

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
BNSF Railway Co.)	File No. EB-FIELDSCR-12-00004069
Owner of Antenna Structure No. 1049165)	
)	NOV No. V20123250023
Frisco, Texas 75034)	
)	
)	
)	

NOTICE OF VIOLATION

Released: 10/18/2012

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued, pursuant to Section 1.89 of the Commission’s rules (Rules),¹ to BNSF Railway Co., owner of antenna structure number 1049165 in Frisco, TX. Pursuant to Section 1.89(a) of the Rules, issuance of this NOV does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violation(s) noted herein.²
2. On August 30, 2012, an agent of the Commission’s Dallas Office inspected antenna structure number 1049165 located in Frisco, Texas, and observed the following violation(s):
 - a. 47 C.F.R. § 17.23: “Unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA’s painting and lighting recommendations set forth on the structure’s FAA determination of “no hazard,” as referenced in the FAA Advisory Circulars...” The Antenna Structure Registration for antenna structure number 1049165 requires medium intensity dual lights in accordance with FAA Circular Number 70/7460-1K, Chapters 4, 8, and 12. During the daytime inspection on August 30, 2012, the agent observed that the daytime white lights were not lit.
 - b. 47 C.F.R. § 17.4(g): “The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Material used to display the Antenna Structure Registration Number must be weather resistant and of sufficient size to be easily seen at the base of the antenna

¹47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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structure.” The antenna structure is surrounded by a perimeter property fence. The Antenna Structure Registration Number was not posted at the gate of the perimeter property fence and any signage at the base of the antenna structure was not visible from the perimeter fence gate.

3. Pursuant to Section 403 of the Communications Act of 1934, as amended,³ and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, BNSF Railway Co. must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁴

4. In accordance with Section 1.16 of the Rules, we direct BNSF Railway Co. to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of BNSF Railway Co. with personal knowledge of the representations provided in BNSF Railway Co. response, verifying the truth and accuracy of the information therein,⁵ and confirming that all of the information requested by this Notice which is in the licensee’s possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁶

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission
Dallas Office
9330 LBJ Freeway, Suite 1170
Dallas, Texas, 75243

6. This Notice shall be sent to BNSF Railway Co. at its address of record.

³ 47 U.S.C. § 403.

⁴ 47 C.F.R. § 1.89(c).

⁵ Section 1.16 of the Commission’s Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

⁶ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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7. The Privacy Act of 1974⁷ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas District Office
South Central Region

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).