

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)
)
BeamSpeed, LLC)
)
Determination Of Effective Competition in)
Wellton, Arizona)
)

MEMORANDUM OPINION AND ORDER

Adopted: July 8, 2004

Released: July 9, 2004

By the Deputy Chief, Policy Division, Media Bureau:

1. BeamSpeed, LLC (“BeamSpeed”) requests a finding of effective competition in Wellton, Arizona in conjunction with its showing of compliance with Section 21.912 of the Commission’s rules.¹

2. The Communications Act and the Commission’s rules provide that only the rates of cable systems that are not subject to effective competition may be regulated.² One of the bases by which a cable system will be deemed subject to effective competition is where a franchise area is: (i) served by at least two unaffiliated multichannel video programming distributors (“MVPD”) each of which offers comparable programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.³ In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined by Section 76.905 of the Commission’s rules, is present within its franchise area.⁵ BeamSpeed has met this burden.

3. BeamSpeed has submitted reliable evidence demonstrating that Wellton is served by at least two unaffiliated MVPDs offering comparable service to more than 50% of the households therein. BeamSpeed asserts that the service of direct broadcast satellite providers such as DIRECTV and EchoStar

¹See 47 C.F.R. § 76.905; Application of Cardiff Communications Partners II to Transfer Control of MMDS Station Licenses to BeamSpeed, LLC; 47 C.F.R. § 21.912; Letter dated January 21, 1998 from Roy J. Stewart, Chief, Mass Media Bureau to Charles G. Cline, Kenneth W. Garrard, BellSouth Wireless Cable, Inc. and BellSouth Corporation (File Nos. 50849-CM-AL(1)-97 and 50851-CM-AL(2)-97).

²47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

³47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.906(b)(2).

⁴47 C.F.R. § 76.906.

⁵47 C.F.R. § 76.911(b)(1).

satisfy this requirement.⁶ In addition, BeamSpeed maintains that its own cable facilities serving Wellton pass nearly 100% of the households therein.⁷ We therefore find that BeamSpeed has submitted sufficient evidence to satisfy the first prong of the competing provider test.

4. BeamSpeed has also submitted sufficient evidence demonstrating that the number of households subscribing to MVPDs other than the largest MVPD, in this case BeamSpeed, exceeds 15% of the households in all of the franchise areas. Relying on DBS subscribership reports obtained from the Satellite Broadcasting and Communications Association (“SBCA”), BeamSpeed submits evidence that the aggregate subscribership to DBS service in Wellton exceeds 15% of the households therein.⁸ We find that BeamSpeed has submitted sufficient evidence to satisfy the second prong of the competing provider test, thereby establishing the presence of effective competition.

5. Accordingly, **IT IS ORDERED** that the request for a determination of effective competition in Wellton, Arizona filed by BeamSpeed, LLC **IS GRANTED**.

6. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

⁶Petition at 1.

⁷*Id.*

⁸Supplement to Petition at Exhibit 1. The precise DBS penetration rate for Wellton is 17.6 percent.

⁹47 C.F.R. § 0.283.