

Before the
Federal Communications Commission
Washington, DC 20554

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

ORDER TO PAY OR TO SHOW CAUSE

Adopted: March 22, 2023

Released: March 22, 2023

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 (Licensee) for WPNC-FM, Plymouth, North Carolina (Station), for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission).1 For the reasons set forth below, we direct Licensee 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 section 1.1151 of the Commission’s rules (Rules), the Commission is required to “assess and collect regulatory fees” to recover the cost of carrying out the functions of the Commission.”2 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.”3

1 We previously issued an Order to Pay or to Show Cause to Licensee on July 9, 2019. Durlyn Broadcasting Company, Order to Pay or Show Cause, 34 FCC Rcd 5273 (MB/OMD Jul. 9, 2019) (2019 Order). Licensee did not file a written response to the 2019 Order, but did contact the Office of Managing Director (OMD) in August 2019 requesting to pay its regulatory fee debts in installments. In August of 2019, Licensee entered into an installment payment agreement to pay the delinquent regulatory fee debt it owed for Fiscal Years (FYs) 2010, 2012, 2013, 2014, 2015, 2016, and 2018. In March 2020, Licensee made two installment payments, after which it made no further installment payments, thereby defaulting under the agreement. As a consequence, OMD referred the remaining debt to the United States Department of Treasury for further collection. The debt remains unpaid. Moreover, Licensee has failed to pay additional regulatory fees assessed since the 2019 Order was issued, to wit, the regulatory fee debt it owes for FYs 2019 through 2022. This Order, which has been updated to include the FYs 2019 through 2022 regulatory fee debt, supersedes the 2019 Order and Licensee is directed to respond to this Order as set forth below.

2 47 U.S.C. § 159(a)(1); 47 CFR § 1.1151.

3 47 U.S.C. § 159A(c)(1); 47 CFR § 1.1164.

3. For fiscal year (FY) 2010, the deadline for paying regulatory fees was August 31, 2010;⁴ for FY 2012, it was September 13, 2012;⁵ for FY 2013, it was September 20, 2013;⁶ for FY 2014, it was September 23, 2014; for FY 2015, it was September 24, 2015;⁷ for FY 2016, it was September 27, 2016;⁸ for FY 2018, it was September 27, 2018;⁹ for FY 2020, it was September 28, 2020;¹⁰ for FY 2021, it was September 24, 2021;¹¹ and for FY 2022, it was September 30, 2022.¹² When Licensee 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 Act¹³ and section 1.1164 of the Rules,¹⁴ and interest, penalties, and administrative costs required by section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA), section 159A(c)(2) of the Act and section 1.1940 of the Rules.¹⁵

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of \$1,292.84 for FY 2010; \$1,211.93 for FY 2012; \$967.29 for FY 2013; \$1,845.95 for FY 2014; \$2,523.16 for FY 2015; \$2,587.68 for FY 2016; \$2,052.43 for FY 2018; \$2,076.50 for FY 2020; \$2,059.41 for FY 2021; and \$2,150.00 for FY 2022. Additional charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.¹⁶ When Licensee did not pay the regulatory fee debts for FYs 2010, 2012, 2013, 2014, 2015, 2016, 2018, 2020, and 2021, the Commission

⁴ See *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees*, Public Notice, DA 10-1450, 25 FCC Rcd 10670 (OMD Aug. 9, 2010).

⁵ *Payment Methods and Procedures For Fiscal Year 2012 Regulatory Fees*, Public Notice, DA 12-1294, 27 FCC Rcd 9204 (OMD Aug. 13, 2012).

⁶ See *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, DA 13-1796, 28 FCC Rcd 12635 (OMD Sep. 4, 2013).

⁷ *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees*, Public Notice, DA 15-103, 30 FCC Rcd 9941 (OMD Sep. 11, 2015).

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

⁹ The Commission established September 25, 2018 as the FY 2018 regulatory fee payment deadline, but extended the deadline to September 27, 2019 for regulatory fee payors affected by Hurricane Florence, including North Carolina, where Licensee is located. *Regulatory Fee Filing Window for those Regulatees Affected by Hurricane Florence is Extended to Thursday, September 27, 2018*, Public Notice, DA 18-975, 33 FCC Rcd 8804 (OMD Sep. 21, 2018); *Payment Methods and Procedures for Fiscal Year 2018 Regulatory Fees*, Public Notice (OMD Aug. 30, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-353883A1.pdf>.

¹⁰ *Regulatory Fee Filing Window is Extended to Monday, September 28, 2020*, Public Notice, DA 20-1131, 35 FCC Rcd 10466 (OMD Sep. 24, 2020).

¹¹ *Payment Methods and Procedures for Fiscal Year 2021 Regulatory Fees*, Public Notice, DA 21-1112, 36 FCC Rcd 13423 (OMD Sep. 7, 2021).

¹² *Fiscal Year 2022 Regulatory Fee Filing Deadline is Extended to Friday, September 30, 2022, for All Regulatory Fee Payors*, Public Notice, DA 22-1023, 2022 WL 4597483 (OMD Sep. 28, 2022).

¹³ 47 U.S.C. § 159(c)(3) (1993); 47 U.S.C. § 159A(c)(1) (2018). 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.

¹⁴ 47 CFR § 1.1164.

¹⁵ 31 U.S.C. § 3717; 47 U.S.C. § 159A(c)(2); 47 CFR § 1.1940.

¹⁶ See 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letters, the Media 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).

transferred those debts to the United States Department of Treasury for collection.¹⁷ At the Commission's request, the United States Department of Treasury has returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. The Commission has authority under section 9A(c)(4) of the Act and section 1.1164(f) of the Rules to revoke licenses and authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Licensee 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 or show cause why the payment is inapplicable or should be waived or deferred.¹⁸ Licensee is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f) of the Rules,¹⁹ an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.²⁰ Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.²¹

7. To the extent that Licensee 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 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,²² 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 FYs 2010, 2012, 2013, 2014, 2015, 2016, 2018, 2020, 2021, and 2022, **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:

¹⁷ See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917. The Commission retained the FY 2022 regulatory fee debt owed by Licensee and did not refer it to Treasury for further collection.

¹⁸ The Commission may waive, reduce, or defer payment of fee debt where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207-08, paras. 49-51 (2019).

¹⁹ 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

²⁰ 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

²¹ 47 U.S.C. § 159A(c)(4)(C)(ii)(iii); 47 CFR § 1.1164(f)(3).

²² 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.11, 0.61, 0.231, 0.283 and 1.1164(f).

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 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. 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); 1842 (for FY 2018); 2042 (for FY 2020); 2142 (for FY 2021); and 2242 (for FY 2022).

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 Commission's rules.²³ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.²⁴ A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

²³ 47 CFR §§ 1.16 and 1.80(g)(3).

²⁴ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

12. **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

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director