

GLOVER COMMUNICATIONS, INC.

IBLA 84-755

Decided November 8, 1985

Appeal from decision of the Albuquerque, New Mexico, District Office, Bureau of Land Management, requiring payment of permit charges for communication site right-of-way NM 44246.

Affirmed.

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

An appraisal by BLM of fair market value for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in BLM's appraisal method or fails to show by convincing evidence that charges are excessive. In the absence of a showing of error that the appraisal methods used by BLM are incorrect, an appraisal may be rebutted only by another appraisal.

APPEARANCES: Edwin Glover, President, Glover Communications, Inc.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On May 14, 1981, the New Mexico State Office, Bureau of Land Management (BLM), issued right-of-way NM 44246 to Glover Communications, Inc. (Glover), for use as a communications site. The grant established no rental amount but provided:

The right-of-way herein granted shall be subject to the express covenant that if other administrative costs and/or rentals are due, as indicated by an appraisal, they shall be paid upon request.

No appraisal report for the site was completed until February 2, 1984, and by letter dated February 15, 1984, appellant was informed a total amount of \$3,400 was due on the basis of a one-year rental charge of \$850. ^{1/} The

^{1/} The decision also listed administrative charges which were offset by the amount appellant had sent with the application.

letter advised appellant he could discuss the rental charges with BLM, and could also file written objections based on evidence that the rental charge does not represent current fair market value for the rights conveyed. The letter also informed appellant a hearing could be requested by writing to the Albuquerque District Manager. This letter was sent by certified mail to appellant's last address of record but was returned unclaimed. ^{2/}

On June 19, 1984, the Albuquerque District Office issued a decision informing Glover the amount due had not been paid and action would be taken to terminate the right-of-way if the rental was not received within 30 days. Glover filed a notice of appeal from this decision.

Appellant contends the rental rate is excessive and not supported by substantial evidence of value, that the administrative charges are excessive, and that the rental rate established for any future period is "excessive, arbitrary, and non-supportable by reason of economic analysis." Appellant's president, in his statement of reasons, expresses a desire to examine BLM's evidence and to submit his own written evidence and oral testimony concerning fair market value of the right-of-way.

[1] Under 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay annually in advance rental for the fair market value of the right-of-way when this value is established by an appraisal, although BLM may allow use of a right-of-way prior to a formal appraisal. See Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone and Telegraph Co., 79 IBLA 5 (1984). The Board will generally affirm a right-of-way rental appraisal if the appellant fails to show error in the appraisal method used by BLM or fails to show by convincing evidence that the charges are excessive. Donald R. Clarke, 70 IBLA 39 (1983); Francis H. Gifford, 62 IBLA 393 (1982); Dwight L. Zundel, 55 IBLA 218 (1981); B & M Service, Inc., 48 IBLA 233 (1980). In general, an appraisal may be rebutted only by another appraisal. Dwight L. Zundel, *supra* at 222.

BLM's appraisal report uses the comparable lease method of appraisal to determine fair market value. This is the preferred method for appraising the fair market value of communication sites where there is sufficient comparable rental data. Southern California Gas Co., *supra*. The report considered a number of private leases, and after consideration of the differences and similarities between those leases and appellant's right-of-way, the fair market annual rental value for appellant's right-of-way was determined. Despite appellant's stated desire to submit additional information, appellant has not done so. Consequently, there is no basis for concluding BLM's appraisal was incorrect.

^{2/} This was sufficient to complete service upon appellant and to provide it with constructive notice of the requirements of the letter. See 43 CFR 1810.2(b).

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.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

