



NORTHWESTERN COLORADO BROADCASTING CO.

49 IBLA 23

Decided July 15, 1980

Editor's Note: The original decision was erroneously dated "July 15, 1970". It has been subsequently corrected to the true date of decision, "July 15, 1980".



United States Department of the Interior
Office of Hearings and Appeals

Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

NORTHWESTERN COLORADO BROADCASTING CO.

IBLA 79-587

Decided July 15, 1970 [1980]

Appeal from a decision of the Colorado State Office, Bureau of Land Management, setting the rental charges for use and occupancy of communication site right-of-way C-21995.

Affirmed.

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

"Fair Market Value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, 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 desired but is not obligated to so use.

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

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

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

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

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

The relevant regulation, 43 CFR 2802.1-7(d), does not absolutely prohibit acceptance of partial payments of past due rentals in all circumstances.

APPEARANCES: George O. Cory, President for Northwestern Colorado Broadcasting Company.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Northwestern Colorado Broadcasting Company has appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 10, 1979, setting the fair market rental for communication site right-of-way C-21995 at \$800 per year. The decision stated that a lump sum payment of \$4,000 less \$600 deposit for the period May 16, 1975, to May 15, 1980, was past due and payable within 30 days.

BLM granted to appellant right-of-way C-21995 on May 16, 1975, pursuant to the Act of March 4, 1911, 43 U.S.C. § 961 (1970), repealed, Federal Land Policy and Management Act of 1976 (FLPMA), section 706, 90 Stat. 2743 and 2793. The 50-year grant allowed a right-of-way for a 180-foot by 180-foot radio transmitting station tower site and a 30-foot wide, 2,738.21-foot long access road on Cedar Mountain in Moffat County, Colorado. The site is located in lots 10, 14, and 15, sec. 9, and the NE 1/4 NW 1/4 sec. 16, T. 7 N., R. 91 W., sixth principal meridian.

On April 3, 1975, appellant deposited \$600 with BLM to be credited toward rental charges pending the formal appraisal of the right-of-way. Thereafter, on December 9, 1975, BLM made a rental determination that fair market value was \$700 a year. BLM therefore required a payment of \$3,500 for the period May 16, 1975, through December 31, 1980. Appellant appealed that assessment to this Board. Before a decision was reached, BLM requested that the case be remanded

for reassessment of the rental based on additional data then available. We remanded the case by order of July 27, 1976.

BLM reassessed the right-of-way using the comparable lease method of appraisal. The resulting rental determination is being appealed in this case. The decision called for a lump sum payment of \$3,400 payable within 30 days. However, prior to submitting its notice of appeal, appellant offered to make monthly payments of past due rental plus interest and submitted \$200 towards the total amount.

In its statement of reasons 1/ appellant argues that the rental is excessive because rental of the land for grazing was substantially less and there is no competition for the site as a communications site. Appellant adds that inflation and interest rates make the rental charge greater than it seems. Appellant further contends that rentals for certain installations in rural areas similar to its site are the appropriate sites for cost comparisons and infers that the sites used by BLM in its appraisal were not comparable. Finally appellant indicates that the total burden of Government-imposed costs on its enterprise is unreasonable.

[1] Appellant's right-of-way is now subject to the provisions of FLPMA. FLPMA, section 510(a), 43 U.S.C. § 1770(a) (1976); Full Circle, Inc., 35 IBLA 325 (1978). Under FLPMA and Departmental regulations, rights-of-way grantees must pay fair market value for rights-of-way on public lands. Section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1976), states:

(g) The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: Provided, That when the annual rental is less than \$100, the Secretary concerned may require advance payment for more than one year at a time: * * *.

The appropriate regulation, 43 CFR 2802.1-7(a) reads in part:

[T]he charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: * * *. 2/

1/ Appellant has incorporated its statement of reasons from its first appeal into its statement of reasons for this appeal.

2/ Section 310 of FLPMA, 43 U.S.C. § 1740 (1976), provides that existing regulations will govern the administration of public lands to the extent practical prior to the promulgation of new regulations.

In Full Circle, Inc., supra at 332, we noted that the Department had adopted the Uniform Appraisal Standards for Federal Land Acquisition (1973) developed by the Interagency Land Acquisition Conference as guidelines for Departmental appraisers determining charges for use of public lands. See 602 Departmental Manual 1.3; American Telephone and Telegraph Co., 25 IBLA 311, 348-49 (1976). Under those guidelines, fair market value in the case of rights-of-way sites is "the amount in cash, or on terms reasonably equivalent to cash, 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." B & M Service, 48 IBLA 233 (1980); American Telephone and Telegraph Co., supra at 349-50; see Uniform Appraisal Standards, supra at 3.

[2] BLM determined the fair market value of appellant's right-of-way site by comparing it with similar sites in the same region under private lease. This is a proper appraisal method for determining fair market value when current, well-established rental data for comparable sites is available. Full Circle, Inc., supra. BLM's appraisal report compared the following characteristics of three other sites with appellant's site:

SIZE: The relative sizes of the sites.

TENURE: The length of the leases and the effect of the length of a lease on rental prices.

LOCATION: The relative distances from major population centers.

ACCESS: The type and quality of access available to the sites.

PHYSICAL CHARACTERISTICS: Actual character of the sites and view from them.

POWER: The availability of power at or near the sites.

TIME: The age of the lease and the effect of passing time on rental prices.

See Appraisal Report, pp. 4-5. Location and access were considered the dominant factors of the comparison.

The BLM appraisal report summarized the data accumulated about the comparison leases in relation to appellant's site as follows:

The cited regulation is that which was in effect upon enactment of FLPMA and governs this appeal. Final regulations governing management of rights-of-way on public land pursuant to FLPMA were published at 45 FR 44518 (July 1, 1980) effective July 31, 1980.

COMPARISON TABLE

<u>Lease</u>	<u>Date</u>	<u>Annual Rent</u>		<u>Size</u>	<u>Tenure</u>	<u>Loc.</u>	<u>Ac.</u>	<u>Phys. Charc.</u>	<u>Power</u>	<u>Time</u>	<u>Overall</u>
5-C	3/75	\$2580.00	+	-	-	-	-	0	0	+	-
9-W	7/75	\$1080.00	+	+	-	-	-	0	0	-	-
2-W	6/78	\$ 500.00	+	+	+	-	-	0	0	-	+

Legend: + Subject is superior to the rental.
 - Subject is inferior to the rental.
 0 Subject and rental are comparable.

Further examination of the report indicates that each site serves a population area of similar size or somewhat larger than appellant's site in the northwest Colorado and southwest Wyoming region. Although the report characterizes lease No. 9-W as being most comparable, BLM concluded that the annual fair market rental should fall between \$500 and \$1,080.

[3] The general standard for reviewing rights-of-way appraisals is to uphold the appraisal if there is no error in the appraisal methods used by BLM or the appellant fails to show by convincing evidence that the charges are excessive. Full Circle, Inc., supra; Four States Television, Inc., 32 IBLA 205 (1977). We find that appellant has not made the necessary showing. Cedar Mountain, on which appellant's site is located, is a well-established communications site. BLM considers the highest and best use of the mountain to be for communications sites. It is inappropriate to consider the value of the land for grazing in setting appellant's rental because the Government has an obligation to charge fair market value of the site, and the most appropriate use of the site is clearly for communication purposes. The fact that appellant has no direct competition for use of the site is evidence which supports use of the comparison method of appraisal. The rental charge should not be what appellant would like to pay or BLM would like to charge, but rather that rental which would be a fair amount on the open market for appellant to pay and BLM to receive.

Appellant's argument relating to the effects of inflation is premised on a misperception of the original appraisal. This misperception is partially occasioned by the failure of the original decision to state that the initial annual rental payment was \$700. The lump sum payment for the period from May 16, 1975, through December 31, 1980, a period of 5.6301 years, was computed to be \$3,372.60. This figure incorporates a discount for the present payment of future rentals. See Western Slope Gas Co., 21 IBLA 119, 122 (1975). BLM added to this figure an interest factor amounting to \$138 on the assumption that while the amount was due on May 16, 1975, it would not be paid until December 31, 1975.

Since appellant was not informed of the base computations, but was simply told the total amount of the rental due, appellant apparently assumed that no discount was being allowed for the present payment of future rents, and that it was being required to pay full rental for each year of future use. Accordingly, it argued that it was required to make full payment for subsequent rental years with present dollars, and was thus bearing the full cost of inflation. This, however, was not the case.

No discount was allowed in the 1979 assessment for the simple reason that by this time these rentals had already accrued and thus the demand for total rentals did not constitute present payment of future obligations. Moreover, since the State Office did not assess any interest for the period of time antedating the 1979 assessment decision, appellant has been given the advantage of paying earlier rentals with inflated dollars.

Although appellant has cited rental charges for various leases which it believes appropriate for comparison and indicated that, in its opinion, the annual rental charge is excessive, appellant has presented no clear evidence which shows error in BLM's appraisal or that, based on a comparison of similar characteristics, the charge is excessive.

[4] The final issue concerns the appropriateness of appellant's offer to make monthly payments plus interest on the overdue rental. In its transmittal of the case files to the Board, the State Office noted that "[b]ased on 43 CFR 2802.1-7(d), this office would have rejected the offer of periodic payments." The cited regulation provides:

If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way or easement. After default has occurred, no structure, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

We do not believe that this section would have prohibited acceptance of monthly payments given the facts of the instant appeal.

In Full Circle, Inc., *supra*, this Board held that "a lump-sum payment should not be demanded for future years where the annual amount exceeds \$100." 35 IBLA at 342-43. While the Board held that Full Circle was liable for the full past rental in a lump sum payment, it did not purport to hold that BLM was without authority to accept monthly rental payments in all cases. Considerations of equity and efficiency might require that BLM accept less than the full payment for past rentals at any one time. It is, of course, axiomatic that

BLM must assess interest on any outstanding balances. While we cannot say in the factual milieu of the instant appeal that the appellant must be accorded the opportunity to make monthly payments of its outstanding debt, we do not wish to intimate that BLM is automatically foreclosed from permitting such payments in the proper situation.

In the instant case, appellant offered to make payment in full by May 1980. Thus, there is no reason why appellant cannot make immediate payment of the full amount which we have deemed properly owing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge