

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-5003
of Douglas Rainforth, Doniphan,)
seeking authority to receive)
advanced telecommunications) GRANTED
service from the Doniphan)
Exchange of Hamilton Telephone)
Company.) Entered: April 2, 2019

BY THE COMMISSION:

By Application filed September 6, 2018, Douglas Rainforth of Doniphan, Nebraska, sought authority to receive advanced telecommunications service from the Doniphan exchange of the 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 September 11, 2018.

E V I D E N C E

On November 15, 2018, 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 March 6, 2019 at the Doniphan Event Center, 103 W Pine Street, Doniphan, Nebraska 68832. The application, response, publication, and hearing notice were made part of 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. Sallie Dietrich and Shana Knutson appeared on behalf of Commission staff.

Commission exhibits numbered 1 - 10 were offered and accepted. These exhibits included Exhibit 1, consisting of Mr. Rainforth's application, and Exhibit 8, including a letter from Hamilton stating that Hamilton consents to the boundary change, and that it will pay construction and costs for the change. Additionally, Exhibit 11 was offered by the Applicant in C-5004, and was accepted into the record. Following the hearing, on March 27, 2019, counsel for Windstream submitted a letter stating Windstream's position regarding Exhibit 11, which was accepted as late-filed Exhibit 12.

Mr. Rainforth testified in support of his application. Mr. Rainforth sought a boundary change for his rental property located at 7601 Rosedale Road, Doniphan, Nebraska. He testified that broadband service has become a vital part of life and the marginal nature of the current service has presented a problem for his family and current tenants.¹ He testified he moved out of the home

¹ See Testimony of Douglas Rainforth, Hearing Transcript (TR) 9:10-14.

located in Windstream's territory and currently rents the home, however, it was difficult to find renters because of the lack of broadband availability to that residence.²

Mr. Rainforth indicated that he contacted Windstream on prior occasions and was informed that there was no intention to provide this location with broadband service.³ He stated that Windstream has been in the area since 2006 when they took over from Alltel.⁴ He also stated that Windstream has had the opportunity to provide broadband internet service to the area and has not done so.⁵ When Windstream took over the Hansen Exchange, he signed up for a one-rate phone and broadband internet plan.⁶ At that time, Mr. Rainforth testified, he was told that DSL internet service would be available to his address in the next six to twelve months.⁷ He stated that was approximately 12 years ago.⁸ In addition, he testified that he called Windstream customer service on a regular basis asking when they were going to provide him service. He testified that about six or seven years ago a Windstream representative told him that they had no plans to provide broadband service and not to expect anything in the future.⁹

In addition to not having broadband service, Mr. Rainforth stated, the phone line service and maintenance has deteriorated. Since he has no reception for cellular service at his house he has relied on landline service for communication.¹⁰ Any number outside of the Hansen Exchange is long distance. He has had to pay for long distance plans to make calls to communities of interest and his county seat.¹¹ Regarding maintenance, he testified, there are many broken wooden posts in the area that support the copper connections. The broken posts and broken covers leave the wires exposed to the elements and rodents. He stated he is aware of other service issues that have not been fixed by Windstream.¹²

Mr. Rainforth testified that he had tried a fixed wireless product offered by another carrier but that he was not happy with its performance and speeds.¹³ Most days he said, he was only able

2 *Id.* at 9:15-18.

3 *See id.* at 10:2 through 11:21.

4 *See id.*

5 *Id.* at 10:4-6.

6 *See id.* at 10:7-12.

7 Mr. Rainforth testified he signed a contract for DSL service but that service was never provided. He requested a copy of the contract he signed but he could not get a copy from Windstream.

8 *See TR* 10:7-12.

9 *See id.* at 10:23 through 11:19.

10 *See id.* at 11:22-24.

11 *See id.* at 12:1-6.

12 *See id.* at 12:7-11.

13 *See id.* at 13:23 through 14:14,

to receive broadband speeds of around 1.5 Mbps.¹⁴ Evenings and weekends were worse because of congestion.¹⁵ There were times where he lacked service altogether.¹⁶ Because the fixed wireless service was not reliable, he did not want another unreliable fixed wireless service.¹⁷ He further stated that after digging into some of the technical aspects of Windstream's proposal, he could say with confidence that the system would not work as advertised.¹⁸

Mr. Rainforth testified that has been waiting 12 plus years for Windstream to offer him broadband service. Considering the track record of maintenance issues he lacked confidence in Windstream's ability to offer the service and fix the service.¹⁹ He added to that the concern that they would be able to provide good service while they are undergoing Chapter 11 Bankruptcy proceedings.²⁰

On the other hand, Hamilton was willing to offer a fiber-based broadband service. Mr. Rainforth testified that Hamilton's service would be the best and most reliable service.²¹

Upon questioning, Mr. Rainforth testified that he and his tenants need Internet service for their business and for school needs. His tenant has a child in school and Internet access is needed for school work.²² He would like at least 20 Mbps speeds but faster would be better. Mr. Rainforth further testified he was not aware Hamilton could build fiber to that location without a boundary change.²³ He also testified that he would be satisfied with speeds of up to 100 Mbps at that location.²⁴

Mr. Brad Hedrick, Regional President of Operations for Windstream for Nebraska, Iowa, Minnesota, Missouri and Arkansas, testified in opposition to the application. Mr. Hedrick testified that Windstream does intend to serve these customers with fixed wireless technology and propose to do that fairly soon. He stated that fixed wireless is a technology that Windstream came upon in early 2018 where they discovered that there had been dramatic improvements in fixed wireless technology. Windstream is using a

14 See *id.*

15 See *id.*

16 See *id.*

17 See *id.* at 19:1-7; see also TR 20:7-14.

18 See *id.* at 17:10-19.

19 See *id.*

20 See *id.* at 17:21-25.

21 See *id.* at 21:2-8.

22 See *id.* at 31:22 through 32:6.

23 See *id.* at 32:7-9.

24 See *id.* at 32:11-15.

company called RADWIN.²⁵ They can provide 100 Mbps down and 8 Mbps up and this technology uses something called beamforming which helps mitigate some of the interference issues we've heard about in the older fixed wireless technology.²⁶

Mr. Hedrick further testified that Windstream did encounter some delays last year.²⁷ It had intended to have service operational in mid-2018 when the FCC changed the rules on them with regard to an environmental impact study and that slowed down these projects.²⁸ Windstream also encountered issues with Adams County when we actually applied for the permits to put up the poles.²⁹ Windstream has struggled with those issues getting resolved with Adams County which caused them to revise how they propose to provide service.³⁰ Windstream was in the process of negotiating a lease with American Tower Company for one of their sites and one of the Hall County sites.³¹ Windstream estimated that both of these sites would be complete by the end of April.³² Mr. Hedrick stated they have delivered poles for their Sutton and Harvard projects. Those are currently laying on the ground where they are putting those up. Windstream is estimating completion of those sites by mid-April.³³ Overall, Windstream intends to provide service to 887 households in the Hansen, Harvard, and Sutton areas.³⁴

Mr. Hedrick further testified that nothing prevents Hamilton from building fiber to provide broadband service to these customers today. The boundary change process is not required to provide broadband service.³⁵

Upon questioning by the Commissioners, Mr. Hedrick testified that the long distance charges are the historical way the telephone service developed. There was local calling within a given exchange and in some cases there were extended area service relationships.³⁶ Mr. Hedrick also answered questions about Windstream's Chapter 11 filing. He testified that the bankruptcy court authorized it to go ahead and use 400 million of the one billion dollar line of credit.³⁷ The big issue will be what they call pre-petition

25 See Testimony of Brad Hedrick, TR 95:20-25.

26 See *id.* at 95:20 through 96:5.

27 See *id.* at 95:6-18.

28 See *id.*

29 *Id.*

30 *Id.*

31 See *id.* at 96:19-24.

32 See *id.*

33 See *id.* at 96:19 through 97:6

34 See *id.* at 97:8-13.

35 See *id.* at 98:14-24.

36 See *id.* at 101:23 through 102:5.

37 See *id.* at 105:1-6.

invoices from vendors as those will have to be approved for payment by the bankruptcy court judge.³⁸

Mr. Hedrick also testified they had not reached out to any of the applicants except for Mr. Rainforth.³⁹ They have not started marketing this service.⁴⁰ He further stated that a vast majority of people would say they wanted fiber but it was just not feasible to provide fiber to everyone.⁴¹

Mr. Hedrick agreed that Windstream initially stated it would have service available May of 2018, then August, then November.⁴² He testified that Windstream encountered the rule changes by the Federal Communications commission and unexpected difficulties with Adams County.⁴³ Windstream did not have any fixed wireless sites active in Nebraska.⁴⁴ After the towers are erected, Windstream would need to place the equipment at the site and interconnect it with backhaul. Mr. Hedrick agreed that there may be instances where someone would not be able to get the fixed wireless service based upon where they are located. However, it thought it would be an extremely low probability.⁴⁵

Upon further questioning, Mr. Hedrick testified that the age of the plant in that exchange would be mid-1980s.⁴⁶ Windstream's fixed wireless service would not be a local exchange service. Windstream would not file a tariff and the Commission would not have the ability to oversee the service quality provided by that service.⁴⁷ Mr. Hedrick testified that Windstream would be able to provide its fixed wireless service in that exchange irrespective of a grant of the application and change in the local exchange boundary.⁴⁸

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.⁴⁹ The cost of that service is approximately \$89.95, which is a cost when bundled.⁵⁰ Hamilton's second tier would be 250 Mbps download by 50

38 *Id.*

39 *See id.* at 106:10-13.

40 *See id.* at 106:21-25.

41 *See id.* at 108:20-25.

42 *See id.* at 113:1-7.

43 *See id.* at 113:12-18.

44 *See id.* at 114:12-19.

45 *See id.* at 115:2-19.

46 *See id.* at 118:6-17.

47 *See id.* at 120:7 through 121:6.

48 *See id.* at 122:6-12

49 *See* Testimony of Pat Shaw, TR 125:2-22.

50 *Id.*

Mbps upload.⁵¹ Hamilton's third tier is 50 Mbps download by 25 Mbps upload.⁵² Hamilton currently has extended area service agreements in place in the Doniphan Exchange which means subscribers can call the Hansen Exchange and with Grand Island without incurring long distance charges.⁵³

Mr. Shaw further testified that Mr. Rainforth lives approximately two and a half miles from Hamilton's boundary. He testified that service could be up and running within 60 days.⁵⁴

In response to questions from Commissioners, Mr. Shaw stated Hamilton could provide broadband service without a boundary change, however, without having universal service funds available to it as the incumbent carrier, it does not make a business case for Hamilton to make that investment and provide that service.⁵⁵ A boundary change would be necessary in order to obtain access to those resources.

Upon questioning from staff, Mr. Shaw testified that Hamilton consented to the application.⁵⁶ In terms of construction cost for the fiber build, if the boundary change were approved, there would be no direct cost to the applicant.⁵⁷

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 March 6, 2019, in Doniphan, Nebraska.⁵⁸

Hamilton and Windstream are local exchange carriers holding certificates of public convenience and necessity to provide local exchange service in their respective territories. Mr. Rainforth seeks service to his rental house, which is located within the boundary of Windstream's Hansen Exchange, and has requested a

51 *Id.*

52 *Id.*

53 *See id.* at 126:1-6.

54 *See id.* at 128:1-5.

55 *See id.* at 129:1-19.

56 *See id.* at 130:1-7.

57 *See id.* at 130:9-14.

58 Notice of the hearing was mailed to the interested parties on or around January 7, 2019.

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 rental 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.

In considering this application, we weigh the testimony offered by Mr. Rainforth 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 September of the previous 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 September. We further find Windstream's testimony that it plans to provide advanced telecommunications service to this area by the end of April lacks sufficient credibility. Windstream has previously made claims that it would have its broadband service operative in the Doniphan area in the summer of 2018, only to experience several delays.⁵⁹ Given the date of the application in this matter and that progress on the fixed wireless project has been slow, the Commission believes the Applicant has not received, and will not receive, advanced telecommunications services within a reasonable period of time.

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

⁵⁹ 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); 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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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 2nd day of April, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Cystal Broades
Lee J. Adams
Donna
Tim Schram

Mary Redder





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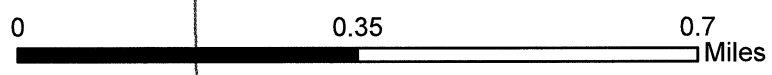
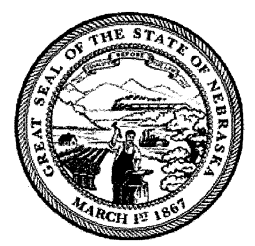
ATTEST:

Shelley H. Hill
Executive Director

Attachment A (1 of 2)

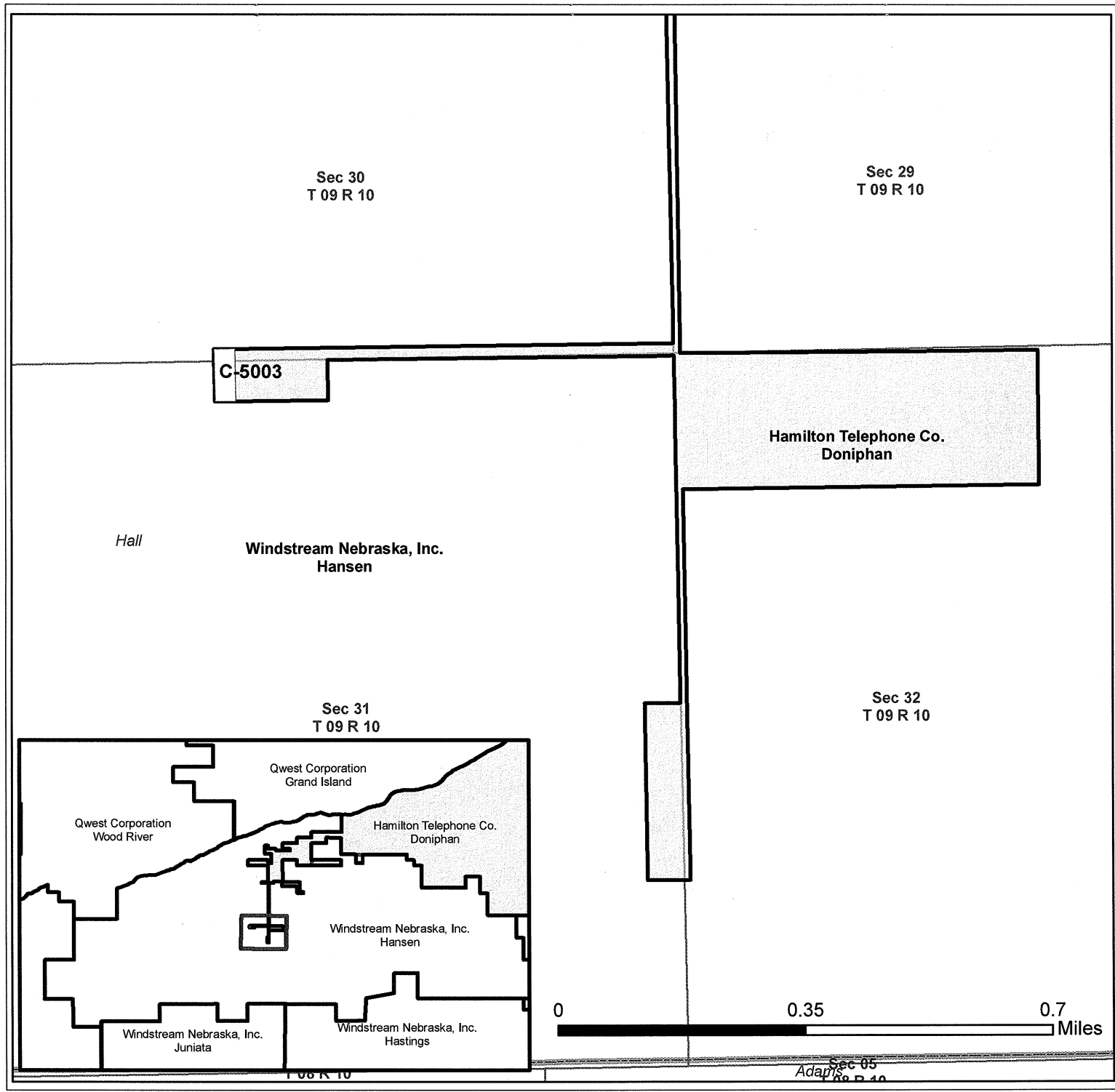
Hamilton Telephone Co.
Doniphan Exchange

-  Area of Change - C-5003
-  New Doniphan Boundary
-  New Exchange Boundaries
-  County Boundaries







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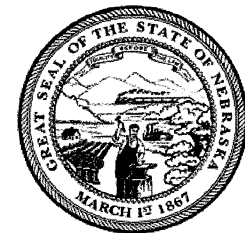
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Attachment A (2 of 2)

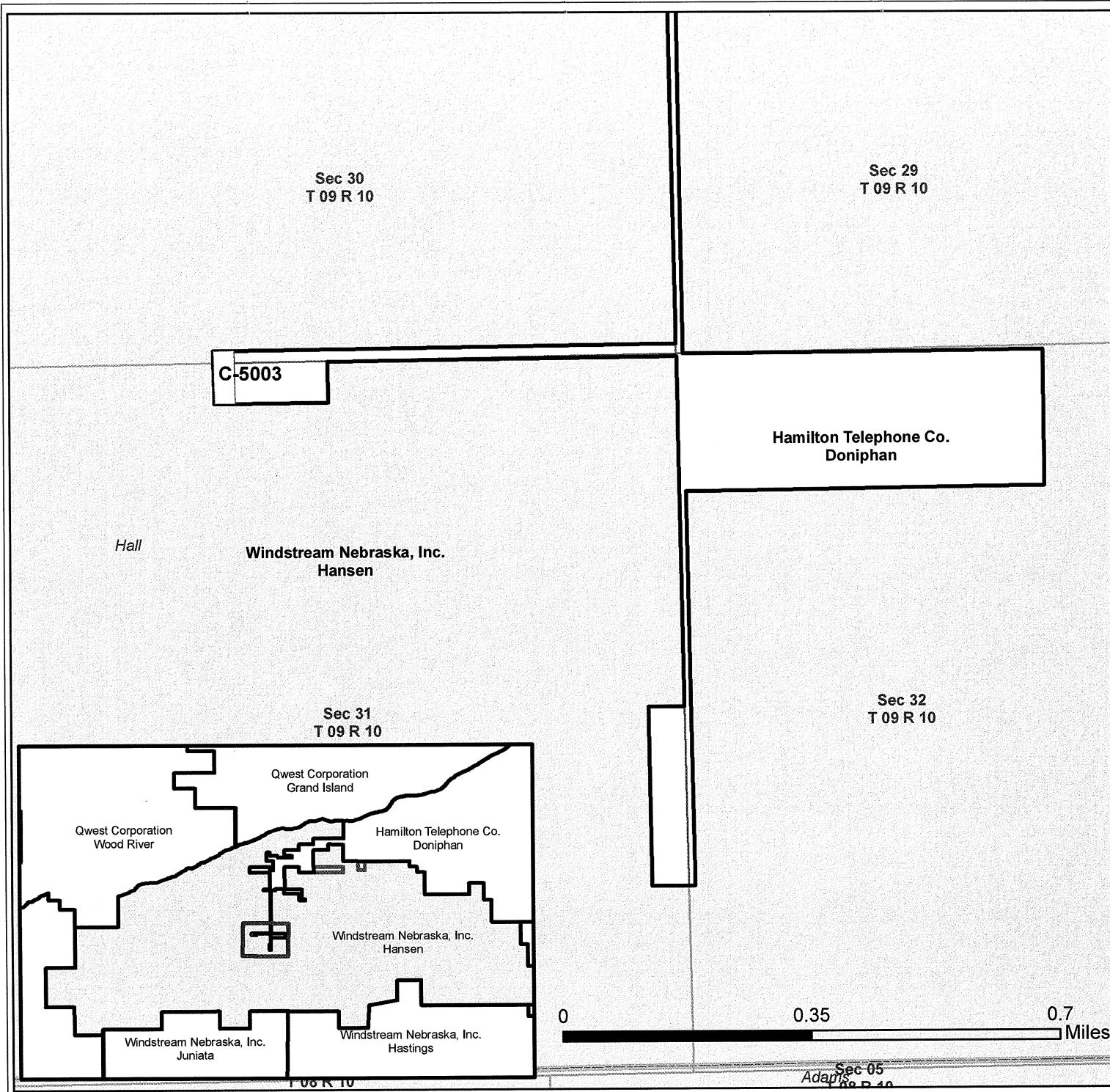
Windstream Nebraska, Inc.
Hansen Exchange

-  Area of Change - C-5003
-  New Hansen Boundary
-  New Exchange Boundaries
-  County Boundaries



Doc. Name: 190329_Doug_Rainforth_BC_WS_Hamilton
Prepared by: NE PSC - Telecommunications

Date: 4/1/2019



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