

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
)
Durlyn Broadcasting Company, ) Fac. ID 52737
Licensee of WPNC-FM, Plymouth, North ) FRN: 0009371071
Carolina )

ORDER TO PAY OR TO SHOW CAUSE

Adopted: July 9, 2019

Released: July 9, 2019

By the Chief, Media Bureau and the Managing Director, Office of Managing Director:

I. INTRODUCTION

1. By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the license held by Durlyn Broadcasting Company (Durlyn) for WPNC-FM, Plymouth, North Carolina (Station), for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Commission. For the reasons set forth below, we direct Durlyn to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

2. Under Section 9 of the Communications Act of 1934, as amended (Act), and the Commission’s rules (Rules), the Commission is required to “assess and collect regulatory fees” to recover the costs of certain regulatory activities.1 When the required payment is received late or is incomplete, the Commission must assess a penalty equal to “25 percent of the amount of the fee which was not paid in a timely manner.”2

3. For fiscal year (FY) 2010, the deadline for paying regulatory fees was August 31, 2010;3 for FY 2012, it was September 13, 2012;4 for FY 2013, it was September 20, 2013;5 for FY 2014, it was September 23, 2014;6 for FY 2015, it was September 24, 2015;7 for FY 2016, it was September 27,

1 47 U.S.C. § 159(a)(1); 47 CFR §§ 1.1151-1.1167.
2 47 U.S.C. § 159A(c)(1); 47 CFR §§ 1.1157(c)(1), 1.1164.
3 See Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees, Public Notice, 25 FCC Rcd 10670 (OMD 2010).
4 See Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET), Public Notice, 27 FCC Rcd 10297 (OMD 2012).
5 See Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees, Public Notice, 28 FCC Rcd 12635 (OMD 2013).
6 See FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET), Public Notice, 29 FCC Rcd 10414 (OMD 2014).
7 See Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees, Public Notice, 30 FCC Rcd 9941 (OMD 2015).

2016;<sup>8</sup> and for FY 2018, it was September 27, 2018.<sup>9</sup> When Durlyn failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act<sup>10</sup> and Sections 1.1157(c)(1) and 1.1164 of the Rules,<sup>11</sup> and interest, penalties, and administrative costs required by Section 3717 of Title 31 of the U.S. Code and Section 1.1940 of the Rules.<sup>12</sup>

4. The Commission's records show that Durlyn currently has unpaid regulatory fees of \$1,157.90 for FY 2010; \$1,085.44 for FY 2012; \$866.33 for FY 2013; \$1,644.02 for FY 2014; \$2,413.70 for FY 2015; \$2,453.61 for FY 2016; and \$1,939.13 for FY 2018. Additional charges will continue to accrue on these debts until they are paid in full. Demand Letters, which demanded payment of Durlyn's delinquent regulatory fees, were previously sent to Durlyn.<sup>13</sup> When Durlyn did not pay the FY 2010, FY 2012, FY 2013, FY 2014, FY 2015, FY 2016, and FY 2018 regulatory fee debt, the Commission transferred that debt to the Secretary of Treasury at the Treasury Department for collection.<sup>14</sup> At the Commission's request, and in order to consolidate the collection process, the Secretary of the Treasury has returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. In addition to financial penalties, Section 9A(c)(4) of the Act,<sup>15</sup> and Section 1.1164(f) of the Rules<sup>16</sup> grant the FCC the authority to revoke authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Durlyn to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made in accordance with Section 1.1164(a) of the Rules,<sup>17</sup> or show cause why the payment is inapplicable or should be waived or deferred. Durlyn is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Durlyn's license for the Station.

6. Under Section 9A(c)(4)(C) of the Act and Section 1.1164(f),<sup>18</sup> an adjudicatory hearing will not be designated unless Durlyn presents a substantial and material question of fact. Further,

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<sup>8</sup> See *Payment Methods and Procedures for Fiscal Year 2016 Regulatory Fees*, Public Notice, 2016 WL 4625515 (OMD Sep. 6, 2016).

<sup>9</sup> See *Regulatory Fee Filing Window for Those Regulatees Affected by Hurricane Florence Extended to Thursday, September 27, 2018*, Public Notice, 33 FCC Rcd 8804 (MB 2018).

<sup>10</sup> 47 U.S.C. § 159A(c)(1); 47 U.S.C. § 159A(c)(1) (2017). The RAY BAUM'S Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified Section 9 of the Act and added a new Section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, Section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, Section 9A(c)(1) now sets forth those penalties.

<sup>11</sup> 47 CFR §§ 1.1157(c)(1), 1.1164.

<sup>12</sup> 31 U.S.C. § 3717; 47 CFR § 1.1940.

<sup>13</sup> In addition to these Demand Letters, the Bureau notified Durlyn of its delinquency in paying the Station's regulatory fees for FY 2010, FY 2012, FY 2013, and FY 2014. Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Todd Steiner, Harrison & Johnston, PLC (MB dated June 3, 2015).

<sup>14</sup> See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c) & 901.1; 47 CFR § 1.1917.

<sup>15</sup> 47 U.S.C. § 159A(c)(4). As noted, *supra* at n. 11, the RAY BAUM'S Act modified Section 9 of the Act and added a new Section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, Section 9(c)(3) authorized the Commission to revoke "any instrument of authorization held by any entity that has failed to make payment of a regulatory fee." 47 U.S.C. § 159(c)(3) (2017). As amended by the RAY BAUM's Act, Section 9A(c)(4) now authorizes such action.

<sup>16</sup> 47 CFR § 1.1164(f).

<sup>17</sup> 47 CFR § 1.1164(a).

<sup>18</sup> 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

disposition of any adjudicatory hearing will be based upon written evidence only, and Durlyn will bear the burden to introduce evidence and to provide proof in any such hearing.<sup>19</sup>

7. To the extent that Durlyn is a respondent in other administrative proceedings, both before this agency and other federal agencies, action in this proceeding is without prejudice to action in those proceedings. Further, the existence of any such proceedings and matters raised therein are not considered in this proceeding.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 9A(c)(4) of the Act and Sections 0.61, 0.283, and 1.1164(f) of the Rules,<sup>20</sup> Durlyn Broadcasting Company is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FY 2010, FY 2012, FY 2013, FY 2014, FY 2015, FY 2016, and FY 2018, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

9. **IT IS FURTHER ORDERED** that payment of the delinquent regulatory fee debt must be made by wire transfer and must include the FRN referenced above. Additional wire transfer instructions are as follows:

ABA Routing Number 021030004

Receiving Bank:  
TREAS NYC  
33 Liberty St.  
New York, NY 10045

(BNF) Beneficiary: FCC  
Account #: 27000001  
OBI Field (skip one space between each information item)

Durlyn Broadcasting Company must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

Durlyn Broadcasting Company must fax a copy of the wire transfer confirmation to the FCC at (202) 418-2843 or send the wire transfer confirmation copy to the FCC via email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same day the wire transfer is initiated.

10. **IT IS FURTHER ORDERED** that Durlyn Broadcasting Company must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at [http://www.fcc.gov/Forms/Forms\\_159/159.pdf](http://www.fcc.gov/Forms/Forms_159/159.pdf). When completing the FCC Form 159, Durlyn Broadcasting Company must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): 1042 (for FY 2010), 1242 (for FY 2012), 1342 (for FY 2013), 1442 (for FY 2014), 1542 (for FY 2015), 1642 (for FY 2016), and 1842 (for FY 2018).

<sup>19</sup> 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

<sup>20</sup> 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.61, 0.283, 1.1164(f).

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Durlyn Broadcasting Company, 930 Highway 32 South, Plymouth, NC 27962, and its counsel Todd A. Steiner, Esq., Harrison & Johnston, PLC, 21 S. Loudon, Street, Winchester, VA 22601.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

Mark Stephens, Managing Director  
Office of Managing Director

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
Dunlyn Broadcasting Company 930 Highway 32 South Plymouth, NC 27962		Billy Bergan	7/12
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
7018 0680 0001 1766 1208		3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery	
PS Form 3811, April 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ®.	
<b>OFFICIAL USE</b>	
Certified Mail Fee \$ 3.50	ANNAPOLIS JUN MD 2070 Postmark Here <b>JUL 09</b> USPS
Extra Services & Fees (check box, add fees appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy) \$ 1.80	
<input type="checkbox"/> Return Receipt (electronic) \$	
<input type="checkbox"/> Certified Mail Restricted Delivery \$	
<input type="checkbox"/> Adult Signature Required \$	
<input type="checkbox"/> Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	
Sent To <u>Dunlyn Broadcasting Company</u>	
Street and Apt. No., or PO Box No. <u>930 Highway 32 South</u>	
City, State, ZIP+4® <u>Plymouth, NC 27962</u>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

POSTAGE WILL BE PAID BY ADDRESSEE  
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Todd A. Steiner, Esq.  
Harrison R Johnston, PLC  
21 S. Loudon Street  
Winchester, VA 22601

9590 9403 0295 5155 4280 05



**2. Article Number (Transfer from service label)**

7018 0680 0001 1766 1215

PS Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature**  Agent  Addressee
- X**
- B. Received by (Printed Name)** **C. Date of Delivery**

- D. Is delivery address different from item 1? If YES, enter delivery address below:**  Yes  No

**3. Service Type**

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®

**OFFICIAL USE**

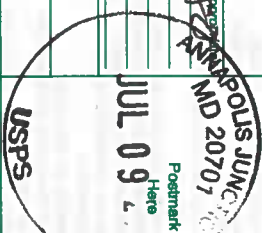
Certified Mail Fee \$ 3.50

Extra Services & Fees (check box, add fees as appropriate)

- Return Receipt (hardcopy) \$
- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage \$ 1.50

Total Postage and Fees \$



7018 0680 0001 1766 1215

Sent To Todd A. Steiner, Esq.  
Street and Apt. No. or PO Box No. 21 S Loudon Street  
City, State, ZIP+4® Winchester, VA 22601

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Federal Communications Commission  
Washington, D.C. 20554

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

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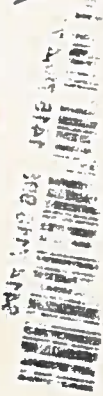
COBURN, KEITH  
2-B442

Phone: Unspecified  
Received On: 07-30-2019 08:22am

CERTIFIED MAIL



70190680000177661215



MAIL  
RECORDED

Refused  
7-11-19

Todd A. Steiner, Esq.  
Harrison & Johnston, PLLC  
21 S. Loudon Street  
Winchester

800004

22601-47192 REF

NIXIE 207 DE 1 0007/25/19  
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UNABLE TO FORWARD  
BC: 20554  
\*2217-04720-09-41

FCC Mailroom

Received & Inspected  
JUL 30 2019



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07/09/2019  
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FIRST-CLASS MAIL