

XYZ TELEVISION, INC.

IBLA 76-725

Decided December 8, 1977

Appeal from decision of the Colorado State Office, Bureau of Land Management, establishing the charge for use and occupancy of communication site right-of-way C-19481-RW.

Affirmed as modified.

1. Appraisals -- Communication Sites -- Hearings -- Rights-of-Way:
Generally -- Rules of Practice: Hearings

An applicant has no right to a hearing in connection with original federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

2. Appraisals -- Communication Sites -- Rights-of-Way: Generally

When a parcel of land is properly determined to have a highest and best use for communication site purposes, an annual use charge based on the fair market value of the right-of-way grant may be determined by comparison with value of the right of use for similar sites and by making whatever adjustments may be necessary because of differences in factors influencing value.

3. Communication Sites -- Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Generally

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A.

§ 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

APPEARANCES: Warren L. Turner, Esq., and Carl Q. Anderson, President, XYZ Television, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

XYZ Television, Inc., has appealed from the July 9, 1976, decision of the Colorado State Office, Bureau of Land Management, which determined the charge for appellant's communication site right-of-way, C-19481-RW, to be \$ 8,000 from August 2, 1973 (when the land containing the sites was quitclaimed to the United States), to December 31, 1981, or \$ 1,000 annually. Appellant uses the site for a television and radio microwave relay station. Appellant contends that the charge was determined with no opportunity for a hearing which it asserts is required by regulation, and that the value determined does not represent the fair market value of the right-of-way.

The station was originally built on a mountain on land purchased from the United States by the City of Montrose, Colorado, under the Act of May 9, 1914, 38 Stat. 375. That statute prohibited conveyance of the land by the city and provided for reversion of the land to the United States if it were not used for park purposes. Upon becoming aware that the city had allowed communication sites to be built on the mountain, the Montrose District Office suggested the city quitclaim the land to the United States. A right-of-way grant was issued to appellant on August 25, 1975, subject to determination of a charge.

[1] Appellant's contention that the regulations require a hearing is without merit. While 43 CFR 2802.1-2(e) requires an opportunity for hearing prior to a revision of charges under an existing right-of-way, no hearing is required in connection with the imposition by the United States of original charges for use of a right-of-way. Mountain States Telephone & Telegraph Co., 26 IBLA 393, 83 I.D. 332 (1976). Appellant offers no evidence to support the contention that the charge does not represent the fair market value of the site. In no event would a hearing be warranted in absence of a factual assertion that would show the appraisal is incorrect. id.; Western Slope Gas Company, 21 IBLA 119 (1975); Western Arizona CATV, 15 IBLA 259 (1974).

[2] Noting the existence of other sites on the mountain and giving due consideration to the needs of the community, the State

Office properly concluded that the highest and best use of the land was as a communication site. Mountain States Telephone & Telegraph Co., supra. The State Office properly made detailed value comparison of appellant's grant and the right of use for other communication sites. The charge was determined after appropriate adjustments for differences such as time the grant was made, length of tenure, coverage, location, access, size, and availability of power. Where the appraisal was properly formulated and in the absence of a factual assertion which would impel the conclusion that the appraisal is incorrect, the appraisal should be sustained. Mountain States Telephone & Telegraph Co., supra. The charge of \$ 1,000 per year was therefore proper.

[3] As to the alternative that XYZ make a lump sum payment under 43 CFR 2802.1-7(a) for occupancy through 1981, section 504(g) of the Federal Land Policy and Management Act, 43 U.S.C.A. § 1764(g) (West Supp. 1977), requires that payments be made annually except when the annual charge is less than \$ 100. It is provided in 43 U.S.C.A. § 1740 (West Supp. 1977) that until new regulations are promulgated, that existing regulations continue in effect "to the extent practical." However, under the doctrine of noscitur a sociis, section 1764(g) is specific and gives meaning to the subsequent general section. See United States v. Baumgartner, 259 F. 722, 724 (S.D. Cal. 1919).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the request for hearing is denied and the decision appealed from is affirmed as modified.

Joseph W. Goss
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

