

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

In the Matter of	)	
	)	
Twenty-One Sound Communications, Inc.	)	File Number EB-05-KC-017
Licensee, KNSX(FM)	)	
Facility ID: 68579	)	NAL/Acct. No. 20053256002
Steelville, MO	)	
Florissant, MO	)	FRN: 0009075656

**FORFEITURE ORDER**

**Adopted:** July 25, 2005

**Released:** July 27, 2005

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) to Twenty-One Sound Communications, Inc. (“Twenty-One Sound”), licensee of Station KNSX(FM) in Steelville, Missouri, for willful and repeated violation of Sections 11.35(a), 73.1125(a), and 73.3526(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Twenty-One Sound’s failure to maintain Emergency Alert System (“EAS”) equipment in operational readiness condition, failure to maintain a main studio in compliance with the Rules, and failure to maintain a complete public inspection file.

**II. BACKGROUND**

2. On March 1, 2005, an agent with the Commission’s Kansas City Office of the Enforcement Bureau (“Kansas City Office”) attempted to inspect the main studio for Station KNSX(FM). The agent found signs at the KNSX(FM) transmitter site in Woodland Lakes, Missouri that stated the main studio was located in a guard shack at the entrance to a gated residential area near the transmitter site.<sup>2</sup> The agent observed that there were no signs on or near the guard shack that indicated it was associated with the station. The guard shack was staffed twenty-four hours per day by a single guard. The guards who manned the guard shack worked for the nearby residential community. The guard on duty during the inspection, who worked between 3 P.M. and 11 P.M., stated that he was the only guard paid on occasion by the station owner to make the public file available to the public. There was no microphone or transmission or production equipment of any kind in the guard shack. All of the equipment which enabled the station to operate was located at the transmitter site. The guard stated that the KNSX transmitter could not be controlled from the guard shack. The station owner contemporaneously stated that he was in the process of obtaining a main studio in Sullivan, Missouri for

<sup>1</sup>47 C.F.R. §§ 11.35(a), 73.1125(a), and 73.3526(a).

<sup>2</sup>The KNSX(FM) transmitter was located nearby but not within the gated residential community.

Station KNSX(FM) and Station KESY(FM), a co-owned station licensed to Cuba, Missouri. The owner also admitted that the station did not publish a local or toll-free number in the Steelville telephone directory.

3. During the inspection on March 1, 2005, the agent observed that the public file in the guard shack did not contain any ownership reports or issues programs lists after December 24, 2003. The file contained a station license that expired on February 1, 2005 and did not include a license renewal application or license renewal.

4. Also on March 1, 2005, the agent inspected the unattended KNSX transmitter site and observed that the sole EAS unit for the station was installed there. The EAS unit was found in manual operating mode and, as installed, was incapable of automatically retransmitting messages and tests. The station had been receiving EAS activations, but a review of the station logs for the two-month period prior to the inspection confirmed that the station had not retransmitted any activation it had received and had not transmitted several required weekly EAS tests. The owner also admitted that he did not contact the local or state EAS coordinator to determine which stations he had been assigned to monitor, and, as a result, was only monitoring one of the three stations assigned to it.

5. On April 12, 2005, the Kansas City Office issued a *Notice of Apparent Liability for Forfeiture* to Twenty-One Sound in the amount of twenty-five thousand dollars (\$25,000) for the apparent willful and repeated violation of Sections 11.35(a), 73.1125(a) and 73.3526(a) of the Rules.<sup>3</sup> On June 6, 2005, Twenty-One Sound submitted a response to the *NAL* requesting cancellation or reduction of the proposed forfeiture.<sup>4</sup>

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Commission's Rules ("Rules"),<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Twenty-One Sound's response, 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.<sup>7</sup>

7. Section 11.35(a) of the Rules requires broadcast station licensees to ensure that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the

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<sup>3</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20053256002 (Enf. Bur., Kansas City Office, April 12, 2005) ("*NAL*").

<sup>4</sup>Twenty-One Sound requested an extension of time in which to submit a response to the *NAL*, which was granted by the Kansas City Office.

<sup>5</sup>47 U.S.C. § 503(b).

<sup>6</sup>47 C.F.R. § 1.80.

<sup>7</sup>47 U.S.C. § 503(b)(2)(D).

stations and systems are in operation.<sup>8</sup> Broadcast station licensees are also required to receive, interrupt normal program, and transmit certain EAS messages.<sup>9</sup> When facilities are unattended, Sections 11.51 and 11.52 of the Rules require licensees to employ automatic systems to interrupt programming and transmit certain EAS messages.<sup>10</sup> On March 1, 2005, the EAS unit for Station KNSX(FM) was installed at its unattended KNSX transmitter site and set in manual mode. The owner of Twenty-One Sound claimed to visit the site occasionally to transmit manually the required weekly and monthly EAS tests. He admitted, however, that, since he put the station back on the air in 1996, the transmitter site had never been regularly staffed. Thus, the EAS unit at this unattended transmitter site should have been set on an automatic mode. Because the EAS unit was set in manual mode, if an actual and unscheduled EAS message was received, no person would be present at the EAS transmitter site to interrupt normal programming and transmit the EAS message or test. Therefore, although its EAS unit was installed and not defective, Twenty-One Sound failed to maintain an operational EAS system.

8. In its response, Twenty-One Sound does not deny that its EAS unit was set in a manual mode on March 1, 2005, but, nevertheless, requests cancellation or reduction of the proposed forfeiture. Twenty-One Sound alleges that the EAS unit was originally set in an automatic mode and, due to a power outage or equipment glitch, reverted to the manual mode on an undisclosed date. Twenty-One Sound claims that the problem would have been found and corrected when the EAS equipment did not function properly during the next required monthly test. If Twenty-One Sound's EAS unit was set in an automatic mode and only recently switched to manual mode, its EAS unit should have functioned properly in January and February of 2005. However, on January 8, 2005, the station's EAS unit did not automatically retransmit the required monthly test. The station's logs show that the station received the required monthly test on January 8, and originated, rather than retransmitted, it. Moreover, the station's logs show that the EAS unit failed to retransmit the required monthly test in February 2005. Although the station owner claimed to have conducted the weekly and monthly tests, there was no evidence that any weekly or monthly tests were conducted by the station between January 8 and March 1, 2005. The EAS unit's logging system and printer worked properly on January 8, 2005 and again when it was tested on March 1, 2005. The station owner stated that he was unaware of any damage or repairs to the EAS unit's logging system and printer between January 8 and March 1. The station owner knew or should have known that its EAS unit was not set in automatic mode when it failed to retransmit the January and February monthly tests. Accordingly, we find no basis to cancel or reduce the forfeiture associated with this violation.

9. Section 73.1125(a) of the Rules requires FM stations to maintain a main studio. "A station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence."<sup>11</sup> The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.<sup>12</sup> The guard shack/main studio at the time of inspection was staffed by a single guard. Twenty-One Sound asserts in its response that the guard on duty during the inspection was the station manager. However, when the agent questioned the guard, the

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<sup>8</sup>47 C.F.R. § 11.35(a).

<sup>9</sup>See 47 C.F.R. §§ 11.51(k), 11.52(e).

<sup>10</sup>See 47 C.F.R. §§ 11.51(k)(1), 11.52(e)(1).

<sup>11</sup>*Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988).

<sup>12</sup>*Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), clarified 7 FCC Rcd 6800 (1992).

guard stated, in the presence of the station owner, that he was not considered part of station management. The owner did not dispute contemporaneously the guard's statements. Accordingly, we cannot rely upon Twenty-One Sound's assertion that the guard was the station manager without corroborating documentation. Thus, we conclude Twenty-One Sound failed to maintain full-time managerial personnel. Twenty-One Sound also claims that the guard could control the transmitter and originate programming from the main studio via the telephone, and it, therefore, equipped its main studio with production and transmission facilities that meet applicable standards. No radio equipment of any kind, however, was located in the guard shack other than a telephone. All of the station's equipment was located at the transmitter site. Moreover, when asked if he could control the station transmitter, the only guard on duty stated explicitly that he could not control the transmitter from the guard shack. Assuming *agruendo* that the guard did know how to control the transmitter from the guard shack, the guard still could not maintain continuous program transmission capability, because there was only one telephone line to the guard shack. If the guard placed or received a phone call during his shift, he would not be able to control the transmitter or originate programming. Therefore, we find that Twenty-One Sound failed to equip its main studio with production and transmission facilities that meet applicable standards and failed to maintain continuous program transmission capability.

10. In addition, Twenty-One Sound questions the fairness of the main studio rules for lower power stations, because higher power stations have larger principal community contours and greater flexibility in locating their main studios. The Commission has addressed this concern, however, by allowing stations to locate their main studios within either the station's community of license, at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license, or within twenty-five miles from the reference coordinates of the center of its community of license.<sup>13</sup> Thus, lower power stations and higher power stations serving the same community would have almost the same options in locating their main studios. Twenty-One Sound also states that it has now obtained a new main studio for the station in Cuba, Missouri. Licensees are expected to take prompt remedial action to comply with the Rules after being informed of a violation, so such action does not warrant a reduction in the forfeiture.<sup>14</sup>

11. Section 73.3526(a) of the Rules requires commercial broadcast stations to maintain for public inspection, a file containing materials listed in that section.<sup>15</sup> The public inspection file is to be maintained at the main studio of the station<sup>16</sup> and be available for public inspection during regular business hours.<sup>17</sup> The Kansas City Office found that the station's public file was apparently unavailable to the public during normal business hours, because the guard on duty stated that he was the only guard to provide the public file to members of the public and that the other guards were supposed to call him if

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<sup>13</sup>See 47 C.F.R. § 73.1125(a).

<sup>14</sup>See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524, para. 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, para. 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, para. 13 (Enf. Bur. 2002).

<sup>15</sup>47 C.F.R. § 73.3526(a).

<sup>16</sup>See 47 C.F.R. § 73.3526(b).

<sup>17</sup>See 47 C.F.R. § 73.3526(c)(1).

anyone came by between 9 A.M. and 3 P.M.<sup>18</sup> The Kansas City Office also concluded that it would be very difficult for the public to find the file, as the guard shack was not labeled<sup>19</sup> and the station did not maintain a telephone number listed in the local directories.<sup>20</sup> In its response to the *NAL*, Twenty-One Sound asserts that the other guards, who worked between 9 A.M. and 3 P.M., would make the public file available to members of the public. It is possible that the station owner failed to inform the guard on duty of this fact, and we have no other evidence to contradict the station owner's assertion that the file would have been available to members of the public between 9 A.M. and 3 P.M. Therefore, we reduce the forfeiture associated with this violation from \$10,000 to \$3,000, because the public file was partially complete and was only missing the station's license renewal,<sup>21</sup> ownership reports, and issues-programs lists<sup>22</sup> after December 24, 2003.<sup>23</sup>

12. We have examined Twenty-One Sound's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review and based on the evidence, we find that Twenty-One Sound willfully<sup>24</sup> and repeatedly<sup>25</sup> violated Sections

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<sup>18</sup>Although the guard lived in the nearby residential community, there is no guarantee that this guard would be reachable or that he would arrive at the guard shack within a reasonable period of time for members of the public that arrived between 9 A.M. and 3 P.M.

<sup>19</sup>Twenty-One Sound asserts in its response to the *NAL* that there were signs not far from the guard shack that stated the guard shack was the station's main studio. The only sign the agent could find, however, was located at the transmitter site. That sign referenced the guard shack, but did not indicate which guard shack, of the several in the residential complex, served as the main studio. If an agent, who was looking for appropriate signage, could not find the main studio's signage, members of the general public would likely have similar difficulties locating the main studio.

<sup>20</sup>The station did maintain a toll-free telephone number that was listed in 800 directory assistance.

<sup>21</sup>The *NAL* noted that Twenty-One Sound's public file was missing a copy of its most recent license application. During the inspection, the station owner stated that the Commission had not yet renewed its license. However, in its response to the *NAL*, Twenty-One Sound states that its license was renewed on January 21, 2005. The public file contained neither the most recent license application, nor the license renewal.

<sup>22</sup>Twenty-One Sound correctly notes that issues-programs lists are only to be retained until final action has been taken on the station's next license renewal application. Twenty-One Sound asserts that it was not required to have any issues-programs lists on March 1, 2005, because its license was renewed on January 21, 2005. However, pursuant to Section 1.117 of the Rules, an action issued pursuant to delegated authority is not final until 40 days after public notice of the action. 47 C.F.R. § 1.117. Public Notice of Twenty-One Sound's license renewal was published on January 26, 2005. Thus, its renewal was not final on March 1, 2005, and the issues-programs lists from 2004 were required to be maintained in the file.

<sup>23</sup>The *NAL* also stated that the station's public file was missing emails from the public. During the inspection, the station owner stated that the station received numerous emails from the public, but that he failed to place them in the public file. However, in its response to the *NAL*, Twenty-One Sound asserts that the emails in question were not required to be placed in the file, because they were merely record requests.

<sup>24</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

11.35(a), 73.1125(a) and 73.3526(a) of the Rules by failing to maintain EAS equipment in operational readiness condition, failing to maintain a main studio in compliance with the Rules, and failing to maintain a complete public inspection file. We find it appropriate to reduce the forfeiture for these violations from \$25,000 to \$18,000.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>26</sup> Twenty-One Sound Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighteen thousand hundred dollars (\$18,000) for willfully and repeatedly violating Sections 11.35(a), 73.1125(a) and 73.3526(a) of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>27</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>28</sup>

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Twenty-One Sound Communications, Inc. at its address of record and its counsel, Lee J. Peltzman, Shainis & Peltzman, Chartered, 1850 M Street NW, Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

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<sup>25</sup>The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>26</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>27</sup>47 U.S.C. § 504(a).

<sup>28</sup>See 47 C.F.R. § 1.1914.