

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-4960
Application of Jason Poppe,)
Brooke Marshall, Eugene)
Griess, Cole Schelkopf,)
Craig Griess, Ron Nuss, Lon)
Ochsner, Kristin Jerred,)
Jerry Huebert, Isaac) ORDER OVERRULING OBJECTION,
Schelkopf, Aurora, Sutton) ACCEPTING LATE FILED
and Saronville seeking) EXHIBIT, AND CLOSING THE
authority to receive) RECORD
advanced telecommunications)
service from the Stockham)
Exchange of Hamilton)
Telephone Company.)
) Entered: July 6, 2018

BY THE HEARING OFFICER:

By Application filed November 27, 2017, Jason Poppe, Brooke Marshall, Eugene Griess, Cole Schelkopf, Craig Griess, Ron Nuss, Lon Ochsner, Kristin Jerred, Jerry Huebert, Isaac Schelkopf, of Aurora, Sutton and Saronville, seek authority to receive advanced telecommunications service from the Stockham Exchange of Hamilton Telephone Company. Notice of the Application appeared in The Daily Record, Omaha, Nebraska on December 12, 2017.

Pursuant to Neb. Rev. Stat. § 86-135 a hearing is required when the telecommunications companies involved do not consent to the application. On February 1, 2018, Windstream notified the Commission that it did not consent to the boundary change. Hearing was held in the above-captioned application on May 23, 2018, at 1:30 p.m. at the Sutton City Council Chambers.

At the hearing, Isaac Schelkopf, Jason Poppe, and Craig Griess testified on behalf of the Applicants. Brad Hedrick testified on behalf of Windstream. Mr. Hedrick testified that Windstream would have service available to the Applicants within the next thirty to sixty days.¹ Windstream will be offering fixed wireless service. They will put up two towers with a service radius of five miles each direction from the towers. One tower will be located in Downtown Sutton, and the other tower will be located eight miles north of Sutton.²

Because seven of the ten applicants were not present at the hearing, the Commission recessed the hearing rather than adjourning to accommodate any additional proceedings which may be necessary. On May 29, 2018, the Commission sent a letter to all of

¹ Hrg. Transcr. (May 23, 2018). 25:24-25.

² Id. at 34:2-21.

the parties outlining what was proposed at the hearing. The letter further invited any Applicant who was not present at the hearing to submit a letter to the Commission identifying whether they wished to proceed with their applications or wait for the service promised by Windstream. The deadline provided by the Commission was June 8, 2018.

On June 6, 2018, Applicant Brooke Marshall submitted one such letter. She indicated her family currently had service through Mainstay out of Henderson Nebraska. Ms. Marshall noted the service was so poor, they often had to rely on their cell phone hotspots. Ms. Marshall further stated her family has been in Windstream's territory for many years. To date, Windstream has not provided service to her family. Ms. Marshall requested continued consideration of her Application.

On June 13, 2018, Windstream filed an objection to any letters submitted in lieu of testimony. Windstream argued such written comments are not contemplated within the statute. Windstream further argued accepting written comments deprives Windstream of the opportunity to cross examine witnesses.

OPINION AND FINDINGS

In a boundary change application, the Commission is required to consider the circumstances of each customer affected by such application as well as the impact on the affected telecommunications company which has not consented.³ The Commission is further required to have a hearing and provide notice to all parties at least thirty days in advance of the hearing if all telecommunications companies involved do not consent to the boundary change.⁴ The Commission fulfilled those obligations in this matter. Hearing was properly noticed to the parties on April 3, 2018. A hearing was held May 23, 2018.

Although there are ten distinct Applicants in this matter, the Applications were bundled as one docket. As noted above, three of the ten Applicants provided testimony at the hearing. One Applicant, Brooke Marshall, submitted a letter summarizing her interest in moving forward with her boundary change application. The Nebraska Supreme Court has found that each Applicant must present evidence to establish their case.⁵

The hearing was properly held in this docket. Windstream had an opportunity to cross examine the three applicants who provided live testimony. Counsel for Windstream only asked one question

³ Neb. Rev. Stat. §86-135 (3).

⁴ Id. at (2).

⁵ *In re Application of Jantzen*, 245 Neb. 81, 511 N.W. 2d 504 (1994).

of one of the three witnesses.⁶ Windstream was presented the opportunity to question each witness and declined that opportunity with two of the three.⁷ Ms. Marshall's letter described her current level of service and why she wished to continue with her application. This is the same type of evidence presented by the three live witnesses. Windstream's argument that it would be harmed by admission of Ms. Marshall's letter as a late filed exhibit because it would be deprived the opportunity to cross examine Ms. Marshall, is insufficient. Windstream elected not to pursue cross examination of most of the witnesses who were present in the hearing.

While each Applicant must present evidence as to why their Application should be granted, neither the statute, Commission rules, nor the *Jantzen* case cited above explicitly require such evidence to come in the form of live testimony. The Commission is required to "consider the circumstances of each customer and the impact to the obligations of any affected telecommunications company which has not consented to the application."⁸

Based upon the forgoing, I find that the objection filed by Windstream is hereby overruled. I further find the letter submitted by Applicant Brooke Marshall shall be admitted as a late filed exhibit and given the weight it deserves when the Commission rules on this matter. Lastly, I find the record should be officially closed in this matter for deliberation by the Commission.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the objection filed by Windstream should be and is hereby overruled.

IT IS FURTHER ORDERED by the Hearing Officer that the letter submitted by Applicant Brooke Marshall is hereby accepted as a late-filed exhibit and will be given the weight it deserves by the Commission.

IT IS FINALLY ORDERED by the Hearing Officer that the record in this matter is officially closed for deliberation by the Commission. No additional exhibits will be accepted in this matter.

⁶ Hrg. Transcr. (May 23, 2018) 11:6-18.

⁷ Id. at 16:18-20; and 19:2-4.

⁸ Neb. Rev. Stat. §86-135 (3)

Application No. C-4960

Page 4

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 6th day
of July, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

A handwritten signature in black ink, appearing to read "Rod Johnson", is written over a horizontal line.

By: _____

Rod Johnson
Hearing Officer