BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **WIDEOPEN WEST COLORADO, LLC,** v. Respondent: **JEFFERSON COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: James D. Butler, Esq. & Richard F. Rodriguez, Esq. Holme Roberts & Owen LLP Address: 1700 Lincoln Street, Suite 4100 Denver, Colorado 80203-4541 Phone Number: (303) 861-7000 Attorney Reg.: 6325 & 25105	**Docket Number: 40405**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on December 18, 2003, Karen E. Hart, MaryKay Kelley and Debra A. Baumbach presiding. Petitioner was represented by James Butler, Esq. and Richard F. Rodriquez, Esq. Respondent was represented by Martin McKinney, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Jefferson County Schedule No. 976855

Petitioner is protesting the 2002 actual value of the subject property: business personal property located throughout Lakewood and Denver, Colorado.

ISSUES:

Petitioner:

Petitioner contends that all three approaches to value were considered in the valuation. During the assessment time frame, there was a large downturn in market conditions. These conditions resulted in many similar companies going out of business and liquidating their assets. The Respondent did not consider or adjust for economic obsolescence in the valuation of the personal property.

Respondent:

Respondent contends that all three approaches to value were considered. However, the cost approach was considered to be the most reliable approach for the subject personal property. All of the factors affecting the subject were considered and the guidelines set forth by the Division of Property Taxation were followed.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Mark Haverkate of Champion Broadband, testified that he is one of the owners and operator of a cable system known as WideOpen West that serves portions of the Lakewood and Denver market areas.

2. Mr. Haverkate testified that telecommunication regulations were changing and it became legal for new network systems to compete with existing systems. This opened the market area for competing systems. There was a high demand for high-speed Internet service companies and WideOpen West was formed in 1999 to help meet those demands.

3. Mr. Haverkate testified that cable industries define an overbuilt cable system as one cable system that is built over an existing system. The intended business plan for WideOpen West was to obtain franchises for the Denver metropolitan area and surrounding areas. There were enough funds raised through seed equity investors to obtain the franchises, get the team in place and build the headend and launch system. It was going to be necessary to raise additional funds to build out the complete network. The franchises were obtained in late 2000 and construction of the model began in late 2000. The first customer was activated in the spring of 2001.

4. Mr. Haverkate described the basic components of the cable system. He testified that it was necessary to design and construct a superior quality system. In order to compete in the marketplace, it was also necessary to have a system that could accommodate a larger customer base.

It was the consensus that there was going to be a high demand in the area for Internet subscribers and they ordered the highest capacity fiber optic cable available for the system. There was a high demand for fiber optics, which subsequently resulted in a shortage and made it very expensive to purchase.

5. Mr. Haverkate testified that they intended to construct the highest capacity network possible. The electronic cable installed was the most superior in the cable industry at the time. The actual cost per mile was much higher than traditional cable. The planned cost for construction of the network was estimated to be $2,300.00 per subscriber.

6. Mr. Haverkate further testified that by the first quarter of 2001, additional capital was needed. However, the plans changed as a result of changes in market conditions. There were numerous telecommunication, DSL and Internet companies going out of business. Raising additional capital was going to be impossible. Construction continued at a slower pace during 2001 and stopped completely by the end of 2001. It became quite clear that, with the changing market conditions and the inability to obtain additional funding, they were not going to be able to continue with their original business plan.

7. Mr. Haverkate testified that the system was not big enough to generate any money on its own and that no additional funding was available. They decided to purchase an existing cable company, known as Ameritech, with the money that was left. This cable company was much larger and had a larger customer base. The company was purchased for $217,300,000.00 or $700.00 per subscriber, with a customer base of approximately 300,000. This was more cost-effective than the current cost of new construction of $2,300.00 per subscriber.

8. Mr. Haverkate testified that further construction of the WideOpen West system was halted, and that construction and marketing personnel were laid off. The hours of operation were scaled back and they kept just enough people to provide installations and repair. The main objective was to keep the monthly losses down and possibly initiate a sale of the company. If that did not work, then liquidation might be considered.

9. Under cross-examination, Mr. Haverkate testified that WideOpen West was formed in 1999. They established offices and started hiring personnel in the beginning of 2000. They actually began acquiring personal property in the second half of 2000, and the remainder of the equipment was acquired during 2001. During the last half of 2000 and leading into 2001, additional funding could not be obtained from the capital markets. This clearly indicated that the business plan could not move forward.

10. Under redirect, Mr. Haverkate testified that to the best of his knowledge, the sale of Ameritech was the only sale of an overbuilt system in 2001. The parent company of Ameritech was Southwestern Bell Corporation, the largest telephone company in the country. Ameritech was experiencing financial distress.

11. Under recross-examination, Mr. Haverkate testified that during the years WideOpen West was in operation, it was in direct competition with AT&T Broadband, whose stock was going downward by 40 to 50 percent.

12. Petitioner's witness, Mr. John Sanders, a principal of Bond and Pecaro, presented the following indicators of value:

Market:	$ 804,000.00
Cost:	$1,061,450.00

13. Mr. Sanders testified that he inspected the subject's assets in late November 2003. The assets are comprised of a headend facility and approximately 45 miles of an aerial distribution plant. This is typically cable mounted on poles, with 18 miles of underground distribution plant and related assets necessary to serve approximately 1,195 subscribers.

14. Mr. Sanders testified that all three approaches were considered in the valuation. The assets are based on their value in operation as an operating cable system. Based on the subject's historical and projected losses, he determined that there was not enough reliable data to support a value conclusion based on the income approach.

15. Based on the market approach, Petitioner's witness presented an indicated value of $804,000.00 for the subject property

16. The market approach value was determined by the sales of overbuilt cable systems similar to the subject. The market conditions were indicating a downward trend. However, there was a significant sale that was considered to give reliable insight to the value of the subject. The best indicator was the acquisition of Ameritech by WideOpen West for $206,500,000.00. Based on information provided regarding the sale, a value of $673.00 per subscriber was indicated. That figure was employed and yielded a value conclusion of $804,000.00 for the subject.

17. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of $1,300,000,00. The asset list was compiled from the physical inspection of the subject. The witness tried to establish a contemporary replacement cost for those assets and then valued them in place and in use. The sales tax, installation, and various forms of depreciation were factored in, including physical, functional and economic obsolescence.

18. The rate of 84 percent was applied for physical, functional and economic depreciation for the subject. The tax rate used was calculated at 6.7 percent. This resulted in a replacement cost new somewhere in the range of $7 to $7.5 million. The total depreciation was estimated to be around 82 percent resulting in a value of $3 million.

19. The assets were considered to be in good condition with minimal physical depreciation. However, there appeared to be levels of functional and economic obsolescence. Some of the equipment was considered to be superadequate. At the time of the inspection there were certain service and technical problems. Some of the higher depreciation factors were applied to the

equipment that was not working correctly and for some of the customized equipment.

20. Mr. Sanders further testified to the economic meltdown of the overbuilt cable industry. Research on the secondary market indicated that a lot of specific components could be replaced for 7 to 15 cents on the dollar, and in many cases, in new condition. The economic obsolescence factor was based on the inability of these assets to generate any type of income at all.

21. Under cross-examination, Mr. Sanders testified that the overbuilt companies are in direct competition with the incumbent carriers. The difference between the carriers is that the overbuilt carrier is at a financial and operational disadvantage. The incumbent carriers generally have a 70 to 80 percent penetration rate per household. The subject had a household penetration rate of 17 percent during the assessment time frame.

22. Under further cross-examination, Mr. Sanders testified that the total market trends changed for both the incumbent and overbuilt cable companies. The incumbents were performing at a higher level than the overbuilt companies due in part to their size and their ability to generate income.

23. Under cross-examination, Mr. Sanders testified that the adjustments made for the rate of depreciation might appear to be aggressive. However, the entire Internet industry was experiencing a large downturn resulting in losses to the equipment. The overall cost to retrieve underground cable is far more than the resale value of the cable.

24. Upon questions from the Board, Mr. Sander's testified that a factor was applied to each individual item. The rate of depreciation ranged from 10 percent to 90 percent. In some cases, a depreciation rate as low as 8 percent was applied. The depreciation factor could also be supported by documentation of sales of similar equipment.

25. Upon further questions from the Board, Mr. Sanders testified that the depreciation factor for superadequacy resulted in an excess of equipment on the market for values within the range placed on the subject. The other factor affecting the conclusion was that the system had no capacity, current or prospective, to generate income.

26. Petitioner is requesting a 2002 actual value of $1,061,450.00 for the subject property.

27. Respondent's witness, Stephen C. DeBell, a Registered Appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Cost: $8,862,796.00

28. Mr. DeBell testified that the subject was acquired in 2001 and placed on the tax roll in 2002. All three approaches to value were considered. The cost approach provided the most

information for valuation. There was not enough information to arrive at an accurate value based on the market approach and income streams to personal property could not be determined to value the property based on the income approach.

29. Mr. DeBell testified that the cost approach was relied upon and provided the most relevant information. The guidelines set forth by the Assessor's Reference Library were followed, as were standards from the Uniform Standards of Professional Appraisal Practice.

30. Respondent relied upon the Personal Property Declaration Schedule provided by the Petitioner to determine the list of assets. A cost factor was applied to the original cost of the property and then multiplied by a percent good factor. The final calculation applied is a reverse index, which rolled the value back to the June 30, 2001 level of value.

31. Mr. DeBell testified that, other than what was indicated in the cost tables, no additional depreciation was applied for economic, physical and/or functional obsolescence.

32. Mr. DeBell testified that, when considering the market comparison approach, sales are examined for the date of sale, sales price, condition, age and location. In this instance, there was a lack of sales to derive an accurate market comparison. The sale of Ameritech is only one sale and does not necessarily define a market. The income approach can be used if there is sufficient income data and the resulting value is lower than that indicated by the cost approach. There was no way to attribute an income stream to the property and the income approach was not considered to be a reliable approach.

33. Mr. DeBell testified that the Petitioner presented a more extensive asset list for this hearing than was provided the Assessor's office.

34. Under cross-examination, Mr. DeBell testified that all three approaches were considered in the valuation process. The cost approach was relied upon for the value. The cost tables that were used mainly reflected functional and physical depreciation. Any additional depreciation would need to be considered on its own basis. The subject property did not indicate that any additional depreciation factors were warranted. All forms of depreciation were considered and there was no data to support any additional adjustments.

35. Under further cross-examination, Mr. DeBell testified that the same methodology was used to value Comcast, TV Max and other similar cable companies.

36. Regarding questions from the Board, Mr. DeBell testified that office equipment and furniture would have been grouped with the cable equipment. He believed that an adjustment for economic obsolescence was not warranted. Some of the events of the changing market could have been foreseen and less expensive equipment capable of performing the same function might have been purchased instead. Business decisions are different than economic factors that would indicate obsolescence.

37. Respondent assigned an actual value of $8,862,796.00 to the subject property for tax year 2002.

38. Petitioner's witness, Ms. Karen Eisenach, Senior Consultant with CBIZ Property Tax Solutions, testified that it is her responsibility to review returns and tax bills, and to file appeals when necessary. She was familiar with some of Comcast's equipment costs and the assessed value. She discussed Comcast's market value per subscriber and value per mile shown in Petitioner's Exhibit 13. Utilizing the same methodology and value assigned by Respondent, she determined that the market value per subscriber was $7,385.00 and market value per mile was estimated to be $139,795.00 for the subject property.

39. Petitioner's rebuttal witness, Mr. Sander's, testified that headend equipment should cost approximately $200,000.00 to $300,000.00. The Respondent showed a replacement cost of approximately $5,000,000.00.

40. Petitioner's rebuttal witness, Mr. Haverkate, testified that the equipment was ordered in late 1999 and the early part of 2000. At that time, there was a huge shortage of fiber optic cable and it was challenging for a small company to even be able to get it. If they could get the cable, they paid premium prices for it.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2002 valuation of the subject property was incorrect.

2. The Board has carefully considered all of the admitted evidence and testimony and has affirmed the Petitioner's value. The Petitioner's witness presented a well-supported and documented report. The Board was convinced that an adjustment should be made for economic obsolescence. The Board believes the Petitioner's report took into consideration all the factors affecting the subject property.

3. The Board believes that the Ameritech sale presented by the Petitioner is a very credible sale and gives support to market value of similar equipment during the time frame and to the economic obsolescence factor. The Petitioner followed the Assessor's Reference Library guidelines in the valuation process and did consider all three approaches to value.

4. The Board was persuaded by Petitioner's testimony indicating that market conditions during the assessment time frame were volatile, which lends further support for a decline in the cost and market value of similar equipment.

5. The Board can sympathize with how difficult the valuation process can be with personal property. The Respondent presented a well-documented and supported report. The Respondent addressed all three approaches to value and functional and physical depreciation. The Respondent stipulated to the decline in market conditions. The Board believes that an adjustment should have been made to reflect this downward trend as it would have a direct impact on the value

of the equipment.

6. The Board concluded that the 2002 actual value of the subject property should be reduced to $1,061,450.00.

ORDER:

Respondent is ordered to reduce the 2002 actual value of the subject property to $1,061,450.00.

The Jefferson County Assessor is directed to change his records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 5th day of February, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

MaryKay Kelley

MaryKay Kelley

Debra A. Baumbach

Debra A. Baumbach

This decision was put on the record

FEB 0 5 2004

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Lowenthal

Penny S. Lowenthal

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

40405.04.doc