

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-5007
of Troy Jones, Doniphan, seeking)
authority to receive advanced)
telecommunications service from) GRANTED
the Doniphan Exchange of)
Hamilton Telephone Company.)
) Entered: April 2, 2019

BY THE COMMISSION:

On September 26, 2018, an application was filed by Troy Jones 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 September 28, 2018.

E V I D E N C E

On November 15, 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 March 6, 2019, at the Doniphan Event Center in Doniphan, Nebraska, concurrently with hearings in C-5003, C-5004, C-5005, C-5010, and C-5017. Troy Jones appeared without counsel. 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 4, consisting of Mr. Jones' 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.

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

The Applicant testified that he requested the proposed boundary change because has been unable to receive a good wireless

signal at his home.¹ The Applicant stated that he needs access to the internet for his and his wife's work, as well as for his child's school.² The Applicant further testified that he has an infant grandchild who needs breathing treatments that require reliable internet, and because the Applicant does not have internet service at his home, his grandchild cannot stay overnight with the Applicant.³ The Applicant uses a cell phone provided by Verizon for his phone needs, and does not use a land line from Windstream because of the long distance fees which would attach to calls to locations such as Hastings.⁴

Windstream then offered the testimony of Brad Hedrick, President of Operations. Mr. Hedrick testified that Windstream opposes the application because it intends to serve the Applicant with fixed wireless service, but that Windstream has encountered some delays in building the project. Mr. Hedrick testified that Windstream has revised its original plans due to zoning issues within Adams County, and hopes to build a tower in Hall County instead.⁵ Mr. Hedrick testified that Windstream intends to have completed its Hansen Exchange project completed by early April 2019.⁶

Upon questioning, Mr. Hedrick further testified that Windstream has filed for Chapter 11 bankruptcy.⁷ Mr. Hedrick stated that Windstream intends to continue going forward with its ongoing plans, and has received a \$1 billion line of credit in order to continue operations while Windstream works through the bankruptcy process.⁸

Upon further questioning, Mr. Hedrick agreed that Windstream initially stated it would have service available in the Doniphan area in May of 2018, then changed that date to August, and then to November.⁹ He testified that these delays are due to rule changes by the Federal Communications Commission, as well as zoning difficulties in Adams County. He further testified that due to these zoning difficulties, Windstream has changed its original site plans and will be using an existing site in Adams County and a new site in Hall County to provide coverage to the Doniphan area.¹⁰ Mr. Hedrick further testified that at the time of the

¹ Transcript at 66.

² *Id.* at 65.

³ *Id.* at 65-66.

⁴ *Id.* at 70.

⁵ *Id.* at 96.

⁶ *Id.*

⁷ *Id.* at 103-105.

⁸ *Id.*

⁹ *Id.* at 113.

¹⁰ *Id.* at 113-114.

hearing, Windstream did not have any fixed wireless sites active in Nebraska.¹¹

Hamilton then offered the testimony of Pat Shaw, General Manager. Mr. Shaw testified that Hamilton does not object to the application, and is willing to build out service to the Applicant in this docket at no direct cost to him.¹² Mr. Shaw then testified that Hamilton intends to offer service options to this Applicant at speeds of 1G download / 250 mbps upload for \$89.95 per month, or 250 mbps download / 50 mbps upload for \$64.95 per month, or 50 mbps download / 25 mbps upload for \$49.95 per month.¹³ Mr. Shaw further testified that Hamilton anticipates that it will be able to serve applicants within the Doniphan area within sixty days of the approval of the boundary change.¹⁴ Mr. Shaw also noted that Hamilton currently has extended area service agreements in place in the Doniphan Exchange, meaning subscribers can call the Hansen Exchange, and to the city of Grand Island, without incurring long distance charges.¹⁵

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

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. Troy Jones 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

¹¹ *Id.* at 114.

¹² *Id.* at 130.

¹³ *Id.* at 125.

¹⁴ *Id.* at 127-128.

¹⁵ *Id.* at 126.

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 by the affected telecommunications companies. The Commission notes the fact that Windstream has been on notice that the Applicant would be seeking advanced telecommunications service since October 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 October.

The Commission finds that Windstream's testimony that it plans to provide advanced telecommunications service to the Doniphan 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.¹⁶ 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.

¹⁶ 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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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-5007 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 2nd day of April, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Crystal Snodgrass

Mary Riddle

Chair

Pat Jones

Don Williams

ATTEST:





Tim Schram

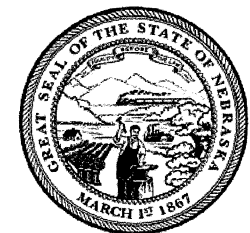
Phil H. S.

Executive Director

Attachment A (1 of 2)

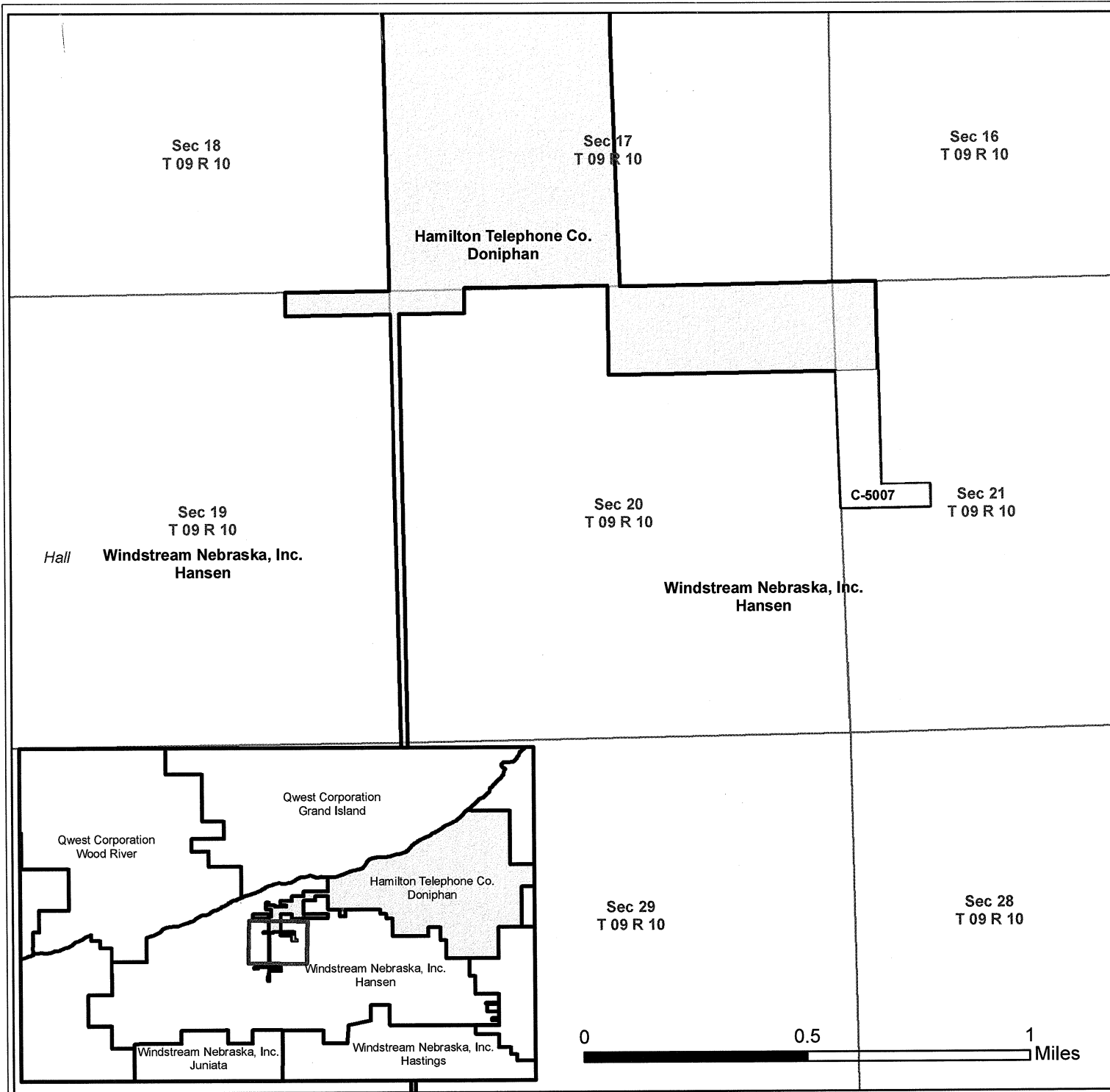
Hamilton Telephone Co. Doniphan Exchange

-  Area of Change - C-5007
-  New Doniphan Boundary
-  New Exchange Boundaries
-  County Boundaries







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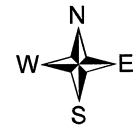
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Attachment A (2 of 2)

**Windstream Nebraska, Inc.
Hansen Exchange**

-  Area of Change - C-5007
-  New Hansen Boundary
-  New Exchange Boundaries
-  County Boundaries



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