 171204_Griess_BC_WS_Hamilton
Prepared by: NE PSC - Telecommunications

Date: 7/3/2018