

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

In the Matter of	)	
	)	
Viva Communications Group, LLC	)	File Number EB-07-BF-020
	)	
Licensee of Station WSDE	)	NAL/Acct. No. 200832280002
	)	
Cobleskill, New York	)	FRN 0011157781
	)	
Facility ID # 4002		

### FORFEITURE ORDER

**Adopted:** October 24, 2008

**Released:** October 28, 2008

By the Regional Director, Northeast Region, Enforcement Bureau:

#### I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twelve thousand eight hundred dollars (\$12,800) to Viva Communications Group, LLC (“Viva”), licensee of AM radio station WSDE, Cobleskill, New York, for willfully and repeatedly violating Sections 11.35(a), 73.1560(a), 73.1745(a), and 73.3526(e)(12) of the Commission's Rules (“Rules”)<sup>1</sup> by failing to maintain operational Emergency Alert System (“EAS”) equipment, failing to sign off at local sunset time, failing to maintain daytime operating power at more than 90% of the authorized power, and failing to maintain a complete public inspection file.

2. On December 20, 2007, the Buffalo Field Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$16,000 to Viva for failure to maintain operational EAS equipment, failure to sign off at local sunset time, failure to maintain daytime operating power at more than 90% of the authorized power, and failure to maintain a complete public inspection file.<sup>2</sup> In this *Order*, we consider Viva’s arguments that the forfeiture amount should be cancelled in light of the remedial efforts taken by Viva prior to the inspection by FCC agents.

#### II. BACKGROUND

3. On May 9, 2007, in response to a complaint, an agent in the FCC’s Buffalo Office began an investigation of AM station WSDE’s operations in Cobleskill, NY. WSDE is authorized to operate with a power of 1000 watts daytime and is required to cease operating at local sunset time, which is 7:15 PM Eastern Standard Time for the month of May. The agent monitored WSDE before and after local sunset and determined that the station remained on the air with programming after local sunset time. The agent conducted field strength measurements before and after local sunset and determined that the radio station operated at the same power level before and after sunset.

<sup>1</sup> 47 C.F.R. §§ 11.35(a), 73.1560(a), 73.1745(a), 73.1870(a), and 73.3526(e)(12).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832280002 (Enf. Bur., Philadelphia Office, rel. December 20, 2007).

4. On the morning of May 10, 2007, the agent monitored radio station WSDE before and after sunrise and determined that the station was on the air with programming before sunrise. The agent conducted field strength measurements before and after sunrise and determined the radio station operated at the same power level before and after sunrise.

5. Later that morning, the FCC agent visited WSDE's main studio and met with the manager of the station, who stated that the station had been operating after sunset for quite some time. After conducting the inspection at the main studio, the manager and the agent went to the transmitter site. The agent determined that the operating power of the station was only 33% of the authorized power, *i.e.*, 333 watts. The manager stated that the station had technical problems and that he wanted to keep the power low until the problems were corrected.

6. The agent later returned to WSDE's main studio with the manager. The agent asked the operator on duty for the station's EAS logs. The operator on duty stated that the station does not have an EAS log. The operator on duty further stated that he has been employed at the station for approximately three years and has never conducted an EAS test. The operator further stated that he did not know the procedure for conducting an EAS test and does not recall the last time the station received an EAS test. The agent inspected the EAS equipment and determined that it was not functioning; no stations could be detected on the EAS receiver. The agent also found that the EAS printer was not attached to the EAS equipment. The agent also reviewed the station's public inspection file and found that it did not contain any issues/ programs lists for the last two years

7. On December 20, 2007, the Buffalo Field Office issued a *NAL* in the amount of \$16,000 to Viva for failure to maintain operational EAS equipment, failure to sign off at local sunset time, failure to maintain daytime operating power at more than 90% of the authorized power, and failure to maintain a complete public inspection file.<sup>3</sup> In its response, Viva does not dispute the findings in the *NAL*, but requests that we cancel the forfeiture in light of its remedial efforts.<sup>4</sup>

### III. DISCUSSION

8. 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 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* ("*Forfeiture Policy Statement*").<sup>7</sup> In examining Viva'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>8</sup>

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832280002 (Enf. Bur., Philadelphia Office, rel. December 20, 2007).

<sup>4</sup> See Letter from Aaron K. Bikofsky, Counsel for Viva, to FCC Buffalo Office, dated January 16, 2008. At the request of FCC staff, Viva submitted a supplemental response to the *NAL*. See Letter from Aaron K. Bikofsky, Counsel for Viva, to Sharon Webber, Regional Counsel for Northeast Region, dated August 14, 2008.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

9. Viva does not dispute the findings in the *NAL*, but seeks cancellation of the proposed forfeiture based on efforts it took to correct the violations. Although we do not believe that cancellation of the forfeiture in its entirety is warranted, we find that a reduction in the forfeiture amount is appropriate in light of Viva's remedial efforts. The Commission consistently has held that reductions are appropriate based on good faith efforts to correct or remedy violations prior to the Commission's involvement.<sup>9</sup> Viva submitted documentation, including an invoice from a consulting engineer, showing that it had taken steps to correct the violations prior to the agent's inspection on May 10, 2007. We therefore conclude that a reduction to \$12,800 is warranted.

10. We have examined Viva's responses to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that a reduction of the proposed forfeiture to \$12,800 is warranted, based on Viva's remedial efforts prior to the agent's inspection.

#### IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Viva Communications Group, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$12,800 for willfully and repeatedly violating Sections 11.35(a), 73.1560(a), 73.1745(a), and 73.3526(e)(12) of the Rules.<sup>10</sup>

12. 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>11</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/Account Number* and *FRN Number* referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL/Account number* in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Viva Communications Group, LLC, shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov)

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<sup>9</sup> See e.g., *Sutro Broadcasting Corporation*, 19 FCC Rcd 15274, 15277 (2004) (stating that the Commission will generally reduce the assessed forfeiture amount "based on the good faith corrective efforts of a violator when those actions were taken prior to Commission notification of the violation").

<sup>10</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35(a), 73.1560(a), 73.1745(a), 73.3526(e)(12).

<sup>11</sup> 47 U.S.C. § 504(a).

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Viva Communications Group, LLC, at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

G. Michael Moffitt  
Regional Director, Northeast Region  
Enforcement Bureau