

## **Exhibit 5** **Ownership**

The Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Parkside submits the following explanation with regard to its Low Power FM station eligibility in connection with the FCC's LPFM ownership regulations in Sections 73.855, 73.858, and 73.860 of the FCC's Rules. As explained below, the "local chapter" and student-run station exceptions apply to this application by a local campus of a statewide University system.

*Background.* The University of Wisconsin-Parkside is part of the statewide University of Wisconsin System. The University of Wisconsin System is made up of 13 four-year universities (including the University of Wisconsin-Parkside), 13 freshman-sophomore UW College Campuses, and the statewide UW-Extension. The University of Wisconsin-Parkside is an independently organized campus, administered locally by its own Chancellor, Provost, and Vice Chancellor, and was originally created to serve its local region. The University of Wisconsin-Parkside was founded in 1968 to bring together the two-year University of Wisconsin College campuses at Racine and Kenosha, and to create a four-year college for southeastern Wisconsin.

The Board of Regents of University of Wisconsin System is currently the licensee of multiple broadcast radio and television stations, including professionally run public radio stations throughout the state of Wisconsin, and student-run radio stations at some regional campus locations. Nonetheless, under the FCC's Rules on Low Power FM ownership eligibility and the FCC's recent clarification of the applicability of those rules to larger university systems with multiple campuses, the existing broadcast interests of the larger University of Wisconsin System are not attributed to the University of Wisconsin-Parkside with respect to eligibility for this application under Sections 73.855, 73.858, and 73.860 of the Rules, and do not preclude the University of Wisconsin-Parkside from applying for a student-run Low Power FM station construction permit.

*Discussion.* The Commission addressed the specific issues of student-run Low Power FM ownership by universities with other stations, and of student-run LPFM stations at independent campus locations of university systems with multiple campuses serving distinct regions, at paragraphs 158-160 of *In the Matter of Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, FCC 12-144, MM Docket No. 99-25, (rel. Dec. 4, 2012). In that Order, the Commission first eliminated its limitations on eligibility for student-run LPFM applications by schools with non-student-run full power broadcast stations.<sup>1</sup> Specifically, where the FCC previously allowed accredited schools with non-student-run full power broadcast stations to also apply for LPFM stations to be managed and operated by students of that same institution – but only when not subject to competing applications – the Commission eliminated the requirement to dismiss such student-run LPFM applications in situations

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<sup>1</sup> *In the Matter of Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, FCC 12-144, MM Docket No. 99-25, (rel. Dec. 4, 2012), at paragraph 159.

where there are competing applications. Accordingly, with this application for a student-run station at the University of Wisconsin-Parkside, the applicant's eligibility is not restricted by the fact that the University of Wisconsin is already licensee of non-student-run full service broadcast stations.

Second, with *In the Matter of Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, the Commission clarified that its LPFM attribution exception for "local chapters" applies to schools that are part of the same school system, including university systems with multiple campuses, provided that the "local chapter" seeks its own licenses.<sup>2</sup> The Commission further explained that a university system's ownership of full power broadcast stations licensed to separate campus institutions would not prevent that University system, through one of its local campus, from applying for a LPFM permit for a student-run station.<sup>3</sup> The Commission concluded that such applicants would not be precluded from applying for low power FM stations under the existing rules because the interests of the larger university system are not attributed to the local campus.<sup>4</sup> While the Commission provided one caveat in connection with this clarification – that such applicants will not qualify for a "new entrant" point – it made clear that the "parent" organization's other broadcast interests and holdings will be considered "attributable...only" for the purposes of the new entrant point criterion.<sup>5</sup>

This application presents precisely the same scenario set forth by the Commission in its clarification that the "local chapters" exception applies to schools with local campuses that are part of larger university systems with multiple campuses. The University of Wisconsin-Parkside is one of 13 four-year universities which, along with 13 freshman-sophomore UW College Campuses and the UW-Extension, constitute the larger, statewide University of Wisconsin System. The University of Wisconsin System is licensee of 14 noncommercial educational FM and AM stations, and 1 noncommercial educational television station. See Attachment 1. The majority of the radio stations are part of the professionally-run Wisconsin Public Radio network (headquartered in Madison, Wisconsin), and also include student-run stations at the campuses of the University of Wisconsin-Platteville, the University of Wisconsin-River Falls, the University of Wisconsin-Stevens Point, and the University of Wisconsin-Madison, and the University of Wisconsin-Whitewater. This application for a new student-run Low Power FM station at the University of Wisconsin-Parkside represents an initial local, stand-alone broadcast station for the University of Wisconsin-Parkside campus and the Kenosha community, to be managed and operated by students of the University of Wisconsin-Parkside. As a result, under the FCC's rules in Sections 73.858 and 73.860, as clarified by the Fifth Order on Reconsideration and Sixth Report and Order, the existing broadcast interests of the larger University of Wisconsin System are not attributed to the University of Wisconsin-Parkside and to this application and do not preclude this proposal for a new, local student-run station for that campus.

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<sup>2</sup> Id. at paragraph 160.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id., emphasis added.

As noted, the University of Wisconsin-Parkside has a distinct local presence and mission to serve its local region. The University of Wisconsin-Parkside is physically headquartered and located at its Kenosha area campus, which is home to its approximately 5,300 students. The University of Wisconsin-Parkside's mission includes providing high quality educational programs, creative and scholarly activities, and services responsive to its student population and local communities. The low power FM station will be operated and managed exclusively by the University of Wisconsin-Parkside and its students, who currently have no control or involvement with broadcast radio stations or the stations controlled and operated by the larger University of Wisconsin System, and with its broadcast programming services targeted for its local southeastern Wisconsin community. Thus, for all of the above reasons, the applicant submits that: the existing broadcast interests of the University of Wisconsin System are not attributed to this Low Power FM station application for the University of Wisconsin-Parkside campus under the "local chapters" exception of Section 73.858 of the Rules; and the Cross-Ownership restrictions of Section 73.860(a) are inapplicable under the provisions of Section 73.860(d) because the University is an accredited educational institution, with interests in non-student-run broadcast stations, that is applying for an Low Power FM station for the Parkside campus to be managed and operated on a daily basis by students of the accredited educational institution. Moreover, the University of Wisconsin-Parkside does not already have a student-run (or any other) broadcast station.

We note further that the Commission's dicta in *In the Matter of Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order and subsequent Commission pronouncements at LPFM webinars and on the FCC website, contain an unfortunate misimpression that local campuses can be "separately incorporated" from a university system as a whole. University systems with multiple campuses do not have the same legal organizational structure as national nonprofit organizations; national nonprofit organizations can have separately incorporated local chapters, but public university systems cannot. Instead, public university systems with multiple campuses are organized pursuant to state law, not "incorporated" as corporations, which means it is not legally possible to have a "separately incorporated" local campus. In fact, a local campus can become legally separate from a public university system only by a change in state law enacted by the state legislature, which would address many educational concerns beyond LPFM eligibility.<sup>6</sup> Thus, in the example given in the *In the Matter of Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, which example was demonstrating the expansion of the "local chapters" exception to local campuses, the University of California at Merced is part of the larger University of California system, but is not (and cannot legally be) separately incorporated. For purposes of this LPFM application, we assume that the Commission had a misimpression about the legal organizational structure of university systems with multiple campuses and did not mean to hold local campuses of

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<sup>6</sup> By way of analogy to the Federal Communications Commission, the "Media Bureau", while separate and distinct from other bureaus at the FCC and with a separate and distinct mission, cannot become "separately incorporated" or become a legal entity separate and apart from the FCC without a change in federal law enacted by Congress.

university systems with multiple campuses to an impossible legal standard or to render such local campuses ineligible for LPFM licenses.

Notably, concurrent with this applicant, the Board of Regents of the University of Wisconsin System of behalf of the University of Wisconsin-La Crosse is also submitting a Low Power FM station application. The University of Wisconsin-La Crosse is similarly situated to University of Wisconsin-Parkside, in that it is one of the 13 four-year universities in the larger University of Wisconsin System. In the event that both the La Crosse and Parkside applications are successful, the applicants submit that for the same reasons noted above, the ownership limits of Section 73.855 of the Commission's Rules do not preclude ownership of both stations – specifically, the Commission determined that in the case of University systems with distinct campuses the “parent” organization's other broadcast interests and holdings will be considered “attributable...only” for the purposes of the new entrant point criterion given the “local chapters” exception, such that under Section 73.858 of the Rules, any such interests at other system campuses will not be attributable or preclusive with respect to the multiple ownership limits of Section 73.855. Indeed, the Commission has stated that “[s]eparate college campuses within a university system...could each individually apply for LPFM construction permits.”<sup>7</sup>

*Waiver Request.* Accordingly, for all of the above reasons, the applicant submits that it is eligible under the FCC rules (as clarified by *In the Matter of Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order) to apply for and hold a Low Power FM station authorization for a student-run station, as a local campus of a larger state university system. Nonetheless, out of an abundance of caution and to the extent necessary, the applicant hereby requests a waiver of the FCC's rules in Sections 73.855, 73.858, and 73.860 with respect to Low Power FM eligibility. The applicant submits that, if necessary due to consideration of the existing broadcast station interests of the larger University of Wisconsin, there is good cause for waiver of the Commission's rules on Low Power FM station ownership. Acceptance of the University of Wisconsin-Parkside's application for a Low Power FM station will greatly serve the public interest. The Commission's goal in creating the LPFM service was to “create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.”<sup>8</sup> The University of Wisconsin-Parkside's proposed student-run LPFM station would do exactly that – provide a broadcast outlet for the very localized campus and surrounding Kenosha community, and specifically a forum for students – currently underrepresented on the local airwaves – as operator, programmers, and listeners. In fact, the Commission has stated that “another goal” for the LPFM service was to “specifically include the voices of community based schools.”<sup>9</sup> Once again, on this measure, the Commission's specific public interest goals for LPFM are directly served by eligibility for applicants such as the University of Wisconsin-Parkside.

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<sup>7</sup> <http://www.fcc.gov/encyclopedia/low-power-fm-broadcast-radio-stations-lpfm>.

<sup>8</sup> *In the Matter of Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, FCC 00-19 (Jan. 27, 2000), at paragraph 4.

<sup>9</sup> *Id.* at paragraph 5.

Moreover, with respect to ownership restrictions for LPFM, the Commission's general limitations on LPFM ownership by those with attributable interests in other broadcast stations were established in support of "one of the most important purposes" of establishing the LPFM service: "to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership."<sup>10</sup> In fact, Commission further explained that its interests for LPFM included "providing new voices to speak to the community, and providing a new medium for new speakers to gain experience in the field" – all goals directly served by welcoming applicants like the University of Wisconsin-Parkside for its local, student-run station, and by allowing into the broadcast market the local campus's new student voices and their small, community-based organization.

Finally, in establishing the "local chapters" exception from the inception of the LPFM service, and clarifying that it applies to university systems with multiple campuses serving distinct regions whose individual campuses apply for student-run stations (despite having non-student-run broadcast stations held by the larger university entity), the Commission cemented the notion that local campus student organizations such as the radio group at the University of Wisconsin-Parkside represent exactly the types of new, local voices that the LPFM service is designed for and should welcome, even if the intricacies of their larger, statewide university system ownership structures would otherwise run afoul of attribution regulations designed (potentially somewhat paradoxically) to ensure that local, underrepresented groups – precisely like student organizations at local college campuses – have access to the LPFM licensing process.

In addition, in accordance with the elements of the local chapter exception, the University of Wisconsin-Parkside, applicant for a student-run LPFM, is a separate, local entity. Its campus and students have no connection to the existing broadcast interests or operations of the larger University of Wisconsin System, its statewide professionally-run network or the System's existing student-run stations at other distinct campuses already serving other regions.

For all of these reasons, even if the University of Wisconsin-Parkside's LPFM ownership eligibility is somehow deemed to be restricted by the University of Wisconsin System's existing full service broadcast interests, then a waiver of the FCC's LPFM ownership eligibility rules is warranted and justified by the Commission's above-noted policy goals underlying both the LPFM service as a whole and the "local chapter" exception to the attribution requirements for eligibility. The proposed student-run station for the University of Wisconsin-Parkside campus represents an extremely localized effort to add new community voices to the airwaves, and to allow students to gain experience in the broadcast field. Likewise, should any interpretation of the ownership structure of the greater University system raise issues in the attribution considerations, it would represent a unique and unusual circumstance given the historical organization of this public university system under state statute and law – obviously not any sort of design to end-run the FCC's LPFM eligibility restrictions – and would represent an inequitable and undue burden on the local University campus applicant, given the Commission's clear

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<sup>10</sup> Id. at paragraph 29.

intent to open the LPFM application and licensing process to such local, new entrants. Therefore, to the extent it is deemed necessary, a grant of a waiver of the FCC's LPFM ownership eligibility rules with respect to this application by the University of Wisconsin-Parkside is in the public interest and justified under applicable FCC waiver standards.<sup>11</sup>

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<sup>11</sup> See 47 C.F.R. §§ 1.3 and 1.925(b)(3). The underlying purpose of the rules would not be served and would be frustrated by application to the instant applicant; a waiver would be in the public interest; and view of the unique circumstances, application of the rules would be inequitable and contrary to the public interest. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 409 U.S. 1027 (1972).

FCC Form 318  
University of Wisconsin-Parkside

*Attachment 1*

*Board of Regents of the University of Wisconsin System  
Existing Broadcast Interests*

WHA-TV, Madison, WI  
WHA(AM), Madison, WI  
WSUM(FM), Madison, WI  
WUWM(FM), Milwaukee, WI  
KUWS(FM), Superior, WI  
WUEC(FM), Eau Claire, WI  
WRST-FM, Oshkosh, WI  
WHID(FM), Green Bay, WI  
WLSU(FM), La Crosse, WI  
WVSS(FM), Menomonie, WI  
WWSP(FM), Stevens Point, WI  
WSUP(FM), Platteville, WI  
WSUW(FM), Whitewater, WI  
WRFW(FM), River Falls, WI  
WUWS(FM), Ashland, WI  
W300BM, Madison, WI  
BNPFT-20030317KOE (pending FM translator application)

The applicant also shares common board members with the State of Wisconsin-Educational Communications Board, licensee of several noncommercial educational TV, radio and translator stations. *See, e.g.*, FCC File No. BOA-20130712ABE. For the same reasons set forth in this Exhibit 5 with respect to the above-listed University-licensed stations, the State of Wisconsin-Educational Communications Board stations are not attributable or preclusive with respect to this University of Wisconsin-Parkside campus Low Power FM application.