

Appeals from separate decisions of the Bennett Hills Resource Area Office, Bureau of Land Management, establishing fair market rental value by appraisal for communication site right-of-way IDI 25388 and increasing the rental for that right-of-way.

Decisions affirmed; motion for stay in IBLA 94-870 denied as moot.

1. Administrative Authority: Laches–Appraisals–Communication Sites–Federal Land Policy and Management Act of 1976: Rights-of-Way–Laches–Rights-of-Way: Appraisals

BLM properly requires the holder of a communication site right-of-way to pay rental charges, in addition to those originally estimated at the time of issuance of the right-of-way grant, based upon an appraisal of the fair market rental value of the right-of-way grant. A delay of over 2 years between issuance of the right-of-way grant and notification to the holder of the appraised rental value does not relieve the right-of-way holder of the obligation to pay the appraised rental charges.

2. Appraisals–Communication Sites–Federal Land Policy and Management Act of 1976: Rights-of-Way–Rights-of-Way: Appraisals

Generally, the proper appraisal method for determining the fair market rental value of nonlinear rights-of-way, including communication sites, is the comparable lease method of appraisal. An appraisal of a right-of-way grant will not be set aside unless BLM has erred in applying the proper criteria to calculate the fair market rental value or the appellant demonstrates that the resulting charges are excessive. Absent a showing of error in the appraisal methods utilized, an appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive.

APPEARANCES: Michael D. Dahmer, Jerome, Idaho, pro se; Janis L. VanWyhe, Acting District Manager, Shoshone District Office, Bureau of Land Management, Shoshone, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Michael D. Dahmer has appealed from a decision of the Bennett Hills, Idaho, Resource Area Office, Bureau of Land Management (BLM), dated March 31, 1992, establishing \$300 as the appraised fair market annual rental for amended communication site right-of-way IDI 25388 and requiring payment of \$785 rental for the period 1989-1991 (IBLA 92-366). Dahmer has also appealed from, and moved for a stay of, BLM's August 17, 1994, decision increasing the annual rental for the right-of-way to \$330 and converting the rental billing period to coincide with the calendar year (IBLA 94-870). Because these appeals involve the same basic issues, we have consolidated them for review. 1/

On October 29, 1987, Dahmer filed an application for a communication site right-of-way which he described as a "third party right of way grandfathered under the Federal Land Policy and Management Act of October 21, 1976 [(FLPMA), 43 U.S.C. § 1761 (1988)]," claiming that he had been licensed by the Federal Communications Commission and had been operational since April 15, 1976, and asserting that he was a subsequent user to Radio Service Company's communication site right-of-way, I-04600. Dahmer requested that the communication site right-of-way, which encompassed approximately 0.01 acre in the SW¹/₄ NW¹/₄ SE¹/₄ sec. 13, T. 8 S., R. 17 E., Boise Meridian, Jerome County, Idaho, on Flat Top Butte, within an existing site, be issued for a 30-year term.

Upon receipt of the \$25 rental payment determined by BLM to be required for the first 5-year period of the grant, BLM issued Dahmer communication site right-of-way IDI 25388, pursuant to section 501(a)(5) of FLPMA, 43 U.S.C. § 1761(a)(5) (1988). The grant, which had an effective date of February 8, 1988, authorized Dahmer's use of a site within an existing building constructed by Radio Services Company, the primary communication site right-of-way holder, for the transmission of telephone signals over the air between Dahmer's residence and vehicle and specified that it would terminate on January 24, 2006, paralleling the termination date of the primary communication site holder's right-of-way.

1/ Dahmer's notice of appeal from BLM's 1994 decision increasing the annual rental by 10 percent specifically incorporates the facts and issues raised in his appeal of BLM's appraisal. Accordingly, resolution of both appeals hinges on our determination of the questions raised in the original appeal.

On August 11, 1989, Dahmer filed an application to amend communication site right-of-way IDI 25388. He proposed changing the location of his communication site on Flat Top Butte and constructing a new 8- by 12- by 12-foot concrete building and a 12- by 250-foot access road, thereby converting from a secondary user of the existing structure to a primary site holder. The revised site location embraced approximately 0.23 acre in the W¹/₂ NE¹/₄ SW¹/₄ sec. 13, T. 8 S., R. 17 W., Boise Meridian, Jerome County, Idaho.

After reviewing the amended right-of-way application and analyzing the impact of granting the amended right-of-way on other communication site users and the environment, BLM sent Dahmer an amended right-of-way grant offer for the relocation of his communication site on September 25, 1989, requesting that he sign and return copies of the grant. BLM informed him that an interim rental of \$100 had been established pending completion of an official appraisal. Dahmer immediately signed and returned the grant and BLM issued amended right-of-way grant IDI 25388 for a 35-year period, effective September 25, 1989. The grant, at paragraph 3, specifically provided that "[f]or and in consideration of the rights granted, the holder agrees to pay [BLM] fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation."

Although BLM requested an appraisal of the communication site right-of-way on September 21, 1989, the appraisal report was not completed until January 29, 1991. As documented in that report, the appraiser used the comparable lease appraisal method to determine the fair market rental value of the site as of the September 25, 1989, effective date of the amended right-of-way grant. The appraiser preliminarily noted that, according to a statewide investigation, BLM was the landlord on the largest number of communication sites within the state, followed by the U.S. Forest Service and the State of Idaho, with the remaining sites located on private lands, Indian reservations, and other Federally administered lands. The appraiser explained that he, nevertheless, did not consider either U.S. Forest Service or State of Idaho leases as bases for comparison with the subject site since the statewide investigation had also revealed that neither the U.S. Forest Service nor the State of Idaho collected fair market value for use of sites on their respective lands. See Appraisal Report at 18. Accordingly, the appraiser limited his analysis to evaluating comparable private leases which he compared to the subject right-of-way, making adjustments for differences between the private lease and subject right-of-way based on factors affecting fair market rental value, including time, coverage, Government regulations, location, access, physical character, and availability of electrical power. See Appraisal Report at 19.

The appraiser selected three private leases, none of which was located on Flat Top Butte, as the sites most comparable to the subject right-of-way. He determined that the subject site was superior to one private lease with an annual rental of \$200 (Lease 1) and inferior to

another private lease with a \$600 annual rental (Lease 3). The appraiser considered the third private lease, identified as Lease 2, with an annual rental of \$300, as the most comparable lease since, although the subject was superior in time to the lease, that advantage was offset by the lease's freedom from Government regulations and restrictions. Accordingly, the appraiser determined that the fair market annual rental for the amended communication site right-of-way was \$300.

In its March 31, 1992, decision, the Bennett Hills Resource Area Office, BLM, advised Dahmer that the required fair market rental value appraisal for his amended communication site right-of-way had been completed and had established the rental at \$300 per year. After crediting the rental payments previously submitted by Dahmer, ^{2/} BLM calculated that Dahmer owed \$785 in rental for the period 1989-91 and requested that Dahmer submit that amount within 30 days from receipt of the decision. Dahmer appealed this decision to the Board.

By decision dated August 17, 1994, BLM informed Dahmer that section 10003 of the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat. 405 (Aug. 10, 1993), directed BLM to assess and collect an annual rental payment on communication site rights-of-way at a rate of 10 percent above the rental paid for the 1993 rental year. Based on this directive, BLM calculated Dahmer's annual rental to be \$330. BLM also changed Dahmer's rental due date to coincide with the calendar year. Accordingly, BLM advised Dahmer that rental in the prorated amount of \$83 was due for the period September 25, 1994, through December 31, 1994, and that Dahmer would be billed for rental for the full 1995 calendar year on January 1, 1995. After his request for reconsideration was denied, Dahmer appealed BLM's decision to the Board, seeking a stay of its effectiveness pending appeal. ^{3/}

In his statement of reasons for appeal (SOR) and other appeal submissions, Dahmer attacks BLM's rental determination on several fronts, challenging both BLM's authority to increase the rental value of the communication site above the interim amount set contemporaneously with the issuance of the grant and BLM's appraisal of the site's fair market rental value. Dahmer contends that BLM lacks the power to raise the rental value of the site because its establishment of an interim rental of \$100 per year

^{2/} These credits included \$15 for the 3 years remaining on his original communication site right-of-way grant and \$100 for the interim rental paid in 1989.

^{3/} We note that stays of decisions concerning rights-of-way are governed by 43 CFR 2804.1(b), not 43 CFR 4.21(a). See London Bridge Broadcasting, Inc., 130 IBLA 73, 75 (1994). In any event, our affirmance of BLM's decision renders moot Dahmer's stay request.

when it granted the right-of-way created a binding rental agreement at that amount. Dahmer also insists that the 27-month delay between the issuance of the right-of-way grant and BLM's decision establishing the rental mandates that BLM absorb the liability for the additional rental now found owing.

Dahmer also disputes numerous aspects of BLM's appraised fair market rental value of the site. He challenges several factual predicates of the appraisal, including BLM's estimates of the elevation of Flat Top Butte and the site's distance from Twin Falls, BLM's statements that neither new road construction nor extensive levelling or excavation was necessary to access or develop the site, BLM's assertion that electricity was available to the site, BLM's assumption that no restrictions affecting the value of the site existed, and BLM's approximation of the number of primary and secondary users of Flat Top Butte. Dahmer insists that BLM should have determined the value of the site as unimproved desert land with no adjacent roads and services, the condition of the land at the time he claims commenced occupancy of the site. ^{4/}

Dahmer also objects to BLM's choice of comparable leases, charging that BLM improperly ignored leases issued by the U.S. Forest Service and

^{4/} Dahmer claims that he has been a continuous user of the site since 1967 and should, therefore, be afforded grandfathered rights of use prior to FLPMA. In support thereof, he asserts that he was specifically advised by a BLM real estate specialist that, by amending an original right-of-way dating from 1967, he obtained all of the rights of the original right-of-way grant.

Although Dahmer's Oct. 29, 1987, right-of-way application states that he has been licensed since Apr. 15, 1976, prior to the enactment of FLPMA, he has offered no evidence showing that he has ever held a pre-FLPMA communication site right-of-way grant. Because both his original and amended right-of-way grants were applied for and issued well after the enactment of FLPMA, that statute and its implementing regulations clearly govern the administration of his communication site right-of-way grant. Contrary advice allegedly received from a BLM employee does not negate this conclusion since erroneous information provided by BLM employees does not operate to vest any right not authorized by law. 43 CFR 1810.3(c).

In any event, even if the grant were a pre-FLPMA grant, management of the grant would still be subject to the requirements of 43 CFR Part 2800, including the payment of fair market rental value for the right-of-way. See Southern Pacific Transportation Co., 116 IBLA 164, 165-66 (1990), and cases cited. Furthermore, since Dahmer's approved use of the relocated site did not begin until Sept. 25, 1989, when BLM issued the amended grant, BLM properly appraised the right-of-way based on its condition at that time.

the State of Idaho and that it erroneously relied solely on leases 300 to 500 miles from his site. Dahmer asserts that he has investigated 14 other sites and two proposed sites, all of which rent for less than \$100 per year. In support of this last claim, he has provided letters from two private landowners willing to rent adjacent private property for \$60 and \$90 per year and the affidavit of Harry Neuhardt, Vice-President and General Manager of Ambassador Media Corporation which operates KPVI Channel 6 and which has its own lease on Flat Top Butte. The Neuhardt affidavit verifies the existence of other leases for communication sites in eastern and southern Idaho renting for \$100 per year. Dahmer avers that this information should be accorded substantial weight in determining the appropriate rental value for the site.

In its answer, BLM responds point by point to the issues raised in Dahmer's attack on its appraisal. BLM contends that the factual errors alleged by Dahmer would have no significant effect on the estimated fair market rental value of the site and are primarily differences of opinion and judgment. BLM explains that since an existing improved road traverses Flat Top Butte providing access to all existing communication sites and most users simply drive across the terrain from the main road to their sites, construction of a graded and graveled road was not necessary and therefore no adjustment for construction of that road was warranted in appraising the value of Dahmer's site. Nor, BLM indicates, does extending electrical power 250 feet from an existing line to his individual site entitle Dahmer to an adjustment given that such a power line extension is considered normal and only the user who first makes electricity available on a butte properly receives an adjustment for developing electrical power. Similarly, while recognizing that Dahmer expended some cost and effort to develop his site, BLM regards the amount of work required as far from excessive. BLM also challenges Dahmer's claim that, inasmuch as he is the 29th user of the site, his site must be less desirable than the other sites, noting that the butte is relatively large and there could easily be 30 equally desirable sites located on it.

Insofar as Dahmer's rental value submissions are concerned, BLM points out that he has not presented any actual leases for similar uses. BLM argues that the sites which the two landowners state they are willing to lease for less than the subject right-of-way are not situated on the butte, but rather embrace nearby flat farm land for which there is no apparent present demand for use as communication sites. Further, BLM suggests that these landowners are likely uninformed as to rental values for communication purposes. BLM also argues that, in the absence of the submission of the actual leases which Neuhardt referenced, it was impossible to determine whether the sites involved were truly comparable, especially given the fact that the referenced leases consist of leases for television translators, not radio communication sites such as Dahmer's site.

Finally, BLM bolsters its decision to disregard U.S. Forest Service and State of Idaho leases by explaining that the State collects rents which

are administratively set and do not reflect rents collected in the private market and that the U.S. Forest Service, while in the process of changing to a system establishing rents based on fair market appraisals, still charges rental fees based on the value of improvements on the site. Private leases in northern Idaho were selected as comparables, BLM submits, based on its data search for private leases of similar use and the fact that more private land exists in northern Idaho.

Dahmer's response to BLM's answer reiterates and expands upon many of the factual assertions contained in his earlier submissions and strenuously objects to BLM's attempts to discredit his evidence concerning the proper rental value of his site. Dahmer has also filed a supplemental SOR, asserting that BLM's recent sale of comparable land to Twin Falls County, Idaho, for \$109.81 per acre, which he claims equates to a \$4.49 to \$8.97 per-acre annual rental fee according to the schedule of the rental values for linear rights-of-way established by 43 CFR 2803.1-2, conclusively demonstrates the excessiveness of BLM's appraised rental value for the communication site.

[1] Dahmer's assertion to the contrary notwithstanding, the Board has consistently upheld BLM's authority to issue a right-of-way grant subject to a later determination of the annual rental pursuant to 43 CFR 2803.1-2(c)(3)(ii), which provides that, in order "[t]o expedite the processing of any [right-of-way grant], the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination." See Alaskan M.D.S., Inc., 130 IBLA 13, 14-15 (1994); Voice Ministries of Farmington, Inc., 124 IBLA 358, 360 (1992); Oregon Broadcasting Co., 119 IBLA 241, 242-43 (1991). BLM's letter transmitting the amended communication site right-of-way grant to Dahmer for his signature, which specifically advised Dahmer that the \$100 interim rental was established "until an official appraisal is completed," adequately apprised Dahmer of BLM's intent to proceed in accordance with this procedure. Absent such agreement on appellant's part, he would not have been allowed to occupy the new site until completion of the appraisal. See Voice Ministries of Farmington, Inc., *supra* at 361 n.3. Thus, in actuality, the issuance of the grant with an estimated rental value subject to adjustment upon appraisal was a procedure which benefitted appellant by facilitating his occupancy of the site at an earlier date than might otherwise have been possible.

Nor does the 27-month delay between the issuance of the grant and BLM's decision notifying Dahmer of the appraised rental value of the communication site relieve Dahmer of his obligation to pay the fair market rental for use of the site. As noted above, Dahmer's immediate occupancy of the site was conditioned on his agreement to pay the fair market rental value as ultimately computed by BLM. So long as this amount is determined

to be fair market value, Dahmer has no cause for complaint. ^{5/} In any event, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); see also Ametex Corp., 121 IBLA 291, 294 (1991); Mallon Oil Co., 107 IBLA 150, 155 (1989). We reject Dahmer's claim that BLM was bound by the interim rental established at the time the amended right-of-way was issued.

[2] Under section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1988), the holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal. Alaskan M.D.S., Inc., supra at 15; Quality Broadcasting Corp., 126 IBLA 174, 188 (1993); Questar Service Corp., 119 IBLA 65, 67 (1991); Great Co., 112 IBLA 239, 242 (1989); Mountain States Telephone & Telegraph Co., 107 IBLA 82, 85-86 (1989). Such value is considered the amount "for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desires but is not obligated to so use." Questar Service Corp., supra, citing American Telephone & Telegraph Co., 25 IBLA 341, 349-50 (1976).

The preferred method for appraising the fair market value of non-linear rights-of-way, including communication sites, is the comparable lease method, where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites. Alaskan M.D.S., Inc., supra; Oregon Broadcasting Co., supra at 243, and cases cited; see 43 CFR 2803.1-2(c)(3)(i) (rental for non-linear rights-of-way including communication sites based on "market survey of comparable rentals"). Under this method, which was the method utilized in the appraisal of Dahmer's right-of-way, the rentals charged for similar sites are reviewed and adjustments are made for variations in the features of the sites and the rights obtained under the leases. See Idaho Wireless Corp., 120 IBLA 172, 174 (1991), and cases cited.

An appraisal of a right-of-way grant will not be set aside unless BLM has erred in applying the proper criteria to calculate the fair market value of the right-of-way rental or the appellant demonstrates that the resulting charges are excessive. See, e.g., Quality Broadcasting Corp.,

^{5/} Indeed, as a practical matter, the delay in the determination of the fair market value actually works to appellant's benefit. While BLM did require full payment of the rental already accrued, no interest on this payment was assessed because the failure to timely pay the annual rental was occasioned by BLM's failure to more expeditiously compute the fair market value of the site. Thus, appellant retains the time value of the funds (i.e., the interest) which he would not have had if BLM had completed its appraisal sooner.

supra; Oregon Broadcasting Co., supra; Great Co., supra at 242, and cases cited therein. Absent a showing of error in the appraisal methods, an appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive. See, e.g., Quality Broadcasting Corp., supra; Oregon Broadcasting Co., supra, and cases cited therein. However, even though an appellant does not provide a formal appraisal, if he presents information which raises significant doubts regarding the method of analysis of the comparable leases, the Board will set aside BLM's decision and remand the case for further appraisal. Oregon Broadcasting Co., supra at 244, and cases cited. Our review of the record demonstrates that Dahmer has not met this standard.

Dahmer does not challenge BLM's use of the comparable lease method of appraisal; rather, he alleges error in BLM's application of the chosen method in this case. Dahmer questions BLM's selection of comparables, objecting specifically to BLM's failure to include U.S. Forest Service and State of Idaho leases and to consider the rental information he provided. We note that in American Telephone & Telegraph Co., 77 IBLA 110 (1983), we held that, since the Federal Government is normally required to charge fair market value for the use of its lands, a requirement which is subject to both administrative and judicial review, the values arrived at for renegotiated Governmental leases "may indeed be the best evidence of fair market value for other renewals." Id. at 119 n.5. Accord First Broadcasting of Nevada, Inc., 120 IBLA 240, 243 (1991).^{6/} This general statement, however, was significantly refined when the Board examined the applicability of this holding to leases issued by the U.S. Forest Service and State entities.

Thus, in MCI Telecommunications Corp., 115 IBLA 117 (1990), this Board affirmed the refusal of BLM to include either certain U.S. Forest Service leases or state leases in its list of comparable sites. With respect to U.S. Forest Service leases, we noted that, until 1985, U.S. Forest Service policy with respect to communication sites had been to base its rental charges on a percentage of the value of the user's improvements. In October 1985, the U.S. Forest Service announced it was abandoning this policy and would, in the future, establish appropriate rentals based on

^{6/} We note that the conclusion of the American Telephone & Telegraph decision that BLM renegotiated leases may be the best evidence of fair market value may no longer be valid. For a number of years, Congress has expressly limited annual rental increases to 10 percent of the previous year's rental. See, e.g., section 10003 of the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat. 405 (Aug. 10, 1993). Since these increases are now, in effect, administratively determined and no longer necessarily reflect fair market value, reliance on such rentals for the purposes of determining fair market value with respect to new grants can no longer be theoretically justified.

appraisals, competitive bidding or fee schedules based on market studies. See 50 FR 40574, 40576 (Oct. 4, 1985). This policy, however, was to be phased in over a 3-year period.

In the MCI decision, we affirmed BLM's exclusion of U.S. Forest Service leases where the rental for those leases was a function of the value of the user's improvements since, in effect, the rental applicable in those cases "was dependent more on the discretion of the lessee than the fair and unrestrained bargaining of the lessor and lessee." Id. at 123-24. Similarly, with respect to State leases, we noted that, where the rental rates are set administratively and do not necessarily reflect rates derived from market forces, BLM properly declines to include such sites in its list of comparables. Id. Consistent with the foregoing, the exclusion of U.S. Forest Service rentals which were determined based on the value of improvements and State rentals set administratively was completely in accord with prior Board precedents.

We also find no flaw in BLM's failure to accord significant weight to the rental information provided by Dahmer. Neither Neuhardt's affidavit nor the letters from the two landowners specifically identifies the sites referred to or offers any evidence indicating that those sites might properly be considered comparable to the Flat Top Butte site for purposes of rental comparisons. Since we are unable to compare those sites to the Flat Top Butte site, we have no basis upon which to conclude that there was any error in the BLM appraisal or that the appraised rental charged for Dahmer's site did not represent the fair market value for that site. KPVI Channel 6, 122 IBLA 263, 265 (1992). 7/

With respect to Dahmer's criticism of numerous asserted factual errors in the appraisal, it is well-settled that an individual disputing a determination of fair market value made by officials of BLM must do more than merely show that mistakes occurred, he must affirmatively establish that such defects had a direct causal relationship to the determination of fair market value so as to compromise the rental derived by BLM. See Mountain States Telephone & Telegraph, 79 IBLA 5, 12 (1984). Even assuming the existence of the various errors delineated by appellant, and we note that a number of appellant's allegations of error are challenged by BLM, he has failed to demonstrate that these errors, either individually or collectively, directly affected BLM's rental assessment in any significant way. Thus, appellant has simply failed to carry his burden.

Nor has Dahmer convinced us that BLM improperly refused to make additional adjustments to the appraised value of his site to reflect his

7/ We note that the Board's decision in KPVI Channel 6, 122 IBLA 263 (1992), rejected Neuhardt's challenge to BLM's rental determination for his communication site right-of-way on Flat Top Butte and affirmed BLM's decision increasing the annual rental to \$400.

construction of an access road and power line to his amended site location. Dahmer does not dispute that the butte was accessible via an existing road or that commercial power was brought to the butte by an earlier user. Normally, the first user who brings power and access to a site is entitled to an adjustment for those improvements in determining the fair market value after the initial 5-year period. Thus, for purposes of determining the fair market value for the renewal term of the initial user's lease, the site is assessed as unimproved, as, indeed, it was when the initial user commenced occupancy. See Full Circle, Inc., 35 IBLA 325, 334-35, 85 I.D. 207, 212 (1978). In determining the annual rental charge for subsequent users, however, BLM properly considers the site as it was when those users commenced occupancy, *i.e.*, improved by the initial user's infrastructure. The fact that subsequent users may have costs in providing access to a site from an existing road or hooking up a site to an existing powerline simply has no relevancy to whether or not the site was properly valued as an "improved" site for the purpose of ascertaining comparable sites. Nor can any compensation be allowed for such expenditures as they are part of the normal cost of doing business and, as such, are properly the sole obligation of the user.

Finally, we reject Dahmer's assertion that BLM's sale of comparable land to Twin Falls County, Idaho, for \$109.91 per acre conclusively demonstrates the excessiveness of BLM's appraised rental value for his communication site. This Board has noted on numerous occasions that no necessary correlation exists between the per-acre purchase price for land and its per-acre rental value for a communication site right-of-way, particularly when the acreage within the communication site is small. See, *e.g.*, Voice Ministries of Farmington, Inc., *supra* at 361 n.4; Qwestar Service Corp., *supra*; American Telephone & Telegraph Co., 77 IBLA at 122 (1983).

Since the information submitted by Dahmer is insufficient to demonstrate that BLM's appraisal methods are incorrect or that the rental assessed is exorbitant, only another appraisal establishing by convincing evidence that the rental charges are excessive would justify setting aside BLM's decision. See Oregon Broadcasting Co., *supra* at 248. No such appraisal has been provided and BLM's appraised rental valuation for the 1989-93 rental period is properly upheld. It necessarily follows that the decision increasing the rental for the 1994 calendar year (IBLA 94-870) must also be upheld since the increase in rental therein provided was specifically mandated by Congress. ^{8/}

^{8/} Since Dahmer's appeal of the 10-percent increase in his rental does not challenge BLM's application of section 10003 of the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat. 405 (Aug. 10, 1993), but rests solely on his objections to the appraised rental value upon which the adjustment was based, our affirmance of that appraised rental value effectively disposes of all issues raised therein.

To the extent not specifically addressed herein, appellant's arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed and the motion for stay filed in IBLA 94-870 is denied as moot.

James L. Burski
Administrative Judge

I concur in the result:

Franklin D. Amess
Administrative Judge