

MESA BROADCASTING CO.

IBLA 85-638

Decided December 5, 1986

Appeal from a decision of the Grand Junction District Office, Bureau of Land Management, imposing rental for communication site right-of-way C-35154.

Affirmed.

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

An appraisal 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 the appraisal methods used or fails to show by convincing evidence that the charges are excessive. In the absence of a showing of error that the appraisal methods used by BLM are incorrect, an appraisal may generally be rebutted only by another appraisal.

APPEARANCES: John W. Hough, Esq., Chicago, Illinois, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Mesa Broadcasting Company has appealed from a decision dated April 23, 1985, by the Grand Junction District Office, Colorado Bureau of Land Management (BLM), imposing a rental of \$2,000 per year for communication site right-of-way C-35154. The right-of-way, consisting of 11.36 acres in secs. 25 and 36, T. 2 N., R. 2 W., Ute Principal Meridian, Mesa County, Colorado, was granted, subject to formal appraisal, on April 22, 1983, pursuant to section 501(a)(5) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a)(5) (1982).

BLM's decision advised that an appraisal had been completed and that the fair market rental had been determined to be \$2,000 per year. Since appellant had paid a \$25 deposit, BLM requested it to remit a balance of \$5,975 due for the first 3 years' rental (April 22, 1983, through April 21, 1986).

In its notice of appeal/statement of reasons 1/ appellant asserts that \$2,000 per year is "far in excess of the current market price for like and similar land." Appellant further states that it has not obtained an FCC license and has not yet taken possession of the land subject to the right-of-way grant. Appellant suggests, citing 43 CFR 2803.1-2(c)(3), 2/ that it should receive the grant at below fair market value, or at no charge at all, because it provides public service announcements without charge.

[1] Under 43 U.S.C. § 1764(g) (1982), 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, although BLM may allow use of a right-of-way prior to a formal appraisal. Jancur, Inc., 93 IBLA 310 (1986); Glover Communications, Inc., 89 IBLA 276 (1985); see also Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). An appraisal of fair market value for a communications site right-of-way will not be set aside on appeal if the appellant fails to show error in the appraisal methods used by BLM or fails to show by convincing evidence that the charges are excessive. Jancur Inc., *supra*; Glover Communications, Inc., *supra*; see Donald R. Clark, 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 the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Jancur, Inc., *supra* at 312.

The comparable lease method of appraisal, used by BLM in this case to determine the fair market value, is the preferred method for appraising the fair market value of communication sites where there is sufficient comparable rental data. See Southern California Gas Co., *supra*; Mountain States Telephone & Telegraph Co., *supra*. The BLM appraiser considered four communication site leases in the vicinity of appellant's right-of-way. After consideration of the differences and similarities between those leases and appellant's right-of-way, the fair market rental value for Appellant's right-of-way was determined to be \$2,000 per year. 3/ Appellant has shown no error in the appraisal methods used by BLM, nor has it provided another appraisal or evidence that the charges are excessive.

1/ Appellant's notice/statement filed with BLM on May 17, 1985, indicated that a "further Statement of Reasons" would be filed. However, no additional filings have been received by the Board.

2/ The regulations at 43 CFR 2803.1-2(c) implement section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1982). Under that provision, the Secretary may charge less than fair market annual rental, including no charge at all. However, the legislative history of the provision reveals Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large. San Miguel Power Ass'n, 71 IBLA 213 (1983).

3/ In arriving at this determination, BLM's appraisal report placed emphasis on lease 10-C, which was considered the most comparable and rented for \$2,250 per year.

Accordingly, 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.

John H. Kelly
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

