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June 27, 2014

Our File No. 22869-00100-61

BY HAND & ELECTRONIC FILING IN CDBS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

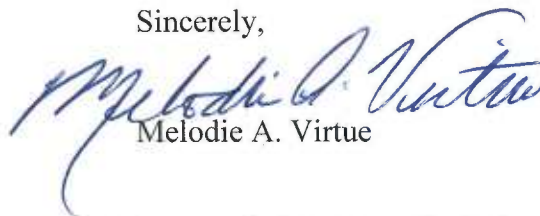
Re: Radio Station KXMZ(FM), Box Elder, SD
Facility ID 164109
FCC File No. BALH-20130620ABJ
Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act

Dear Ms. Dortch:

Pandora Radio LLC, the proposed assignee in the above-referenced assignment application, hereby submits the attached Petition for Declaratory Ruling asking the Commission to exercise its discretion to consent to allowing the applicant's publicly traded parent, Pandora Media, Inc., to exceed the 25% foreign ownership benchmark in Section 310(b)(4) of the Communications Act based on the inability of the applicant to determine the identity and alien status of a substantial number of its shareholders.

Should you have any questions regarding this matter, kindly communicate directly with this office.

Sincerely,



Melodie A. Virtue

MAV:cll
Attachment

cc: Christine Goepp, Esq., Attorney Advisor, Audio Division, Media Bureau, FCC (pdf copy via email: Christine.Goepp@fcc.gov)
Meredith S. Senter, Jr., Esq., counsel for ASCAP (pdf copy via email: msenter@lermansenter.com)
David D. Oxenford, Esq., counsel for Connoisseur Media Licenses, LLC (pdf copy via email: doxenford@wbklaw.com)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Pandora Radio LLC

Petition for Declaratory Ruling Under Section
310(b)(4) of the Communications Act of 1934, as
Amended

)
)
) KXMZ(FM), Box Elder, SD
) Facility ID No. 164109
) FCC File No. BALH-20130620ABJ
)
)

To: Secretary, FCC
For: Chief, Media Bureau

**PETITION FOR DECLARATORY RULING
OF PANDORA RADIO LLC
UNDER SECTION 310(B)(4)
OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED**

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EXECUTIVE SUMMARY

Pandora Radio LLC (“Pandora Radio”) hereby petitions the Federal Communications Commission (“Commission”) to issue a declaratory ruling that allowing widely dispersed, indirect, and non-controlling foreign investment in Pandora Radio’s controlling parent company, Pandora Media, Inc. (“Pandora”), above the 25% threshold set forth in Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), is not inconsistent with the public interest. Such a ruling will enable Pandora to acquire a small Midwestern radio station, KXMZ(FM), Box Elder, South Dakota, which serves the Rapid City market.

Pandora is a quintessential American success story. It is an innovative technology startup that was founded in the United States by a U.S. citizen and that has grown into a publicly traded U.S.-organized corporation with a market capitalization of over \$5.5 billion. It is fundamentally a U.S. company. All but two of Pandora’s officers and all of its directors are U.S. citizens. Further, it is headquartered and operates almost exclusively in the United States, and the vast majority of its customers are U.S. consumers.

Moreover, based on the extensive ownership analysis discussed herein, it is evident that Pandora Radio complies with the 25% indirect foreign ownership benchmark established by Section 310(b)(4). However, Pandora Radio cannot prove this in a manner consistent with the guidance provided by the Commission’s Audio Division in this proceeding, which guidance primarily is based on a decades old Commission policy that is irreconcilable with the manner in which publicly traded securities are held and traded in the United States today. Specifically, as the Commission previously has acknowledged, Securities and Exchange Commission (“SEC”) privacy regulations make it virtually impossible for publicly traded companies such as Pandora to determine the identity, much less the alien status, of many of their shareholders—often more

than 50%. Further, the Commission requires broadcast licensees to treat all such unidentifiable shareholders as foreign even though most of these shareholders likely are not. In fact, based on separate ownership analyses conducted by Nasdaq OMX and K&L Gates, two highly respected and nationally recognized firms, Pandora Radio has reasonable grounds to believe that U.S. entities own and vote more than 80% of the shares of Pandora and that therefore Pandora Radio complies with Section 310(b)(4) of the Act.

Accordingly, to the extent that the Commission requires Pandora uniformly to treat unidentifiable shareholders as foreign, Pandora Radio herein requests for the Commission to permit Pandora to be up to 100% beneficially owned by foreign entities and for foreign entities to hold up to 49.9% of the aggregate voting authority over Pandora. This approach is consistent with two important Commission objectives. First, it prohibits foreign investors from acquiring voting control over Pandora. Thus, this approach is significantly more restrictive than the approach that the Commission has adopted with respect to common carrier wireless licensees, and it should mitigate concerns historically expressed by the Commission regarding foreign influence over U.S. broadcasters. Second, this approach better aligns the Commission's foreign ownership limitations with other federal agency policies, such as the SEC's shareholder privacy rules.

Moreover, grant of the instant petition will provide significant public interest benefits consistent with those outlined in the Commission's recent declaratory ruling regarding the application of Section 310(b)(4) to broadcasters. Importantly, grant of the petition will do so without inflicting any concomitant public interest harms. As an initial matter, Pandora does not currently hold a broadcast license. Therefore, grant of the petition will enable Pandora to become a new entrant into the Rapid City radio market, as well as facilitating the influx of new

capital into the market. In addition, Pandora is a technology company that intends to bring a new business model to the mature broadcast radio industry, thereby furthering the Commission's goal of fostering innovation. Also, grant of the petition will promote broadcast localism by enabling Pandora to use its data regarding the online listening preferences of Rapid City residents to offer programming on KXMZ that is specifically tailored to the local tastes of the Station's audience.

For these reasons and as further set forth herein, Pandora Radio respectfully requests the Commission expeditiously to approve the instant petition.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Pandora Radio LLC

Petition for Declaratory Ruling Under Section
310(b)(4) of the Communications Act of 1934, as
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)
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) KXMZ(FM), Box Elder, SD
) Facility ID No. 164109
) FCC File No. BALH-20130620ABJ
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To: Secretary, FCC
For: Chief, Media Bureau

**PETITION FOR DECLARATORY RULING OF PANDORA RADIO LLC
UNDER SECTION 310(B)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED**

Pandora Radio LLC (“Pandora Radio”), by its attorneys, hereby petitions the Federal Communications Commission (“Commission” or “FCC”) to issue a declaratory ruling that allowing widely dispersed, indirect, and non-controlling foreign investment in Pandora’s controlling parent company, Pandora Media, Inc. (“Pandora Media”),¹ above the 25% threshold set forth in Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”),² is

¹ This petition for declaratory ruling (“Petition”) is filed by Pandora Radio, the proposed assignee in the underlying assignment application, rather than Pandora Media, Inc., the assignee’s controlling parent company. *See infra* note 7. For convenience and to avoid confusion, however, the term “Pandora” generally is used herein to refer to either Pandora Media, Inc. or Pandora Radio LLC as the context dictates.

² 47 U.S. C. § 310(b)(4). Section 310(b)(4) states, in relevant part, that “[n]o broadcast ... 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, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.” *Id.*

not inconsistent with the public interest and, based on this finding, that Pandora's acquisition of radio station KXMZ(FM), Box Elder, South Dakota ("KXMZ"), should be approved.³ Pandora is a U.S. company – a quintessential success story of the modern U.S. economy. It is controlled by U.S. citizens, operates almost exclusively in the United States, and poses no alien ownership concerns. Thus, this petition for declaratory ruling should be expeditiously approved.

As set forth in more detail below, it is evident based on extensive analysis that Pandora's foreign ownership complies with the 25% benchmark established by Section 310(b)(4). However, for the reasons discussed herein, Pandora cannot prove this for a fact. Because of certain Securities and Exchange Commission ("SEC") privacy regulations and the workings of the current marketplace for publicly traded securities, it is not possible for Pandora to satisfy the instructions for assessing compliance with Section 310(b)(4)'s foreign ownership restrictions set forth in the forty-year old *Suggestions for Meeting Citizenship Requirements of Corporate Applicants* ("Suggestions").⁴ These policies, adopted decades ago, simply do not reflect the

³ Consistent with the text of Section 310(b)(4), if the Commission does not determine that the public interest requires the Commission to refuse to permit Pandora to have indirect foreign ownership of more than 25% in its controlling ownership chain, then the Commission should grant the declaratory ruling requested in this petition. *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, 16249 ¶ 10 (2013) ("*Broadcast Declaratory Ruling*") ("Such applications [for approval of foreign investment in the controlling U.S. parent of a broadcast licensee above the 25% benchmark] may be granted unless the Commission finds that a denial will serve the public interest.").

⁴ *See* Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, to John M. Pelkey and Melodie A. Virtue, Counsel to Pandora, KXMZ(FM) (dated Sept. 23, 2013) ("First Division Letter"), Attachment A: *Suggestions for Meeting Citizenship Requirements of Corporate Applicants* ("Suggestions"). The *Suggestions* initially were drafted in 1974 by Alan Stillwell, an economist in the Research Branch of the FCC's Renewal and Transfer Division, which was a division of the Broadcast Bureau—a predecessor to today's Media Bureau. *See* Memo to Chief, Renewal and Transfer Division, Broadcast Bureau, FCC, from Alexander Korn, Chief, Research Division, Broadcast Bureau, FCC (dated June 25, 1974) (suggesting that the FCC distribute "xerox copies [sic]" of the *Suggestions* to "anyone inquiring on what we would find acceptable" from corporate applicants seeking to confirm their citizenship status).

current regulatory environment or today's marketplace realities. Current regulation and the marketplace make it virtually impossible for Pandora to determine the identity, much less the alien status, of many of its shareholders.

However, inasmuch as the extent of foreign influence over a broadcast station is one of the primary factors to be assessed by the Commission in making the required public interest determination under Section 310(b)(4),⁵ the fact that Pandora is unlikely to be influenced by shareholders whose identity is hidden from it argues in favor of permitting a Pandora subsidiary to become a Commission licensee. Contemporary SEC privacy regulations make it virtually impossible to perform the type of survey that the Commission many years ago considered to be the *sine qua non* of Section 310 compliance. SEC rules help to ensure that, once a shareholder evidences an intent to exert influence over a publicly-traded company, it makes its intentions known. This permits a publicly-traded holding company with a broadcast subsidiary to determine the alien status of that shareholder and to take steps as necessary to ensure that alien shareholders do not exert excessive control over the holding company. Specifically, once a shareholder acquires 5% of the holding company's stock, that shareholder must file a Schedule 13D or Schedule 13G with the SEC disclosing the shareholder's ownership interest in the company and describing any plan or proposal to influence the management or operation of the company. Those filings, which are publicly available in real time on the SEC's website, alert the holding company as to whether the shareholder intends to exert influence or control over the holding company.⁶ With the regulatory safeguards of the SEC, and as detailed in this Petition, the Commission can determine that Pandora's ownership of radio stations poses no public interest concerns.

⁵ *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16253 ¶ 16.

⁶ *See infra* note 87.

The first section of this Petition provides background information about both Pandora and the instant proceeding in which the Commission is considering Pandora’s assignment application (“Application”) to acquire a broadcast radio station license.⁷ The second section explains why Pandora is compelled to file this Petition. The third section provides public interest justifications for the Commission’s grant of the Petition. The fourth section provides ownership information regarding Pandora, including an estimate of Pandora’s current level of foreign ownership. Finally, the fifth section of the Petition explains the public interest declaratory ruling that Pandora requests of the Commission.

I. BACKGROUND

About Pandora. Pandora operates an online music streaming service at www.pandora.com that provides Pandora’s listeners with “[the] music and comedy [that] they love anytime, anywhere, through connected devices.”⁸ Each listener’s personalized stations launch instantly upon the input by the listener of a single “seed” – a favorite artist, song, or genre – which is analyzed by Pandora using its proprietary intellectual property, The Music Genome Project. The Music Genome Project is a deeply detailed, hand-built musical taxonomy that powers the personalization of Pandora’s internet radio service by using musicological “DNA”

⁷ See FCC File No. BALH-20130620ABJ. On November 25, 2013, Pandora Media amended the pending Application to substitute its wholly owned and controlled subsidiary, Pandora Radio, as the proposed assignee of KXMZ’s broadcast radio station license. As a result of this amendment, Pandora Radio became a “corporation directly ... controlled by [another] corporation” (*i.e.*, Pandora Media), and therefore Section 310(b)(4) now applies to Pandora Media’s proposed ownership structure. See 47 U.S.C. § 310(b)(4).

⁸ See Pandora Company Profile, <http://press.pandora.com/phoenix.zhtml?c=251764&p=irol-overview> (last visited June 10, 2014).

and constant listener feedback to craft personalized stations from a growing collection of more than one million tracks.⁹

Although Pandora has been providing its music service directly to U.S. listeners for less than a decade, in this short span it has become an American success story. In March 2014 alone, Pandora's 75.3 million active listeners logged 1.7 billion hours listening to Pandora's service, which Pandora has computed to represent approximately a 9.28% share of total U.S. radio listening for the month.¹⁰ Further, based on public audience ratings services, Pandora is the largest Internet radio service in the country, far exceeding the listening of other U.S. webcasters.¹¹

Pandora is a U.S. Company. Pandora was founded in 2000 by Tim Westergren, a U.S. citizen who was born in Minnesota and moved to California to attend school. He remains on the Pandora board. Pandora originally provided a song recommendation service to record stores and other companies and launched its Internet radio service in 2005. The company was conceived, launched, and continues to be operated in the United States. Pandora is organized under Delaware law¹² and its stock is publicly traded on the New York Stock Exchange.¹³ In addition

⁹ *See id.*

¹⁰ *See* Press Release, Pandora Media, Inc., *Pandora Announces April 2014 Audience Metrics*, (May 6, 2014), available at <http://press.pandora.com/phoenix.zhtml?c=251764&p=irol-newsArticle&ID=1927382&highlight>.

¹¹ *See* Webcast Metrics, February 2014 Top 20 Ranker, at 4-6 (Apr. 2, 2014), <http://www.tritondigital.com/Media/Default/rankers/feb-ranker-2014.pdf>, which shows that Pandora's number of average active sessions (effectively the number of average listeners) exceeds the total of the remaining 19 ranked services.

¹² Pandora initially was incorporated in the State of California in January 2000 as TheSavageBeast.com, Inc. In July 2005, the company's name was changed to Pandora. In December 2010, Pandora became a Delaware corporation by way of a merger with and into a wholly-owned Delaware subsidiary.

¹³ Pandora became a publicly traded corporation on the New York Stock Exchange on June 15, 2011, under the ticker symbol "P".

to being founded by a U.S. citizen, all of Pandora's executive officers except two are U.S. citizens, and Pandora's eight board members all are U.S. citizens.¹⁴ Further, Pandora's headquarters is located in Oakland, California; Pandora employs over 1,000 employees throughout the United States; and the vast majority of Pandora's listeners reside in the United States.¹⁵

Pandora's Efforts to Become a Radio Broadcaster. On June 20, 2013, Pandora Media filed an Application to seek Commission consent for Pandora to acquire from Connoisseur Media Licenses, LLC, the broadcast license of full-power FM radio station KXMZ (Facility ID No. 164109), which is in the Rapid City, South Dakota market.¹⁶ Pandora already serves online tens of thousands of residents of the Rapid City listening area, and Pandora tracks the listening

¹⁴ Pandora's Chief Marketing Officer is a Canadian citizen and its Chief Strategy Officer is a New Zealander. The Telecommunications Act of 1996, P.L. No. 104-104, 110 Stat. 56 (1996), eliminated the restrictions on the citizenship of broadcasters' officers and directors that previously was contained in Section 310(b)(4) of the Act.

¹⁵ For music royalty and other business reasons, Pandora until very recently restricted its music service to listeners in the United States. Pandora expanded to provide service in Australia and New Zealand. Pandora employs tools to review IP addresses and otherwise limit its listeners to individuals physically located in these countries. The vast majority of its listeners are in the United States, and listeners in Australia and New Zealand comprise less than 1% of its users.

¹⁶ The Rapid City market is ranked at number 257 by Nielsen. See Nielsen, *Radio Market Survey Population, Rankings & Information*, at 7, 14 (Spring 2014), available at http://www.nielsen.com/content/dam/corporate/us/en/docs/nielsen-audio/market_populations_and_rankings_2014.pdf (last visited June 10, 2014). The population of the Rapid City, South Dakota Metropolitan Statistical Area ("MSA") is 134,598. See Wikipedia, *List of Metropolitan Statistical Areas*, http://en.wikipedia.org/wiki/List_of_Metropolitan_Statistical_Areas (last visited June 10, 2014); City Population, *USA: Metropolitan Areas*, <http://www.citypopulation.de/php/usa-metro.php> (last visited June 10, 2014). Box Elder is a town that is located about ten miles west of Rapid City. According to the 2010 census, the population of Box Elder was 7,800 residents living in less than 2,500 households. See *Box Elder, South Dakota Population: Census 2010 and 2000 Interactive Map, Demographics, Statistics, Quick Facts*, <http://censusviewer.com/city/SD/Box%20Elder> (last visited June 10, 2014).

tastes of these Pandora listeners. As a result, Pandora is uniquely situated to offer programming responsive to the preferences of the Box Elder community.¹⁷

History of the Instant Proceeding. On July 25, 2013, the American Society of Composers, Authors and Publishers (“ASCAP”) filed a petition to deny the Application on several grounds, including that Pandora’s Section 310(b)(4) certification was “suspect.”¹⁸ Pandora subsequently opposed ASCAP’s petition.¹⁹ Thereafter, ASCAP made a series of additional filings against the Application.²⁰ Further, on September 23, 2013, the Audio Division sent Pandora a letter requesting certain additional information about Pandora’s ownership,²¹ and Pandora filed a comprehensive response to the FCC’s letter on November 25, 2013.²² On

¹⁷ Pandora’s more than 42,000 unique listeners in the Rapid City area represent nearly one-third of the MSA’s population. In an effort to create programming for KXMZ that reflects more accurately the listening tastes of the community, Pandora designed a local “dashboard” to show how it can leverage local Rapid City Pandora music data to inform KXMZ programming decisions. Every Pandora station that is created (by artist, genre or song) by a listener in the Rapid City area is tracked in the dashboard. This tool shows local preferences by ranking active listeners and trending data over the past four months. This listener data will give KXMZ unique insight into local listening trends, allowing it to provide a more targeted music service to better serve the preferences of the Rapid City market. *See* Opposition to Petition to Deny of Pandora, FCC File No. BALH-20130620ABJ, at 5-6, 8 (filed Aug. 7, 2013) (“Pandora Opposition”).

¹⁸ *See* Petition to Deny of ASCAP, FCC File No. BALH-20130620ABJ, at 9-14 (filed July 25, 2013).

¹⁹ *See* Pandora Opposition.

²⁰ *See* Reply to Opposition to Petition to Deny of ASCAP, FCC File No. BALH-20130620ABJ (filed Aug. 19, 2013) (“ASCAP Reply”); Supplement to Petition to Deny of ASCAP, FCC File No. BALH-20130620ABJ (filed Aug. 14, 2013); Motion for Leave to File Supplement to Petition to Deny of ASCAP, FCC File No. BALH-20130620ABJ (filed Sept. 23, 2013).

²¹ *See* First Division Letter; *see also* Letter from Meredith S. Senter, Jr., Attorney for ASCAP, to Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, FCC File No. BALH-20130620ABJ (filed Oct. 25, 2013) (seeking clarification of the First Division Letter); Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, to John M. Pelkey and Melodie A. Virtue, Counsel to Pandora, KXMZ(FM) (dated Oct. 29, 2013) (clarifying the First Division Letter).

²² *See* Letter from Delida Costin, General Counsel & Secretary, Pandora, to Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, FCC File No. BALH-20130620ABJ (filed Nov. 25, 2013) (“Pandora Response”); *see also* Letter from Meredith S. Senter, Jr. and F. Scott Pippin,

January 8, 2014, the Audio Division sent a further inquiry letter to Pandora requesting Pandora to provide additional ownership information.²³ After discussing the Second Division Letter with the Audio Division,²⁴ Pandora determined that, despite being a U.S.-organized and U.S.-controlled corporation, Pandora would be unable to demonstrate its compliance with Section 310(b)(4) of the Act under the procedures historically recommended by the Audio Division.²⁵ For this reason, Pandora is filing the instant Petition seeking a determination by the Commission that permitting Pandora's parent company to have more than 25% foreign ownership is consistent with the public interest.²⁶

Attorneys for ASCAP, to Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, FCC File No. BALH-20130620ABJ (filed Dec. 9, 2013) ("ASCAP Dec. 2013 Letter").

²³ See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, to John M. Pelkey and Melodie A. Virtue, Counsel to Pandora, KXMZ(FM) (dated Jan. 8, 2014) ("Second Division Letter").

²⁴ This discussion was held in a meeting between Commission representatives and the parties to the Application, including ASCAP, on April 3, 2014.

²⁵ The *Suggestions* attached to the First Division Letter recommend that a corporation with numerous shareholders determine the citizenship of as many shareholders as possible. These shareholders are referred to as "known" shareholders in the *Suggestions*. *Suggestions* at 2. Then, according to the *Suggestions*, the corporation should survey the holders of its remaining shares – termed "unknown" shareholders in the *Suggestions* – using a "properly conducted" and "statistically valid" sampling procedure to determine the citizenship of these unknown shareholders. *Suggestions* at 3. It is important to note the *Suggestions*' reference to the surveyed shareholders as "unknown" shareholders merely refers to the citizenship status of such shareholders, not to their identities. In fact, the *Suggestions* are based on the fundamental assumption that the corporation knows the identity and contact information of each such "unknown" shareholder. Without this information – information that SEC privacy regulations prevent Pandora from obtaining with respect to approximately half of its shareholders – the survey procedures set forth in the *Suggestions* simply are not feasible. See also Memorandum from K&L Gates LLP to Pandora Media, Inc. re: U.S. Shareholder Analysis at 4 (May 16, 2014) ("K&L Gates Report") (describing the methodology set forth in the *Suggestions* and why this methodology "cannot be used to reliably determine the citizenship of Pandora's beneficial owners"). The K&L Gates Report is attached hereto as Exhibit A.

²⁶ Consistent with the requirement set forth in the *Broadcast Declaratory Ruling*, Pandora has amended its Application to respond "no" to the foreign ownership certification set forth in Section III, Question 9, and has attached the instant Petition to the Application as a new Exhibit 24. See *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16251 ¶ 13 ("[FCC Form 314]

II. SEC PRIVACY REGULATIONS PREVENT PANDORA FROM DETERMINING THE IDENTITY OF A SIGNIFICANT PORTION OF ITS SHAREHOLDERS THEREBY NECESSITATING THE FILING OF THIS PETITION

Pandora is filing the instant Petition not because it believes that foreign entities beneficially own or vote more than 25% of its shares, but instead because it cannot prove in a manner consistent with the standards set forth in the Second Division Letter and the *Suggestions* that foreign entities do not beneficially own or vote more than 25% of its shares. In fact, as further set forth below, Pandora has reasonable grounds to believe that U.S. entities own and vote more than 80% of its shares and that therefore Pandora complies with Section 310(b)(4) of the Act.²⁷ However, given the standards that have been applied by the Commission to assess the foreign ownership of stock in publicly traded broadcast companies, this Petition is being submitted.

Due primarily to the SEC privacy regulations further discussed below, Pandora is unable to determine the specific identity of the beneficial owners of at least half of its shares.²⁸ As a

Applicants must continue either to certify that their transactions will comply with Section 310 benchmarks or, in the event they will not, to indicate that they will not comply and provide an explanatory exhibit. A petition for declaratory ruling to allow foreign ownership to exceed the 25 percent benchmark must be filed along with any application in which the applicant cannot certify compliance with Section 310(b)(4).”) (citations omitted).

²⁷ For this reason, Pandora continues to believe in good faith that its certification in the Application of compliance with Section 310 of the Act was true, complete, and accurate to the best of Pandora’s knowledge given the reasonable methods used by Pandora to determine its foreign ownership prior to making the certification. *See WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 6569, 6572 ¶ 13 (1991) (requiring applicant to “use reasonable methods to insure compliance with section 310(b)”).

²⁸ As part of a study of Pandora’s ownership, Nasdaq OMX determined that approximately half of Pandora’s shareholders were not individually identifiable because they were objecting beneficial owners (“OBOs”) under the SEC’s rules – *i.e.*, 49,031,240 Pandora shares, or approximately 28.1%, were held by OBOs who used Broadridge Financial Services as their depository institution and another 46,218,817 shares, or approximately 26.4%, “primarily” were shares held by OBOs that used other banks and brokers as their depository institutions. *See* Pandora Response at 14-15 and Table 5; *see also Exhibit A*, K&L Gates Report at 3 (“During its

result, Pandora is unable independently to determine the citizenship of these unidentifiable shareholders and is unable to survey them as part of a statistically valid random sample of shareholders for purposes of determining Pandora's overall foreign ownership. Moreover, relying on Commission policy established more than 30 years ago, the Second Division Letter requires Pandora to treat all such unidentifiable shareholders as foreign for purposes of determining Pandora's compliance with Section 310(b)(4) even though it is likely that most such shareholders are not foreign.²⁹ As detailed below, this policy of treating unidentifiable shareholders as foreign is irreconcilable with the manner in which publicly traded securities are held and traded in the United States and with the policies of a sister agency to the Commission, the SEC. For these reasons, Pandora is filing the instant Petition to seek a public interest declaratory ruling from the FCC that the facts and circumstances of its ownership are such that it would be consistent with the public interest for Pandora to hold a broadcast radio station license.

Shares Held in Street Name. Most shares of publicly traded companies today are held in so-called "street name." This means that a broker or bank intermediary typically holds legal title to such shares on behalf of the beneficial owner, who retains full economic ownership of the shares.³⁰ As a result, it often is difficult independently to determine the identity, and therefore the citizenship, of the beneficial shareholders of public companies.

investigation ... K&L Gates learned that a large majority of Pandora's shares were held in street name, and more than 70 percent of these shares were held by objecting beneficial owners, about which no direct identifying information could be obtained due to SEC privacy rules.").

²⁹ See Second Division Letter at 2 ("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.") (citation omitted).

³⁰ See Alan L. Beller and Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting*, Council of Institutional Investors, at 5 (Feb. 2010), <http://www.sec.gov/comments/s7-14-10/s71410-22.pdf> (the "CII Report").

The use of street names actually was encouraged by Congress, which viewed it as being a means of addressing the stock settlement and clearing crisis that occurred during the bear market of the late 1960s.³¹ In its 1976 report following its investigation of the use of street names as a possible solution to the settlement and clearing crisis, the SEC determined that separation of record and beneficial ownership facilitated clearance and settlement of securities transactions and that wider use of the practice was a necessary precursor to eliminating exchange of paper stock certificates.³² Consequently, the SEC successfully cleared a path for a dramatic increase in the street name registration of securities.³³ By one estimate, between 70% and 80% of publicly-traded shares are now held in street or nominee name.³⁴ Accordingly, most publicly traded companies no longer can consult a registered shareholder list to determine the identity of their shareholders to enable the companies independently to determine the shareholders' citizenship or to send the shareholders an ownership survey of the type envisioned by the Commission's decades-old policy for determining foreign ownership.

Objecting and Non-Objecting Beneficial Owners. In the 1980's, the SEC created a regulatory framework in which companies primarily communicate with beneficial owners of their stock indirectly through broker or bank intermediaries.³⁵ As part of this system of shareholder communications, the SEC's rules permit brokers to disclose to a company the

³¹ *Id.* at 8.

³² *Id.* (citing SEC, 94th Con., 2d Sess., Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in other than the Name of the Beneficial Owner of Such Securities 15, House Comm. on Interstate and Foreign Com. (Comm. Print 1976)).

³³ *See id.*

³⁴ *Id.* at 5; SEC, *Concept Release on the U.S. Proxy System*, Release Nos. 34-62495, at 75 (rel. July 14, 2010), available at <http://www.sec.gov/rules/concept/2010/34-62495.pdf> ("Concept Release").

³⁵ *See* CII Report at 9-10.

identity of only those beneficial owners who do not object to such disclosure – *i.e.*, “non-objecting beneficial owners” or NOBOs. Those who object to the disclosure of their identity are, by contrast, known as “objecting beneficial owners” or OBOs. Although companies may directly communicate with NOBOs for purposes other than distribution of proxy materials, companies are effectively precluded from direct communication with OBOs by the SEC’s regulations prohibiting disclosure to the companies of these beneficial owners’ identities.³⁶

The Commission has itself recognized the difficulties that the SEC rules can pose to FCC-regulated companies trying to determine the citizenship of their shareholders. In an express recognition of the challenges that the SEC’s privacy regulations pose to companies seeking to determine their compliance with Section 310(b)(4), the Commission stated:

Publicly traded companies typically do not know the identities of all beneficial owners of their shares. In many cases, a nominee, such as a broker or bank, holds the shares in accounts with The Depository Trust Company, which appears as the record holder of the shares in the company’s books. Securities and Exchange Commission (SEC) rules prohibit intermediaries between the company and the beneficial owner from disclosing to a company the identity of beneficial owners who object to such disclosure.³⁷

As a result, the SEC’s privacy regulations prevent public companies from determining the identities of a substantial portion of their beneficial owners. Experts estimate that OBOs

³⁶ See 17 C.F.R. §§ 240.14b-1 and 240.14b-2 (permitting broker dealer and bank intermediaries to provide issuing companies with identifying information only as to beneficial owners who have not objected to such disclosure (*i.e.*, NOBOs)), and § 240.14a-13 (obligating the issuing company to supply proxy materials to intermediaries for distribution to beneficial owners and permitting direct communication between the issuing company and NOBOs for the purpose of distributing the annual report). See also CII Report at 10.

³⁷ *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, 11776 n.99 (2011) (citing with approval the CII Report).

comprise 52%-60% of the shares of publicly held companies in the United States.³⁸ Further, as the SEC has noted, large institutional investors, such as mutual funds and retirement plans, often choose OBO status.³⁹

Although a company theoretically may request an OBOs' broker or bank intermediary to forward an ownership survey to the OBO, systems for the collection and accurate tabulation of shareholder responses have not been developed outside of the proxy solicitation context and brokers may not be obligated to forward such a request to OBOs.⁴⁰ Moreover, an adequate shareholder response to such a survey is unlikely, as OBOs are presumably unwilling to disclose the very ownership information that they determined to protect by choosing OBO status, and given that an OBOs' stock interest in Pandora may represent only a small fraction of the shares held by the OBO in publicly traded companies in the aggregate, the OBO has little incentive to spend resources responding to Pandora's survey. This is especially true of Pandora shareholders that are institutional investors that hold shares in numerous publicly traded companies. As a result, any effort to conduct a statistically valid random survey of OBOs is likely to result in a very low response percentage, which is especially problematic because the Commission requires non-respondents to be treated as foreign rather than permitting them to be excluded from an ownership survey's results.⁴¹

³⁸ CII Report at 5.

³⁹ *Concept Release* at 67-68.

⁴⁰ Under SEC rules brokers are required only to forward proxy solicitation and certain related materials. *See* 17 C.F.R. § 240.14b-1. Additionally, however, virtually all broker intermediaries are members of the NYSE and are subject to NYSE rules requiring them, upon request of the company and payment of a specified fee, to forward to beneficial owners "copies of interim reports of earnings or other material being sent to stockholders." It is not clear whether a shareholder survey is within the scope of the informational material contemplated by the rule. *See* NYSE Rule 465 (2014).

⁴¹ *See Suggestions* at 3 ("[S]hares of non-respondents must be counted as alien owned.").

As noted above, the Commission has recognized in non-broadcast contexts that the SEC's shareholder privacy policies make the determination of citizenship problematic. Broadcasters face the same obstacles. Pandora believes that many public companies are hampered by the same challenges as Pandora when attempting to prove the citizenship of their shareholders – issues primarily caused by the SEC's shareholder privacy policies and the prevalence of OBOs in today's public markets. This is especially true for publicly traded companies not previously regulated by the FCC, such as companies like Pandora that are seeking to enter the broadcast sector for the first time. Companies that historically have not been regulated by the FCC have had no reason to ask shareholders to waive their right to privacy granted by the SEC. Further, asking their shareholders to do so may prove to be a disincentive to buy the company's stock. This chill on an institutional investor's desire to purchase the company's stock could affect the market for the company's shares, affecting stock prices and/or liquidity. Thus, requiring strict compliance with FCC policies that date from well before the SEC shareholder privacy rules were adopted would discourage investment by new companies in FCC regulated entities. Erecting barriers to entry for companies like Pandora negatively affects innovation and the infusion of new capital the FCC sought to encourage in the communications marketplace.

III. GRANT OF THE PETITION WILL FURTHER IMPORTANT COMMISSION PUBLIC INTEREST OBJECTIVES

Pandora's entry into the radio broadcast industry as a new broadcaster is exactly the type of transaction that the Commission aimed at facilitating when it adopted the *Broadcast Declaratory Ruling* in November 2013 to clarify that the Commission will consider on a case-by-case basis permitting broadcasters to exceed Section 310(b)(4)'s restriction on indirect foreign ownership. Pandora is a young technology company seeking to bring an innovative new

programming model to, and to commit new capital to, the radio sector, both of which are consistent with the Commission's objectives in the *Broadcast Declaratory Ruling*. Similarly consistent with the Commission's objectives, Pandora will enhance both the localism and diversity of voices in the Rapid City radio market.⁴² Moreover, Pandora will advance these Commission goals without imposing any concomitant public harms that might offset the significant public interest benefits that Pandora's proposed control of KXMZ will generate. Thus, the unmitigated public interest benefits that will accompany Pandora's entry into the Rapid City broadcast market fully justify the Commission's issuance of the public interest declaratory ruling requested by Pandora under Section 310(b)(4) of the Act.

First, Pandora currently is not, and never previously has been, a broadcaster.⁴³ Therefore, Pandora's acquisition of a broadcast radio station represents the influx of new capital into the Rapid City radio market. The Commission expressly stated in its *Broadcast Declaratory Ruling* that one of the public interest benefits of its "fresh statement" of Commission policy implementing Section 310(b)(4) is the "potential to spur new and increased opportunities for

⁴² See *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16254 (statement of FCC Chairman Tom Wheeler holding that Congressional goals underlying the Commission's public interest evaluation of Section 310(b)(4) petitions for declaratory ruling are investment, innovation, media diversity, and localism) ("*Wheeler Statement*").

⁴³ Although Pandora has never previously participated in the broadcast industry, Pandora has provided Internet-based radio for the past ten years to tens of millions of active listeners – many multiples of the addressable audience in the Rapid City area in which Box Elder is located. See *supra* note 16 and accompanying text. It is difficult to envision how Pandora's nascent participation in the radio broadcast industry through the purchase of a radio station serving a relatively small community like Box Elder could pose any of the national security concerns that Section 310(b) was intended to address while Pandora's dramatically broader reach as an online radio provider is not controversial and does not appear to pose any such governmental concerns. See *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16244 ¶ 2 (stating that "[t]he Act's foreign ownership restrictions were originally conceived to address homeland security interests during wartime" such as to "thwart the airing of foreign propaganda on broadcast stations") (citation omitted).

capitalization of broadcasters, and particularly for ... new entrants.”⁴⁴ According to the Commission, “limited access to capital is a concern in the broadcast industry, especially for ... new entrants.”⁴⁵

Second, the Commission found in the *Broadcast Declaratory Ruling* that “[g]reater capitalization may in turn yield greater innovation.”⁴⁶ Pandora is an innovative technology company that intends to bring a new business model to the mature broadcast radio industry. Specifically, Pandora intends to apply to radio broadcasting the data and expertise that it has developed managing The Music Genome Project, which will enable Pandora to tailor KXMZ’s programming to the tastes and preferences of the station’s local audiences in a manner previously unseen in broadcasting.⁴⁷ Accordingly, grant of the instant Petition will further this Commission goal.

Third, grant of the Petition will enable Pandora to acquire KXMZ and thereby become a new entrant into the broadcasting sector generally and, more specifically, into the Rapid City market. According to the Commission, “[p]romoting diversity has long been a central goal,” and “[t]he Commission historically has approached the diversity goal from five perspectives – program diversity, viewpoint diversity, source diversity, outlet diversity, and minority and

⁴⁴ *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16249 ¶ 10 (citation omitted).

⁴⁵ *Id.*; see also *id.* at 16254 (*Wheeler Statement*: “Promoting a regulatory framework that does not inhibit the flow of capital to the US communications sector is an important goal of Commission policy.”).

⁴⁶ *Id.* at 16249 ¶ 10; *id.* at 16255 (statement of Commissioner Mignon Clyburn: “Competition and innovation in media in the 21st century move at warp speed, and in order to keep pace, broadcasters need new and increased sources of capital.”) (*Clyburn Statement*); see also 47 U.S.C. § 309(j)(3)(A)-(B) (holding that “the development and rapid deployment of new technologies, products, and services for the benefit of the public” and “ensuring that new and innovative technologies are readily accessible to the American people” are objectives that the FCC should pursue when developing spectrum auction rules.).

⁴⁷ See *supra* note 9 and accompanying text.

female ownership diversity.”⁴⁸ Because it will be a new broadcaster and bring a new and unique approach to programming to KXMZ, the addition of Pandora as a new competitor in Rapid City will further the first four of these five metrics. Thus, the Commission’s grant of the Petition will further the Commission’s diversity goals.⁴⁹

Fourth, grant of the Petition also will serve the Commission’s objective of promoting broadcast localism.⁵⁰ As set forth above, Pandora intends to use the data that it has collected from its online listeners in the Rapid City area, as well as the music database that Pandora has compiled as part of The Music Genome Project, to offer programming on KXMZ that is specifically tailored to the local tastes of the station’s audience. This cutting edge approach to programming a local broadcast radio station to precisely reflect the preferences of its listeners is a unique means of furthering the Commission’s objective of fostering broadcast localism. Further, Pandora plans to continue and expand KXMZ’s involvement in serving the needs and interests of the local community.⁵¹

⁴⁸ *2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 25 FCC Rcd 6086, 6106 ¶ 66 (2010) (citations omitted).

⁴⁹ *See Broadcast Declaratory Ruling*, 28 FCC Rcd at 16255 (*Clyburn Statement*: “Knocking down unnecessary barriers and realizing greater ownership diversity will help to open our airwaves to the presentation of content that more fully reflects the composition of our broad society.”), *id.* at 16258 (statement of Commissioner Ajit Pai: “Indeed, this item demonstrates ... how modernizing our rules can promote diversity.”).

⁵⁰ *See 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, 17495 ¶ 14 (2011) (affirming the FCC’s broadcast localism objective and holding that “[a]t its core, localism policy is designed to ensure that each station treats the significant needs and issues of the community that it is licensed to serve with the programming that it offers.”) (internal quotations omitted) (citation omitted).

⁵¹ *See Pandora Opposition* at 6-8.

Finally, grant of the Petition does not implicate any potential harms that might offset these important public interest benefits. Broadcast radio stations today are one of the many diverse media channels that compete for the attention of U.S. consumers and for advertising dollars. Although broadcast radio remains an important medium to consumers, it no longer holds the distinction of being consumers' exclusive source of audio programming. As explained by the Coalition for Broadcast Investment when it initially requested the Commission to clarify that it would consider granting Section 310(b)(4) petitions for declaratory rulings filed by broadcasters:

Today, Americans have unprecedented access to myriad sources of information and entertainment, including not only local broadcasters but also cable networks, over-the-top video providers, Internet radio services, and online access to a huge variety of news sources. Yet, only broadcasters, among all these competing outlets, are subject to a rigid foreign-investment restriction. In this competitive environment, there is no basis in fact or law for any assertion that the public interest would be harmed merely by considering higher levels of indirect foreign investment in broadcasters on a case-by-case basis. As the National Association of Broadcasters notes, "[n]o public purpose is served by preventing broadcasters from obtaining investment capital on a more equitable basis with their direct competitors."⁵²

IV. PANDORA ESTIMATES THAT U.S. ENTITIES BENEFICIALLY OWN AND HOLD VOTING CONTROL OVER MORE THAN 80% OF ITS OUTSTANDING SHARES

The Commission has not yet issued any published guidance regarding the nature of the foreign ownership information that should be included in a Section 310(b)(4) petition for declaratory ruling filed by a proposed assignee of a broadcast license. Instead, the Commission stated in its *Broadcast Declaratory Ruling* that it will develop its procedures for the filing of

⁵² See Reply Comments of the Coalition for Broadcast Investment, MB Docket No. 13-50, at 2-3 (filed Apr. 30, 2013) (quoting Comments of the National Association of Broadcasters, MB Docket No. 13-50, at 5 (filed Apr. 15, 2013)).

broadcast Section 310(b)(4) petitions on a case-by-case basis.⁵³ In the absence of formal guidance from the Commission, Pandora herein provides percentage estimates of its foreign ownership and a general description of the methods used to determine these percentage estimates, which is the required ownership showing applicable to a petition for declaratory ruling filed by a common carrier wireless licensee.⁵⁴ Specifically, Pandora sets forth herein the citizenship information provided to Pandora in reports prepared by two outside specialists separately retained by Pandora to evaluate Pandora's ownership. These reports collectively incorporate all of the sources of information about Pandora's ownership that are reasonably available. Using this information, Pandora estimates that foreign entities hold beneficial and voting ownership of Pandora of less than 20%.

Pandora initially retained Nasdaq OMX (formerly Thomson Reuters)⁵⁵ to conduct an evaluation of Pandora's ownership ("Nasdaq Report").⁵⁶ The Nasdaq Report primarily addressed the citizenship of the beneficial owners of Pandora's stock using location and address

⁵³ See *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16252 ¶ 15 ("[W]e believe it is appropriate that our review of proposed broadcast investments remain on a case-by-case basis and be allowed to mature before we consider comprehensive rules and procedures similar to those applicable to foreign investment in common carrier licensees.") (citation omitted).

⁵⁴ See *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd 5741, 5801 ¶ 115 (2013) ("We will require petitions to include a percentage *estimate* of the licensee's and/or U.S. parent's aggregate direct and indirect foreign equity and voting interests, [and] a general description of the methods used to determine the percentages,") (emphasis added) ("*Common Carrier Wireless Order*").

⁵⁵ As set forth in the Pandora Response, Pandora relies on Nasdaq OMX to analyze Pandora's shareholder base on an ongoing basis to monitor movements within the stock and build strategy around shareholder prioritization and targeting efforts. Before conducting its analysis, Nasdaq OMX consulted with Commission staff regarding the methodology that Nasdaq OMX intended to use and received no objection from the staff regarding its proposed methodology. See Pandora Response at 3-4.

⁵⁶ The Nasdaq Report was attached as Exhibit 2 to the Pandora Response. Nasdaq OMX, *Pandora Media Inc.: Ownership Overview* (May 22, 2013) ("Nasdaq Report"); see also Pandora Response at 6.

information as a proxy for citizenship.⁵⁷ In addition, using the information that Nasdaq OMX obtained about the significant majority of Pandora's shareholders, Nasdaq OMX extrapolated the citizenship of the relatively small minority of Pandora's shareholders for which Pandora was unable to obtain such information.⁵⁸

After receiving the Second Division Letter, Pandora retained K&L Gates LLP ("K&L Gates") to conduct a second study of Pandora's ownership ("K&L Gates Report"). Prior shareholder studies that K&L Gates conducted for other entities, and the methodology that K&L Gates employed in such studies, were cited favorably by both the Commission staff and ASCAP in the instant proceeding.⁵⁹ The K&L Gates Report focused on voting control of Pandora's stock

⁵⁷ The Audio Division held in the Second Division Letter that the Nasdaq Report did not constitute sufficient grounds for a foreign ownership certification of compliance with Section 310(b)(4) because the Commission previously ruled, in *dicta*, that mailing addresses are not a reliable indicator of citizenship in the broadcast context. See Second Division Letter at 1. Although the Commission has been hesitant to permit addresses to be used as a proxy for citizenship for the purposes of determining compliance with Section 310(b)(4), it historically has been much more willing to permit the use of addresses as proxies for citizenship for the purposes of estimating foreign ownership in a Section 310(b)(4) petition for declaratory ruling, such as the instant Petition. See *Applications of SoftBank Corp., Starbust II, Inc., Sprint Nextel Corporation, and Clearwire Corporation*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9688 n.358 (2013) ("*SoftBank MO&O*") (citing *Mobile Satellite Ventures Subsidiary, LLC*, Petition for Declaratory Ruling Under Section 310 of the Communications Act, as Amended, File No. ISP-PDR-20070314-0004, at 14, n.44 (filed Mar. 14, 2007) for the proposition that citizenship may be analyzed based on "the underlying shareholder address provided by the beneficial owners"); see also *Softbank MO&O*, 28 FCC Rcd at 9688, 9691; *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, 11772 (2011).

⁵⁸ The Second Division Letter did not address whether the Nasdaq Report, standing alone or in conjunction with the separate K&L Gates Report, may be used to provide an *estimate* of foreign ownership for purposes of the instant Petition.

⁵⁹ See Second Division Letter at 2 ("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," etc.) (emphasis added); ASCAP Reply at 18 n.59

and did not reach conclusions regarding Pandora's beneficial ownership.⁶⁰ For this reason, it ultimately is insufficient standing alone to enable Pandora to certify Section 310(b)(4) compliance in the Application. However, the K&L Gates Report provides detailed information regarding the citizenship of the entities that have voting authority over a significant majority of Pandora shares and indicates an absence of foreign voting control. Therefore, it is appropriate for Pandora to rely on the results of this survey in this Petition to estimate Pandora's foreign

("Unlike here, in the Sprint case the parties disclosed their foreign ownership surveys and the underlying methodology. On its face, the survey in this case appears to lack the robustness of the surveys conducted in connection with Softbank's acquisition of control of Sprint and Clearwire.") (citations omitted). K&L Gates conducted the study in the Sprint case.

⁶⁰ The Nasdaq Report is based on a substantial sample of Pandora beneficial shareholders – those beneficial interest holders that are identifiable – and it provides a significant amount of useful information about Pandora's beneficial ownership. Neither Nasdaq OMX nor Pandora, however, have conducted a sampled survey of Pandora's NOBOs that hold less than a 5% equity interest in Pandora. For purposes of this request, the Commission has indicated that Pandora may need to presume that its less than 5% shareholders are foreign. *See* Email from Christine Goepp, Attorney Advisor, Audio Division, Media Bureau, FCC, to Melodie Virtue, Counsel for Pandora (May 9, 2014). Such a survey, however, would not provide useful information about Pandora's overall beneficial ownership. As an initial matter, as explained in the K&L Gates Report, beneficial ownership information garnered from a survey "could not be commingled with voting authority citizenship information [set forth in the K&L Gates Report]" because "voting authority for a share may be, and often is, held by a different entity than the beneficial owner." *See* K&L Gates Report at 5-6. Nor can that information be extracted from the Nasdaq Broadridge NOBOs list (Pandora Response, Exhibit 4) because the report does not identify the beneficial owner's intermediary broker or bank and attempting to do so could result in double counting of votes. *See* CII Report at 16. This dramatically limits the potential usefulness of a NOBO survey. Further, as explained in the K&L Gates Report, only approximately 41% of Pandora's shareholders are identifiable NOBOs and no contact information is available for some portion of these shareholders. *See* K&L Gates Report at 5. Moreover, a significant portion of these shareholders are unlikely to correctly complete or return such ownership surveys. As a result, the extensive time and resources that would be required to be committed to such a survey would likely result in the acquisition of beneficial ownership information for a very small percentage of Pandora shares. For this reason, Pandora and Nasdaq OMX determined that the approach used by Nasdaq OMX to determine Pandora's beneficial ownership in the Nasdaq Report was much more likely to produce useful information about the citizenship of a much greater number of Pandora's beneficial owners. It seems inappropriate to presume that all of Pandora's beneficial owners are foreign merely because a more effective mechanism for determining citizenship information about Pandora's beneficial owners does not involve a survey of such owners.

voting ownership and to demonstrate that its ownership of a broadcast station will not pose any public interest concerns.

The Nasdaq Report and K&L Gates Report are further discussed below in reverse chronological order.⁶¹

K&L Gates Report. A copy of the study of Pandora's ownership conducted by K&L Gates is attached hereto as Exhibit A. K&L Gates is a full service global law firm with extensive experience in the representation of public companies and investment managers in a wide range of securities and capital market matters.⁶² K&L Gates also has experience with shareholder analysis and reports related to Section 310(b)(4), including ownership reviews for MetroPCS Communications, Inc. in WT Docket No. 12-301 and Sprint Corporation in IB Docket No. 12-343.⁶³

⁶¹ While these reports were conducted at different times and thus reviewed information about different shareholder pools, the fact that both studies reported similar results should assuage any concerns that Pandora's ownership is somehow too fluid to be relied on to provide continued compliance with the Commission's policies. While shares in Pandora may change hands, the continuity of the results found in these two studies demonstrate that the vast majority of the company's shareholders are U.S. citizens and that there is no fundamental concern about Pandora's ownership that should make the Commission at all hesitant to grant this Petition.

⁶² The latest *US News – Best Lawyers* survey ranked K&L Gates as Law Firm of the Year in the area of Securities Regulation and as a national first tier law firm in the area of Securities/Capital Markets Law. *Corporate Board Member* magazine and FTI Consulting, Inc. ranked the K&L Gates U.S. corporate practice among the top 25 national corporate law firms in its 2012 "America's Best Corporate Law Firms" survey of nearly 2,000 general counsel of U.S. public companies. Further, K&L Gates' investment management practice group, which is composed of more than 100 lawyers, is consistently recognized as an industry leader, and annually noted in the top tiers by independent research-based guides to the legal profession, such as *Chambers* and *The Legal 500*. See K&L Gates Report at 1-2.

⁶³ See *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2358 ¶ 93 (IB/WTB 2013); *SoftBank MO&O*, 28 FCC Rcd at 9691-92 ¶ 120.

K&L Gates explained in its report that “*despite its best efforts and investigation, [it] could not obtain access to the necessary shareholder information to examine Pandora’s beneficial ownership.*”⁶⁴ According to K&L Gates:

[SEC] rules adopted in the 1980s created a regulatory regime in which issuers of stock communicate not with beneficial owners but primarily with broker-dealer or bank intermediaries who hold shares in “street name,” *i.e.*, in the name of a brokerage firm or another nominee and not in the name of a beneficial owner. The SEC rules allow beneficial owners to elect either objecting beneficial owner (sometimes referred to as “OBO”) or non-objecting beneficial owner (sometimes referred to as “NOBO”) status. Objecting owners object to having their names and addresses released to issuers of stock, and issuers of stock are forbidden to communicate directly with these objecting owners. All communications to the objecting owners must be sent via the broker-dealer or bank intermediary, and identifying information about these owners cannot be obtained and is protected from disclosure.⁶⁵

K&L Gates noted that a large majority of Pandora’s stock is held in street name, and more than 70% of these shares are held by objecting owners. As a result, K&L Gates determined “that the ... sampling procedure [set forth in the *Suggestions*] cannot be used to reliably determine the citizenship of Pandora’s beneficial owners for reasons that were apparently not contemplated at the time the [*Suggestions*] were written (*i.e.*, the SEC privacy rules’ obstructive effect on shareholder transparency).”⁶⁶

For these reasons, K&L Gates focused its report on the entities that hold voting control of Pandora’s stock. Specifically, K&L Gates utilized information set forth on SEC Forms 13F (“13Fs”) filed by certain large institutional investment managers that exercised certain voting

⁶⁴ K&L Gates Report at 5 (emphasis added).

⁶⁵ *Id.* at 2-3 (citations omitted).

⁶⁶ *Id.* at 4. Further, K&L Gates explains that it would not be “prudent to modify the ... sampling procedure [set forth in the *Suggestions*] to conduct a survey limited to non-objecting owners whose names and addresses could be obtained by Pandora” and that any such survey would be of “severely limited utility.” *Id.* at 5; *see also id.* at 4-5 nn.11-12.

authority over 150,149,563 shares of Pandora stock (“Pandora 13F Shares”) out of 195,395,940 shares outstanding as of the 13F reporting date of December 31, 2013.⁶⁷ In the aggregate, the holders of the Pandora 13F Shares examined by K&L Gates held voting control over approximately 77% of Pandora’s outstanding shares.⁶⁸ Using a methodology detailed in the K&L Gates Report,⁶⁹ K&L Gates was able to determine the citizenship of the entities that control these shares as set forth below:⁷⁰

- 134,488,918 shares, or 68.83% of Pandora’s outstanding shares, were voted by U.S. citizens.
 - Of those shares, 9,057,957 shares, or 4.64% of Pandora’s outstanding shares, are shares for which voting authority is held by an investor that is organized in a foreign country but is ultimately controlled by a U.S. citizen.
- 15,660,645 shares, or just 8.01% of Pandora’s outstanding shares, had voting interests attributable to non-U.S. jurisdictions.
 - Of those shares, 4,826,418 shares, or 2.47% of Pandora’s outstanding shares, are shares for which voting authority is held by an investor that is organized in the United States but is ultimately controlled by a non-U.S. person or entity.

⁶⁷ According to K&L Gates, institutional investment managers that exercise investment discretion over \$100 million or more in securities are required by Section 13(f) of the Securities and Exchange Act of 1934 to file quarterly Forms 13F to report the number of shares in each company over which such institutional investment managers exercise voting or investment discretion. *See id.* at 6. Note that while an institutional investor may manage more than \$100 million in total assets, Pandora constitutes only a small portion of the portfolio of most of these investors.

⁶⁸ *Id.* at 7.

⁶⁹ *Id.* at 8-10.

⁷⁰ *Id.* at 11.

K&L Gates, however, was unable to determine the citizenship of the remaining 42,246,377, or approximately 23%, of Pandora shares for which voting authority was not reported on 13Fs.

Pandora's Extrapolation Based on the K&L Gates Report. If the most conservative of K&L Gates' findings is extrapolated to the Pandora shares for which K&L Gates made no determination regarding citizenship, then it seems reasonable to estimate that U.S. citizens held voting control over 82.2% of Pandora's outstanding shares as of December 31, 2013. Specifically, K&L Gates determined that voting control over 125,430,961 of the Pandora 13F Shares (*i.e.*, 134,488,918 – 9,057,957), or approximately 64.2% of Pandora's outstanding shares, was held by U.S. entities that, in turn, are controlled by U.S. citizens. This represents approximately 83.5% of the 150,149,563 shares to which K&L Gates was able to assign citizenship to the entity with voting authority over such shares. 83.5% of the 42,246,377 shares for which K&L Gates was unable to assign citizenship with respect to voting control is equal to approximately 35,275,725 shares, or 18% of the outstanding Pandora shares. Adding this 18% of Pandora shares for which voting control is deemed to be held by U.S. citizens via the extrapolation set forth above to the 64.2% of Pandora shares for which K&L Gates determined that voting control was held by U.S. citizens, results in an estimated overall percentage of U.S. voting control over Pandora shares of 82.2%.

Nasdaq Report. A copy of the Nasdaq Report was attached as Exhibit 2 to the Pandora Response, and the Nasdaq Report was thoroughly discussed in the Pandora Response.⁷¹ To prepare its report, Nasdaq OMX used a wide variety of public and proprietary data sources to develop a list of beneficial shareholders and the number and percentage of Pandora shares held by such beneficial shareholders that should be treated as foreign. Nasdaq OMX relied on the

⁷¹ See Pandora Response at 13-17 and Exhibits 2-5; *see also* Nasdaq Report.

addresses of record of these beneficial shareholders as a proxy for their citizenship. Among other resources, Nasdaq OMX obtained this information from Pandora's registered shareholder list and lists of certain NOBOs (*i.e.*, Pandora shareholders that permit the disclosure of their identity) provided by Broadridge Financial Services ("Broadridge"). Nasdaq OMX also considered anonymized and aggregated address information provided by Broadridge regarding Pandora's OBOs (*i.e.*, Pandora shareholders that choose to remain anonymous under the SEC's privacy regulations), as well as similar information provided by other repository banks and brokers with respect to certain other Pandora NOBOs.⁷²

Nasdaq OMX ultimately was able to examine the beneficial ownership of approximately 73.6% of Pandora's outstanding shares ("Examined Shares"). However, according to Nasdaq OMX:

Since beneficial holders of shares are not obligated to disclose their holdings under US regulation[s], the [Nasdaq Report was] based on a sampling of shareholders. ... The identified shares represent the sample. In order to provide detail on the total shareholder base, the sample was pro-rated to account for the ownership of the unidentified portion.⁷³

Based on the foregoing, Nasdaq OMX determined that approximately 62% of Pandora's outstanding shares (or approximately 84.3% of the Examined Shares) should be treated as having U.S. beneficial ownership and 11.6% of Pandora's outstanding shares (or approximately 15.7% of the Examined Shares) should be treated as having foreign beneficial ownership.⁷⁴ Nasdaq

⁷² See Pandora Response at 13-15 for a more detailed discussion of the methodology used by Nasdaq OMX to compile the Nasdaq Report.

⁷³ Nasdaq Report at 1.

⁷⁴ Pandora Response at 13. ASCAP asserted that Nasdaq OMX improperly treated as U.S. certain Pandora shareholders that had U.S. addresses but that may have been organized under the laws of a foreign country. In the aggregate, the shares held by these shareholders represented approximately 5.3% of Pandora's outstanding shares. See ASCAP Dec. 2013 Letter at 3-6. Although Pandora disputes portions of ASCAP's assertion regarding these shareholders, Pandora ultimately acknowledges that Nasdaq OMX's use of addresses as proxies for citizenship

OMX then used the results of this evaluation to extrapolate the level of foreign beneficial ownership of the approximately 26.4% of Pandora's outstanding shares for which Nasdaq OMX was unable to obtain ownership information ("Extrapolation Shares"). This extrapolation was based on Nasdaq OMX's reasonable assumption that the percentage of Extrapolation Shares that are beneficially owned by foreign entities is roughly the same as the percentage of Examined Shares that were determined by Nasdaq OMX to be beneficially owned by foreign entities. Based on this extrapolation, Nasdaq OMX concluded that an additional approximately 4.2% of Pandora's outstanding shares should be deemed to be beneficially owned by foreign entities (or 15.7% of the 26.4% of Pandora shares that are Extrapolation Shares).⁷⁵ Thus, when considering both the Examined Shares and the Extrapolation Shares in the aggregate, which was equal to the total number of outstanding Pandora shares, Nasdaq OMX ultimately determined with a 99% confidence interval that approximately 84.3% of Pandora's outstanding shares should be treated as being beneficially owned by U.S. entities, and the remaining approximately 15.7% of Pandora's outstanding shares should be treated as being beneficially owned by foreign entities.⁷⁶

Conclusion. Based on the K&L Gates' data (and reasonable extrapolations therefrom by Pandora), it appears that approximately 82% of Pandora's shares are voted by U.S. citizens. Similarly, Nasdaq OMX concluded that 84% of Pandora's shares are beneficially owned by U.S. citizens. Combined with the fact that Pandora is a U.S.-organized company, founded by U.S. entrepreneurs, with primarily U.S. officers and directors, targeting a U.S. audience, and operated

necessarily resulted in the introduction of some level of error in the Nasdaq Report. Any time that proxies are used in a study as a substitute for primary data that is unavailable, the results of the study will contain some degree of error. However, this does not render valueless all studies that are reliant on proxies. To the contrary, the Nasdaq Report provided a useful estimate of the citizenship of the ownership of Pandora's beneficial ownership.

⁷⁵ Pandora Response at 15-16.

⁷⁶ *Id.* at 16-17.

from its headquarters in Oakland, California, it is clear that there is no threat that KXMZ would experience undue alien influence or control if it is acquired by Pandora. Thus, the Commission can make a public interest determination that the ownership of this radio station by Pandora is in the public interest. Specifics of the public interest determination requested by this Petition are discussed below.

V. PANDORA REQUESTS THE COMMISSION TO ISSUE A DECLARATORY RULING PROVIDING AUTHORITY FOR FOREIGN ENTITIES TO HOLD UP TO A 49.99% VOTING INTEREST AND 100% EQUITY OWNERSHIP IN PANDORA

Unlike in the common carrier wireless context in which the Commission has adopted detailed rules and procedures for petitions for declaratory ruling,⁷⁷ the Commission thus far has not provided any material substantive guidance regarding the type of relief the Commission expects to grant in response to petitions for declaratory ruling filed by broadcasters. According to the Commission:

By their nature, these case-by-case reviews [of broadcast Section 310(b)(4) petitions for declaratory ruling] will lead to distinct, factually driven results. Each application or petition will be assessed on its own merits, and we will determine, given the particular circumstances presented in a particular case, whether the public interest would be served by permitting the requested foreign ownership. We anticipate that applicants may propose ownership by a range of foreign interests and countries, involving varying corporate and organizational structures, with different public interest showings.⁷⁸

Pandora therefore proposes herein specific regulatory relief that could be provided in a declaratory ruling issued by the Commission in response to the instant Petition. In addition, Pandora proposes an alternative approach that could be adopted by the Commission and that is

⁷⁷ See, generally, *Common Carrier Wireless Order*, 28 FCC Rcd 5741; 47 C.F.R. §§ 1.990-1.994.

⁷⁸ *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16252 ¶ 15.

consistent with the regulatory relief provided by the Commission to common carrier wireless licensees that file Section 310(b)(4) petitions for declaratory ruling.

Consistent with the Commission's rules applicable to common carrier wireless licensees, Pandora requests that the regulatory relief provided by the Commission pursuant to this Petition be prospective in nature and apply to any of Pandora's affiliates that are wholly owned and controlled by Pandora or have common control with Pandora.⁷⁹ This will avoid the need for Pandora and its affiliates to file additional petitions for declaratory ruling under Section 310(b)(4) in the future prior to acquiring additional broadcast licenses, provided that Pandora remains in compliance with any regulatory relief granted by the Commission hereunder.

Pandora's Requested Declaratory Ruling. Pandora requests the Commission to grant a declaratory ruling in response to this Petition that permits Pandora in the future to be up to 100% *beneficially owned* by foreign investors without additional Commission approval but that requires Pandora to obtain prior Commission approval for the aggregate *voting authority* of foreign investors to exceed 49.99%,⁸⁰ or if a change in the Board of Directors of the company is proposed such that a majority of the Board would no longer be comprised of U.S. citizens.⁸¹

⁷⁹ See, e.g., *Common Carrier Wireless Order*, 28 FCC Rcd at 5790-91 ¶ 92 ("Under the modified automatic extension rule, we will issue foreign ownership rulings under ... section 310(b)(4) to cover all of the petitioning licensee's subsidiaries and affiliates, whether existing at the time the ruling is issued or formed or acquired subsequently, provided that foreign ownership of the licensee and its subsidiaries and affiliates that are relying on the licensee's ruling remains within the parameters of the ruling and our new rules"); 47 C.F.R. § 1.994(b).

⁸⁰ When granting Section 310(b)(4) petitions for declaratory ruling filed by common carrier wireless licensees, the Commission frequently has authorized petitioners to increase their aggregate foreign equity and voting ownership up to 100% without further Commission approval, provided that individual investors do not obtain interests exceeding certain thresholds without prior Commission approval.

⁸¹ Under existing FCC rules, Pandora would be required to obtain FCC consent for any transfer of control of the company caused by the acquisition of a controlling voting interest in the company by a single entity or a rapid change in the identity of half of Pandora's board of directors. See 47 U.S.C. § 310(d) (requiring prior Commission consent for a transfer of control

This approach, which prohibits foreign investors in the aggregate from acquiring voting control of Pandora, is significantly more restrictive than the approach that the Commission has adopted with respect to Section 310(b)(4) petitions for declaratory ruling filed by common carrier wireless licensees.⁸² It is consistent with two important objectives. First, this approach mitigates the concern expressed by the Commission in its *Broadcast Declaratory Ruling* about foreign influence on U.S. broadcasters. Specifically, the Commission noted that its “approach to the benchmark for foreign investments in broadcast licenses has reflected heightened concern for foreign influence over or control of [broadcast] licensees which exercise editorial discretion over the content of their transmissions.”⁸³ The Commission further stated that it does “not believe that the historical statutory concern for foreign influence over broadcast stations has

of a broadcast licensee); *see also Committee for Full Value of Storer Communications, Inc.*, 101 FCC 2d 434, 443, *aff'd sub nom. Storer Communications, Inc. v. FCC*, 763 F.2d 436 (D.C. Cir. 1985) (“an abrupt change of the entire Board . . . requires prior Commission approval under Section 310”); *Transfers of Control of Certain Licensed Non-Stock Entities*, Notice of Inquiry, 4 FCC Rcd 3403, 3404 ¶ 6 (1989) (“We have also taken the approach that prior Commission approval is generally not required when a corporate election only results in a change in a minority of the board, even if, over time, a majority of the board is eventually replaced.”).

⁸² The Commission recently codified this longstanding policy by adopting rules governing the filing of Section 310(b)(4) petitions by common carrier wireless licensees that are consistent with the policy. *See Common Carrier Wireless Order*, 28 FCC Rcd at 5785-88 ¶¶ 81-86; 47 C.F.R. § 1.994(a)(1).

⁸³ *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16245-46 ¶ 3 (internal quotations omitted) (citation omitted); *see also id.* at 16244 ¶ 2 n.3 (citing *Wilner & Scheiner*, Request for Declaratory Ruling, 103 FCC 2d 511, 516-17 for the proposition that “Section 310(b) reflects the broader purpose of safeguard[ing] the United States from foreign influence in the field of broadcasting. The specific citizenship requirements . . . reflect a deliberate judgment on the part of Congress as to the limitations necessary to prevent undue alien influence in broadcasting.”) (internal quotations omitted).

disappeared.”⁸⁴ This public interest concern is obviated by Pandora’s proposed limitation on foreign voting control of its stock.

Second, by relieving aggregate restrictions on foreign equity investment in Pandora but retaining restrictions on foreign voting interests, the Commission will better align its foreign ownership limitations with other federal agency policies, such as the SEC’s privacy and disclosure rules.⁸⁵ This mitigates much of the challenge posed to Pandora by the high percentage of its shares held by OBOs whose identities are protected against disclosure by the SEC’s privacy regulations. Specifically, under the proposed Commission declaratory ruling, Pandora would use 13F filings to monitor changes in the voting control of its shares to ensure that U.S. entities maintain voting authority at all times over more than 50% of Pandora’s outstanding shares.⁸⁶ In addition, Pandora would use SEC Form 13D and 13G filings to monitor whether individual foreign investors are acquiring large interests in Pandora.⁸⁷ These filings, in turn,

⁸⁴ *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16253 ¶ 16.

⁸⁵ As the Court of Appeals for the District of Columbia Circuit has reiterated, “[t]he Commission has a duty to implement the Communications Act but also must attempt to do so in a manner as consistent as possible with corporate and federal security laws’ protection of shareholders’ rights,” *Storer Communications, Inc. v. FCC*, 763 F.2d 436, 443 (D.C. Cir. 1985), *citing LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) (“‘Agencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.’”).

⁸⁶ *See* K&L Gates Report at 6-7 (discussing the SEC’s 13F filing requirements). Pandora anticipates that going forward it would regularly monitor 13F filings that disclose ownership of Pandora shares by institutional investment managers as part of Pandora’s foreign ownership compliance regime.

⁸⁷ Under Section 13(d) of the Securities Exchange Act of 1934, persons (or groups of persons acting in concert) acquiring more than 5% of a voting class of equity securities registered under Section 12 of the Securities Exchange Act must file a SEC Schedule 13D within 10 days of the acquisition. Schedule 13D requires a report of the acquisition along with disclosure of certain other information about the acquiring shareholder, including the citizenship of individual shareholders and the place of organization of shareholders that are entities. Any material changes to the information in the Schedule 13D must be promptly reported in an amendment. Certain persons otherwise required to file a Schedule 13D may file the shorter form Schedule

would enable Pandora to determine when an investor acquires an interest in Pandora in excess of 5% and, if so, whether it is the investor's intention to exert influence or control over Pandora. Thus, by leveraging existing SEC filing requirements, Pandora can ensure that neither a single foreign entity nor any combination of foreign entities will be able to obtain voting control over the company without prior Commission approval and an opportunity for the Executive Branch to evaluate the matter.

Alternative Declaratory Ruling. As an alternative to the foregoing request by Pandora, the Commission instead could choose to issue in response to this Petition a declaratory ruling that is consistent with the Commission's policy with respect to common carrier wireless petitions. Specifically, the Commission could issue a declaratory ruling in response to this Petition that permits Pandora in the future to be up to 100% owned and controlled by foreign investors in the aggregate without additional Commission approval,⁸⁸ provided that

- (i) no foreign investor that is not named in this Petition (as amended, as described below) increases its equity or voting interest in Pandora to 5% (for foreign investors generally)⁸⁹ or 10% (for certain institutional investors)⁹⁰ without prior Commission approval; except that

13G in lieu of a Schedule 13D if that person acquired the securities (i) in the ordinary course of business, (ii) without the purpose or the effect of changing or influencing the control of the issuer, and (iii) without a connection to, or as a participant in, any transaction having the intended purpose or effect of changing or influencing control of the issuer. Schedule 13G must be filed within 45 days after the end of the calendar year in which the acquisition occurred (for specifically enumerated categories of financial and investment institutions) and within 10 days of the acquisition (for non-enumerated investors). Schedule 13G also requires disclosure of citizenship and place of organization. *See* 17 C.F.R. § 240.13D-1. *See also* Thomson Research, *Guide to SEC Filings*, http://research.thomsonib.com/help/sec_guide04-03-02.htm#13F (last visited June 10, 2014).

⁸⁸ *See Common Carrier Wireless Order*, 28 FCC Rcd at 5784-87 ¶¶ 79-83.

⁸⁹ *See id.* at 5770-72 ¶¶ 52-54.

- (ii) any foreign investor named in this Petition (as amended) may increase its equity and/or voting interest in Pandora to 49.99% at some future time and without additional Commission approval.⁹¹

If the Commission determines to adopt this approach to the instant Petition, Pandora will, promptly upon the Commission's request, amend this Petition to provide the Commission with a list of all individuals and entities that Pandora has been able to identify that hold beneficial ownership interests in, or voting authority over, Pandora's outstanding shares.

VI. ADMINISTRATIVE MATTERS

Permit-But-Disclose Ex Parte Status. Pandora acknowledges that the Commission will place this Petition on public notice to seek comment from interested parties.⁹² Pandora requests that any such public notice specify that the Commission proceeding to consider this Petition be deemed a permit-but-disclose proceeding.⁹³ As the first petition for declaratory ruling filed with the Commission by a broadcaster since the issuance of the Commission's *Broadcast Declaratory Ruling*, this Petition raises significant issues that may be of interest to the parties other than the parties to the Application proceeding. By subjecting the instant proceeding to the Commission's permit-but-disclose *ex parte* rules, the Commission can facilitate the free flow of information about this matter with Commission staff.

⁹⁰ See *id.* at 5773-76 ¶¶ 58-65.

⁹¹ See *id.* at 5779-83 ¶¶ 69-75.

⁹² See *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16251 ¶ 14 ("Following preliminary staff review to ensure completeness of the filing materials, [Section 310(b)(4) petitions for declaratory ruling] will be subject to public notice seeking comment from interested parties.").

⁹³ See 47 C.F.R. § 1.1206(a)(3) ("[E]x parte presentations ... to or from Commission decision-making personnel are permissible in the following proceedings, which are referred to as permit-but-disclose proceedings, provided that ex parte presentations to Commission decision-making personnel are disclosed pursuant to paragraph (b) of this section: ... [a] declaratory ruling proceeding.").

Executive Branch Review. In addition, Pandora acknowledges that the Commission may coordinate its review of this Petition with appropriate Executive Branch agencies consistent with the Commission's longstanding policy to afford deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.⁹⁴ Pandora does not believe that this Petition raises any such concerns because the Petition relates to the ownership of a small rural radio station and because K&L Gates found no material foreign voting interests in Pandora. Nevertheless, Pandora is prepared to cooperate fully with any such review by the Executive Branch agencies.

VII. CONCLUSION

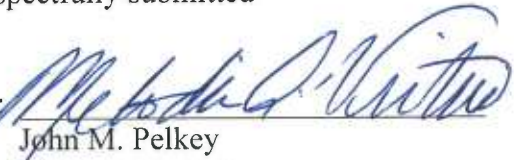
For the reasons stated herein, Pandora respectfully requests that the Commission issue a declaratory ruling that it is consistent with the public interest for Pandora to have indirect foreign equity and voting ownership in excess of the 25% threshold set forth in Section 310(b)(4) of the Act. Specifically, Pandora requests that the Commission's declaratory ruling provide the narrowly tailored regulatory relief requested herein, which would prohibit foreign entities from acquiring aggregate voting control over Pandora, or, in the alternative, that the Commission

⁹⁴ See *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16251 ¶ 14.

provide relief consistent with the Commission's common carrier wireless approach to declaratory rulings.

Respectfully submitted

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Dated: June 27, 2014

EXHIBIT A: K&L GATES REPORT



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MEMORANDUM

To Pandora Media, Inc.

From K&L Gates LLP

Date May 16, 2014

Re U.S. Shareholder Analysis

SCOPE

Pandora Media, Inc. (“Pandora” or the “Company”), a Delaware corporation, has requested that K&L Gates LLP (“K&L Gates”) determine whether at least 75 percent of the shares of the Company’s common stock, par value \$0.0001 per share (“Common Stock”), are owned and voted by United States Citizens. For purposes of this analysis, the following entities or persons were considered “U.S. Citizens”:

1. Any individual if he or she is a U.S. citizen;
2. Any bank, insurance company, pension plan, or foundation/endowment if it is organized in the United States and controlled by U.S. citizens; and
3. Any private equity fund, management investment company, or brokerage firm that has its principal place of business in the United States, taking into consideration: (i) the country where its world headquarters are located; (ii) tax jurisdiction; (iii) the country of its incorporation, organization or charter; (iv) the citizenship or principal place of business of its controlling principals, directors, and/or investment managers; and (v) countries from which the funds being managed were contributed.

OUR EXPERIENCE

K&L Gates is a full service global law firm with extensive experience in the representation of public companies in a wide range of securities and capital market matters. The latest *US News – Best Lawyers* survey ranked K&L Gates as Law Firm of the Year in the area of Securities Regulation and as a national first tier law firm in the area of Securities/Capital Markets Law. *Corporate Board Member* magazine and FTI Consulting, Inc. ranked the K&L Gates U.S. corporate practice among the top 25 national corporate law firms in its 2012

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“America’s Best Corporate Law Firms” survey of nearly 2,000 general counsel of U.S. public companies.

As discussed further, K&L Gates’ analysis involved, among other things, examination of public filings of investment managers subject to the jurisdiction of the U.S. Securities and Exchange Commission (“SEC”) pursuant to federal securities laws. This undertaking was supported by members of the firm’s investment management practice group, which is composed of more than 100 lawyers, consistently recognized as an industry leader, and annually noted in the top tiers by independent research-based guides to the legal profession, such as *Chambers* and *The Legal 500*.

K&L Gates also has experience with shareholder analysis and reports related to 47 U.S.C. § 310(b)(4), including reviews for MetroPCS Communications, Inc. in WT Docket No. 12-301,¹ and Sprint Corporation in IB Docket No. 12-343.²

OUR INVESTIGATION

The Company reported to K&L Gates that the number of outstanding shares of its Common Stock as of December 31, 2013 was 195,395,940. According to the Company, this information was taken from the Company’s required government filings.³

For reasons discussed below, the Company was unable to provide K&L Gates with a complete shareholder list providing information about its shareholders, such as the names of shareholders, city and state locations of the shareholders, and number of shares of Common Stock held by each shareholder.⁴

SEC rules adopted in the 1980s created a regulatory regime in which issuers of stock communicate not with beneficial owners but primarily with broker-dealer or bank intermediaries

¹ See *In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.*, WT Docket No. 12-301, DA 13-384, at ¶ 93 (rel. March 12, 2013).

² See *In the Matter of Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation For Consent to Transfer Control of Licenses and Authorizations. Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control*, IB Docket No. 12-343, FCC 13-92, at ¶ 120 (rel. July 5, 2013).

³ This information was contained in a balance sheet in a Form 10-K filed with the SEC on February 14, 2014.

⁴ In previous reviews conducted for MetroPCS Communications, Inc. and Sprint Corporation, those companies had provided K&L Gates with varying degrees of this type of shareholder information.

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who hold shares in “street name,” *i.e.*, in the name of a brokerage firm or another nominee and not in the name of a beneficial owner.⁵ The SEC rules allow beneficial owners to elect either objecting beneficial owner (sometimes referred to as “OBO”) or non-objecting beneficial owner (sometimes referred to as “NOBO”) status. Objecting owners object to having their names and addresses released to issuers of stock, and issuers of stock are forbidden to communicate directly with these objecting owners.⁶ All communications to the objecting owners must be sent via the broker-dealer or bank intermediary, and identifying information about these owners cannot be obtained and is protected from disclosure.⁷ Conversely, an issuer may obtain, upon request, the names and addresses of its non-objecting beneficial owners.⁸ In practice, however, the utility of this allowance is minimal, as experts estimate that 52-60 percent of the shares of publicly held companies in the United States are held by objecting owners.⁹ As the SEC has noted, large institutional investors, such as mutual funds and retirement plans, often choose objecting owner status.¹⁰

Inquiry Into Citizenship of Beneficial Owners

During its investigation and relying on materials provided Pandora, K&L Gates learned that a large majority of Pandora’s shares were held in street name, and more than 70 percent of those shares were held by objecting beneficial owners, about which no direct identifying information could be obtained due to SEC privacy rules.

As a potential alternative method to obtain beneficial information, in light of the SEC’s privacy rules, K&L Gates explored conducting surveys of non-objecting beneficial owners using the methodology described in the Federal Communications Commission’s (“FCC” or “Commission”) *Suggestions for Meeting Citizenship Requirements of Corporate Applicants*

⁵ See *Street Name*, U.S. Securities and Exchange Commission, <http://www.sec.gov/answers/street.htm> (last visited April 10, 2014).

⁶ See Alan L. Beller and Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting*, Council of Institutional Investors, February 2010, at 5, <http://www.sec.gov/comments/s7-14-10/s71410-22.pdf> (last visited April 10, 2014).

⁷ See *id.*

⁸ *Concept Release on the U.S. Proxy System*, U.S. Securities and Exchange Commission, at 67, <http://www.sec.gov/rules/concept/2010/34-62495.pdf> (last visited April 10, 2014).

⁹ Beller and Fisher, *supra* note 6, at 5.

¹⁰ *Concept Release on the U.S. Proxy System*, *supra* note 8, at 67-68.

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(“FCC Suggestions”), which was attached as Attachment A to the FCC’s September 23, 2013 letter of inquiry to Pandora. That document describes a sampling procedure to estimate the portion of an issuer’s shares owned by U.S. citizens. The procedure requires the issuer to first compile a registered shareholder list. In general, that list would not have to identify individual owners where representatives, such as nominees and trust accounts, for owners are used, but it would have to identify the names of brokerage houses and the amount of stock held for clients by each brokerage house. Shareholders on the list would then be assigned a block of numbers corresponding to the total number of shares each holds. Using an outlined statistical methodology, the surveyor would then select 300 shares to sample and look to the shareholder list to determine the holder of each selected share. The methodology then presumes that the surveyor would contact the holder of each of the selected shares. For shares held by individual owners, the surveyor would inquire as to an owner’s citizenship status. For shares in the name of a corporation, the methodology instructs the surveyor to determine whether the corporation is organized under the laws of a foreign country or represents a foreign government. For shares in the name of a representative (such as a brokerage house) who holds shares for others, the surveyor is instructed to request from the representative the citizenship of its shareholder client with the largest number of shares. Finally, the surveyor would use the citizenship information for the 300 sampled shares to extrapolate to an estimated percent U.S. citizen-owned shares of total outstanding shares of an issuer.

K&L Gates determined that the above-referenced sampling procedure cannot be used to reliably determine the citizenship of Pandora’s beneficial owners for reasons that were apparently not contemplated at the time the FCC Suggestions were written (*i.e.*, the SEC privacy rules’ obstructive effect on shareholder transparency). While the survey on its face would cover 100 percent of Pandora’s shares, as discussed above, a large majority of Pandora’s shareholders have chosen to remain anonymous under SEC privacy rules, which prohibit identifying information about these objecting beneficial owners from being disclosed, including to Pandora. As such, brokerage firms and other representatives would not be able to provide the information that the survey demands. That would include identifying information about certain “largest” Pandora shareholders, which would likely include many objecting beneficial owners. Therefore, assuming that brokerage houses and other representatives even agreed to respond to it, a survey might provide potentially unreliable and incomplete citizenship information¹¹ limited only to the minority of shareholders who have elected non-objecting owner status and have not completely restricted access to their identifying information. K&L Gates believes that the resulting incomplete data set could not be used to make a reliable extrapolation or conclusion regarding the citizenship of Pandora’s beneficial owners.

¹¹ Even if that information was provided by representatives of this minority group of shareholders, the surveyor would have no way to verify the accuracy of the information provided by the representatives.

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Nor would it be prudent to modify the above-mentioned sampling procedure to conduct a survey limited to non-objecting owners whose names and addresses could be obtained by Pandora. As Pandora reported to the FCC last fall, while approximately 45 percent of its shareholders were non-objecting owners, only the names of approximately 41 percent of its shareholders could actually be obtained. Some of those named shareholders do not have addresses or other contact information associated with them, meaning that a smaller fraction of these shareholders is actually eligible for a survey.¹² Even assuming an unlikely perfect response rate from this narrower pool of non-objecting owners, such a survey would be of severely limited utility in that it could not be extrapolated to create a reliable estimate of citizenship for the entire universe of beneficial owners of Pandora's shares. As such, pursuant to FCC rules, shares for which citizenship is unknown would be treated as foreign, so a controlling mass of Pandora's beneficial owners likely would be deemed foreign without any insight into their actual status.

In short, because so many of Pandora's beneficial owners have elected to remain anonymous pursuant to the SEC's shareholder privacy rules, K&L Gates, despite its best efforts and investigation, could not obtain access to the requisite baseline information necessary to begin its inquiry regarding the citizenship of such parties. Because K&L Gates could not obtain adequate information about Pandora's beneficial ownership, it was left to ascertain whether there were any other means to gather reliable information about the Pandora shareholders. After exhaustive research into whether any filings required by the SEC or another government agency could provide other identifiable information about Pandora's shareholders, K&L Gates determined that the identity of entities that hold voting authority over Pandora's outstanding shares could be established by looking at information that the SEC requires institutional investment managers to report quarterly on what is called a Form 13F ("Form 13F" or "13F").¹³ It is important to note that voting authority for a share may be, and often is, held by a different entity than the beneficial owner. For that reason, even if K&L Gates had been able to obtain citizenship information for beneficial owners, that ownership data could not be commingled with

¹² Furthermore, NOBO information could not be obtained by K&L Gates for the measuring date of December 31, 2013. Pandora's provider of the NOBO information, Broadridge, can generally only obtain NOBO data upon request for a *future* date. For post-dated requests, Broadridge can only provide information about NOBOs for a date that correlates with a past "mailing" date, for which it already possesses accurate NOBO information in its systems. If the past date requested does not correlate with a past mailing date, an accurate NOBO list for that date cannot be obtained. The analysis of shareholder data obtained as of different measuring dates is undesirable as it commingles unrelated data to produce unreliable and potentially misleading results. In short, NOBO information as of a measuring date other than December 31, 2013 would need to be used to conduct a survey, rendering such a survey less reliable.

¹³ A Form 13F does not provide beneficial ownership information.

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voting authority citizenship information. Such a commingling would lead to a double counting of shares.¹⁴

Compilation of List of Entities Holding Voting Authority over Outstanding Shares

The SEC requires all institutional investment managers that exercise investment discretion¹⁵ over \$100 million or more in securities subject to Section 13(f) of the Securities and Exchange Act of 1934 (“the ’34 Act”) to file quarterly Forms 13F (referred to herein as “13F Filers”). Form 13F requires 13F Filers to report certain types of information in columns associated with the name of the issuer of the security (*i.e.*, Pandora) and the issuer’s standard unique identifying number. This information includes: the total number of shares of a security held; the type of investment discretion the 13F Filer exercises over the shares; the names of other managers on whose behalf the 13F is being filed and with whom investment discretion is shared; and the type of voting authority the 13F Filer exercises over the shares. The type of investment discretion the 13F Filer exercises over the shares is to be reported as (i) Sole, meaning the 13F Filer exercises sole investment discretion over the shares; (ii) Shared-Defined, meaning the 13F Filer shares investment discretion with a company that it controls or is controlled by; or (iii) Shared-Other, meaning the 13F Filer shares investment discretion in some other manner not delineated above. The type of voting authority the 13F Filer exercises over the shares is reported as Sole, Shared, or None.¹⁶ By establishing the identity of the 13F Filers with voting authority over Pandora shares, K&L Gates could then examine whether the 13F Filers are U.S. Citizens and thereby reach a conclusion regarding the percentage of Pandora’s shares voted by U.S. Citizens.

¹⁴ Voting authority over a share may be held by a different entity than a beneficial owner. Therefore, a share held by a particular beneficial owner may also be reported by a different entity on a 13F, because Forms 13F report *voting authority* over a share. Because Forms 13F do not give any indication as to beneficial ownership of a share, K&L Gates would not be able to ascertain whether a particular share reported on a 13F had also already been examined and counted in a beneficial ownership analysis.

¹⁵ Under the ’34 Act and associated regulations, an institutional investment manager exercises investment discretion if the manager has the power to determine which securities are bought or sold for the account. A manager also has investment discretion with respect to all accounts over which any natural person, company, or government instrumentality under its control exercises investment discretion. For example, because of their corporate relationships, bank holding companies share investment discretion with their bank trust departments, and parent corporations share investment discretion with their subsidiaries.

¹⁶ Interestingly, however, pursuant to the 13F instructions, a 13F Filer may report voting authority as Sole if voting authority is “shared only in a manner similar to a sharing of investment discretion which would call for a response of ‘shared-defined.’”

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To be clear, there are certain inherent limitations to the Form 13F that make it an unlikely means to establish identifying information about all entities that hold voting authority over the entire universe of Pandora's outstanding shares (i.e., 100 percent of the outstanding shares). Specifically, managers that exercise investment discretion over less than \$100 million in such securities are not required to file the Form 13F, nor are other, non-covered entities or individuals. Furthermore, because some beneficial owners choose to retain voting control over their shares, a 13F Filer may report voting authority over shares as "None" on a 13F and would not report any further information about the entities or individuals that hold voting interests.

Although the complexity and density of the Form 13F can cause confusion for 13F Filers,¹⁷ K&L Gates, relying on the experience and knowledge of its investment management practice, was able to recognize based on general practice and experience that voting authority and investment discretion typically track one another. To put it plainly, for a particular security, if a 13F Filer lists the name or names of other managers with whom investment discretion is shared, those other managers also typically share voting authority over the shares of the particular security. Accordingly, K&L Gates gathered and analyzed information on the citizenship of not only the 13F Filers, but also any other managers who were named as sharing investment discretion over Pandora shares. This conservative approach meant that all named managers, including the 13F Filer, had to be investigated and deemed to be U.S. Citizens before their associated shares could be determined to be voted by U.S. Citizens.

K&L Gates used Morningstar, a securities filings database, to retrieve 13Fs that were filed for the fourth quarter of 2013 (and thus reported holdings for December 31, 2013) and that listed holdings of Pandora. Relying on the 13Fs, K&L Gates then identified shares over which an entity reported it had certain voting authority — either Sole or Shared. Those shares amounted to 150,149,563, or approximately 76.84 percent of Pandora's total outstanding shares. That is, before beginning the investigation and analysis of the citizenship of the 13F Filers reporting certain voting authority, the universe of shares to be investigated was no greater than 76.84% of Pandora's total outstanding shares.¹⁸

¹⁷ Due to the complexity of the instructions, Forms 13F may be filed inconsistently from manager to manager. In the spirit of caution, K&L Gates excluded six 13Fs in which 13F Filers did not clearly report voting authority over shares. Note that the exclusion of such Forms 13F could not favor Pandora, because the exclusions necessarily result in fewer shares potentially included in the percentage determined to be voted by U.S. Citizens.

¹⁸ Regarding why this percentage is less than 100 percent, we refer generally to the two preceding paragraphs. As an additional clarification, as discussed above, K&L Gates evaluated the possibility of combining (or commingling) the 13F Filer Pandora shares with the shares held by Pandora's NOBO shareholders in an effort to establish a larger percentage of Pandora's total outstanding shares to investigate and analyze. K&L Gates ultimately determined it was not feasible to do so reliably. The Form 13F does not provide any information about beneficial ownership; it only provides information relating to the 13F Filer's voting authority over its reported shares in Pandora. As such, the shares held by Pandora's NOBO shareholders could also be reported by 13F Filers without any NOBO-identifying information, thereby creating a significant risk of double counting the same Pandora shares

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Investigation and Analysis of U.S. Citizenship

With 150,149,563 shares as its starting point, K&L Gates sought to determine whether voting authority over these shares can be considered to be held by U.S. Citizens.

1. With respect to entities constituting banks, insurance companies, pension plans or foundations/endowments, K&L Gates primarily relied on information from the following sources:¹⁹

- State Secretary of State websites to determine state of incorporation and headquarters locations for such entities;
- Public record sources reflecting corporate data submitted in official filings to determine the issuance of Federal Employer Identification Numbers for an entity. These sources were searched using the LexisNexis Accurant service and the TransUnion TLO service;
- Corporate filings submitted to the SEC by publicly traded companies to gather information, such as parent/subsidiary relationships and other relevant information disclosed by SEC-regulated companies. The publicly available SEC EDGAR database, the commercially available Securities Mosaic, and the commercially available Morningstar were consulted; and
- Corporate filings submitted to the Internal Revenue Service.

2. With respect to entities constituting private equity funds, management investment companies, or brokerage firms, K&L Gates primarily relied on information from the following sources:²⁰

if such data sets were combined. Given the significant number of shares reported by the 13F Filers, it appears likely that many (if not most) of the NOBO shares are also “generically” reported in the Forms 13F. Accordingly, in order to ensure the accuracy of this report’s conclusions, K&L Gates determined it would not combine NOBO shares with shares reported on Forms 13F. This exclusion of NOBO shares did not favor Pandora, as it required K&L Gates to commence its citizenship investigation with a lower maximum percentage of Pandora’s total outstanding shares than if NOBO shares could have been included.

¹⁹ K&L Gates did not rely on this information in any particular order.

²⁰ K&L Gates also relied on certain information from the sources outlined under item 1 above, but not in any particular order.

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- Form ADVs (Uniform Application for Investment Adviser Registration) filed by private equity fund and management investment company shareholders with the SEC. Form ADV is the uniform registration form used by investment advisers to register with both the SEC and state securities authorities, and the form requires, among other items, information about the investment adviser's business, ownership, and affiliations, including direct and indirect beneficial owners, executive officers, and controlling persons (see below under assumptions). In particular, in undertaking an analysis of an entity, including an up-the-chain review, K&L Gates reviewed and relied on the information provided in Form ADVs under Item 1 (Identifying Information), Item 3 (Form of Organization), Schedule A (Information about Direct Owners and Executive Officers) and Schedule B (Indirect owners). Form ADVs were retrieved on the SEC's Investment Adviser Public Disclosure ("IAPD") database.
- The Financial Industry Regulatory Authority ("FINRA")'s BrokerCheck reports, containing information from the Central Registration Depository ("CRD"), the securities industry online registration and licensing database. Information contained in the CRD includes information FINRA and the SEC require brokers and brokerage firms to submit as part of the registration and licensing process and information that regulators report regarding disciplinary actions or allegations against firms or brokers.

3. In addition to the above sources, K&L Gates has relied on information from the following secondary and redundant sources:

- The Federal Deposit Insurance Corporation Institution Directory
- Office of the Comptroller of the Currency National Banks List
- The Federal Communications Commission
- Capital IQ;
- Hoovers;
- GuideStar;
- Lexis/Westlaw; and
- Institutional websites and media.

As of the date hereof, K&L Gates has spent approximately 509.5 hours to conduct the investigation described in this memorandum.

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OUR ASSUMPTIONS

For the purposes of our investigation, K&L Gates assumed the following:

- The information obtained from the above sources is accurate and, as such, K&L Gates has not independently established any of the information so relied on;
- Voting authority interests and investment discretion interests as reported on Forms 13F align;
- Any person with a U.S. Social Security number is deemed a U.S. Citizen;
- Any person or entity organized in the United States, with its principal place of business in the United States or an employee identification number issued by the Internal Revenue Service, is deemed subject to U.S. tax jurisdiction; and
- For purposes of determining “controlling persons,” the definition provided by the SEC in its instructions to Form ADV is instructive.²¹ If the entity is organized in the United States and has its principal place of business in the United States or filed a Form ADV with the SEC, then the funds contributed were deemed managed in the United States.

Although K&L Gates has not independently verified any of the foregoing assumptions, K&L Gates has not come across any material information that would cause it to believe that its conclusions below are incorrect.

CONCLUSION

As of December 31, 2013, according to information it provided, the Company had 195,395,940 shares of Common Stock outstanding.

Based on the investigation, and subject to the foregoing assumptions, K&L Gates is able to conclude that as of December 31, 2013, 125,430,961 shares, or 64.19 percent of Pandora’s

²¹ Under such instructions, “control” means the “power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Each of [a] firm’s officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control [such] firm. A person is presumed to control a corporation if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation’s voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation’s voting securities. A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership. A person is presumed to control a limited liability company (‘LLC’) if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC. A person is presumed to control a trust if the person is a trustee or managing agent of the trust.”

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outstanding shares, were voted by U.S. Citizens. Another 9,057,957 shares, or 4.64 percent of Pandora's outstanding shares, are shares for which voting authority is held by an entity that is organized in a foreign country but is ultimately controlled by a U.S. Citizen. Together, these shares total 134,488,918 shares, or 68.83 percent of Pandora's outstanding shares.

K&L Gates further concludes that as of December 31, 2013, 10,834,227, or 5.54 percent of Pandora's outstanding shares, had voting interests attributable to non-U.S. jurisdictions. Another 4,826,418 shares, or 2.47 percent of Pandora's outstanding shares, are shares for which voting authority is held by an entity that is organized in the United States but is ultimately controlled by a non-U.S. person or entity.

K&L Gates reaches no conclusion with respect to the remaining 45,246,377 shares for which certain voting authority was not reported on Forms 13F.