

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

In the Matter of:)	
)	
Pandora Radio LLC)	
)	MB Docket No. 14-109
Petition for Declaratory Ruling Under)	
Section 310(b)(4) of the Communications)	
Act of 1934, as amended)	
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submit these comments on Pandora Radio LLC's (Pandora)'s Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act.² NAB believes the time is right for the Federal Communications Commission (FCC or Commission) to acknowledge that its policies applying the Section 310(b)(4) foreign ownership restrictions are outdated. These policies must be updated to provide broadcasters a reasonable method to comply with Section 310(b)(4) and applicable current securities laws with regard to widely-traded, public entities. Beyond this, NAB takes no position on Pandora's underlying proposal to acquire KXMZ(FM), Box Elder, SD.

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² See Petition for Declaratory Ruling of Pandora Radio LLC Under Section 310(b)(4) of the Communications Act of 1934, As Amended, FCC File No. BALH-20130620ABJ (June 27, 2014) (Petition). See *also* Pandora Radio LLC Seeks Foreign Ownership Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, As Amended, Public Notice, DA 14-1019 (July 29, 2014).

I. NAB SUPPORTS FCC ACTION TO REVISE ITS POLICIES TO PROVIDE WIDELY-TRADED PUBLIC ENTITIES WHOM CANNOT ASCERTAIN THE CITIZENSHIP OF THEIR NON-ATTRIBUTABLE SHAREHOLDERS A RATIONAL AND REASONABLE WAY TO SHOW COMPLIANCE WITH FOREIGN OWNERSHIP LIMITS

A. The FCC's Policies Applying Section 310(b)(4) to Publicly-Traded Firms Is Outdated

The FCC currently requires widely-traded public entities to satisfy the Section 310(b)(4) 25% foreign ownership benchmark by assessing compliance using “suggestions” found in the *Suggestions for Meeting Citizenship Requirements of Corporate Applicants*.³ These “suggestions” harm the public interest by serving as a *de facto* ban on investment by publicly-traded entities in broadcast licensees.

The FCC's “suggestions” are outdated. They were created when an entirely different set of Securities and Exchange Commission (SEC) regulations governed the holding of widely-traded stock certificates. Instead of physically holding stock certificates, as was the case 40 years ago, most shares of publicly traded companies are now held in “street name.” Street name refers to a broker holding legal title to a share on behalf of the beneficial owner. The beneficial owner retains the full economic value, but in order to further the trading of shares, does not hold legal title. Today, most shares are held by brokerages or other Wall Street companies on behalf of the beneficial owner, whom is often not publicly identified to the company issuing the shares.

³ See Petition at n.4.

B. The SEC's Rules Make Compliance With Current FCC Section 310(b)(4) Policies Nearly Impossible

As stated in Pandora's Petition, Congress itself encouraged the use of street names to help with stock clearing and settlement.⁴ Given SEC rules that specifically limit brokers from providing companies with shareholder identifying information without shareholder permission,⁵ widely-traded public entities have little recourse if the shareholder decides to remain anonymous.

A shareholder may have many reasons for objecting to disclosure of identifying information. For example, a large hedge or mutual fund may not want competitors to know its positions because that information could move the market. Alternatively, many beneficial shareholders may not be aware that their information is not being shared. Indeed, the SEC says that "many brokerage firms will automatically put [a customer's] securities into street name unless you give them instructions to the contrary."⁶ It is estimated that 70-80% of publicly traded shares are held in street name.⁷ Thus, it is unlikely that the majority of shareholders are aware, or care, if a brokerage firm holds their securities in street name.

In light of the SEC's rules, and industry practice, the Commission cannot rationally assume that all street name shareholders are foreigners. Given that the

⁴ Petition at 11.

⁵ See 17 C.F.R. §§ 240.14b-1; 240.14b-2.

⁶ *Holding Your Securities – Get the Facts*, U.S. Securities and Exchange Commission, available at - <http://www.sec.gov/investor/pubs/holdsec.htm> (last visited Aug. 27, 2014).

⁷ See Alan L. Beller and Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareholder Communications and Voting*, Council of Institutional Investors, at 5 (Feb. 2010), available at <http://www.sec.gov/comments/s7-14-10/s71410-22.pdf> (last visited Aug. 27, 2014).

default for most brokerage firms is to hold publicly traded shares in street name, there is no method, short of breaking the SEC's regulations, to disprove such a presumption.

C. Street Name Investors Cannot Exert Influence Without Disclosure

Widely-traded public entities are insulated from influence from shareholders who hold their shares in street name, regardless of whether they are foreign or domestic investors, because the SEC and FCC require identification and attribution if a shareholder purchases more than 5% of a publicly-traded company.⁸ The SEC also requires the shareholder to specifically disclose any plan or proposal *to influence the management or operation of the company*.⁹ These SEC and FCC requirements mitigate concerns that any unknown foreign shareholder, or group of foreign shareholders, holding a position in street name could somehow influence a broadcaster.

The foreign ownership restrictions were originally designed to protect the United States' airwaves, especially in times of emergency or war.¹⁰ But, the FCC's current policies are overbroad. Unidentified shareholders are highly unlikely to have the ability to impact broadcasts. In particular, an undisclosed, non-attributable public shareholder will be unable to influence the content aired by a widely-traded broadcast licensee or to somehow exert control sufficient to result in the airing of foreign propaganda. Any

⁸ 17 C.F.R. § 240.13d-1; 17 C.F.R. § 240.13d-101, Item D. Additionally, the FCC's rules require a broadcaster to disclose any individual or company with an attributable interest, which includes any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee. See 47 C.F.R. § 73.3555 n.2; See also Report on Ownership of Commercial Broadcast Stations, 27 FCC Rcd. 13814, ¶ 1 (2012) ("A station's report must identify all of its attributable interest holders."). The FCC has previously recognized on FCC Form 323, "[b]ecause ownership of less than 5 percent of the outstanding voting stock of a corporation is not attributable, it is common for portions of a licensee's voting stock not to be reported on Form 323, particularly where the licensee is a public, widely held entity." *Id.*, n.3.

⁹ See 17 C.F.R. § 240.13d-101, Item D (emphasis added).

¹⁰ See Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees, Declaratory Ruling, 28 FCC Rcd 16244, ¶ 2 (2013) (Declaratory Ruling).

shareholders with interests large enough to influence a station's programming will be required to provide identifying information.

D. The FCC Has Recognized Similar Foreign Ownership Issues In Other Communications Sectors

Publicly-traded broadcasters are not the only entities affected by foreign ownership restrictions. Most wireless companies are also widely-traded public entities.¹¹ In the wireless context, the FCC has specifically recognized the difficulties of identifying the citizenship of shareholders.¹²

Broadcasters should be similarly treated. The nation's communications infrastructure is very important, whether broadcast or wireless, and should be regulated equitably. Chairman Wheeler previously recognized the perception that the Commission's interpretation of Section 310(b)(4) is an obstacle to new investment opportunities.¹³ It is time for a fresh start to avoid inhibiting capital for broadcasters.

Finally, NAB submits that it may be most appropriate for the Commission to address the issue of identifying shareholder citizenship in a broader rulemaking proceeding. This issue affects the entire broadcast industry, and the FCC's current policies can serve to restrict capital investment in broadcasters. In a broader rulemaking the Commission can hear from all stakeholders, receive feedback, and adopt a policy that balances the needs of the entire broadcasting industry.

¹¹ T-Mobile and Sprint are both majority-owned by foreign companies. Up until recently, a major minority position in Verizon Wireless was controlled by a foreign company.

¹² See Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, Order on Reconsideration, 26 FCC Rcd. 11763, ¶ 25 and n.99 (2011) (explaining the difficulties and costs for publicly traded wireless applicants to identify beneficial owners of their shares and those owners' citizenship, and rejecting challenge to wireless industry transactions based on foreign ownership claims).

¹³ See Declaratory Ruling, Statement of Chairman Wheeler.

II. Conclusion

NAB does not take a position on Pandora's efforts to purchase KXMZ(FM). NAB does strongly believe that the Commission must act to allow widely-traded public entities to invest in broadcasters even if the citizenship of some non-attributable shareholders is unknown. The Commission should update its policies to acknowledge SEC regulations that make compliance with current FCC requirements nearly impossible. Existing SEC and FCC regulations ensure that no foreign entity can influence, or attempt to influence, a broadcaster without disclosure. The public interest is furthered by allowing well-capitalized entities to invest in broadcasting. NAB believes the best route to achieve this change is through a broad proceeding to ensure industry-wide participation.

Respectfully submitted,

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