

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

DEC 10 2014

OFFICE OF
MANAGING DIRECTOR

Phillip G. Drumheller
P. & M. Radio, LLC
d/b/a WIZZ Radio
Post Office Box 983
Greenfield, MA 01302

Licensee/Applicant: **WIZZ Radio**
Waiver and Refund of Regulatory Fee
Disposition: **Denied** (47 C.F.R. §§ 1.1160(a),
1.1166)
Station: WIZZ
Fee: Fiscal Year (FY) 2014 Regulatory Fee
Date Request Filed: Sep. 26, 2014
Date Regulatory Fee Paid: Sep. 22, 2014
Fee Control No.: RROG-14-00015757

Dear Mr. Drumheller:

This responds to Licensee's *Request*¹ for waiver and refund of \$1,020.00 that it paid for the Fiscal Year (FY) 2014 regulatory fee. Licensee asserts it is experiencing financial hardship, which it bases on information reported on attached Federal Income Tax Forms for tax year 2013. For the reasons stated herein, we deny Licensee's *Request*.

On September 26, 2014, after paying the FY 2014 regulatory fee, Licensee submitted its *Request* for a "waiver and full refund due to the hardship."² Licensee asserts that the station is (a) "on the profit side by an extremely low figure," (b) "a daytime only AM station, (c) in a "listening area [that] receives interference from [another broadcaster]," (d) "unable to compete with [advertising offered by other FM and AM stations], and (d) receiving listener contributions that are "barely enough to make a difference."³

¹ Letter from Phillip G. Drumheller, Owner & President, P.&M. Radio-Radio Station WIZZ, P.O. Box 983, Greenfield, MA 01302 to Marlene Dortch, Secretary, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St. S.W., Washington, DC 20554 (Sep. 19, 2014) (filed Sep. 26, 2014)(*Request*) with attachments (a) Greenfield Cooperative Bank, P. & M. Radio, LLC-Radio Station WIZZ-P.O. Box 983, Greenfield MA 01302, Run Date 09-18-2014, Page 1 of 2, Deposits - Loans (*Greenfield Cooperative Bank*), (b) IRS Form 1040, U.S. Individual Income Tax Return for 2013 (*Form 1040*), (c) Schedule C, Profit or Loss From Business (*Schedule C*), (d) Schedule SE, Self-Employment Tax (*Schedule SE*) (e) IRS Form 8829, Expenses for Business Use of Your Home (*Form 8829*), and (f) IRS Form 1040 Overflow Statement (*Form 1040 Overflow*) (collectively, *Exhibits*).

² *Id.*

³ *Id.*

Under 47 C.F.R. § 1.1160, refunds are made in only specific instances, *i.e.*, (1) no regulatory fee is required, (2) in the case where the amount is an advance payment of regulatory fees, subject to 47 C.F.R. § 1.1152, the refund is based on unexpired full years, and the Commission adopted new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless, or a licensee in the wireless radio service surrenders the license or other authorization to the Commission, or when the Commission declines to grant an application submitted with a regulatory fee payment, or (3) when a waiver is granted as set forth in 47 C.F.R. § 1.1166.⁴ Licensee's *Request* (including its *Exhibits*) fails to establish that any of these circumstances apply.

Licensee has the burden of demonstrating⁵ through compelling and extraordinary circumstances that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action. Specifically, a waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶

First, we look to Licensee's assertions that it is a daytime only station in "the small market of Greenfield, MA," and that "much of [the station's] listening area receives interference from WWKB at 1520 from Buffalo, NY." Moreover, Licensee states it is unable to compete with the "manner" of advertising offered by "multi-FM and AM fulltime stations." Licensee describes itself as a "lean radio station, with only [the owner] and one other person working" to program to, and serve the interests and needs of, an over age 50 audience."⁷ These assertions are vague and not relevant to the issue whether Licensee meets our standard.

For example, Licensee failed to plainly state whether radio station, WWKB at Buffalo, NY,⁸ which is approximately 400 miles to the west of Greenfield, MA interferes with Licensee's broadcast, if so to what extent. Moreover, Licensee failed to show the relevance of the alleged interference to the fee waiver request. Similarly, Licensee failed to establish the relevance of its inability to compete in advertising with major corporations and so-called multi-FM and AM fulltime stations. Overall, Licensee failed to explain differences between the assertions in its *Request* and its webpage⁹ presentation. On the internet, Licensee presents a picture of a vital and financially successful station with five staff members, 58 listed advertisers¹⁰ who "get results from their advertising campaigns on WIZZ radio,"¹¹ an on-line streaming capability, and broadcasting that is "[o]n the air all day, every day, with 10,000 watts of power throughout Western MA, Northern Connecticut and the greater Brattleboro, Vermont and Keene, New

⁴ 47 C.F.R. § 1.1160(a).

⁵ See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."); *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

⁷ *Request*.

⁸ <http://www.espn1520.com/> (WWKB is an ESPN sports station).

⁹ <http://wizzradio.com>.

¹⁰ <http://wizzradio.com/advertisers.php>.

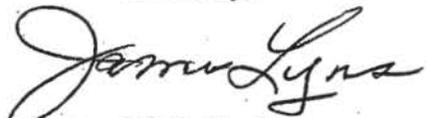
¹¹ <http://wizzradio.com/about.php>.

Hampshire areas.”¹² Indeed, as to its coverage, Licensee’s map shows it extends north to Bellows Falls, VT, east to near Fitchburg, MA, and south to Connecticut’s northern state line.¹³ Thus, not only did Licensee fail to demonstrate the relevance of its assertions, but also it failed to explain the apparent differences between its on-line promotion and the seemingly vague wording that the station experiences financial difficulty.

Turning to Licensee’s *Exhibits*, they provide limited income tax-based financial information showing Licensee’s tax liability for tax year 2013.¹⁴ That information shows Licensee reported a number of expenses and other deductions, including a deduction for the business use of its home, but nonetheless it achieved a net profit. Licensee’s *Exhibits* do not show a complete accurate view of its operating expenses, profit and loss, and assets and liabilities for the period relevant to the FY 2014 regulatory fees. Specifically, Licensee’s financial information is not relevant to the current request for a waiver of the fee and it fails to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁵ “Mere allegations or documentation of financial loss, standing alone,” do not suffice and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹⁶ Plainly, Licensee has shown it is capable of paying the fee, providing service to the public, and achieving a net profit. Licensee did not establish financial hardship sufficient to waive the fee. In summary, Licensee failed to meet our standard set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹⁷ Accordingly, without sufficient evidence of financial hardship,¹⁸ we deny licensee’s *Request* for a waiver of the required regulatory fee, and the requested refund.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


FIR: Mark Stephens
Chief Financial Officer

¹² <http://wizzradio.com/>.

¹³ <http://wizzradio.com/images/wizzcovergaemap.jpg>.

¹⁴ Licensee failed to explain whether the information on the exhibit, *Greenfield Cooperative Bank*, is a listing of personal or business deposits and loans to customer Phillip G. Drumheller. Nonetheless, we accept the balance as evidence of available funds.

¹⁵ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

¹⁶ 10 FCC Rcd at 12761-62, ¶ 13.

¹⁷ 47 C.F.R. § 1.1166.

¹⁸ *Id.*