

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)
Windjammer Communications LLC for) Case No. KA-2009-0034
Video Service Authorization)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by counsel, and for its recommendation states:

1. On July 28, 2008, Windjammer Communications LLC pursuant to § 67.2679.7 RSMo 2000 (Cum. Supp. 2007) filed an application requesting video service authorization in the City of Marshall, Township of Chillicothe, Livingston County, Rich Hill Township, and Dunklin County. On August 8, 2008, Windjammer filed an Amended Application removing the City of Marshall from its request.

2. As noted, Windjammer is requesting video service authorization in the Township of Chillicothe and Rich Hill Township. These two townships are located in Livingston County.¹ Townships are defined as political subdivisions for some purposes. For example, a township is defined as a political subdivision for the purpose of entering into a cooperative agreement with a municipality or another political subdivision. See §§ 70.210 and 70.220 RSMo. Also, a township is defined as a political subdivision because it has the power to tax. See Art IX, § 15, Mo. Const. and §69.290(3) RSMo. A township is not, however, a political subdivision as defined by § 67.2677(11). That statute defines “political subdivision” as “a city, town, village, county.”

¹ Windjammer is not requesting video service authorization for either the City of Chillicothe, which is located in Livingston County, or for the City of Rich Hill, which is located in Vernon and Bates Counties.

3. The term “political subdivision” is used throughout the 2007 Video Services Providers Act. The Act is codified at sections 67.2675 to 67.2714 RSMo 2000 (Cum. Supp. 2007).

A “franchise entity” is “a political subdivision that was entitled to require franchises and impose fees on cable operators on the day before the date of the enactment of sections 67.2675 to 67.2714, provided that only one political subdivision may be a franchise entity with regard to a geographic area.” § 67.2677(5). A “public right-of-way” is “the area of real property in which a political subdivision has a dedicated or acquired right-of-way interest in the real property, including the area on, below, or above the present and future streets, alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired as right-of-way and utility easements dedicated for compatible uses. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service.” § 67.2677(12).

The Commission shall issue a video service authorization allowing a video service provider to offer video service in the franchise area of each political subdivision set forth in the application within thirty days of receipt of a [properly filled out] application. § 67.2679.7. The video service authorization issued by the Commission shall contain a grant of authority to provide video service in the franchise area of each political subdivision set forth in the application. § 67.2679.8(1). At the time that any video service authorization is issued by the Commission, it shall immediately make such issuance public by posting information on its web site relating to the video service authorization, including specifically all political subdivisions covered by that authorization. § 67.2679.10.

4. Section 229.100 RSMo 2000 reads:

No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefore; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.

5. The Staff submits that Section 229.100 makes Livingston County, acting through its county commission, the one political subdivision as described by § 67.2677(5) that on the day before the date of the enactment of the Act was the franchise entity with regard to all the geographic areas of Livingston County located outside of any cities, towns and villages.

6. Because a township is not a political subdivision as defined by § 67.2677(11), the Staff recommends that the Commission should deny Windjammer's request for video service authorization in the Township of Chillicothe and Rich Hill Township. The Staff submits, however, that the grant of a video service authorization to Windjammer for Livingston County would allow Windjammer to provide video service in the Township of Chillicothe and Rich Hill Township and to construct a video service network along, across, or on public rights-of-way and of the Township of Chillicothe and Rich Hill Township.

7. The Staff states that the Amended Application and the attached affidavit comply with the filing requirements set forth in § 67.2679.7.

WHEREFORE, the Staff recommends the Commission grant Windjammer video service authorization for Livingston County and for Dunklin County.

Respectfully submitted,

/s/ William K. Haas

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 14th day of August 2008.

/s/ William K. Haas