

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

In the Matter of

Norfolk Southern Railway
Company KFR862 NAL/Acct. No. 315NF00117
Atlanta, Georgia

ORDER

Adopted: December 12, 1995; Released: January 19, 1996

By the Chief, Compliance and Information Bureau:¹

I. INTRODUCTION

1. In this Order we address the Petition for Reconsideration filed by Norfolk Southern Railway Company (Petitioner), pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106. The petitioner requests review of a monetary forfeiture of \$7,500 issued by the Norfolk Field Office, Compliance and Information Bureau, under authority of Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b) for violating Section 90.439 of the Commission's rules, 47 C.F.R. § 90.439. For the reasons noted below, we reduce the monetary forfeiture to \$5,000.

II. BACKGROUND

2. On May 24, 1993, the Norfolk Field Office issued a Notice of Apparent Liability (NAL) to the petitioner, licensee of Railway Radio Station KFR862, for \$7,500. The Norfolk Field Office issued the NAL because personnel at the petitioner's office in Lynchburg, Virginia, failed to make the station available for inspection by an authorized representative of the Commission in violation of Section 90.439 of the Commission's rules.² In particular, a Commission agent showed his official FCC badge to several persons at the station and requested access to the radio equipment. The agent waited for two and one-half hours and continued to request that he be allowed to inspect the station, but the petitioner's personnel still denied access. In response to the NAL, the petitioner admitted that it denied access to the station and stated that it would take steps to educate its field personnel of the FCC's authority to conduct unannounced on-sight inspections. The Norfolk Field Office treated the petitioner's response to the NAL as an admission and issued a Notice of Forfeiture (NOF) for \$7,500 on July 27, 1993. The petitioner then filed the Petition before us stating that it is not company policy to

allow "outsiders" to gain access to vital communications equipment unless an appropriate company official is present.

III. DISCUSSION

3. The right to inspect a station is one of the cornerstones of the FCC's ability to ensure compliance with the Communications Act and the FCC regulations. *See In The Matter of Jan Mar Courier, Inc.* 8 FCC Rcd 7570 (1993). The petitioner's policy of not admitting outsiders is immaterial. As a licensee, the petitioner must allow inspection at any time the radio station is in operation upon a reasonable request of an authorized FCC representative. *See* 47 U.S.C. § 303(n); 47 C.F.R. 90.439. A refusal to inspect or a significant delay in inspection can often shelter egregious violations and is thus a serious violation. The petitioner presents no evidence that the FCC agent's request was unreasonable and has offered no mitigating circumstances that would account for the failure to allow inspection. The FCC is not required to inspect by appointment and two and one-half hours is not a reasonable time to expect an authorized FCC representative to wait.

4. With respect to the \$7,500 forfeiture, we note that the Norfolk Office followed the forfeiture guidelines established in the Commission's *Policy Statements, Standards for Assessing Forfeitures, (Policy Statement)*, 8 FCC Rcd 6215 (1993). On July 12, 1994, the Court of Appeals for the D.C. Circuit vacated the forfeiture guidelines. *United States Telephone Assn. v. FCC*, 28 F.3d 1232 (D.C. Cir. 1994). On reconsideration, we have reassessed the forfeiture amount pursuant to the statutory guidelines set forth in Section 503 of the Act, 47 U.S.C. § 503(b)(2)(D). In particular, Section 503(b) of the Act requires that the Commission "take into account the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." 47 U.S.C. § 503(b)(2)(D). After evaluating the facts and circumstances in the case under the statutory guidelines, we conclude that the seriousness of this violation warrants the issuance of a forfeiture in the amount of \$5,000.

IV. ORDERING CLAUSES

5. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration is GRANTED in part and the monetary forfeiture is REDUCED.

6. IT IS FURTHER ORDERED that Norfolk Southern Railway Company, must pay the forfeiture amount of Five Thousand Dollars (\$5,000) within thirty (30) days of the release date of this Order, or file an Application for Review of this Order pursuant to 47 C.F.R. § 1.115. Payment may be made by check or money order payable to the Federal Communications Commission.³ Please place NAL/Acct. No. 315NF00117 on the remittance and mail it to:

¹ The Compliance and Information Bureau (CIB) was formerly named the Field Operations Bureau. The name change became effective on November 27, 1994.

² Section 90.439 of the Commission's rules requires that all stations and records of stations in these [Private Radio] services

shall be made available for inspection at any reasonable time and any time while the station is in operation upon reasonable request of an authorized Commission representative. 47 C.F.R. § 90.439.

³ Requests for installment plans should be mailed to: Chief,

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Norfolk Southern Railway Company.

FEDERAL COMMUNICATIONS COMMISSION

Beverly G. Baker
Chief, Compliance and Information Bureau