

**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	)	
	)	

**REPLY COMMENTS OF THE  
MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council (“MMTC”) submits these reply comments on Pandora Radio LLC’s Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act.<sup>1</sup> The Pandora Petition could help the Commission find a way to attract into broadcasting the new foreign capital that will be needed to help minority broadcasters overcome a severe lack of access to domestic capital. For over a decade, in order to expand financing for minority broadcast ventures, MMTC has undertaken to secure the adoption and implementation of a more flexible standard for compliance with the broadcast foreign ownership restrictions contained in Section 310(b)(4) of the Communications Act. Such a standard was adopted in the *2013 Foreign Ownership Declaratory Ruling*,<sup>2</sup> but investment has been deterred by a lack of clarity over the nature of the showing required of applicants who

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<sup>1</sup> 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, 29 FCC Rcd 9094 (2014). MMTC takes no position regarding Pandora’s application to acquire station KXMZ-FM, Box Elder, South Dakota.

<sup>2</sup> *Commission’s Policies & Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (“*2013 Foreign Ownership Declaratory Ruling*”).

must quantify the extent of their foreign holdings. The Pandora Petition directly addresses this critical impediment to the implementation of the first and most significant civil rights initiative of the Wheeler Administration.

MMTC agrees with the NAB's observation that the time is right for the Commission "to acknowledge that its policies applying the Section 310(b)(4) foreign ownership restrictions are outdated."<sup>3</sup> Chairman Wheeler recently noted the importance of "having a diverse array of voices on all media platforms," and observed that one way to "ensure diversity of content is to encourage diversity of media ownership."<sup>4</sup> By recognizing and accepting flexible, practical, and efficient approaches to estimating the foreign ownership of publicly traded entities that own broadcast licensees, the Commission can encourage such diversity and ensure that the benefits of the *2013 Foreign Ownership Declaratory Ruling* are realized.

Broadcasters that are public companies need an FCC-sanctioned, flexible, practical, and efficient means of estimating foreign ownership to demonstrate compliance with Section 310(b)(4), and applicable FCC precedent on estimating broadcast foreign ownership by public companies supports the adoption of such an approach. In particular, interpretations of the FCC's Section 310(b)(4) requirements, which assume that every ownership share whose owner does not respond to a survey must be assumed to be held by a foreign entity, yield an impractical, illogical and inefficient approach to estimating foreign ownership by public companies.

FCC precedent establishes that reasonable methods of estimating foreign ownership are permissible, and the FCC has accepted such methods.<sup>5</sup> For example, in the *WWOR-TV Recon*

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<sup>3</sup> Comments of the National Association of Broadcasters, MB Docket No. 14-109, at 1 (filed Aug. 28, 2014).

<sup>4</sup> Tom Wheeler, Chairman, FCC, Talking Tech in the Cradle of Liberty (Sept. 22, 2014), <http://www.fcc.gov/blog/talking-tech-cradle-liberty> (last visited Sept. 25, 2014).

<sup>5</sup> See *Application of WWOR-TV, Inc.*, Memorandum Opinion & Order, 6 FCC Rcd 193 (1990) ("WWOR-TV"). Applicant provided a foreign ownership update that was based in part on identifying shareholders with foreign mailing addresses. The FCC approved the approach, stating that "we have never imposed on publicly traded

*Order*, the FCC said that it expected the applicant would “generally monitor” its foreign ownership, and that, the applicants would use “reasonable methods” to ensure compliance with section 310(b).<sup>6</sup> The FCC has cited this “reasonable methods” language recently as the standard for assessing compliance with Section 310(b)(4) in the common carrier context.<sup>7</sup>

Seven years later, in *HLT Corporation and Hilton Hotels Corporation*,<sup>8</sup> Hilton submitted a foreign ownership certification based on a survey of its public shareholders that was neither “statistical” nor “random.” The survey, which was nonetheless comprehensive (it examined a total of 82.2 percent of Hilton’s outstanding stock), also included an assessment of the beneficial stock interests held for the benefit of foreign owners (both individuals and entities). Based on the survey results and on Hilton’s certification of compliance with statute’s foreign ownership limits, the FCC found that the transaction was consistent with Section 310(b)(4).<sup>9</sup>

There is no legal or policy rationale for allowing common carriers flexibility in selecting a particular methodology for determining foreign ownership under Section 310(b) but constraining broadcasters’ ability to demonstrate compliance with the foreign ownership limits. Notably, the Act itself does not distinguish between broadcast and common carrier licensees for

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corporate licensees the costly requirement of conducting on-going surveys to assure compliance with the statute.” *Id.* at 198. In the common carrier context, the Commission has relied on mailing address information for interests held in street names.

<sup>6</sup> *Application of WWOR-TV, Inc. for Transfer of Control of WWOR-TV, Inc., License of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, Memorandum Opinion & Order, 6 FCC Rcd 6569, 6572 ¶13 (1991) (“*WWOR-TV Recon Order*”).

<sup>7</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion & Order and Declaratory Ruling, 23 FCC Rcd 17444, 17544-45 ¶229 (2008) (“*Verizon/Alltel Order*”) (citing *WWOR-TV Recon Order*, 6 FCC Rcd at 6572).

<sup>8</sup> *HLT Corporation and Hilton Hotels Corporation For Consent to Interim Transfer of Control of ITT Broadcasting Corporation and HLT Corporation and Hilton Hotels Corporation For Consent to Transfer of Control of ITT Broadcasting Corporation*, Memorandum Opinion & Order, 12 FCC Rcd 18144, 18152-53, ¶28 (MMB 1997).

<sup>9</sup> *Id.* at 18153 ¶30.

purposes of Section 310(b).<sup>10</sup> And although the FCC has explained that there are different policy considerations applicable to the ownership of broadcast and common carrier licensees, its explanations for such differences focus on *control* of licensees, not on minority ownership interests, and largely stem from the outdated concern that foreign control of broadcast stations could allow foreign powers to disseminate propaganda within the United States, since control of a broadcast licensee generally implies control over the station’s programming content.<sup>11</sup>

Even accepting this policy justification as valid, the FCC has not established the nexus between that justification and any separate concern with permitting U.S. corporations that own broadcast licensees to rely on shareholder addresses to establish nationality when ownership of those corporations is widely dispersed. Although the Commission stated in 2013 that to exercise its discretion under section 310(b)(4) in a “meaningful way,” broadcast license applicants must submit “detailed information sufficient for the agency to make the public interest finding

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<sup>10</sup> The statute merely says that “[n]o *broadcast or common carrier* or aeronautical en route or aeronautical fixed radio station 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 . . . .” 47 U.S.C. §310(b) (emphasis added).

<sup>11</sup> In 1995, the FCC rejected a proposal to adopt a market access test in the broadcast context, even though it did so for common carrier ownership, explaining that “[f]oreign ownership of broadcast licenses presents different questions than for other types of radio spectrum licenses, especially in view of the public trustee concept applied to broadcasting in this country. Historically, foreign control of limited broadcast information outlets, particularly in time of war, was a principal consideration in adopting the foreign ownership limitations. Although somewhat diminished, the same concerns exist today, namely, that foreign control of a broadcast license confers control over the content of widely available broadcast transmissions. Therefore, we should not at this time lift restrictions on the amount of foreign influence over, or control of, broadcast licenses that allow editorial discretion over the content of their transmissions.” *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3946-47 ¶192 (1995) (internal citations omitted); *see also 2013 Foreign Ownership Declaratory Ruling*, 28 FCC Rcd at 16244-45, ¶2 (noting that broadcast foreign ownership restrictions “were designed to protect the integrity of ship-to-shore and governmental communications and thwart the airing of foreign propaganda on broadcast stations”); *Cable & Wireless, Inc.*, Declaratory Ruling & Memorandum Opinion, Order, Authorization, & Certificate, 10 FCC Rcd 13177, 13179 ¶18 (1995) (noting that “the Commission traditionally has found that alien ownership of common carrier radio licensees raises far fewer policy concerns than that of radio broadcast licensees . . . because [common carrier] licenses are ‘passive’ in nature and there is no control over the content of transmission.”)

required by the statute,”<sup>12</sup> there is no indication that the Commission required applicants in any of the three broadcast cases it cited to submit ownership information above and beyond what is normally required in the common carrier context.<sup>13</sup>

FCC recognition and acceptance of flexible, practical and efficient approaches to estimating the foreign ownership of publicly traded entities that own broadcast licenses is necessary to realize the benefits of the *2013 Foreign Ownership Declaratory Ruling*. As stated in that decision:

In light of the concerns many commenters raised, we believe that a clear articulation of the Commission’s approach to section 310(b)(4) in the broadcast context has the potential to spur new and increased opportunities for capitalization for broadcasters, *and particularly for minority, female, small business entities, and new entrants*. Greater capitalization may in turn yield greater innovation, particularly in programming directed at niche or minority audiences.<sup>14</sup>

However, these much-needed benefits are not likely to be realized if potential applicants lack a practical and efficient means of estimating the foreign ownership of a publicly traded company involved in an acquisition. In the absence of such guidance, publicly traded entities with substantial foreign ownership (or which are themselves foreign entities) will have no reliable means of assessing whether and the extent to which a foreign ownership issue is presented by a potential transaction, much less the likelihood of favorable Commission action, and such entities accordingly will be unlikely to seriously consider broadcast investments.

The Commission has an opportunity here to provide the required guidance, and substantially mitigate this chilling effect, just as it has done in the past in other contexts. For

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<sup>12</sup> See *2013 Foreign Ownership Declaratory Ruling*, 28 FCC Rcd at 16250 ¶12.

<sup>13</sup> *Id.* at 16250 ¶12 n.42.

<sup>14</sup> *Id.* at 16249 ¶10 (emphasis added).

example, in 1981 the Commission revised its financial qualification requirements for broadcast station transfer of control or assignment applicants to require that such applicants demonstrate sufficient capital to consummate the purchase and operate the station for three months, rather than one year, as had been required since the *Ultravision* rule was adopted in 1965.<sup>15</sup> As with the Declaratory Ruling, the policy basis for the repeal of *Ultravision* included the fact that the more stringent and entirely illogical requirement conflicted with “Commission policies favoring minority ownership and diversity because its stringency may inhibit potential applicants from seeking broadcast licenses.”<sup>16</sup> In the wake of the repeal of *Ultravision*, hundreds of minority and women owned applicants were able to secure financing for the coming wave of new UHF-TV and FM construction permits handed out by the Commission in the late 1980’s and early 1990’s.

In view of the foregoing, MMTC respectfully requests that the Commission recognize and accept flexible, practical, and efficient means of estimating foreign ownership to demonstrate compliance with Section 310(b)(4).

Respectfully submitted,

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<sup>15</sup> See *Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301); and Modification of Processing Standards for Determining the Financial Qualifications of Broadcast Station Purchasers*, 87 FCC 2d 200 (1981) (repealing *Ultravision Broadcasting Company*, 1 FCC 2d 544, 547 (1965)).

<sup>16</sup> *Id.* at 201.