

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-5005
of Keith and Carol Haussler,)
Hastings, seeking authority to)
receive advanced) GRANTED
telecommunications service from)
the Doniphan Exchange of)
Hamilton Telephone Company.) Entered: April 2, 2019

BY THE COMMISSION:

By Application filed September 21, 2018, Keith and Carol Haussler of Hastings, 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 Communications (Windstream). Notice of the Application appeared in The Daily Record, Omaha, Nebraska, on September 24, 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 3, consisting of Mrs. Haussler'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.

Mrs. Carol Haussler testified in support of the application. Mrs. Haussler sought a boundary change for her residence located at 15612 S. 70th Road, Hastings, Nebraska. She testified that she moved into her residence about ten years ago and had Windstream

landline service.¹ Approximately four or five years ago, they started having a lot of interference and static on the phone line.² They would call Windstream and they would do something and then it would be better.³ Then, approximately three years ago, the phone line had static or they would have no dial tone at all and she found out that the telephone line had come down and was broken.⁴ Instead of burying the line, Windstream strung it across the road and then down their ditch.⁵ The phone line was laying on top of the ditch.⁶ If it rained or a road grater or something hit it, they would have no telephone service.⁷ Mrs. Haussler testified that this went on for some time.⁸ The repairman was out there frequently repairing it.⁹ Mrs. Haussler testified that they finally gave up about two and one half years ago because they would not fix it.¹⁰

Presently, Mrs. Haussler testified, they have internet service through Glenwood, and it too is not sufficient.¹¹ She stated that sometimes they have an Internet connection and sometimes they do not.¹² She testified that it would be really nice if they would be able to get telephone, internet and TV all together and have it be more reliable.¹³ She testified that they have Verizon cell service but that her husband cannot place a call from the house. He must go outside to receive a signal.¹⁴

Upon questioning, Mrs. Haussler testified she thought the telephone line was laying in the ditch for over a year.¹⁵ She called Windstream at least a dozen times during that period because of service problems.¹⁶

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

1 See Testimony of Carol Haussler, Hearing Transcript (TR) 52:7-14.

2 See id.

3 See id.

4 See id. at 52:15-25.

5 Id.

6 Id.

7 Id.

8 See id. at 53:1-5.

9 See id.

10 See id.

11 See id. at 53:6-13.

12 See id.

13 See id. at 53:14-20

14 See id.

15 See id. at 54:6-12.

16 See id. at 54:16-20.

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 company called RADWIN.¹⁷ 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.¹⁸

Mr. Hedrick further testified that Windstream did encounter some delays last year.¹⁹ 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.²⁰ Windstream also encountered issues with Adams County when we actually applied for the permits to put up the poles.²¹ Windstream has struggled with those issues getting resolved with Adams County which caused them to revise how they propose to provide service.²² 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.²³ Windstream estimated that both of these sites would be complete by the end of April.²⁴ 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.²⁵ Overall, Windstream intends to provide service to 887 households in the Hansen, Harvard, and Sutton areas.²⁶

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.²⁷

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

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

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

20 See *id.*

21 *Id.*

22 *Id.*

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

24 See *id.*

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

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

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

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.²⁸ 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.²⁹ The big issue will be what they call pre-petition invoices from vendors as those will have to be approved for payment by the bankruptcy court judge.³⁰

Mr. Hedrick also testified they had not reached out to any of the applicants except for Mr. Rainforth.³¹ They have not started marketing this service.³² 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.³³

Mr. Hedrick agreed that Windstream initially stated it would have service available May of 2018, then August, then November.³⁴ He testified that Windstream encountered the rule changes by the Federal Communications Commission (FCC) and unexpected difficulties with Adams County.³⁵ Windstream did not have any fixed wireless sites active in Nebraska.³⁶ 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.³⁷

Upon further questioning, Mr. Hedrick testified that the age of the plant in that exchange would be mid-1980s.³⁸ 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

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

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

30 *Id.*

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

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

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

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

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

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

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

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

service.³⁹ 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.⁴⁰

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.⁴¹ The cost of that service is approximately \$89.95, which is a cost when bundled.⁴² Hamilton's second tier would be 250 Mbps download by 50 Mbps upload.⁴³ Hamilton's third tier is 50 Mbps download by 25 Mbps upload.⁴⁴ 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.⁴⁵ Mr. Shaw further testified that service could be up and running within 60 days.⁴⁶

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.⁴⁷ 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.⁴⁸ In terms of construction cost for the fiber build, if the boundary change were approved, there would be no direct cost to the applicant.⁴⁹

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

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

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

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

42 *Id.*

43 *Id.*

44 *Id.*

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

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

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

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

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

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.⁵⁰

Hamilton and Windstream are local exchange carriers holding certificates of public convenience and necessity to provide local exchange service in their respective territories. Mrs. Haussler seeks service to her residence which is located within the boundary of Windstream's Hansen Exchange, and has requested a boundary change so that she may receive advanced telecommunications service from the Doniphan Exchange of Hamilton. Mrs. Haussler has also pointed to a history of service quality issues as a reason for wanting to change service providers.

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 advanced telecommunications service at her residence. 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 the Applicant and that 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 find Windstream's testimony that it plans to provide advanced telecommunications service to this area by the end of April lacks sufficient credibility. Windstream previously made

⁵⁰ Notice of the Hearing was mailed to the interested parties on or around January 7, 2019.

claims that it would have its broadband service operative in the Doniphan area in the summer of 2018, only to experience several delays.⁵¹ 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 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.

⁵¹ 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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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 2nd day
of April, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Crystal Luoades

Paul Jones

Don Williams

Tim Schram

Mary Riddell

Chair





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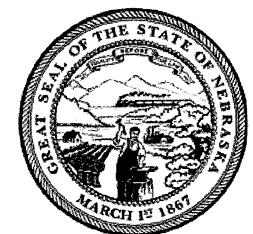
Michael R. K. D.

Executive Director

Attachment A (2 of 2)

Windstream Nebraska, Inc. Hansen Exchange

-  Area of Change - C-5005
-  New Hansen Boundary
-  New Exchange Boundaries
-  County Boundaries



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

Date: 4/1/2019

