



Federal Communications Commission
Washington, D.C. 20554
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In Reply Refer to:
1800B3-CEG

John M. Pelkey, Esq.
Melodie A. Virtue, Esq.
Garvey Schubert Barer
Fifth Floor
1000 Potomac St NW
Washington DC 20007

In re: **KXMZ(FM), Box Elder, SD**
Facility ID No. 164109
File No. BALH-20130620ABJ

**Applications for Assignment of License
Petitions to Deny**

Dear Counsel:

We have reviewed the November 25, 2013, response (“Response”) of Pandora Media, Inc. (“Pandora”) to our letter of inquiry (“LOI”) dated September 23, 2013, as well as comments submitted by ASCAP on December 9, 2013 (“ASCAP Comments”). We find that the foreign ownership methodology described in the Response is inadequate to support Pandora’s certification of compliance with the foreign ownership limitations of Section 310(b)(4) of the Communications Act of 1934, as amended (“Section 310(b)”).¹ The Response relies upon mailing addresses as proxies for shareholder citizenship. The Commission has specifically stated, however, that in the broadcast context a mailing address is not a sufficiently reliable indicator of citizenship for Section 310(b) purposes.² Such use of mailing addresses may result in a clearly foreign shareholder, such as a company incorporated under the laws of another country, being treated as a U.S. shareholder.³ Therefore, Pandora may not rely on this data in making its foreign ownership certification in the Application.⁴

¹ See above-referenced application, Section III, Item 9 (“Application”); 47 U.S.C. 310(b)(4).

² See *Applications of Cellco Partnership d/b/a Verizon Wireless, Rural Cellular, and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Order on Reconsideration, 26 FCC Rcd 11763, 11775 n.92 (2011) (“Notwithstanding our conclusion that beneficial owner addresses may be sufficiently reliable indicators of citizenship in cases involving common carriers, as in the case before us here, we emphasize that . . . such addresses are not a substitute for the more reliable method of statistical surveys in the broadcast context given the different policy concerns in that service.”)

³ See, e.g. Response at Exhibit 3 (treating a “GmbH,” or German limited liability company, as a U.S. shareholder).

⁴ Although Pandora has not requested a declaratory ruling that the foreign ownership limitation be waived under 47 U.S.C. § 310(b)(4), we note that such a request must likewise be supported with reliable ownership data. See, e.g., *Application of Fox Television Stations, Inc. for Renewal of License of Station WNYW-TV, New York, New York*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8474-75 (1995) (“If the Commission is to exercise its [Section 310(b)(4)] discretion in any meaningful way, it must be alerted to the fact that such discretion is at issue, and given sufficient facts upon which to make the case-by-case analysis required.”).

Because the record does not show that Pandora has attempted other methods of directly ascertaining citizenship, we do not credit its assertion that “no publicly traded corporation with a large shareholder base would be able today to adequately demonstrate compliance with the alien ownership limits using the outdated methodology contained in the [LOI],”⁵ which Pandora asserts was “devised . . . long before electronic trading became widely available.”⁶ Indeed, rather than hampering such inquiries, modern technology provides access to numerous resources that an applicant can use to supplement direct inquiry, including—as recently used by Sprint Nextel Corporation in a similar proceeding—Secretary of State websites, Westlaw, Lexis, the Securities and Exchange Commission (“SEC”)’s EDGAR and Investment Advisor Public Disclosure databases, Knowledge Mosaic, the Federal Reserve National Information Center, Bloomberg Financial, S&P Capital IQ, Hoovers, Accurint, and PitchBook, as well as institutional shareholder websites and media.⁷

We expect the citizenship of each “known” shareholder as defined by the LOI—and “unknown” shareholder randomly selected for sampling—to be ascertained using a reliable method, such as direct inquiry or research using one or more of the above online resources.⁸ If Pandora is unable to determine the citizenship of a shareholder due to the shareholder’s choice to remain anonymous under the Securities and Exchange Commission’s regulations, the interest must be treated as foreign.⁹ We emphasize that in the case of corporate shareholders, the inquiry does not end upon discovery that the shareholder is incorporated in the United States. Rather, Section 310(b) requires that an applicant exercise good faith due diligence “up the chain” of such company’s voting and equity shareholder interests, using our multiplier rules, before certifying as to its foreign ownership.

Because we find, as explained above, that Pandora may not rely on the data presented in the Response, we do not address the specific timing issues raised by ASCAP here. However, we caution Pandora not to selectively use data from varying time frames for either foreign ownership or real-party-in-interest purposes. For example, if Pandora uses recent, updated data to determine that an investor has dropped below five percent ownership for real-party-in-interest purposes, it must also determine and report whether any other investor has risen, during the same time period, to a five percent or above interest.¹⁰ Similarly, Pandora may not rely on different versions of the same document (e.g., a registered

⁵ Response at 6.

⁶ Response at 4. However, we agree with Pandora that the first sentence of Question 2.c of the LOI contains a typographic error. It should read: “Provide the sum of (1) the total number of shares owned by “known” shareholders, multiplied by the “known foreign percentage” and (2) the number of shares owned by the remaining shareholders, multiplied by the “unknown foreign percentage.”

⁷ See, e.g., *Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9692 n.377 (2013) (“*Sprint*”).

⁸ The LOI and Suggestions make clear that any sampling of “unknown” shares must be random (not, for example, extrapolated by comparison to the records of selected custodial holders or shareholder services companies).

⁹ Such voluntary anonymity does not excuse the Commission or its regulatees from compliance with Section 310(b). See LOI, Attachment A, at 3 (“. . . shares of non-respondents must be counted as alien owned.”); see also *Sprint*, 28 FCC Rcd at 9692 (demonstrating compliance with Section 310(b) using only confirmed U.S. shareholders).

¹⁰ See Response at 13 (listing entities that no longer hold a five percent attributable interest); ASCAP Comments at 8 (pointing to a recent SEC filing to support its argument that Artisan Partners Limited Partnership now holds more than five percent of Pandora stock); 47 C.F.R. § 1.65.

shareholder list or SEC filing) to support various elements of its foreign ownership showing.¹¹ Rather, the same version should be used consistently throughout the study.

For the reasons stated above, processing on the Application will cease until Pandora demonstrates adequate support for its foreign ownership compliance certification, in accordance with the guidance set out in the caselaw, LOI, and subsequent correspondence.¹²

Sincerely,



Peter H. Doyle *for*
Chief, Audio Division
Media Bureau

cc: Meredith S. Senter, Jr., Esq., counsel for ASCAP
David D. Oxenford, Esq., counsel for Connoisseur Media Licenses, LLC

¹¹ For example, the Response includes, in Exhibit 3, a list of registered shareholders dated May 22, 2013, including “Offshore Crosslink Ventures IV.” However, Pandora stated, on August 7, 2013, that “Ventures IV fund was not listed in the [Application] because [it is not] on the list of registered shareholders,” apparently in reliance on a different, possibly updated shareholder list. Opposition to Petition to Deny filed by Pandora on August 7, 2013.

¹² Such a submission should include a description of any corporate governance measures Pandora has in place to ensure ongoing compliance with Section 310(b).

Recipient List:

John M. Pelkey, Esq.
Melodie A. Virtue, Esq.
Garvey Schubert Barer
Fifth Floor
1000 Potomac Street NW
Washington DC 20007

Meredith S. Senter, Jr., Esq.
Lerman Senter PLLC
2000 K Street NW Suite 600
Washington DC 20006

David D. Oxenford, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street NW Suite 700
Washington, DC 20037

Samuel Feder, Esq.
Jenner & Block LLP
1099 New York Avenue NW Suite 900
Washington, DC 20001-4412