

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pandora Radio LLC)	KXMZ(FM), Box Elder, SD
)	Facility ID No. 164109
)	FCC File No. BALH-20130620ABJ
)	
Petition for Declaratory Ruling Under Section)	MB Docket 14-109
310(b)(4) of the Communications Act of 1934, as)	
Amended)	

DECLARATORY RULING

Adopted: May 1, 2015

Released: May 4, 2015

By the Commission: Commissioner Pai concurring and issuing a statement; Commissioner O’Rielly issuing a statement.

I. INTRODUCTION

1. In this *Declaratory Ruling*, the Commission addresses a petition for declaratory ruling filed by Pandora Radio LLC (“Pandora Radio”) on June 27, 2014 (“Petition”). The Petition requests the Commission to exercise its discretion to permit Pandora Radio’s parent company, Pandora Media, Inc. (“Pandora Media”), to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4) (“Section 310(b)(4)”) of the Communications Act of 1934, as amended (the “Act”).¹ As discussed below, we find that it would serve the public interest to permit a widely dispersed group of shareholders to hold aggregate foreign ownership in Pandora Media in excess of the 25 percent benchmark in Section 310(b)(4). Therefore, we grant the Petition, subject to the conditions specified in this *Declaratory Ruling*.

II. BACKGROUND

2. Pandora Radio is a wholly owned, direct subsidiary of Pandora Media, a publicly traded company incorporated in the State of Delaware.² By the above-captioned assignment application, filed June 20, 2013 (“Assignment Application”), Pandora Radio seeks to acquire radio Station KXMZ(FM), Box Elder, South Dakota, from Connoisseur Media Licenses, LLC (“Connoisseur”). On July 25, 2013, the American Society of Composers, Authors and Publishers (“ASCAP”), a music licensing organization, filed a petition to deny the Assignment Application, and it continues to oppose Pandora’s Petition in the present proceeding. As both parties have stipulated in their respective pleadings before the Commission, Pandora and ASCAP are currently involved in a dispute, including litigation, over copyright performance royalty rates.

3. On its initial Assignment Application, Pandora certified to its compliance with the foreign ownership limitation in Section 310. On September 23, 2013, the Media Bureau (“Bureau”) sent Pandora a letter of inquiry, requesting that Pandora supply information supporting that certification.³ On November 25, 2013, Pandora submitted a foreign ownership study that had been prepared by NASDAQ

¹ 47 U.S.C. § 310(b)(4).

² For convenience, we may refer to Pandora Radio and Pandora Media collectively as “Pandora” herein.

³ *John M. Pelkey, Esq.*, Letter, Ref. No. 1800B3-CEG (MB Sept. 23, 2013).

OMX (formerly Thomson Reuters) prior to the filing of the Assignment Application (“NASDAQ Report”).⁴ Using shareholder mailing addresses as a proxy for citizenship, the NASDAQ Report concluded that approximately 84.3 percent of Pandora Media’s outstanding shares are held by U.S. citizens.⁵ In a letter dated January 8, 2014, the Bureau responded that a study based on shareholder mailing addresses is inadequate to demonstrate compliance with Section 310(b)(4) and notified Pandora that it would cease processing the Assignment Application pending submission of an acceptable compliance showing.⁶ Subsequently, Pandora engaged K&L Gates, LLP, to conduct a second study of Pandora Media’s foreign ownership (“K&L Gates Report”). The K&L Gates Report examined Securities and Exchange Commission (“SEC”) Form 13Fs, which report voting interests held by certain large institutional investment managers. K&L Gates concluded that an estimated 82.2 percent of voting interests in Pandora Media shares are held by U.S. citizens.⁷ However, the Bureau found that a compliance showing that foreign ownership does not exceed the 25 percent benchmark of Section 310(b)(4) based solely on voting interests, excluding equity interests, also would be inadequate, since that benchmark includes both voting *and* equity interests.⁸

4. On June 27, 2014, Pandora amended the Assignment Application to include the Petition “not because it believes that foreign entities beneficially own or vote more than 25% of its shares, but instead because it cannot prove in a manner consistent with [Bureau guidance] that foreign entities do not beneficially own or vote more than 25% of its shares.”⁹ SEC privacy regulations, Pandora explains, “effectively preclud[e]” public companies from communicating directly with shareholders who object to such direct communications and where shares are held “in street name” through broker dealer and bank intermediaries.¹⁰ Pandora notes that a company “theoretically” may request brokers and bank intermediaries to seek citizenship information in order to demonstrate its compliance with the limits of Section 310(b), but raises a question about whether such entities would be obligated to honor such a request and argues that objecting shareholders are “presumably unwilling” to disclose such citizenship information.¹¹ Pandora thus maintains that it is unable to determine the specific identity—and thus the citizenship—of the beneficial owners of “at least half of [Pandora Media’s] shares.”¹² Any attempt at a statistically valid random survey of beneficial owners, according to Pandora, is likely to result in a very low response percentage.¹³ Moreover, as a public company that is a new entrant to the broadcast industry, Pandora Media does not have provisions in its organizing documents that allow it to ascertain its shareholder citizenship information despite SEC regulations. Therefore, Pandora requests Commission

⁴ Petition at 19-20.

⁵ *Id.* at 27.

⁶ *John M. Pelkey, Esq.*, Letter, Ref. No. 1800B3-CEG (MB Jan. 8, 2014).

⁷ Petition at 25; *see generally*, SEC, “Form 13F—Reports Filed by Institutional Investment Managers”, <http://www.sec.gov/answers/form13f.htm> (last visited Feb. 2, 2015). Such institutional investment managers must use Form 13F for reports to the SEC as required by Section 13(f) of the Securities and Exchange Act of 1934, as amended, 15 U.S.C. §§ 78a *et seq.*, and Exchange Act Rule 13f-1 thereunder, 17 C.F.R. § 240.13f-1.

⁸ The calculation of foreign ownership interests under Section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee’s direct or indirect parent. *See BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 (1995).

⁹ Petition at 9.

¹⁰ Petition at 9-14, *citing* 17 C.F.R. §§ 240.14a-13, 240.14b-1, 240.14b-2; *see generally*, Beller and Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting*, <http://www.sec.gov/comments/s7-14-10/s71410-22.pdf> (Feb. 2010).

¹¹ Petition at 13.

¹² *Id.* at 9.

¹³ *Id.* at 13.

approval to exceed the statutory benchmark based on the documentation that it has submitted, as discussed above.

5. On July 29, 2014, the Bureau sought comment on the Petition.¹⁴ ASCAP filed an Opposition to the Petition (“Opposition”). Comments also were filed by the National Association of Broadcasters (“NAB”) and the Minority Media and Telecommunications Council (“MMTC”).¹⁵ Under the procedure described in the *Clarification Order*, various Executive Branch agencies were notified of the pendency of the Petition.¹⁶ No Executive Branch agency filed a comment or objection in the relevant docket.

6. In its Opposition, ASCAP argues that the Commission should deny the Petition because: (1) Pandora is motivated by obtaining the benefits of copyright licensing payment terms applicable to broadcasters rather than by a sincere desire to become a broadcaster; (2) grant of the Petition would create a precedent for any other publicly traded company that cannot ascertain its ownership; (3) Pandora would not be able to obtain prior Commission approval for any increase in foreign ownership relying solely on SEC reports, which are filed *ex post facto*; (4) the proposed transaction would not further the Commission’s goals of increased foreign investment, innovation, diversity, and localism; and (5) grant of the Petition could lead to the collapse of the collective copyright licensing system.¹⁷

7. In its Reply Comments, filed September 29, 2014, Pandora asserts that Pandora Media “quintessentially is a U.S. company, founded in the United States and governed by a board of directors comprised entirely of U.S. citizens. Thus, Pandora’s ownership of KXMZ will not raise any national security concerns.”¹⁸ Pandora further states that “the shareholder disclosure requirements of the [SEC] effectively prevent foreign shareholders, individually or in the aggregate, from influencing, much less controlling, a publicly traded company such as Pandora [Media] without openly disclosing their intention to do so.”¹⁹ Pandora maintains that the collective licensing issue is outside the Commission’s primary jurisdiction and is, in any case, under review by Congress, the courts, Department of Justice, and the U.S. Copyright Office.²⁰ Moreover, Pandora argues, the collective licensing regime is an issue wholly unrelated to foreign influence and control of U.S broadcast stations, the explicit focus of Section 310(b)(4).²¹ Pandora points out that it is a new entrant—and therefore, a new source of capital—to the broadcast industry²² and claims that it will serve the local needs and interests of the Box Elder

¹⁴ *Pandora Radio LLC Seeks Foreign Ownership Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as Amended*, Public Notice, 29 FCC Rcd 9094 (MB 2014).

¹⁵ Effective January 21, 2015, MMTC became the Multicultural Media, Telecom and Internet Council. The NAB Comments, filed Aug. 28, 2014, and the MMTC Reply Comments, filed Sept. 29, 2014, do not take a position on the Petition or Assignment Application specifically, but urge the Commission to initiate a rulemaking (NAB) or otherwise relax the standard (MMTC) for demonstrating compliance with the statutory benchmarks. *See infra*, paragraph 17. On July 30, 2014, Charles Pickney filed a brief informal comment in support of the Petition.

¹⁶ *Commission Policies and Procedures under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcasting*, Declaratory Ruling, 28 FCC Rcd 16244, 16251 (2013) (“*Clarification Order*”).

¹⁷ ASCAP Opposition to Declaratory Ruling, Docket No. 14-109 (filed Aug. 28, 2014).

¹⁸ Reply Comments at 3. Pandora also states that all of Pandora Media’s executive officers except two are U.S. citizens and that the “vast majority” of Pandora’s listeners are U.S. residents. Petition at 6.

¹⁹ Reply Comments at 4.

²⁰ *Id.* at 12-14; *see also* Petition at i.

²¹ Reply Comments at 10, 12 (“[The alleged harm to the music licensing regime] would be the same even if every single share of Pandora’s stock was demonstrably owned by U.S. citizens.”); *see also* Petition at 15 (citing the *Clarification Order*, 28 FCC Rcd at 16244 (“The Act’s foreign ownership restrictions were originally conceived to address homeland security interests during wartime.”) (internal citation omitted)).

²² Reply Comments at 15.

community, bringing a “diversity of voices” to the local market.²³ Pandora contends that it should not be required to adopt provisions in Pandora Media’s organizing documents to ensure future compliance with Section 310(b), because “some [publicly traded] broadcasters’ organizational documents do not contain any such provisions.”²⁴ Finally, Pandora argues that “[i]n an era of high-speed trading of stock held in street name, there is no foolproof method for any widely held and publicly traded company, including any existing publicly traded broadcaster . . . to perfectly, preemptively, and in real-time ensure compliance with Section 310(b).”²⁵ Rather, Pandora predicts that, if foreign shareholders attempt to exercise meaningful control over Pandora Media, the Commission would have an opportunity to review that ownership change under its existing rules.²⁶

III. DISCUSSION

A. Section 310(b)(4) Foreign Ownership Review

1. Legal Standard for Foreign Ownership of Broadcast Licensees

8. We review the proposed foreign ownership of Pandora under Section 310(b)(4), which states that “[n]o broadcast . . . license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”²⁷ In the *Clarification Order*, the Commission stated that it would exercise its statutory discretion to consider, on a case-by-case basis, applications and transactions that propose foreign broadcast ownership exceeding the 25 percent benchmark of Section 310(b)(4).²⁸ In assessing the public interest, we afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.²⁹ To exercise in a meaningful way the discretion conferred by statute, the Commission must receive from the applicant detailed information sufficient for the agency to make the public interest finding the statute requires.³⁰

2. Facts Supporting Public Interest Analysis

9. As stated in the Petition, Pandora Media is a publicly traded company with widely held stock. According to the application, no single foreign individual or entity holds an attributable five percent or greater voting interest.³¹ It was founded and is headquartered and operated in the United

²³ Petition at 14-15.

²⁴ Reply Comments at 20.

²⁵ *Id.* at 19.

²⁶ *Id.* at 20.

²⁷ 47 U.S.C. § 310(b)(4).

²⁸ *Clarification Order*, 28 FCC Rcd at 16249 (“Congress’ directive is that 25 percent alien ownership is the point at which the Commission must act and exercise its discretion in making a public interest determination on proposed ownership arrangements that would exceed this level.”).

²⁹ *Id.* at 16251.

³⁰ *Id.* at 16250.

³¹ The only parties in interest identified in the application, other than officers and directors, are four entities, each with dispositive power over more than five percent of Pandora Media’s shares but less than a five percent voting interest (Artisan Partners Limited Partnership, Price T. Rowe Associates Inc. [sic], Vanguard Group Inc., and Wells Fargo & Company). Therefore, Pandora states, these parties are not attributable. Assignment Application, Exhibit 14, at 2 n.2. Note that voting interests under 20 percent held by certain institutional investors are also not attributable; however, the Commission has long recognized the passive nature of any such investors, given “the legal

(continued....)

States. All eight members of Pandora Media's Board of Directors are U.S. citizens, as are all but two of its ten executive officers.³² As noted above, we have not received comments, objections, or suggested conditions from Executive Branch agencies notified of Pandora's proposed acquisition pursuant to the *Clarification Order*.

10. With respect to Pandora Media's outstanding shares, Pandora has commissioned two independent foreign ownership studies. The first, the NASDAQ Report, relied primarily on shareholder information obtained from Broadridge Financial Services.³³ NASDAQ examined 73.6 percent of Pandora Media's outstanding shares and extrapolated the results to the remaining shares, concluding that a total of 84.3 percent of those outstanding shares should be treated as beneficially owned by U.S. persons or entities.³⁴ This report "relied on the addresses of record of these beneficial shareholders as a proxy for their citizenship."³⁵ The second study, the K&L Gates Report, analyzed information submitted quarterly on SEC Form 13Fs by certain large institutional investment managers that exercised voting authority over 150,149,563 shares of Pandora Media stock, out of 195,395,940 total shares outstanding as of the Form 13F reporting date of December 31, 2013, or approximately 77 percent of outstanding shares.³⁶ K&L Gates determined that voting control over 125,430,961 shares, or approximately 83.5 percent of the shares examined, was held by U.S. entities that are controlled by U.S. citizens.³⁷ K&L Gates extrapolated this percentage to the remaining, unexamined, shares to estimate an overall percentage of U.S. voting control over Pandora Media shares of 82.2 percent.³⁸ In short, Pandora estimates that U.S. citizens vote approximately 82 percent of Pandora Media's shares (based on the K&L Gates report) and beneficially own approximately 84 percent (based on the NASDAQ report).³⁹ It also states that Pandora has no single foreign shareholder with a five percent or greater voting interest.⁴⁰ We find the collective foreign ownership data for Pandora Media submitted by Pandora, while insufficient for compliance and certification purposes under our precedent, to be sufficient, given the totality of the circumstances,⁴¹ to allow us to undertake our public interest analysis of the Petition under Section 310(b)(4).

B. Pandora's Proposals

11. In the Petition, Pandora Radio seeks a declaratory ruling to allow foreign investors to hold up to an aggregate 49.99 percent voting interest and 100 percent equity interest in Pandora Media, its parent company, without additional Commission approval. Under this requested ruling, Pandora would be required to obtain prior Commission approval for the aggregate voting authority of foreign investors in Pandora Media to exceed 49.99 percent, or if any change in the Board of Directors is proposed that would

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and fiduciary requirements that constrain [their] involvement in the management and operational affairs" of the licensee. *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12569-71 (1999). Moreover, the K&L Gates Study found that, of the 76.84 percent of total outstanding shares reported by institutional investment managers on SEC Form 13Fs, U.S. citizens held sole or shared voting power over 83.5 percent of those shares. Petition at Exhibit A, pp. 7, 10-11.

³² Assignment Application, Exhibit 14.

³³ Petition at 26.

³⁴ *Id.* at 26-27.

³⁵ *Id.* at 25-26.

³⁶ *Id.* at 24.

³⁷ *Id.* at 25.

³⁸ *Id.*

³⁹ *Id.* at 27.

⁴⁰ Assignment Application, Exhibit 14.

⁴¹ See *Clarification Order*, 28 FCC Rcd at 16250.

result in the majority of the Board no longer being comprised of U.S. citizens. Pandora Radio requests that the ruling be prospectively applied to any of Pandora's affiliates that are wholly owned and controlled by Pandora Media or have common control with Pandora.

12. Alternatively, Pandora Radio requests that the Commission issue a declaratory ruling that would follow the general policy it applies in the common carrier field,⁴² *i.e.*, permit 100 percent foreign equity and voting interests without prior Commission approval, provided that no foreign investor that is not named in the Petition (as amended) increases its equity or voting interest in Pandora Media to five percent (or 10 percent for certain institutional investors). Under this alternative proposal, any foreign investor named in the Petition (as amended) may increase its equity and/or voting interest in Pandora Media to 49.99 percent at some future time without additional Commission approval.

C. ASCAP Opposition to the Petition

13. In this *Declaratory Ruling*, we deny ASCAP's Opposition to the Petition. We agree with Pandora that the music copyright licensing dispute raised in the Opposition is more appropriately resolved through Congress, the courts, and other government agencies. Furthermore, we agree that matters concerning the collective licensing regime are unrelated to potential unacceptable foreign influence over U.S. broadcast stations, which is the sole focus of Section 310(b)(4) as it applies to broadcast licenses. The alleged harms to the performing rights system arise from Pandora's proposed purchase of a radio station, not from the level of Pandora's foreign ownership, and would exist whether or not Pandora was able to demonstrate compliance with Section 310(b)(4). Thus, ASCAP's broader public interest argument is inapt in the context of this *Declaratory Ruling*, which exclusively concerns our statutory obligations under Section 310(b). With respect to ASCAP's allegations regarding Pandora's motivation in acquiring the Station, the Act does not require us to examine the business rationale of a petitioner for a declaratory ruling on foreign ownership, but instead requires us to determine, on a case-by-case basis, whether it is in the public interest to permit an entity to obtain a station license if the foreign interest in the U.S. parent of the licensee would exceed 25 percent.⁴³ Such a determination should be informed by the clear purpose of Section 310(b) as the Commission has interpreted it, which is a concern with "foreign influence over broadcast stations."⁴⁴

14. As discussed below, in this particular situation and subject to the conditions noted below, we find that Pandora's proposal to exceed the statutory benchmark of Section 310(b)(4) is not contrary to the public interest. Neither the Commission nor the Executive Branch agencies have identified harm to the public interest posed by Pandora Media's current level of unidentified but widely dispersed foreign ownership, where no single foreign individual or entity holds an attributable five percent or greater voting interest in Pandora's outstanding stock. As the Commission noted in its 2013 *Common Carrier Foreign Ownership Order*, any interest in a publicly traded company above five percent of any class of registered equity securities must be timely reported to the SEC and the issuer of the securities as specified in the SEC's shareholder disclosure rules, and any voting interest of five percent or greater also generally makes the interest cognizable under the Commission's attribution rules.⁴⁵ The SEC also requires a shareholder to disclose promptly any plan to influence the management or operation of an issuing company.⁴⁶ These safeguards, when coupled with the conditions imposed below with respect to required amendments of

⁴² Petition at 32-33, citing *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd 5741 (2013) ("*Common Carrier Foreign Ownership Order*").

⁴³ See 47 U.S.C. § 310(b)(4); *Clarification Order*, 28 FCC Rcd at 16249.

⁴⁴ *Clarification Order*, 28 FCC Rcd at 16253.

⁴⁵ *Common Carrier Foreign Ownership Order*, 28 FCC Rcd at 5770-72, citing 15 U.S.C. § 78m(d)(1) and 47 C.F.R. § 73.3555 Note 2(a).

⁴⁶ See *id.*

Pandora Media's organizational documents and its obligation to provide reliable information on its foreign ownership going forward, will effectively prevent foreign shareholders from acquiring significant influence over Pandora Media without prior Commission approval and without first giving Pandora the opportunity to evaluate and take appropriate preventative or remedial measures. In the absence of any countervailing public interest concerns, in particular any facts indicating a likelihood of foreign influence or control, and based on the widespread distribution of Pandora Media's foreign-owned shares as set forth in the record, we find that the conditions imposed herein will be sufficient to ensure that the goals of Section 310(b)(4) are met.

15. With respect to ASCAP's claim that the transaction does not meet the goals of the *Clarification Order*, we note that Pandora is a new and independent entrant to the broadcast industry and as such represents an influx of investment capital. As we stated in the *Clarification Order*, "[g]reater capitalization may in turn yield greater innovation, particularly in programming directed at niche or minority audiences."⁴⁷ We find that nothing in the *Clarification Order* precludes or weighs against the Commission's exercise of discretion under Section 310(b)(4) in this case, which involves no foreign voting interest of more than 5 percent but rather a publicly traded parent company with widely dispersed shareholdings that has demonstrated difficulty despite its efforts to ascertain the citizenship of its many shareholders. The *Clarification Order* did not impose threshold requirements that a petitioner demonstrate either a certain level of foreign investment or investment in a certain type of broadcasting entity; rather, it anticipated that "applicants may propose ownership by a wide range of foreign interests and countries, involving varying corporate and organizational structures, with different public interest showings" that would be evaluated on a case-by-case basis, as we have done.⁴⁸

16. In this regard, we note that the measures outlined herein extend beyond mere monitoring of Pandora Media's foreign ownership through SEC reports, thus mitigating ASCAP's concern that reliance on SEC reports alone would result in Pandora seeking Commission approval of increases in foreign ownership after the fact. As noted below, we condition this ruling on the adoption of changes to Pandora Media's organizational documents and on its exercise of due diligence in proactively monitoring its foreign ownership levels as described herein and in the submission required by paragraph 22, *infra*. Finally, with respect to the alleged universality of our holding, we emphasize that the actions taken herein are limited to the specific circumstances before us and that any petition for declaratory ruling that another publicly traded company may submit will be analyzed based on its own particular facts and circumstances.

D. Comments Regarding Further Reform

17. Others submitted Comments beyond the scope of this Petition. NAB does not take a position on Pandora's proposal to acquire Station KXMZ(FM) but urges the Commission to broadly revisit its "outdated" methodology for assessing compliance with Section 310(b)(4) for publicly held broadcast companies, including initiating a rulemaking as necessary. NAB contends that broadcasters should be treated similarly to other types of communications companies with respect to Section 310(b)(4) compliance showings.⁴⁹ MMTC also argues that the Commission's policies for assessing compliance with Section 310(b)(4) are outdated and should be clarified and revised to provide "flexible, practical, and efficient approaches to estimating the foreign ownership of publicly traded entities that own broadcast licenses."⁵⁰ A more flexible approach, according to MMTC, will encourage diversity and "ensure that the benefits of the [*Clarification Order*] are realized."⁵¹ We note that the actions taken herein are specific to

⁴⁷ *Clarification Order*, 28 FCC Rcd at 16249.

⁴⁸ *Id.* at 16252.

⁴⁹ NAB Comments at 5.

⁵⁰ MMTC Comments at 2.

⁵¹ *Id.*

Pandora's Petition and thus do not prejudice any broadly applicable measures we may consider in response to the above suggestions. Indeed, we intend to examine in the near future whether it would be appropriate for the Commission to revise its methodology for assessing compliance with Section 310(b)(4) in the broadcast context.

E. Declaratory Ruling

18. *Declaratory Ruling.* After careful consideration of the specific facts before us, we conclude, pursuant to Section 310(b)(4) and the *Clarification Order*, that the public interest would be served by granting the petition for declaratory ruling subject to the conditions set forth below. We take no action at this time on the Assignment Application and related pleadings.

19. **Aggregate and individual foreign ownership limits.** Pandora must obtain prior Commission approval for: (1) aggregate foreign equity and/or foreign voting interests in Pandora Media exceeding 49.99 percent; or (2) any change in the Pandora Media Board of Directors that would result in a majority of foreign members; or (3) any individual foreign investor or "group" acquiring a greater than five percent voting or equity interest (or ten percent for certain institutional investors) in Pandora Media.⁵² Conditions (1) and (2) reasonably satisfy the Section 310(b)(4) goal of "safeguard(ing) the United States from foreign influence" in the field of broadcasting by prohibiting foreign shareholders, singly or in the aggregate, from acquiring majority voting control of Pandora Media or its Board of Directors.⁵³ Condition (3) reflects the Commission's longstanding determination, in both the broadcast and common carrier contexts, that a shareholder with a less than five percent interest does not have the ability to influence or control core decisions of the licensee.⁵⁴ This condition is also in keeping with section 13(d) of the Securities Exchange Act of 1934, as amended, which identifies a five percent reporting threshold for stock interests in publicly held companies.⁵⁵

20. **Changes to organizational documents.** Pandora Media shall modify its certificate of incorporation, bylaws, or other appropriate organizational documents to ensure that the Board of Directors has all necessary powers to implement the provisions of this *Declaratory Ruling*. Reflecting broadcast industry best practices regarding compliance with Section 310(b)(4), these powers must include the right of Pandora Media to request and obtain information regarding the citizenship of beneficial owners and those with voting rights and, if necessary to comply with Section 310(b)(4) or any requirement or condition of this *Declaratory Ruling*, the right to take any and all actions that the Board of Directors deems necessary to so comply or cure any noncompliance. Specific changes Pandora Media must incorporate include: (1) the right to restrict the transfer of shares to aliens; (2) the right to require disclosure when an alien acquires beneficial ownership of, or voting interest in, shares; and (3) the right to compel the redemption of shares held by aliens.

21. **Biennial certification.** Although the current Pandora Media foreign ownership information submitted by Pandora has been determined by the Commission to not raise immediate concerns regarding foreign influence or control, we expect Pandora Media to have improved access to shareholder information, and thus be able to submit more accurate and complete foreign ownership data,

⁵² For details of the treatment of certain institutional investors, see *Common Carrier Foreign Ownership Order*, 28 FCC Rcd at 5773-5776 and 47 C.F.R. § 1.991(i)(3). See also *id.* § 1.991(i)(1), Note to paragraphs (i)(1), (2) (defining the term "group").

⁵³ *Clarification Order*, 28 FCC Rcd at 16244-45, n.3 (quoting *Wilner & Scheiner*, Request for Declaratory Ruling, 103 FCC 2d 511, 516-17 (1985)).

⁵⁴ See *Common Carrier Foreign Ownership Order*, 28 FCC Rcd at 5770 (citing *Reexamination of the Commission Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, Report and Order, 97 FCC 2d 997, 1002-12 (1984)); 47 C.F.R. § 73.3555, Note 2a (codifying the five percent attribution standard).

⁵⁵ 15 U.S.C. § 78m(d)(1).

in the future, based on the changes to its organizational documents required herein. However, we are mindful of the burden that an annual compliance showing would represent. Therefore, as a condition of exercising our statutory discretion under Section 310(b)(4), we require that Pandora Media monitor its foreign ownership and certify that it continues to meet the conditions of the grant of the *Declaratory Ruling* every two years, at the same time that it files its FCC Form 323—Biennial Ownership Report.⁵⁶ Consistent with broadcast industry compliance practices, Pandora Media must diligently seek to identify the citizenship of beneficial owners and those with voting rights in numbers sufficient to make this certification on a reasonably reliable basis in the circumstances. In particular, we expect Pandora Media to use sources other than shareholder mailing addresses or corporate headquarters locations. Recognizing the unique structure and circumstances of each company, we grant Pandora Media some flexibility in the specific means of achieving compliance supporting its certifications; however, Pandora should consider the following measures:

- Entering into the Depository Trust Corporation (“DTC”) SEG-100 or equivalent program that allows for the deposit of foreign-owned shares into a segregated account for monitoring of shares. When an issuer such as Pandora requests to be included in the SEG-100 program, DTC notifies its participants that they must apply SEG-100 procedures to future trades of Pandora stock. Each DTC participant is obligated to make inquiries of their own account holders and place the shares of every holder that is a non-U.S. citizen in the DTC participant’s SEG-100 account. This process will allow Pandora, through its transfer agent, to monitor foreign ownership levels and, if the threshold is exceeded, to notify DTC of the number of shares that must be transferred out of SEG-100 accounts. Pandora will receive periodic reports from its transfer agent reflecting the total number of shares placed by shareholders in SEG-100 accounts;
- Monitoring shares held by current and former officers and directors;
- Monitoring relevant SEC filings, such as Form 13F, Schedule 13D, Schedule 13G, and Form ADV, with respect to shares held in Pandora and any plan or proposal to influence the management or operation of the company;
- As to each institutional investor or other person/entity filing such SEC reports, reviewing the reports, consulting other publicly available sources, and contacting the filer as necessary (and permissible under SEC regulations and the company’s governance documents) to determine (1) the citizenship of the holder(s) of sole or shared voting rights in the shares reported by the filer, and (2) the citizenship of the beneficial owners of (i.e., the persons or entities holding the economic interests in) such shares. Include as part of its recertification showing, alien ownership (equity) and voting data for shares reported by each institutional investor or person/entity filing a Form 13F, Schedule 13D or Schedule 13G;
- Requesting that Broadridge Financial Services (or equivalent company) provide Pandora with a non-objecting beneficial owner (“NOBO”) list—i.e., a list of beneficial owners that own shares through a broker or bank intermediary and that do not object to their identifying information being reported to the issuer. Request that all NOBOs provide citizenship information. This may be performed in connection with the issuance of Pandora’s annual meeting proxy notices; and
- Committing to make reasonable efforts to secure the cooperation of the relevant financial intermediaries in obtaining citizenship information.

22. **Other implementation requirements.** Within 90 days of the date of the release of this *Declaratory Ruling*, Pandora shall submit a list of steps it has taken or intends to take to ensure

⁵⁶ 47 C.F.R. § 73.3615.

compliance with the foregoing conditions of this *Declaratory Ruling*. Pandora also shall submit a detailed description of the methodology it and Pandora Media propose to use to make its biennial certification. The commitments set forth in this submission, once reviewed and approved by the Bureau acting on delegated authority, will be considered further conditions of this *Declaratory Ruling*. The Commission reserves the right to modify implementation requirements based on statutory or rule changes, or changes in its foreign ownership policies. Consideration of the Assignment Application by the Bureau will not resume until Pandora and Pandora Media have submitted a satisfactory showing under this condition.

23. **Notification of non-compliance.** If at any time Pandora knows, or has reason to believe, that it is no longer in compliance with this *Declaratory Ruling*, Section 310(b)(4) of the Act, or the Commission's rules or policies relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days.

24. **Organizational changes.** This ruling covers all of Pandora's subsidiaries and affiliates, whether existing or formed or acquired subsequently, that are wholly owned and controlled by, or under 100 percent common ownership and control with, Pandora Media. This ruling does not in any way detract from the requirement under the Act and our Rules to apply for and receive prior Commission consent to a voluntary assignment or transfer of control before such a transaction may be consummated.⁵⁷

IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), the Petition for Declaratory Ruling filed by Pandora Radio LLC IS GRANTED to the extent specified in this *Declaratory Ruling* and subject to the conditions specified herein.

26. IT IS FURTHER ORDERED that pursuant to sections 4(i) and (j), and 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 310(b)(4), the Opposition filed by ASCAP on August 29, 2014, IS DENIED.

27. IT IS FURTHER ORDERED that this *Declaratory Ruling* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁷ See 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540.

**CONCURRING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended*, KXMZ(FM), Box Elder, SD, Facility ID No. 164109, FCC File No. BALH-20130620ABJ, MB Docket 14-109.

Pandora's application to acquire KXMZ, an FM radio station in Box Elder, South Dakota, has been pending at the FCC for almost two years. Why? Because of questions regarding Pandora's level of foreign ownership.

Let's put this in perspective. Today, foreign companies can own majority interests in cable operators, cable programmers, common carriers, Internet backbone providers, satellite video providers, newspapers, and the list goes on. Indeed, foreign companies now own majority interests—together worth tens of billions of dollars—in two of the four nationwide wireless carriers. And right now, over 79 million Americans—more than 10,000 times as many people as live in Box Elder—listen to Pandora's Internet radio service.¹ Yet the Commission has tied itself (and Pandora) in knots trying to determine whether foreign interests own more than 25% of Pandora stock, and if so, whether Pandora should be able to own a single FM radio station in a small South Dakota town.

This is absurd.

Here are just two reasons why. *First*, the best evidence in the record indicates that Pandora's level of foreign ownership falls below the 25% statutory benchmark found in section 310(b)(4) of the Communications Act. Yet, Commission precedent prohibits broadcasters (but not other regulated entities) from relying on this evidence. FCC case law makes it uniquely difficult to invest in broadcast stations, and as I have previously pointed out this is as anachronistic as it is illogical.² And so we have decided to decide whether Pandora should be allowed to have more than 25% foreign ownership. The Commission should spend its time resolving actual controversies, not creating more work for ourselves. I am therefore pleased that we commit to examining in the near future whether we should revise our methodology for assessing compliance with the 25% statutory benchmark in the broadcast context. At this point, our outdated methodology may simply discourage capital from flowing into the broadcast space—which undermines struggling broadcasters, particularly rural and minority-owned stations.

Second, there is no evidence whatsoever in the record that the public interest would be harmed by allowing a publicly traded company with widely dispersed foreign ownership to own an FM radio station in South Dakota. Given these circumstances, the scope of relief that the Commission grants to Pandora is too narrow and the conditions that the Commission imposes on Pandora are too numerous.

Had it been up to me, this *Declaratory Ruling* would have read differently. Specifically, rather than applying a 49.99% limit and requiring Pandora to undertake a comprehensive monitoring regime to ensure that it stays within that limit, I would have followed our precedent with respect to common carriers and allowed Pandora to have up to 100% foreign ownership, so long as no single foreign investor owned more than 5% of the company without prior Commission approval. This approach would have safeguarded the public interest. It would have been much simpler for Pandora to administer. And it would have been consistent with “the Commission's longstanding determination, in both the broadcast

¹ Pandora, Pandora Reports Q1 2015 Financial Results, <http://investor.pandora.com/phoenix.zhtml?c=227956&p=irol-newsArticle&ID=2039575> (Apr. 30, 2015).

² See, e.g., Statement of Commissioner Ajit Pai on Modernizing Approach to Foreign Investment in Broadcast Stations (Feb. 26, 2013), <http://go.usa.gov/3BzDQ>; see also Remarks of Commissioner Ajit Pai Before the Radio Show (Sept. 19, 2012), <http://go.usa.gov/3BzDe>.

and common carrier context, that a shareholder with a less than five percent interest does not have the ability to influence or control core decisions of the licensee.”³

Notwithstanding all of this, I am voting to concur with today’s decision because it is a step in the right direction, one that brings us closer to finally bringing this proceeding to an end. And I do so with the hope that the Commission will be more forward-thinking the next time it evaluates broadcast applications involving foreign ownership questions.

³ *Declaratory Ruling* at para. 19.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended*, KXMZ(FM), Box Elder, SD, Facility ID No. 164109, FCC File No. BALH-20130620ABJ, MB Docket 14-109.

I approve this Declaratory Ruling as a small step toward the ultimate goal of affirmatively expanding permissible foreign ownership in broadcast licensees above the current de facto 25 percent cap. The difficulties encountered by Pandora Media, the publicly traded parent of the licensee, in its efforts to prove that foreign entities do not beneficially own or vote more than 25 percent of its shares, are far from unique. In an increasingly global economy, it is an impossible task for a publicly traded company to establish the identity, let alone the nationality, of the majority of its shareholders. But there is no reason this undisputed fact need stand in the way of U.S. companies' access to capital from foreign investors bullish on the prospects of the dynamic American communications marketplace. Under the law, the Commission is free to permit a higher foreign limit or waive the limit altogether, and I support our doing so here.

However, as I have stated previously, I believe that the Commission can, and should, go beyond the current case-by-case approach to these requests by setting rules and policies affirmatively permitting more foreign ownership, subject to our authority to reject any application, pursuant to coordination with executive branch agencies, to address uncontroverted national security concerns. Further, any such affirmative expansion should not include the types of burdensome conditions set forth in this ruling, which have the potential to entrap any investment plan in a web of red tape for no value. I appreciate the Chairman's commitment to work with me toward an overall liberalization of our broadcast-related foreign ownership rules, and this ruling's clarification that the actions taken are specific only to this case and will not impact our discussions going forward.