

FORM 318 APPLICATION FOR PERMIT TO CONSTRUCT LPFM STATION
EXHIBITS 4 - 6: Attribution and Ownership Restrictions

Multiple Ownership. The Applicant owns no Low Power FM facilities or any other broadcast facility licensed by the agency. See below.

Cross Ownership. Neither the Applicant, nor any party to the Application, holds an attributable ownership interest in another media facility or in any application pending before the agency. See below.

Family Interests. No party to this application has a family relationship with another party to the application.

The Implications of Catholic Church Clergy-Governed Institutions' Traditional Organization. Inasmuch as the form of a corporate sole is unfamiliar to many today, enclosed herewith as an *Addendum* to this exhibit, as is a brief discussion of its features and, to the extent necessary or appropriate, a **request for waiver relief** to ensure that the Catholic Church's clergy-governed institutions adhering to the Church's traditional structure are in no way placed at a competitive disadvantage relative to other similarly situated applicants. The only reason we include, *arguendo*, this exhibit, is because it is uncertain precisely how the FCC intends to treat clergy governed institutions -- such as those of the Catholic faith, the largest faith tradition in the country -- in the wake of the Commission's very recent ***MEMORANDUM OPINION AND ORDER, FCC-13-116 (rel. August 23, 2013)***. The decision involved far-flung Low Power FM facilities, with ownership of one such facility attributed to the "national" Methodist church.¹ Inasmuch as the case turned on the unincorporated nature of one or more of the local churches involved, we discuss here whether the decision holds any import in the agency treatment of Catholic churches.

Catholicism is an inherently hierarchical faith, and its structure gave birth to the corporate sole, a form to which most Catholic Church institutions in this country continue to adhere (either formally or informally), even as the more common corporate aggregate has evolved over centuries from the more traditional form. The traditional structure of Catholic clergy-governed institutions -- specifically, the intricate relationship between that structure and the precepts of the Catholic faith itself -- is what gives us pause as we examine the *August 23 Decision*. We are uncomfortable with the direction the agency may be drifting in its development of attribution policies and enforcement of the multiple and cross ownership rules, and what implications the decision might suggest exist for any Catholic Church entity's reporting and compliance obligations if it wishes to seek a broadcast license.

¹ See *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, MEMORANDUM OPINION AND ORDER, FCC 13-116 (rel. August 23, 2013) (hereinafter the "*August 23 Decision*").

It is not clear whether the Commission seeks disclosure of, or would recognize as an attributable interest, every regulated media authorization (or application for the same) of a religious entity also governed by clergy in the same faith tradition. For the reasons set forth in our *Addendum* hereto, we presume such an onerous burden was not within the scope of the Commission's intent in issuing its *August 23 Decision*. The Catholic Church is an ancient and vast organization -- not just national, but worldwide, in scope. Any particular parish or diocese (including this one) is normally unaware of the media holdings or media-related ambitions of most other local parishes or dioceses. Moreover, most -- if not all -- Catholic radio facilities in this country are generally owned and operated by the laity, via independent nonprofit corporations.

We nonetheless understand that numerous Church institutions, including many governed by clergy, will -- like this Applicant -- seek a permit to construct a LPFM facility serving its region in much the same way its brethren protestant churches and secularists will. It is quite probable that the ownership of some existing regulated media entity authorization -- perhaps even a Low Power FM authorization -- rests in the custody of a clergy-governed organization within the general fold of the Catholic Church. However, we cannot herein catalogue the ownership, or applications, of every clergy-governed Catholic institution in the country.²

Traditionally, the FCC has never assumed that the Pope is a foreign party to every application by a Catholic entity before the agency, or that a Bishop is a party to every application by a Catholic parish or school in his diocese, much less a party to a parish or school in another diocese altogether. It would produce equally absurd results -- indeed, disparate and discriminatory results -- for the FCC to create a rebuttable presumption that every applicant, including any local parish or school whose existence in the community often pre-dates and occasioned the growth of the community itself, is not a state-recognized nonprofit in good standing unless it produces something from the state expressly acknowledging such status. ***At the very least, states have acquiesced, even if not expressly recognized, the nonprofit and functionally independent nature of every established parish church, including those of the Catholic faith, for decades, if not centuries.***

Neither churches nor states are accustomed to recognizing the legitimacy of the other -- precisely because the two, in this country, generally do not get entangled. The

² For the record, we must respectfully -- and categorically -- reject the notion that the broadcast interests of any single clergy-governed Catholic Church institution within a particular American diocese could ever be rightly construed as attributable across diocesan boundaries. Attribution is a concept that applies to ownership and control, and neither ownership nor control cross diocesan boundaries. Regardless of whether such an institution is separately incorporated, in the sole or aggregate, or whether it is unincorporated, the notion that any pastor or Bishop in one American diocese might have ownership or control of broadcast facilities owned by institutions in another diocese is contrary to Civil Law and to Canon Law, as well as to the experience of any Catholic. Pastors and Bishops in one American diocese simply have no authority whatsoever, whether under civil or canonical law, over activities of the Church institutions of another American diocese, regardless of how either institution may (or may not) be organized.

average pastor is not even aware of his church's precise status under civil law, except that he understands the state considers the parish or school to be a nonprofit and therefore essentially leaves the church to attend to her flock.

This has not, historically, created a monopoly over the airwaves that might render broadcast rights a privilege reserved mostly for protestants or secularists. To date, nearly all Catholic forays into broadcasting have been initiated by lay-led apostolates, frequently incorporated, while protestant clergy-governed institutions frequently have built broadcasting empires. Even in the low power realm, where broadcasting empires are to be avoided, a policy that reserved most broadcast rights to incorporated entities is going to favor protestant churches over Catholic churches. This is intricately tied to the fact that protestant clergy more naturally preside over civil corporations inasmuch as their churches are traditionally incorporated (or at the very least, their faith does not discourage autonomy).

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In view of the foregoing, and only in an abundance of caution, we herein support our certifications with respect to Form 318, Section II, Items 5(a) and 5(b), as these relate, respectively, to Sections 73.855 and 73.860 of the Commission's Rules.

Pursuant to Section 73.858(b) of the Commission's Rules, a local chapter of a national organization will not have the attributable media interests of the national organization attributed to it, provided that the local chapter: (1) is incorporated in its local area separately from the national organization with which it is affiliated; and (2) has a distinct local presence and mission.

For these purposes, in view of the historic nature of the Catholic Church's reliance on the form of a corporate sole, we request the FCC treat each church or church-governed school before the agency as presumptively following the form of a corporate sole, regardless whether it produces express state recognition of that status inasmuch as states invariably do not expressly categorize churches at all, or if a state does place such churches in a category, it is akin to a nonprofit corporate sole or to a nonprofit unincorporated association. ***To whatever extent (if any) the agency may be otherwise disinclined to treat Catholic churches and schools as entities not entitled to recognition of their nonprofit status and their functional independence from one another, in the same manner as provided by Section 73.858(b) of its Rules, we request waiver relief to ensure equal treatment of Catholic clergy-governed institutions.***

Furthermore, every local Catholic church has a distinct local mission that includes the purpose of conducting religious education and operating full service schools specific to its geographic boundaries. Accordingly, any far-flung media interests of other clergy-governed entities within the Catholic Church are not attributable to the Applicant here.

Neither Section 73.855 nor Section 73.860 addresses directly the question of an attributable interest in multiple applications for a permit to construct a new LPFM by a common party to both applications, even where that party with the attributable interest is not an applicant for a single LPFM anywhere. Rather, the Rules prohibit common ownership of existing LPFM facilities, or cross ownership of another regulated media facility and a LPFM.

Nonetheless, we hereby disclose that the priest who serves as pastor of the Applicant and thus governs this Applicant is not a party to any other broadcast licensee or regulated media entity, nor to any application for another LPFM authorization or regulated broadcast authorization.

Even so, pursuant to Section 73.858(a) of the Commission's Rules, an officer or director of the Applicant may hold an otherwise attributable interest in another broadcast licensee, daily newspaper or cable television system only if: (1) the LPFM applicant or licensee entity is a multi-faceted organization; (2) the duties of the officer or director are wholly unrelated to the LPFM station; and (3) the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station.

Here again, the Rules themselves do not appear to require any action by Applicant at this time, but in an abundance of caution we nonetheless emphasize that the Applicant is indeed a multi-faceted organization with numerous activities in a broad geographic jurisdiction. Moreover, the duties of the pastor are wholly unrelated to the operation of any LPFM facilities not owned or operated by his office.

Accordingly, pursuant to Section 73.858(a) of the agency's Rules, to the extent the FCC deems it necessary or appropriate in order to prevent pastor from holding undue influence or being unduly influenced in connection with other LPFM or broadcast activities at other Catholic clergy-governed institutions, Applicant hereby certifies that the pastor has recused himself, and will continue to recuse himself, from any consideration of matters affecting the low power FM facility (facilities) contemplated in any other LPFM facility, or application(s) pending before the agency that would secure a permit(s) to launch a LPFM facility, other than the LPFM facility proposed in the instant application.

We likewise stipulate that no clergy governing a Catholic Church entity of any other American diocese – including without limitation those entities that may hold an attributable ownership interest in a regulated media authorization, or that may be a party to a pending application for such an authorization -- shall exercise any role in the consideration of matters affecting the low power FM facility contemplated herein.