

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4981
of Beau Toben, Doniphan, seeking)
authority to receive advanced)
telecommunications service from) GRANTED
the Doniphan Exchange of)
Hamilton Telephone Company.)
) Entered: December 18, 2018

BY THE COMMISSION:

On April 18, 2018, an application was filed by Beau Toben of Doniphan, Nebraska ("Applicant"), seeking authority to change the exchange boundary to receive advanced telecommunications service from the Doniphan 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 23, 2018.

E V I D E N C E

On July 6, 2018, Windstream filed with the Commission a letter stating that it opposed the application for boundary change. Pursuant to Neb. Rev. Stat. § 86-135, a hearing was held in this matter on November 6, 2018, at the Commission Hearing Room in Lincoln, Nebraska. Beau Toben appeared without counsel. Blake Johnson appeared on behalf of Windstream. No appearance was made by Hamilton. Sallie Dietrich appeared on behalf of Commission staff.

Commission exhibits numbered 1 - 5 were offered and accepted. These exhibits included Exhibit 3, consisting of a letter from Hamilton, stating Hamilton consents to the boundary change, and that it will pay construction and costs for the change. The Applicant offered exhibits numbered 6 and 7, which were accepted without objection. No other exhibits were offered.

Testimony was offered by the Applicant and by Brad Hedrick, President of Operations, on behalf of Windstream. Each party was afforded an opportunity for cross-examination of the other party.

The Applicant testified that he requested the proposed boundary change because he currently does not have access to high speed internet at his house.¹ The Applicant is not currently receiving either phone or internet service from Windstream.²

¹ See Exhibit 1, "Application filed by Beau Toben on 4/18/18."

² Transcript, 6:5-10.

The Applicant further testified that he had sought broadband service from Windstream, and that he understood Windstream was developing a fixed wireless product which would be available to him by the second week of September, 2018.³ The Applicant stated that based on this understanding, he postponed the hearing in this docket.⁴ However, when Applicant contacted Windstream in September, he did not receive a response.⁵ The Applicant then sought for this hearing to be held.

Windstream then offered the testimony of Brad Hedrick, President of Operations. Mr. Hedrick testified that Windstream intended to serve the Applicant with fixed wireless service, but that Windstream has encountered some delays in building the project.⁶ Mr. Hedrick testified that Windstream has encountered some delays and is currently in the process of obtaining a permit through Adams County, and has retained local counsel to resolve a dispute in the process.⁷ Mr. Hedrick stated that Windstream hopes to deploy service by the end of the year.⁸ Mr. Hedrick further stated, when questioned, that this dispute could be litigated in local courts and that there was not a definitive timeline for resolving the dispute at this point.⁹

Mr. Hedrick further testified that Windstream is in the process of deploying fixed wireless products to several regions within Nebraska, including the Hansen exchange relevant to this application, as well as in the Sutton exchange and the Juniata exchange.¹⁰ Mr. Hedrick stated that it would be cost effective for Windstream to build the sites for each of these exchanges at the same time, but that for the Applicant to receive service, only the two towers within the Hansen exchange would need to be built.¹¹ Mr. Hedrick further testified that Windstream intends to deploy service within the Harvard area prior to deploying service to the Hansen exchange.¹²

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

³ *Id.* at 5:13-17; Exhibit 8.

⁴ *Id.* at 11:22 - 12:10.

⁵ *Id.* at 5:13-17.

⁶ See generally Transcript at pp. 15-17.

⁷ *Id.* at 15:13-23.

⁸ *Id.* at 15:23-25.

⁹ *Id.* at 17:13-18, 18:15-19.

¹⁰ *Id.* at 21:3-21.

¹¹ *Id.* at 21:16 - 22:7.

¹² *Id.* at 23:12-18.

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. Beau Toben seeks service to his house, which resides 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 house. 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 significant inconveniences and challenges to Nebraska residents. As such, the length of time the Commission will consider to be reasonable within the context of Neb. Rev. Stat. § 86-135 - 138 is relatively short, and is certainly shorter than the nearly eight months this docket has been pending.

The Commission notes the fact that the Applicant in this docket demonstrated a willingness to wait several months to allow Windstream to provide him with service, but did not in fact receive that service within a stated timeframe. The Commission further notes that Windstream has been on notice that the Applicant would be seeking advanced telecommunications service since April of this year. However, the evidence presented in this docket shows that very little progress in providing service in the Doniphan area has been made since the opening of this docket in April.¹³ Given the date of the application in this matter, that progress on the fixed wireless project has been slow, and that the project has no definitive completion date, the Commission believes the Applicant has not received advanced telecommunications services within a reasonable period of time.¹⁴

¹³ Notably, Windstream has not engaged in any advertising to Doniphan customers regarding broadband products which would be available to them at the completion of this project, and appears to only be communicating plans for this project to customers who have applied for boundary changes. Transcript at 25:23 - 26:9.

¹⁴ Particularly perturbing to the Commission is the statement by Windstream's witness that Windstream intends to prioritize its fixed wireless project in

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-4981

Page 4

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 Application No. C-4981 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 Services, LLC.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 18th day of December, 2018.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION




Chair



ATTEST:









Executive Director

//s//Frank E. Landis

//s//Mary Ridder

Harvard, Nebraska over all others, including the Hansen exchange project, based on a funding award granted on the same date as the hearing in this docket. See Commission Application No. NUSF-99.10, Order, dated Nov. 6, 2018; Transcript at 23:7-18.

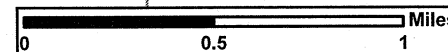
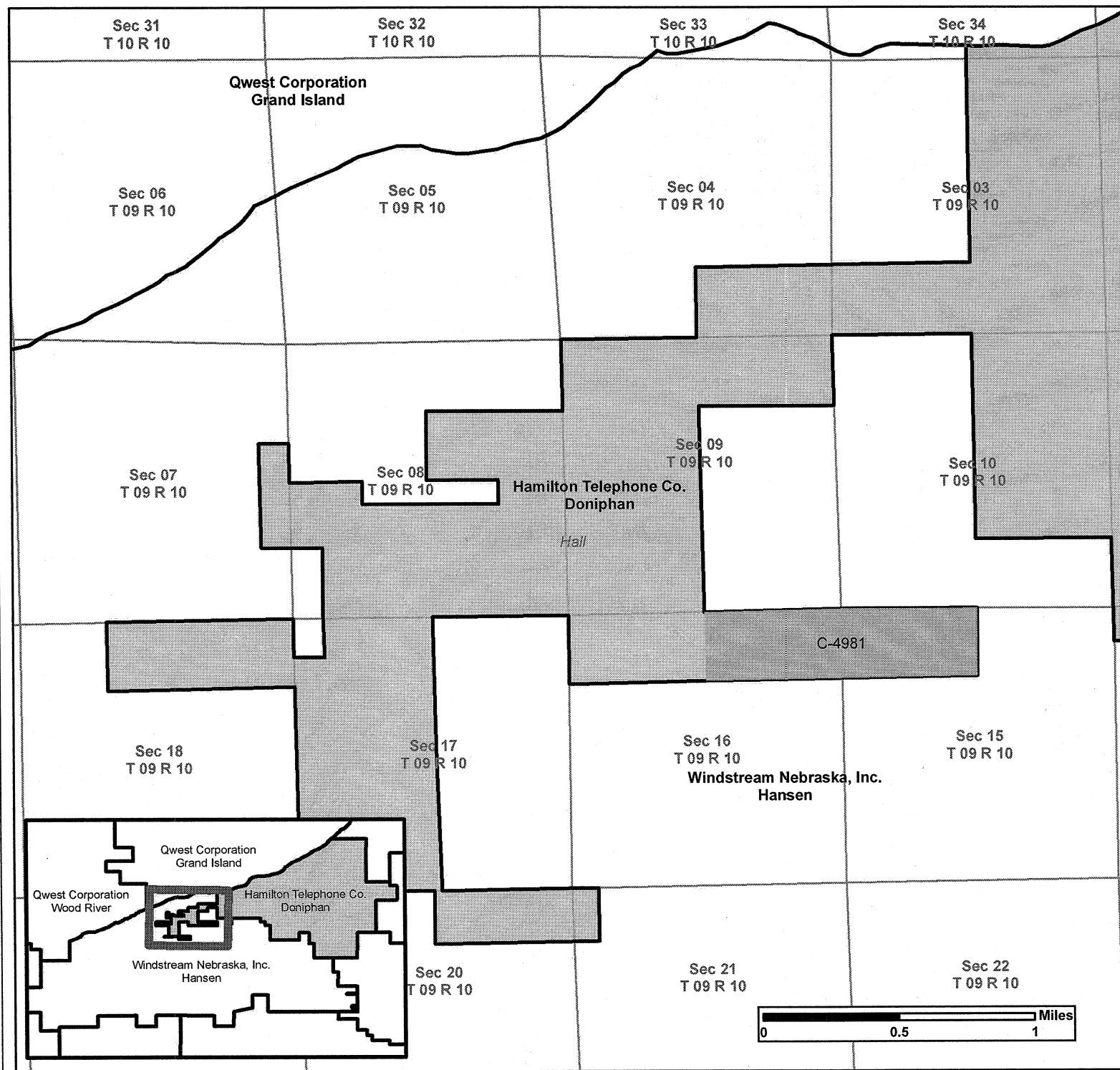
**Hamilton Telephone Co.
Doniphan Exchange**

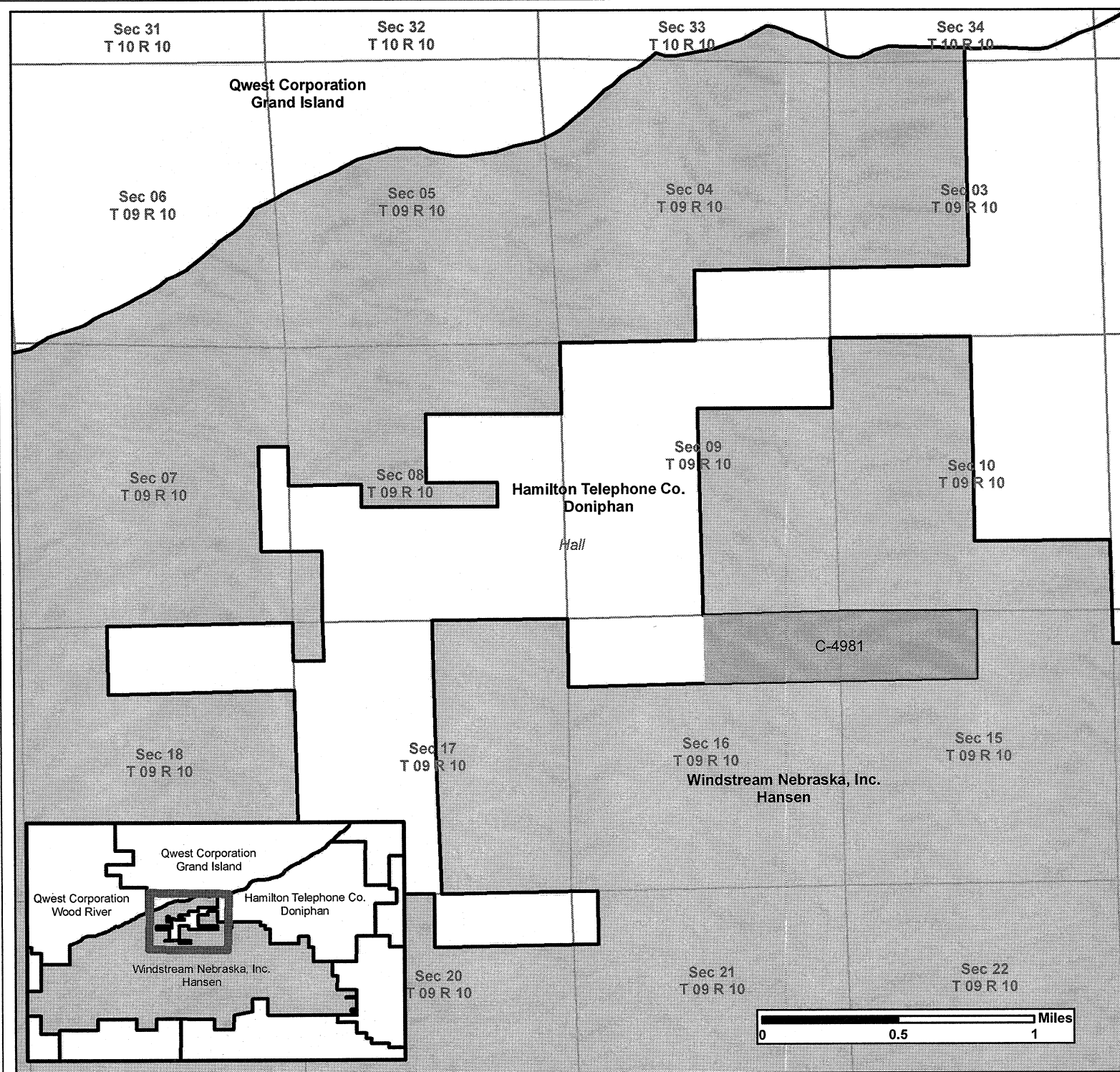
-  Area of Change C-4981
-  Exchange Boundaries
-  New Doniphan Boundary
-  County Boundaries







Doc. Name: 180327_Toben_Beau_BC_WS_Hamilton
Prepared by: NE PSC - Telecommunications

Date: 12/14/2018





**Windstream Nebraska, Inc.
Hansen Exchange**

-  Area of Change C-4981
-  Exchange Boundaries
-  New Hansen Boundary
-  County Boundaries



Doc. Name: 180327_Toben_Beau_BC_WS_Hamilton
Prepared by: NE PSC - Telecommunications

Date: 12/14/2018