

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

In the Matter of	)	
	)	File No. EB-08-SE-154
Mathews Readymix LLC	)	NAL/Acct. No. 200832100076
Marysville, California	)	FRN # 0017497967

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: August 26, 2008**

**Released: August 28, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Mathews Readymix, LLC (“Mathews Readymix”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station KNAS290, apparently liable for a forfeiture in the amount of six thousand two hundred dollars (\$6,200) for operating a PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Mathews Readymix acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)<sup>1</sup> and Sections 1.903(a) and 1.949(a) of the Commission’s rules (“rules”).<sup>2</sup>

**II. BACKGROUND**

2. On October 25, 1996, Mathews Readymix's application to renew its license for station KNAS290 was granted with an expiration date of January 21, 2002. On February 28, 2008, Mathews Readymix filed with the Wireless Telecommunications Bureau (“WTB”) a request for Special Temporary Authority (“STA”) to operate KNAS290. On March 12, 2008, WTB granted Mathews Readymix’s STA request under call sign WQIL765.<sup>3</sup>

3. Because it appeared that Mathews Readymix may have operated KNAS290 after the expiration of its license, WTB referred this case to the Enforcement Bureau for investigation and possible enforcement action. On July 7, 2008, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry (“LOI”)<sup>4</sup> to Mathews Readymix.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>3</sup> See File No. 0003340786. The STA was granted for a six-month period which expires September 8, 2008 without prejudice to possible enforcement action for unauthorized operation.

<sup>4</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Bob Kynaston, Mathews Readymix LLC (July 7, 2008).

4. In its August 6, 2008 response to the LOI,<sup>5</sup> Mathews Readymix stated that it first became aware of the expiration of its license for station KNAS290 in February 2008.<sup>6</sup> Mathews Readymix explained that its failure to file a timely license renewal application for station KNAS290 was unintentional, and that there had been “several management changes between 2002 and 2008, which undoubtedly contributed to this gap in compliance.”<sup>7</sup> Upon discovering the expiration of its license, Mathews Readymix immediately began the process to renew the expired license.<sup>8</sup> It stated that it needs the radios as an “important safety tool” for its business and that it will put in place at the beginning of each year, a review system to check on the expiration date of its new license.<sup>9</sup> Mathews Readymix admitted that it operated the station beyond the license expiration date without Commission authorization.<sup>10</sup> Specifically, Mathews Readymix stated that it continuously operated station KNAS290 from the expiration of its license on January 21, 2002 until the grant of STA to operate under call sign WQIL765 on March 12, 2008, a period of six years.<sup>11</sup>

### III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization.<sup>12</sup> Additionally, Section 1.949(a) of the rules requires that licensees file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”<sup>13</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>14</sup>

6. As a Commission licensee, Mathews Readymix was required to maintain its authorization in order to operate its PLMRS station. Mathews Readymix admitted that it operated the PLMRS station without Commission authority from the station’s license expiration date of January 21, 2002 until March 12, 2008.<sup>15</sup> By operating its PLMRS station for approximately six years without Commission authorization, Mathews Readymix apparently violated Section 301 of the Act and Section 1.903(a) of the rules. Mathews Readymix also acted in apparent violation of Section 1.949(a) of the rules by failing to file a timely renewal application for the station.

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<sup>5</sup> See Letter from Robert Knyaston, VP Finance, Mathews Readymix LLC, to Katherine Power, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 1, 2008) (“Response”). The Response includes the declaration of Mr. Knyaston.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>13</sup> 47 C.F.R. § 1.949(a).

<sup>14</sup> 47 C.F.R. § 1.955(a)(1).

<sup>15</sup> Response at 1.

7. Section 503(b) of the Act,<sup>16</sup> and Section 1.80(a) of the rules,<sup>17</sup> provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.<sup>18</sup> Based upon the record before us, it appears that Mathews Readymix’s violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “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 such other matters as justice may require.”<sup>19</sup> Having considered the statutory factors, as explained below, we propose a total forfeiture of \$7,500.

9. Section 1.80(b) of the rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority and three thousand dollars (\$3,000) for failure to file required forms or information.<sup>20</sup> The Commission has held that a licensee’s failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the rules and warrant the assessment of separate forfeitures.<sup>21</sup> Accordingly, we herein propose separate forfeiture amounts for Mathews Readymix’s separate violations.

10. We propose a forfeiture amount of six thousand dollars (\$6,000) for Mathews Readymix’s continued operation of its PLMRS station after the expiration of its license on January 21, 2002.<sup>22</sup> In proposing a \$6,000 forfeiture for the station’s unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture

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<sup>16</sup> 47 U.S.C. § 503(b).

<sup>17</sup> 47 C.F.R. § 1.80(a).

<sup>18</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>19</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>20</sup> 47 C.F.R. 1.80(b).

<sup>21</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”) (proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who operated its station for 14 months without Commission authority and failed to timely file its renewal application).

<sup>22</sup> Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967).

amount accordingly.<sup>23</sup> Consistent with recent precedent, the proposed \$6,000 forfeiture takes into account that Mathews Readymix's unauthorized operations spanned six years from the license's expiration date.<sup>24</sup> In addition, we propose a \$1,500 forfeiture for Mathews Readymix's failure to file the renewal application for station KNAS290 within the time period specified in Section 1.949(a) of the Rules.<sup>25</sup> Thus, we propose an aggregate forfeiture of \$7,500.

11. We find, however, that a downward adjustment of this proposed forfeiture amount to \$6,200 is warranted because Mathews Readymix made voluntary disclosures to Commission staff immediately upon learning of its violations -- after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.<sup>26</sup> We do not find, however, that Mathews Readymix's lack of awareness presents a mitigating factor warranting a further downward adjustment. As a Commission licensee, Mathews Readymix is charged with the responsibility for knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely renew the authorizations and maintain operating authority for its PLMRS station.<sup>27</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>28</sup> and Sections 0.111, 0.311 and 1.80 of the rules,<sup>29</sup> Mathews Readymix LLC **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand, two hundred dollars (\$6,200) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the rules.

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<sup>23</sup> See *Discussion Radio*, 19 FCC Rcd at 7438; see also *Ted Sakaida & Son, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9962, 9965 (Enf. Bur., Spectrum Enf. Div. 2007), *forfeiture ordered*, 22 FCC Rcd 21844 (2007); *Imperial Sugar Company*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4987 (Enf. Bur., Spectrum Enf. Div. 2007), *forfeiture ordered*, 22 FCC Rcd 17346 (Enf. Bur., Spectrum Enf. Div. 2007) ("*Imperial Sugar*").

<sup>24</sup> See *Mitchell Electric Membership Cooperative*, Notice of Proposed Liability for Forfeiture, 22 FCC Rcd 5538, 5541-52 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid) (proposing forfeiture of \$6,000 for unauthorized operation of a PLMRS station for almost five years); *Shared Data Networks, LLC*, Notice of Proposed Liability for Forfeiture, 20 FCC Rcd 18184, 18186-18187 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid) (proposing an \$18,000 forfeiture (\$6,000 per earth station) for unauthorized operation of earth station over a period of 5 years).

<sup>25</sup> See *Discussion Radio*, 19 FCC Rcd at 7437-38 (proposing a \$1,500 forfeiture for failure to file a timely renewal); see also *Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517, 13519 (Enf. Bur., Spectrum Enf. Div. 2006) (proposing a \$1,500 forfeiture for failure to file a timely renewal application), *forfeiture ordered*, 22 FCC Rcd 7530 (Enf. Bur., Spectrum Enf. Div. 2007); *Imperial Sugar*, 22 FCC Rcd at 4988 (proposing a \$1,500 forfeiture for failure to file timely renewal application for PLMRS station).

<sup>26</sup> See, e.g., *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003); *Emery Telephone*, 13 FCC Rcd 23854, 23858 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999); *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-98 ¶¶ 5-6 (Enf. Bur. 2004); *American Family Association*, 17 FCC Rcd 181135, 18137 (Enf. Bur. 2002), *recon. denied*, 18 FCC Rcd 2413 (Enf. Bur. 2003); *but see American Paging, Inc.*, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (finding that the mitigating effect of voluntary disclosure was abrogated by the licensee's delay).

<sup>27</sup> See *Discussion Radio*, 19 FCC Rcd 7433, 7437 (2004); *William S. Mills*, 15 FCC Rcd 20071, 20072 (Enf. Bur. 2000); see also *Peacock's Radio and Wild's Computer Service, Inc.*, 16 FCC Rcd 15016, 15017 (2001).

<sup>28</sup> 47 U.S.C. § 503(b).

<sup>29</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the rules,<sup>30</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Mathews Readymix LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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. Mathews Readymix will also send electronic notification on the date said payment is made to Katherine Power at [Katherine.Power@fcc.gov](mailto:Katherine.Power@fcc.gov) and to Ricardo Durham at [Ricardo.Durham@fcc.gov](mailto:Ricardo.Durham@fcc.gov).

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Robert Kynaston, Mathews Readymix LLC, P. O. Box 749, Marysville, California 95901.

#### FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>30</sup> 47 C.F.R. § 1.80.