

**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. 200532560002
Steelville, MO)	
Florissant, MO)	FRN: 0009075656

ORDER ON REVIEW

Adopted: February 6, 2008

Released: February 8, 2008

By the Commission:

I. INTRODUCTION

1. In this Order on Review (“*Order on Review*”), we deny the application for review filed by Twenty-One Sound Communications, Inc. (“Twenty-One Sound”), pursuant to Section 1.115 of the Commission’s Rules (“Rules”).¹ Twenty-One Sound seeks review of the Enforcement Bureau’s (“Bureau”) *Memorandum Opinion and Order*² denying Twenty-One Sound’s petition for reconsideration of a *Forfeiture Order* issued July 27, 2005.³ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$18,000 on Twenty-One Sound for the willful and repeated violation of Sections 11.35(a), 73.1125(a), and 73.3526(a) of the Commission’s Rules (“Rules”).⁴ The noted violations involved 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. DISCUSSION

2. In its Application for Review, Twenty-One Sound reiterates past arguments raised at the Bureau level. We find that these arguments were fully and correctly addressed in the Bureau's Order, but we take the opportunity to elaborate on certain issues below. Twenty-One Sound also provides new statements that were not raised at the Bureau level. The Commission’s Rules, however, provide that: “No application for review will be granted if it relies on questions of fact ... upon which the designated authority has been afforded no opportunity to pass.”⁵ We find that Twenty-One Sound has not

¹ 47 C.F.R. § 1.115.

² *Twenty-One Sound*, Memorandum Opinion and Order, 20 FCC Rcd 18064 (Enf. Bur. 2005) (“*Memorandum Opinion and Order*”).

³ *Twenty-One Sound*, Forfeiture Order, 20 FCC Rcd 12497 (Enf. Bur. South Central Region 2005) (“*Forfeiture Order*”).

⁴ 47 C.F.R. §§ 11.35(a), 73.1125(a), 73.3526(a).

⁵ 47 C.F.R. § 1.115(c).

demonstrated good cause to waive this Rule. Nevertheless, as described below, we find that Twenty-One Sound's new arguments lack merit.⁶

3. Twenty-One Sound argues that its violations were not willful, as the station's owner did not intend to violate the Rules. The station's owner asserts that he has great respect for the Commission and the federal government and love of radio and that he would never intentionally violate the Rules. The Communications Act of 1934, as amended, specifically provides, however, that a violator may commit a willful violation, without intending to violate the Rules.⁷ By concluding that Twenty-One Sound willfully and repeatedly violated the Rules, the Bureau in no way impugned the character, motives, patriotism, or love of radio of Twenty-One Sound's owner.

4. Regarding the main studio violation, Twenty-One Sound again asserts that the guard on duty during the inspection on March 1, 2005 was the station's manager. However, according to the Bureau's records of the inspection, that guard stated, in the presence of the station owner, that he was not part of station management. In a statement attached to Twenty-One Sound's application for review, the station owner asserted for the first time that he did not hear this statement and that, if he had, he would have promptly corrected the guard. The fact that the guard made this statement in the presence of the station owner was included in the *Forfeiture Order*, yet Twenty-One Sound failed to raise its current assertion in its petition for reconsideration of the *Forfeiture Order*. Accordingly, Twenty-One Sound is barred from raising this issue of fact in its Application for Review,⁸ and we conclude that the Bureau did not err in finding that Twenty-One Sound failed to maintain a full-time managerial presence at its main studio.

5. Moreover, Twenty-One Sound asserts for the first time in its application for review that the station's main studio was housed in the transmitter building, not the guard shack previously identified as the main studio. In the *Notice of Apparent Liability*, the Kansas City Office of the Bureau acknowledged that the station transmitter site was capable of maintaining program transmission capability, but explained that the owner did not identify the transmitter site as the main studio. The station owner admitted on March 1, 2005 (and his statement in the application for review does not contradict this prior admission) that the transmitter site was unattended. Although Twenty-One Sound cannot maintain that the transmitter building was its main studio consistent with Section 1.115(c) of the Rules, even assuming it could, Twenty-One Sound's failure to maintain a full-time managerial presence at the transmitter building also would constitute a violation of Section 73.1125 of the Rules.

6. Failure to maintain a full-time managerial presence at a main studio by itself constitutes a violation of Section 73.1125(a) of the Rules. However, the Bureau also found that Twenty-One Sound failed to equip the guard shack/main studio with production and transmission facilities that meet applicable standards and failed to maintain continuous program transmission capability in violation of Section 73.1125(a) of the Rules. Twenty-One Sound acknowledges that the guard shack/main studio did

⁶ Twenty-One Sound also raises several issues related to the location of the station's public file that are irrelevant to the violations found by the Bureau. We do not address these issues, as the Bureau issued a forfeiture for failing to maintain a complete public inspection file – not placing the file in a deficient location.

⁷ 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 also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991).

⁸ See 47 C.F.R. § 1.115(c).

not contain any production or transmission equipment or a microphone.⁹ Twenty-One Sound again asserts that the transmitter could be controlled or turned on and off via any telephone or Internet DSL¹⁰ and that the guard on duty knew how to control the station's transmitter but was flustered by the inspection. Regardless of whether the guard on duty was flustered or otherwise incapacitated, when asked to demonstrate control of the transmitter on March 1, 2005, the only guard on duty could not do so. Therefore, the Bureau did not err in finding that the station failed to maintain continuous program transmission capability and control of its transmitter from its main studio.

7. Twenty-One Sound's owner again claims that an agent inspected the station during a disaster inspection in 1997 and found no violations at the main studio. Because the main studio has remained unchanged since then, Twenty-One Sound claims that it thought its current main studio configuration was compliant with the Rules. As stated in the *Memorandum Opinion and Order*, there was a disaster inspection of KNSX(FM)'s tower, but no inspection of the station's main studio occurred at that time. During the disaster inspection, the agent notified Twenty-One Sound's owner of his failure to post an antenna structure registration number and advised him to consult the broadcast station inspection checklist. Moreover, the Bureau found that the claim that the owner thought the main studio configuration was compliant with the Rules was contradicted by his own statement made during the March 1, 2005 inspection that he failed an alternative broadcast inspection ("ABIP") conducted by the Missouri Broadcast Association in the summer of 2004 because of problems with the station's main studio. Accordingly, we find no error in the Bureau's finding that Twenty-One Sound violated the main studio Rules.

8. Twenty-One Sound also alleges that its station setup meets the spirit of the Commission's main studio Rules because its transmitter may be controlled remotely via telephone and Internet DSL, and therefore, it should not be responsible for a forfeiture for a technical violation of the Rules. We disagree. Although the Commission has relaxed the main studio requirements over time, it has not eliminated the requirement that "[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."¹¹ Accordingly, because the Bureau found Twenty-One Sound failed to maintain a full-time management presence and continuous program transmission capability at its main studio, we do not find that the Bureau erred in its imposition of a seven thousand dollar forfeiture.

9. In addition, Twenty-One Sound's owner disputes the Bureau's finding that the station violated the EAS Rules. The owner claims that he had sixty days to correct the problems with the station's EAS equipment. The Commission previously concluded that the 60 days referenced in Section 11.35(b) begin "only after the defective equipment has been removed for repair or replacement."¹² The

⁹ Twenty-One Sound states that production and transmission equipment was housed at the station's transmitter site. However, as discussed *supra*, Twenty-One Sound did not assert that the transmitter site served as its main studio until its application for review.

¹⁰ Twenty-One Sound acknowledges that the guard shack was not equipped with a DSL connection or computer. It did, however, contain a telephone.

¹¹ *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, para. 24 (1988). See *Review of the Commission's Rules Regarding the Main Studio and Local Pub. Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, paras. 7-17 (1998) (relaxing the geographical limitations on the location of the main studio but rejecting proposals to further relax the rules), *revised in part on reconsideration*, Memorandum Opinion and Order, 14 FCC Rcd 11113 (1999).

¹² See *A-O Broadcasting Corporation*, Forfeiture Order, 18 FCC Rcd 27069, 27074, para. 18 (FCC 2003).

Bureau found that Section 11.35(b) did not apply in this case, because the equipment was not defective and had not been removed for repair or replacement. The owner argues that the removal of equipment is not the first thing that would be done when a problem with EAS equipment is noticed; tests would be performed first. He claims that he would have discovered the problems with his EAS equipment within 60 days.¹³ We conclude, however, that the Bureau did not err in its interpretation of Section 11.35(b), which states that a broadcast station may operate “without the defective EAS equipment pending its repair or replacement for 60 days without further FCC authority.”

10. Finally, Twenty-One Sound requests reconsideration of the Bureau’s decision to impose a three thousand dollar forfeiture for failing to make available a complete public inspection file. Twenty-One Sound again claims that the forfeiture should be cancelled, because the station’s ownership report and license renewal and application¹⁴ were possibly removed by an individual who reviewed the station’s public file and because the station’s issues programs lists were only required to be kept for a few days after the March 1, 2005 inspection. The Bureau stated that “[r]egardless of why or for how long items were missing, the fact remains that three items were missing from the station’s public file when the agent conducted his inspection;” and that “Twenty-One Sound is required to maintain a public file and is responsible for ensuring that it is complete.” We find no error in that conclusion. Twenty-One Sound also argues that it is illogical to penalize it for not having its license renewal and its license renewal application in the station’s public file. The Bureau, however, did not penalize Twenty-One Sound for missing both its license renewal and license renewal application, but rather for failure to maintain a complete public inspection file.¹⁵

11. Upon review of the Application for Review and the entire record herein, we conclude that Twenty-One Sound has failed to demonstrate that the Bureau erred. The Bureau properly decided the matters before it, and we uphold its decision for the reasons stated in its *Forfeiture Order* and *Memorandum Opinion and Order*.

¹³ 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. The station’s logs also failed to show any weekly tests between January 8, 2005 and March 1, 2005. We note that the station owner failed to provide an explanation of why he would identify and correct the problem with his EAS equipment within 7 days, when he failed to do so during the 53 days prior to the agent’s inspection.

¹⁴ In its petition for reconsideration, Twenty-One Sound alleged that someone removed its license renewal application. In its application for review, Twenty-One Sound claims that someone removed its license renewal.

¹⁵ During the March 1, 2005 inspection, the station owner stated that the station’s license had not yet been renewed. However, on March 1, 2005, the station’s public file did not contain its most recent license application, so the *NAL* cited Twenty-One Sound for missing its license application. In response to the *NAL*, Twenty-One Sound stated that its license was renewed on January 21, 2005, so it was not required to have its license renewal application in its public file. 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. Section 73.3526(e)(2) of the Rules states that applications shall be retained in the public file until final action has been taken on the application. Twenty-One Sound maintained neither its license renewal application nor its license renewal in its public file on March 1, 2005. Twenty-One Sound was only cited for missing three items – issues program lists, ownership reports, and license renewal application/license renewal.

III. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to section 1.115(g) of the Commission's Rules,¹⁶ that the Application for Review filed by Twenty-One Sound Communications, Inc. **IS DENIED** and the *Memorandum Opinion and Order* **IS AFFIRMED**.

13. 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.¹⁷ 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: Associate Managing Director – Financial Operations, 445 12th Street, SW, Room 1A625, Washington, D.C. 20554.¹⁸

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and certified mail, return receipt requested, to Twenty-One Sound at its address of record and to its counsel, Lee J. Peltzman, Shainis & Peltzman, Chartered, 1850 M Street NW, Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶ 47 C.F.R. § 1.115(g).

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.