



Federal Communications Commission  
Washington, D.C. 20554

June 2, 2015

DA 15-654  
*In Reply Refer to:*  
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In re: **KXMZ(FM), Box Elder, SD**  
Facility ID No. 164109  
File No. BALH-20130620ABJ

**Application for Assignment of License  
Informal Objection**

Dear Counsel:

We have before us the above-referenced application (“Application”) seeking approval for the proposed assignment of the license for Station KXMZ(FM), Box Elder, South Dakota, from Connoisseur Media Licenses, LLC (“Connoisseur”) to Pandora Radio LLC (“Pandora Radio”).<sup>1</sup> Also before us is a self-styled “Petition to Deny” that, for the reasons stated below, we are considering as an Informal Objection (“Informal Objection”), filed on July 25, 2013, by The American Society of Composers, Authors, and Publishers (“ASCAP”) and related pleadings.<sup>2</sup> For the reasons stated below, we deny the Informal Objection and grant the Application.

**I. Background.**

Pandora operates an Internet radio service that creates customized music stations for individual listeners by predicting listener preferences.<sup>3</sup> ASCAP is a performing rights membership organization that

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<sup>1</sup> On November 25, 2013, the Application was amended to substitute Pandora Radio for Pandora Media, Inc., (“Pandora Media”), its corporate parent. For convenience, we refer to both entities, collectively, as “Pandora.”

<sup>2</sup> On August 7, 2013, Pandora filed an Opposition to the Informal Objection (“Opposition”). On August 14, 2013, ASCAP filed a Supplement to the Informal Objection. On August 19, 2013, ASCAP filed a Reply to the Opposition (“Reply”). On September 23, 2013, ASCAP filed another Supplement to the Informal Objection (September 23 Supplement). On May 15, 2015, ASCAP filed a final Supplement to the Informal Objection (“May 15 Supplement”).

<sup>3</sup> Pandora Media, Inc., 2013 U.S. Securities and Exchange Commission (“SEC”) Annual Report (Form 10-K) at 3, available at <http://services.corporate-ir.net/SEC.Enhanced/SecCapsule.aspx?c=227956&fid=8703953>.

licenses and distributes royalties for public performance of its members' works.<sup>4</sup> As both parties stipulate in their respective pleadings, Pandora and ASCAP are currently involved in a dispute, including litigation, over performance royalty rates.<sup>5</sup>

*Declaratory Ruling.* After initial review of the Application and related pleadings, the Audio Division, Media Bureau ("Bureau") issued a letter of inquiry ("LOI") on September 23, 2013, requesting that Pandora supply additional information in support of its certification in the Application that it complies with the foreign ownership limitations set out in Section 310 of the Communications Act of 1934, as amended (the "Act").<sup>6</sup> Through subsequent correspondence, the Bureau ultimately determined that Pandora's foreign ownership showing was inadequate to demonstrate compliance with Section 310.<sup>7</sup> Accordingly, on June 27, 2014, Pandora filed a petition for declaratory ruling ("Petition"), requesting that the Commission exercise its discretion under Section 310(b)(4) to permit Pandora Radio's parent company, Pandora Media, to exceed the 25 percent foreign ownership benchmark for the parent company of a licensee.<sup>8</sup> On July 29, 2014, the Bureau sought comment on the Petition.<sup>9</sup> ASCAP filed comments in the resulting docket (MB Docket No. 14-109), opposing the Petition.<sup>10</sup> On May 4, 2015, the Commission issued a *Declaratory Ruling*, granting Pandora's Petition with conditions.<sup>11</sup>

*Compliance Plan.* In the *Declaratory Ruling*, the Commission imposed certain mandatory conditions on Pandora, including adhering to individual and aggregate foreign ownership limits, implementing changes to its organizational documents, certifying compliance with the terms of the *Declaratory Ruling* biennially, and notifying the Commission of non-compliance.<sup>12</sup> The Commission granted Pandora some discretion, however, in the specific means of monitoring and obtaining citizenship information to support its biennial certifications, providing a list of potential measures that Pandora "should consider" in doing so.<sup>13</sup> The Commission required Pandora to submit, within 90 days of release of the *Declaratory Ruling*, a "list of steps it has taken or intends to take to ensure compliance with the foregoing conditions of this *Declaratory Ruling*," including a "detailed description of the methodology it and Pandora Media propose to use to make its biennial certification."<sup>14</sup> The Commission held that these

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<sup>4</sup> See ASCAP, "About ASCAP," <http://www.ascap.com/about/> (last visited May 27, 2015).

<sup>5</sup> Petition at 2; Opposition at 2-3.

<sup>6</sup> See Application, Section III, Item 9 (citing 47 U.S.C. § 310 ("Section 310")). On October 25, 2013, ASCAP filed Comments to the LOI. On November 25, 2013, Pandora filed a Response to the LOI. On December 9, 2013, ASCAP filed Comments on Pandora's Response. On January 8, 2014, Pandora filed a Supplement responding to ASCAP's December 9, 2013, Comments.

<sup>7</sup> See *Pandora Radio LLC, Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, MB Docket 14-109, FCC 15-52, (May 4, 2015) ("*Declaratory Ruling*"), at 1-2, ¶ 3.

<sup>8</sup> 47 U.S.C. § 310(b)(4) ("Section 310(b)(4)").

<sup>9</sup> *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).

<sup>10</sup> The National Association of Broadcasters ("NAB") and Multicultural Media, Telecom and Internet Council ("MMTC") also filed comments in Docket No. 14-109 but did not take a position on the Petition or Application specifically. Charles Pickney filed a brief informal comment in support of the Petition.

<sup>11</sup> See *supra*, note 7.

<sup>12</sup> See *Declaratory Ruling* at 8-10.

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.* at 9-10.

commitments, once reviewed and approved by the Bureau acting on delegated authority, would be considered further conditions of the *Declaratory Ruling*.<sup>15</sup> On May 8, 2015, Pandora submitted its “Commitments to Ensure Compliance with the Declaratory Ruling” (“Initial Compliance Plan”)<sup>16</sup> and, on May 15, 2015, a revised version entitled “Revised Commitments to Ensure Compliance” (“Revised Compliance Plan”).<sup>17</sup> A copy of the Revised Compliance Plan is attached hereto at Attachment A.

In its Compliance Comments and Compliance Response, ASCAP argues that the Revised Compliance Plan is faulty because Pandora: (1) commits to seek changes to Pandora Media’s organizational documents after, rather than before, grant of the Application; (2) proposes to certify compliance with the terms of the *Declaratory Ruling* with its 2017, rather than 2015, biennial ownership report (Form 323); (3) does not explain how Pandora will comply with the Commission’s requirement that it obtain approval before a foreign investor acquires a greater than five percent interest; and (4) equivocates on making reasonable efforts to secure the cooperation of financial intermediaries regarding the citizenship of beneficial shareholders.<sup>18</sup> ASCAP also objects to grant of the Application before Pandora has demonstrated compliance with the 49.99 percent foreign ownership limit set out in the *Declaratory Ruling*, arguing that the ownership data currently on record supports only a public interest analysis and does not suffice for “compliance or certification purposes.”<sup>19</sup> With respect to timing, although ASCAP acknowledges that the KXMZ(FM) asset purchase agreement allows either Pandora or Connoisseur to terminate as of June 10, 2015, it contends that this deadline is a “red herring” because neither party is likely to exercise that right, for various business reasons including the existence of an LMA.<sup>20</sup> Moreover, ASCAP claims that Pandora has sufficient time to schedule a shareholder’s vote at the June 4, 2015, annual shareholders meeting or to call a special shareholder meeting between now and June 10, 2015.<sup>21</sup>

In its Compliance Reply, Pandora argues that the organizational documents condition of the *Declaratory Ruling* is satisfied by Pandora’s commitment to put the amendment of its charter to a vote of shareholders at its 2016 annual meeting and does not require it to modify its organizational documents before grant of the Application.<sup>22</sup> In the meantime, Pandora points out, its other commitments will be in effect, such as participation in the Depository Trust Company’s SEG-100 program.<sup>23</sup> According to Pandora, it would be “logical” to allow two years before its next foreign ownership study, because, if the

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<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Broadcast Actions*, Public Notice, Report No. 28488 (May 13, 2015). On May 12, 2015, ASCAP filed comments on the Compliance Plan (“Compliance Comments”), to which Pandora replied on May 14, 2015 (“Compliance Reply”). On May 15, 2015, Commission staff requested a presentation from Pandora’s counsel under 47 C.F.R. § 1.1204(a)(10). *See* Application, Exhibit 24. On May 18, 2015, ASCAP submitted a Response to the Compliance Reply (“Compliance Response”).

<sup>17</sup> Application, Exhibit 24; *See also Broadcast Actions*, Public Notice, Report No. 28494 (May 21, 2015).

<sup>18</sup> Compliance Comments at 2-6. ASCAP also finds fault with certain aspects of the Initial Compliance Plan that we do not address here, as only the Revised Compliance Plan is hereby reviewed, approved and incorporated into the conditions of the *Declaratory Ruling*.

<sup>19</sup> Compliance Response at 5; Compliance Comments at 7.

<sup>20</sup> Compliance Response at 2.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> Compliance Reply at 3 (citing *Declaratory Ruling*, para. 22).

<sup>23</sup> *Id.* at 4; *see also* Revised Compliance Plan at 1 (“Pandora will immediately commence the process required to qualify its shares for inclusion in the [SEG-100] program.”).

Commission were to require a new study in connection with a 2015 biennial ownership report, it would “necessarily repeat the findings just approved by the Commission in the *Declaratory Ruling*.”<sup>24</sup> Pandora reiterates that it will monitor the holdings of any SEC filer approaching the five percent ownership threshold so that “such ownership can be reported and approval sought as set forth in the *Declaratory Ruling*.”<sup>25</sup> Pandora also restates its commitment to “make reasonable efforts to secure the cooperation of the relevant financial intermediaries in obtaining citizenship information.”<sup>26</sup> Pandora characterizes ASCAP’s argument that it be required to prove current compliance with the 49.99 percent threshold as a “complete exercise in sophistry,” observing that, in the *Declaratory Ruling*, the Commission concluded that Pandora’s current ownership serves the public interest and “does not raise immediate concerns regarding foreign influence or control.”<sup>27</sup> Finally, Pandora states that it would not be possible to prepare an amendment of Pandora Media’s organizational documents and associated disclosures, file that material with the Securities and Exchange Commission (“SEC”), await any SEC comments, and then disseminate that material to its shareholders in time for the 2015 shareholders meeting—especially given that the Proxy Statement for that meeting was mailed on April 21, 2015.<sup>28</sup>

*ASCAP pleadings.* ASCAP originally objected to Pandora’s Application on two main grounds: (1) failure to demonstrate compliance with the foreign ownership rules; and (2) failure to disclose as parties in interest several investment companies holding a greater than five percent interest in Pandora’s stock.<sup>29</sup> The foreign ownership issue was comprehensively addressed by the Commission in the *Declaratory Ruling*; therefore, the Bureau will not revisit it here at the application stage. Regarding attributable interests, Pandora subsequently amended the Application to report that no individual or entity any longer holds a five percent or greater interest in Pandora Media.<sup>30</sup> Therefore, this argument is now moot. In its May 15 Supplement, ASCAP incorporates certain public interest arguments that it made in comments opposing Pandora’s Petition, namely: (1) that 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; and (2) that grant of the Petition could lead to the collapse of the collective copyright licensing system, to the detriment of copyright owners, the broadcasting industry, and American society in general.<sup>31</sup>

*Standing.* ASCAP claims standing to file a petition to deny the Application on two grounds: (1) on behalf of its individual members who have standing as residents of the Rapid City, South Dakota, market; and (2) in its own right as an injured party (due to potentially reduced licensing payments from Pandora).<sup>32</sup> In its Opposition, Pandora argues that ASCAP lacks standing because it does not fall into any of three traditionally-accepted categories of standing for broadcast petitioners: (1) competitors suffering signal interference; (2) competitors suffering economic harm; or (3) residents of the Station’s service

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<sup>24</sup> Compliance Reply at 6.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.* at 7-8; *see also Declaratory Ruling* at 8.

<sup>28</sup> Compliance Reply at 3.

<sup>29</sup> Informal Objection at 3.

<sup>30</sup> Application, Exhibit 14 (last updated May 1, 2015).

<sup>31</sup> May 15 Supplement at 1-4; *see also Declaratory Ruling* at 3.

<sup>32</sup> Informal Objection at 4-5; Reply at 2-4.

area.<sup>33</sup> Pandora argues that ASCAP’s standing claim—as the representative of a Rapid City market resident—fails because the alleged resident’s declaration is illegible and does not state that ASCAP’s purported petition to deny is filed on resident listeners’ behalf. These defects cannot be cured on reply, according to Pandora.<sup>34</sup> Acknowledging that it does not fall into any of the traditional categories of broadcast standing, ASCAP responds that it is nonetheless entitled to Article III standing because “[i]f the Commission grants the assignment application, Pandora will attempt to claim entitlement to terrestrial broadcaster performance royalty rates . . . This could result in a significant reduction in payments from Pandora to ASCAP.”<sup>35</sup> ASCAP also claims that it is “obviously functioning as the declarant’s representative in this proceeding.”<sup>36</sup>

## II. Discussion.

**Procedural matters. Standing.** Section 309(d)(1) of the Act restricts to “parties in interest” entities that may file a petition to deny a proposed assignment.<sup>37</sup> Under the Commission’s long-established case law on standing, a petitioner to deny a broadcast radio application may be granted standing if: (1) petitioner is a competitor in the market suffering signal interference; (2) petitioner is a competitor in the market suffering economic harm; or (3) petitioner is a resident of the station’s service area or listens to the station regularly and such listening is not the result of transient contacts with the station.<sup>38</sup> While an organization may establish standing to represent the interests of local listeners or viewers, to do so, it must provide the affidavit of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf.<sup>39</sup>

First, we find that the Declaration of David Lee Brown submitted by ASCAP is insufficient to confer organizational standing under Section 309(d)(1). First, as Pandora notes, it is illegible. Furthermore, the fragment of residential address that is legible is “25059 American Center Road [Custer, SD], which is outside KXMZ(FM)’s primary service contour. Moreover, David Lee Brown states merely that “I have listened to Station KXMZ(FM),” but does not allege, as required to establish standing, that he is a regular listener of the Station or that such listening or viewing is not the result of transient contacts with the Station.<sup>40</sup> Although, on August 14, 2013 (well after the petition to deny deadline of July 25, 2013), ASCAP filed an unauthorized supplement containing a legible affidavit of a member residing within KXMZ’s primary service contour, we have consistently held that failure to establish standing in a

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<sup>33</sup> Opposition at 3. Pandora claims that ASCAP also does not meet the threshold standards for a petition to deny because it fails to provide factual support for its assertions and because such factual allegations as it does supply are not supported by an affidavit of a person with personal knowledge of those facts. Opposition at 4-5.

<sup>34</sup> *Id.* at 4 (citing *John R. Feore, Esq.*, Letter, 28 FCC Rcd 5674 (MB 2013) (“*Feore*”).

<sup>35</sup> Reply at 3.

<sup>36</sup> *Id.* at 4, n.9.

<sup>37</sup> 47 U.S.C. § 309(d)(1) (“Section 309(d)(1)”; see also 47 C.F.R. § 73.3584(a); *MCI Communications Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 7790, 7794 (1997) (“*MCI*”).

<sup>38</sup> See *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (1966) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

<sup>39</sup> See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 FCC 2d 89, 99 (1980).

<sup>40</sup> Informal Objection at Exhibit B.

petition to deny cannot be cured by subsequent pleadings.<sup>41</sup> Moreover, neither declaration states that ASCAP represents local residents and that the petition to deny is filed on their behalf. Therefore, we find that ASCAP has failed to establish standing under Section 309(d)(1) to file a petition to deny on behalf of its listener members.

Second, we find that ASCAP has failed to establish standing in its own right to file a petition to deny the Application. Although it does not satisfy any of the above three established categories of administrative standing, ASCAP nonetheless claims that it “satisfies the higher bar of Article III court standing” because it will suffer “economic injury directly traceable to the proposed assignment.”<sup>42</sup> Specifically, ASCAP predicts that *if* the Commission grants the Application, Pandora will *attempt* to claim entitlement to terrestrial broadcaster performance royalty rates, which *could* result in a significant reduction in payments from Pandora to ASCAP.<sup>43</sup> We agree with ASCAP that the Commission has found standing under Section 309(d)(1) using the judicial standard; therefore, we also analyze ASCAP’s Article III claim.<sup>44</sup>

To satisfy the stricter Article III standing standard, ASCAP must prove three elements: (1) it has suffered or will suffer injury-in-fact; (2) there is a causal link between the proposed assignment and the injury-in-fact; and (3) redressability, meaning that not granting the assignment would remedy the injury-in-fact.<sup>45</sup> To establish the first element of injury-in-fact, ASCAP must show “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.”<sup>46</sup> To establish causation, the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.”<sup>47</sup> Finally, to satisfy the redressability requirement, the petitioner must demonstrate “that it is likely as opposed to merely speculative that the injury will be redressed by a favorable decision.”<sup>48</sup> Further, “[w]hen redress depends on the cooperation of a third party, ‘it becomes the burden of the [party asserting standing] to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury.’”<sup>49</sup>

Here, ASCAP does not cite to any cases in which the claimed injury-in-fact leading to standing was a weakened litigation position in a different proceeding in another forum. Even if such an injury were a cognizable, legally-protected interest, ASCAP fails to establish any likelihood that the KXMZ(FM) acquisition would result in a court victory for Pandora. ASCAP’s predictions do not *directly*

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<sup>41</sup> See *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504, 9506 (1995) (petitioner who does not establish standing in its petition cannot cure the failure in its reply).

<sup>42</sup> Reply at ii; see U.S. CONST. art. III (“Article III”).

<sup>43</sup> *Id.* at 3.

<sup>44</sup> See, e.g., *MCI*, 12 FCC Rcd at 7794; cf. *Feore*, 28 FCC Rcd at 5675-76.

<sup>45</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (“*Lujan*”).

<sup>46</sup> *Id.* at 560.

<sup>47</sup> *Id.* at 560-61.

<sup>48</sup> *Id.* at 561; see also *Klamath Water Users Ass'n v. FERC*, 534 F.3d 735, 738 (D.C. Cir. 2008) (“*Klamath Water*”).

<sup>49</sup> *US Ecology, Inc. v. U.S. Dep't of Interior*, 231 F.3d 20, 24-25 (D.C. Cir. 2000) (quoting *Lujan*, 504 U.S. at 562); see also *Klamath Water*, 534 F.3d at 739 (“In a case like this, in which relief for the petitioner depends on actions by a third party not before the court, the petitioner must demonstrate that a favorable decision would create ‘a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.’” (quoting *Utah v. Evans*, 536 U.S. 452, 464 (2002))).

result from any Commission action, but from the intervening actions of various third parties—not only Pandora and the U.S. District Court for the Southern District of New York,<sup>50</sup> but also Congress, the Department of Justice, and the U.S. Copyright Office.<sup>51</sup> Because ASCAP does not and cannot say with any degree of certainty what the actions of these parties will be, it has not established either causation or redressability. We find that ASCAP’s standing argument is thus too attenuated and speculative to demonstrate that ASCAP has suffered or will suffer an actual or imminent injury-in-fact as a result of the KXMZ(FM) transaction, or that such injury will not occur if the Commission denies the Application. Therefore, we find that ASCAP has failed to establish standing to file the petition to deny on its own behalf. Nonetheless, we will treat ASCAP’s petition to deny as an informal objection under Section 73.3587 of the Rules and take its arguments into account in making our determination.<sup>52</sup> We will also briefly address the arguments made in ASCAP’s various unauthorized pleadings, such as the September 23 and May 15 Supplements.

**Substantive matters.** Under Section 309(d) of the Act,<sup>53</sup> informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity.<sup>54</sup> ASCAP has failed to meet this burden.

*Review of Revised Compliance Plan.* The Bureau has reviewed the Revised Compliance Plan and finds that it satisfies the requirements of the *Declaratory Ruling*. In the Revised Compliance Plan, Pandora commits to substantially all of the discretionary measures outlined by the Commission. It is important to note that the Revised Compliance Plan does not, and cannot, modify mandatory provisions of the *Declaratory Ruling*, such as changes to Pandora Media’s certificate of incorporation or prior Commission approval for a foreign investor to acquire a greater than five percent interest in Pandora’s outstanding shares. When the Commission imposed the mandatory condition that Pandora obtain prior approval of a greater than five percent interest, ASCAP’s concerns regarding Pandora’s ability to do so were before it on the record.<sup>55</sup> No further action from Pandora or the Bureau on this point is necessary or appropriate in the assignment context. Similarly, we decline to impose a requirement that Pandora Media modify its organizational documents prior to grant of the Application, noting that the Commission imposed no such requirement in the *Declaratory Ruling*. However, the Commission did anticipate that these changes will improve Pandora Media’s access to its ownership information, thus ensuring ongoing compliance with the terms of the *Declaratory Ruling*. Therefore, we agree with ASCAP that, under the express terms of the *Declaratory Ruling*, shareholder approval must not only be sought but obtained.<sup>56</sup> We expect Pandora Media to present this matter for a shareholder vote at the 2016 annual shareholder meeting, and, if approval is not obtained, to once again present the matter at the 2017 annual shareholder meeting. If approval is not obtained for a second time, the Station will be subject to divestiture.

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<sup>50</sup> Opposition at 2 (citing *In re Petition of Pandora Media, Inc.*, Civil Action No. 12-8035 (DLC) (MHD) (SDNY)).

<sup>51</sup> See *Declaratory Ruling* at 3.

<sup>52</sup> 47 C.F.R. § 73.3587.

<sup>53</sup> 47 U.S.C. § 309(d).

<sup>54</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (holding that an informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>55</sup> See ASCAP’s “Opposition to Petition for Declaratory Ruling” filed in MB Docket 14-109 on Aug. 28, 2014, at 24-25.

<sup>56</sup> *Declaratory Ruling* at 8.

Regarding ASCAP's argument that the Revised Compliance Plan equivocates on the issue of 'reasonable efforts' necessary to secure the cooperation of financial intermediaries, we accept at face value Pandora's independent reiteration of this commitment in its Compliance Reply. However, we take exception to Pandora's statement that "SEC rules regarding the rights of objecting beneficial owners to withhold identifying information from issuers limit the extent to which Pandora can legally require disclosure of this information."<sup>57</sup> Rather, the organizational document changes required by the *Declaratory Ruling* constitute a voluntary relinquishment by Pandora's shareholders, going forward, of certain rights granted to them under SEC rules.<sup>58</sup> Finally, we agree with Pandora that the *Declaratory Ruling* does not require a foreign ownership certification in conjunction with its 2015 biennial ownership report, nor require Pandora to immediately conduct a new study to demonstrate compliance with the 49.99 percent foreign ownership limit before the Application can be granted. Rather, in the *Declaratory Ruling*, the Commission determined that Pandora's foreign ownership "does not raise immediate concerns regarding foreign influence or control" and anticipated that Pandora would have "improved access to shareholder information, and thus be able to submit more accurate and complete foreign ownership data, in the future . . ."<sup>59</sup> For these reasons, we approve Pandora's Revised Compliance Plan. Upon release of this letter decision, the commitments set forth in the Revised Compliance Plan will become additional conditions of the *Declaratory Ruling*.

*Foreign ownership.* As mentioned above, ASCAP's allegations regarding Pandora's foreign ownership were recently and comprehensively addressed in the *Declaratory Ruling*. Therefore, we do not revisit them here. However, we incorporate the *Declaratory Ruling* by reference and observe that, under the terms of the *Declaratory Ruling*, Pandora must divest the Station if it cannot maintain compliance with the foreign ownership threshold and other conditions contained therein, including those incorporated by the Revised Compliance Plan.

*Public interest arguments.* With respect to ASCAP's allegations regarding Pandora's intent in seeking to acquire the Station, we note that the Act does not require us to examine the business, personal, or other motivations of an applicant for a broadcast license, nor would it be practicable to do so. Rather, the Commission will generally presume that an applicant intends to serve its designated community of license if its application complies with our licensing rules; specifically, that the applicant proposes to: (1) provide principal community signal service to the designated community; (2) comply with the main studio location rule; and (3) provide programming that will serve the designated community.<sup>60</sup> Finally, as mentioned in our discussion on standing, we find ASCAP's predictions regarding the effect of this transaction on the collective music licensing system, and the American public at large, to be highly speculative and contingent on the independent actions of third parties, including the courts, Congress, and the Department of Justice. Therefore, we find that ASCAP has failed to raise a substantial and material question of fact that grant of the Application would be inconsistent with the public interest, convenience, and necessity.

**Conclusion/Actions.** We find that ASCAP fails to establish a substantial and material question of fact that grant of the Application would be inconsistent with the public interest. We also find that

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<sup>57</sup> Compliance Reply at 5.

<sup>58</sup> *Declaratory Ruling* at 8.

<sup>59</sup> *Id.* (emphasis added).

<sup>60</sup> See, e.g., *Richard F. Swift, Esq.*, Letter, 26 FCC Rcd 15567, 11570-71 (MB 2011) (citing *WBBK Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 5906, 5907 (2000)).

Pandora is qualified to hold the Station KXMZ(FM) license and that grant of the Application is consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that the Informal Objection filed by ASCAP IS DENIED;

IT IS FURTHER ORDERED that the application to assign the license of station KXMZ(FM), Box Elder, South Dakota (FCC File No. BALH-20130620ABJ) from Connoisseur Media Licenses, LLC to Pandora Radio LLC IS GRANTED; and

IT IS FURTHER ORDERED that the Revised Compliance Plan IS APPROVED and the commitments set forth therein ARE INCORPORATED as additional conditions of the *Declaratory Ruling*, as described above and in the *Declaratory Ruling*.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau