

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

In the Matter of)
)
)
)
Definition of Radio Markets for Areas Not) MB Docket 03-130
Located in an Arbitron Survey Area)

***INITIAL COMMENTS OF
of
ARSO RADIO CORPORATION***

Arso Radio Corporation (“Arso”)¹ submits these comments in response to the Commission’s *Notice of Proposed Rulemaking*² to consider, inter alia, definition of Radio Markets for Areas not located in an Arbitron Survey Area.

Incorporation by Reference

For purposes of this proceeding, Arso by necessity incorporates *in toto* its Petition for Reconsideration filed in MB Docket 02-277, relating to the decision in the Report and Order in that Docket to adopt the Arbitron “Metro” as the appropriate definition of a radio market for purposes of calculating permissible local ownership limitations.

Arso suggests, for the reasons set forth hereinafter, that the Puerto Rico Radio Market be excluded from the Arbitron “Metro” definition and that the Puerto Rico Radio Market be defined by either (1) retention of the existing contour-based model, or (2) utilization of the model the Commission adopts for areas not located in an Arbitron Survey Area through this proceeding.

¹ Arso is an FCC licensee of 7 radio stations located in Puerto Rico, and its principals have an attributable interest in 4 other radio stations in Puerto Rico.

² *Report and Order and Notice of Proposed Rulemaking* in MB Dockets No. 02-277, 01-235, 01-317, 00-244, and 03-130, FCC 03-127 (rel. July 2, 2003)(“*Notice*”).

Background

In the Commission's ***Report and Order and Notice of Proposed Rulemaking*** (FCC 03-127) adopted on June 2, 2003 and released on July 2, 2003, (hereinafter, the "***Report and Order***") the FCC adopted the Arbitron Metro Survey Area ("Arbitron Metro") as the definition of radio market for the purpose of determining compliance with the local radio ownership rule.³ In adopting the Arbitron Metro, the ***Report and Order*** reasoned that "*Where a commercially accepted and recognized definition of a radio market exists, it seems sensible to us to rely on that market definition for purposes of applying the local radio ownership rule. Arbitron, as the principal radio ratings service in the country, has defined radio markets for most of the more populated urban areas of the country. These radio markets – Arbitron Metros – are Arbitron's primary survey area, which in turn are based on Metropolitan Areas (MAs) established by the Office of Management and Budget (OMB) (emphasis added)*"⁴ The ***Report and Order***, in footnote 573, provided a further explanation of MAs and provided reference material concerning the methodology the OMB used in defining MAs and a link to information about the most recent MA listing, incorporating data from the 2000 census. The ***Report and Order***, in reaching its conclusion to use the Arbitron Metro, argued that "people in the United States tend to be clustered around specific population centers"⁵ and adopted one commenter's position that "Radio stations compete in Arbitron markets"⁶. As a result, the ***Report and Order*** concluded that the Arbitron Metro was the appropriate standard for the purpose of calculating compliance with the local ownership rule.

³ ***Report and Order*** paragraph 273

⁴ ***Report and Order*** at 275

⁵ ***Report and Order*** at 273

⁶ ***Report and Order*** at 276

However, the Commission recognized that a definition was needed for those areas outside of an acknowledged Arbitron Metro to substitute for the former contour-overlap methodology.

Commentary

In the *Notice*, the Commission sought comment on whether it should rely on any pre-existing market definitions in delineating radio markets for non-Metro areas. As noted above, adoption of and reliance upon Arbitron's Metro definition was predicated on the assumption that the Arbitron Metro was, in turn, based on the OMB's Metropolitan Areas (MAs). Indeed, the Report and Order extensively footnoted (in footnote 573) how the OMB defined Metropolitan Areas and where to find the most updated information concerning the MAs. This assumption is likely correct in most of the United States but it is completely erroneous when applied to Puerto Rico. Arbitron's Metro definition for Puerto Rico is the *ENTIRE* island of Puerto Rico.⁷ However, the OMB does *NOT* define the entire island of Puerto Rico as a Metropolitan Area. Indeed, according to the most recent OMB MA list, which incorporates information from the 2000 census, Puerto Rico has *EIGHT* (8) Metropolitan Statistical Areas and *THREE* (3) Combined Statistical Areas (which are larger population areas consisting of combinations of Metropolitan Statistical Areas and/or Micropolitan Statistical Areas).⁸ According to the OMB's Bulletin, Metropolitan Statistical Areas have "at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties"⁹. Arbitron,

⁷ see Arbitron Metro Map: (http://www.arbitron.com/downloads/Arb_US_Metro_Map_02.pdf)

⁸ see List 5, Attachments to OMB Bulletin 03-04 (http://www.whitehouse.gov/omb/bulletins/b03-04_attach.pdf)

⁹ *Id.*

presumably because of the geographic isolation of Puerto Rico from the United States and as a matter of convenience, simply defined the entire island as one market.

Insofar as the island of Puerto Rico is concerned, Arso suggests the Commission (1) retain the contour-based rules for determining relevant markets; or (2) adopt the OMB's Metropolitan Areas (MA) definitions as suggested in the *Notice of Proposed Rulemaking* as its definition of "radio market" for purposes of FCC rules.

These recommendations are based on the geographic reality of the island of Puerto Rico. For example, it is impossible for a station in Mayagüez to compete with a station in San Juan because intervening terrain and geography (including Mt. Cerro de Punta, at 4,390 feet), precludes each station's signals from being heard in the other's community. Yet, because of the Arbitron Metro definition encompassing the entire island, a Mayagüez station and a San Juan station are now presumed to be in the same radio market. The conclusion that stations in these cities would compete with each other for the same population ("*radio stations serve people, not land*"¹⁰) is entirely misplaced. The size (three times that of Rhode Island) and topography of the island makes such a conclusion a physical impossibility. It is precisely because of the unique character and topography of Puerto Rico that the Commission has long-established precedent in treating radio stations in Puerto Rico differently than those on the mainland United States. For example, the Commission recognized in *St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329, 74 Rad. Reg. 2d (Pike & Fisher) 202 (1993) that adoption of alternative standards for purposes of determining protected and interfering contours was prudent and necessary to accommodate the greater permissible HAAT that Puerto Rico and Virgin Island stations antennas are allowed (to overcome geographic obstacles). This was later

¹⁰ *Report and Order* at 273

adopted as rule revision in the Commission’s Second Report and Order in MM Docket 98-93 (*In the Matter of 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules – FCC 00-368*), 15 FCC Rcd 2149 (2000), all as a result of the “unique topography” of the island (see Short-spaced FM Station Assignments by using Directional Antennas, *MM Docket 87-121, FCC 91-273*, 6 *FCC Rcd* 5356 at 51); see also 47 C.F.R. §73.211(b)(3). Other examples include 47 C.F.R. §73.1210 (TV/FM Dual Language broadcasting in Puerto Rico) and 47 C.F.R. §73.807 (Minimum distance separation between LPFM stations). The geographic obstacles are further evident by the fact that there are a greater number of AM and FM stations licensed to the island of Puerto Rico than to a comparable geographic sized area in the mainland United States.¹¹

Arso suggests, in light of the foregoing evidence that the Arbitron “Metro” definition for Puerto Rico is *not* based on the OMB’s Metropolitan Areas, that the Commission either retain the existing contour-based rules because of the island’s geography; or define the local radio markets in Puerto Rico in accordance with the OMB’s eight (8) Metropolitan Statistical Areas on the island; or define the relevant local radio markets as the three (3) Combined Statistical Areas as defined by the OMB. Indeed, the Commission has previously utilized the OMB’s definitions in other rules, such as defining “smaller markets” in the context of the new EEO rules.¹²

¹¹ BIA reports there are 94 “Full Power” radio stations licensed to Puerto Rico. A check of the FCC’s CDBS database shows 71 licensed AM stations and 52 licensed FM stations (not including translators, boosters, licensed but silent stations, experimental stations and construction permits). The island is a rectangular shape of land approximately 35 miles north to south and 100 miles east to west.

¹² See 47 C.F.R. 73.2080(e) which uses OMB definitions and standards for defining “smaller market” for the purposes of determining the number of EEO initiatives a station must undertake during a license term.

As noted above, because of the geography of the island of Puerto Rico, and its “unique topography”, as recognized by the Commission in a plethora of rules and rulings, retention of the existing contour-based methodology would be appropriate for Puerto Rico. However, should the Commission determine that the methodology be population based, rather than geographic based, Arso would strongly suggest that the Commission use the actual Metropolitan Statistical Areas (MSA) as established and defined by the OMB, since Arbitron, as a private entity which is not regulated, can and has manipulated the OMB definitions for its own purposes, a fact it readily admits (see attached Exhibit “A”) that the Arbitron Metro definition for Puerto Rico was developed “after assessing the marketing needs that were expressed by radio broadcasters and advertising agencies”.¹³ Notably, the same correspondence indicates that there are “individual marketing areas the comprise the island: Northeast, San Juan, North, South, East and West.”¹⁴ It would seem that even Arbitron recognizes that the island of Puerto Rico is not one radio market. Alternatively, should the Commission believe the MSA definition to be too narrow and not appropriate in light of its reasoning in the Report and Order, Arso suggests that the OMB’s Combined Statistical Areas (CSAs) for Puerto Rico, which divide the island into three (3) population areas, would be an appropriate definition.

Conclusion

In conclusion, Arso offers the above recommendations to the Commission, as invited by the Notice of Proposed Rulemaking, for purposes of (1) removing Puerto Rico from the Arbitron Metro model established in Docket 02-277 because Arbitron’s

¹³ See enclosed letter from Arbitron to Luis Soto dated September 29, 2003.

¹⁴ *Id.*

definition of Puerto Rico is not in compliance with the OMB's definitions (the central premise of the adoption of the Arbitron Metro as a standard by the Commission), and (2) establishing an appropriate methodology for the island of Puerto Rico to be defined for radio markets, either through retention of a geographic based methodology (*i.e. contour*) or utilization of a *proper* population based methodology (*i.e.* OMB's MSAs or CSAs) as described above.

Respectfully Submitted
Arso Radio Corporation

By its Counsel:

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/S/

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EXHIBIT "A"



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September 29, 2003

Luis Soto
President
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Dear Luis,

I am writing in response to your recent request for information as to how Arbitron developed the Metro definition used for the Arbitron market of Puerto Rico.

Arbitron established the Metro definition for Puerto Rico after assessing the marketing needs that were expressed by radio broadcasters and advertising agencies. By developing a sampling plan that encompassed the entire island of Puerto Rico, Arbitron determined that it would be able to place sufficient sample to allow meaningful and workable breakouts of the various individual marketing areas that comprise the island: Northeast, San Juan, North, South, East and West. The Radio Market Report for Puerto Rico is produced in printed form and is available through Arbitron's MaximiSer service and Arbitron's MediaProfessional service. Additionally, a data file on CD is available for use by third party processors that are licensed to process Arbitron's estimates and data for Puerto Rico.

If you have any additional questions, please feel very welcome to give me a call.

Cordially,

Harry Clark