

**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 At this point, our outdated methodology may simply discourage capital from flowing into the broadcast space—which undermines struggling broadcasters, particularly rural and minority-owned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.