Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
The PPM Coalition's Emergency	)	
Petition Requesting an Inquiry	)	MB Docket No. 08-187
Under Section 403 of the	)	
Communications Act of 1934,	)	
as Amended	)	

REPLY COMMENTS OF ARBITRON INC.

Timothy T. Smith
Executive Vice President & Chief Legal
Officer, Legal & Business Affairs
ARBITRON INC.
9705 Patuxent Woods Drive
Columbia, MD 21046-1572

John Griffith Johnson, Jr.
Charles A. Patrizia
PAUL HASTINGS JANOFSKY
& WALKER, LLP
875 15th Street, N.W.
Washington, D.C. 20005

Counsel to Arbitron Inc.

October 6, 2008

SUMMARY

In these Reply Comments, Arbitron Inc. (“Arbitron”) demonstrates that the Comments submitted by the PPM Coalition (the “Petitioners”) in this proceeding substantially misapprehend the process used by the Media Rating Council, Inc. (the “MRC”) to review and accredit audience measurement services, as well as the limitations imposed by our nation’s antitrust laws on that process. The Petitioners’ Comments significantly misstate the history of Nielsen Media Research’s (“Nielsen’s”) experience in commercializing its electronics-based Local People Meter (“LPM”) television audience measurement service – which is functionally quite similar to Arbitron’s Portable People Meter ™ (“PPM” ™) service. The Petitioners compound their error by disingenuously attempting to attribute that misstatement to the Executive Director of the MRC.

The Petitioners in their Comments mischaracterize and overstate the differences between the PPM methodology that the MRC previously accredited for use in Houston and the PPM methodology – known as “Radio First” – that is now commercialized in eight additional markets. In criticizing various aspects of Radio First, Petitioners overlook the fact that many of the features of Radio First at which their criticisms are directed are identical to features inherent in Arbitron’s decades-only diary-based audience measurement service, which has long been accredited by the MRC and which produces audience estimates that Petitioners much prefer over the estimates produced by Radio First.

These Reply Comments demonstrate that the insistent predictions by Petitioners and like-minded parties filing opening-round comments in this proceeding, to the effect that the continued commercialization of Radio First will result in financial devastation for minority-owned and/or

minority-targeted radio stations, is simply not borne out by actual experience to date with Radio First. In a detailed, market-by-market, format-by-format, station-by-station analysis, Arbitron shows herein that various stations in the newly-commercialized Radio First markets having different formats have experienced reported gains in their audience share estimates and rankings, while other stations in those markets with similar formats have experienced losses. These Reply Comments, by reference to empirical data, definitively disprove the proposition underlying the Petitioners' principal complaint, to wit, that Radio First has a uniformly and disproportionately negative impact upon Urban-formatted and Spanish-language stations.

With reference to independent reviews of Radio First data, and taking into consideration the opening comments that have been submitted in this docket by disinterested parties, Arbitron demonstrates that Radio First holds promise for the radio industry as a whole, including stations that serve African-American and Hispanic segments, and that government intervention that would have the effect – whether intended or not – of impeding the deployment of the innovative and 21st-century technology that Radio First represents would only harm radio broadcasting in competition with other media platforms that are migrating to similar forms of up-to-date, state-of-the-art electronics-based audience measurement services.

Accordingly, Arbitron in these Reply Comments urges the Commission to deny the Petitioners' Emergency Petition for Section 403 Inquiry (the "Petition"), filed on September 2, 2008.

TABLE OF CONTENTS

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The PPM Coalition's Emergency	)	
Petition Requesting an Inquiry	)	MB Docket No. 08-187
Under Section 403 of the	)	
Communications Act of 1934,	)	
as Amended	)	

REPLY COMMENTS OF ARBITRON INC.

Arbitron Inc. ("Arbitron"), by its undersigned counsel, hereby respectfully submits these Reply Comments in accordance with the Commission's Public *Notice* released September 4, 2008 that invited comments and reply comments from interested parties in this matter.[1]

I. PETITIONERS' COMMENTS MISCHARACTERIZE THE MEDIA RATING COUNCIL'S ACCREDITATION PROCESS

The PPM Coalition ("Petitioners"), having filed an Emergency Petition for Section 403 Inquiry (the "Petition") that led to the issuance of the *Public Notice*, also submitted opening Comments. Petitioners argue that Arbitron is proceeding to commercialize its "Radio First" Portable People Meter ™ ("PPM" ™) service in a number of markets – including New York, Chicago, Los Angeles, and San Francisco – without first having received Media Rating Council, Inc. ("MRC") accreditation for those markets. Petitioners' Comments argue that MRC's denial

---

[1] *Public Notice*, "Media Bureau Action, PPM Coalition Files Petition Seeking Commission Inquiry Pursuant to Section 403 of the Communications Act (47 U.S.C. § 403)," DA 08-2048, released September 4, 2008. Arbitron submitted its opening Comments in response to the *Public Notice* on September 24, 2008. Opening Comments were also filed by the PPM Coalition ("Petitioners"); Bob Michaels' MediaSense, LLC ("MediaSense"); Anthony Gray; JL Media, Inc. ("JL Media"); Allscope Media ("Allscope Media"); Spanish Broadcasting System, Inc.; the Council of the City of New York (the "City Council"); Richard Downes; and the Hispanic Technology and

(continued...)

of accreditation in Philadelphia and in New York indicates that there are "fundamental flaws" in the Radio First service and that it should not be commercialized.[2] Petitioners' argument is both unwarranted and substantially misstates the MRC's accreditation process.

MRC accreditation is a carefully-constructed process that includes both a fully-independent audit, determined on a case-by-case basis, and votes by the MRC members to grant or to withhold accreditation.[3] To initiate the accreditation process, a ratings service meets with the MRC staff and agrees to an independent audit of all aspects of the methodology and technology – the manner in which the survey panel will be selected, the manner in which it is assured that the panel is representative of the group(s) to be surveyed, the ways in which data will be gathered, categorized, and analyzed, the form in which data will be reported, *etc.*

Because different survey methods differ in scope, use, and other relevant factors, the precise nature of the audit is not pre-determined, but is instead decided upon by the MRC staff's analysis of the issues presented. The applicant for accreditation bears the cost of the audit, but the audit firm is entirely independent and is selected by the MRC staff, under appropriate assurances of confidentiality. The cost of audits can range from as little as $100,000 to more

(...continued)

Telecommunications Partnership, the League of United Latin American Citizens, Media Access Project, and the Office of Communications of the United Church of Christ (collectively, "Hispanic Technology").

2 Petitioners' Comments, at 11.

3 As described in Section II.A.3 of Arbitron's opening Comments, the MRC was created to fulfill a considered congressional suggestion that media ratings services be subject to private, not governmental, oversight. MRC membership includes sellers of advertising time or space and purchasers of advertising time and space. That is, MRC membership includes television and radio broadcasters, cablecasters, print organizations, advertisers, Internet organizations, advertising agencies and industry trade associations. Media ratings services, such as Arbitron, are <u>not</u> MRC members.

than $1,000,000, and the length of the audit can range from a few months' time to as many as six months.[4] In the case of the Radio First service, the audits were conducted by Ernst & Young.

Only after the independent audit has been completed and illuminated (that is, the audit results have been disclosed to the MRC Audit Committee and to the applicant) does the process proceed to the next stage. The audit process is designed to verify that an applicant's submission does or does not comply with a checklist of the MRC's minimum standards.

When the auditor has completed a review of the applicant's submission against the MRC checklist, the auditor makes a report to the relevant industry Audit Committee of the MRC. The relevant Audit Committee is generally made up of members of the MRC whose businesses are relevant to the industry in which the rating service is to be utilized (*i.e.*, members from the print industries are entitled to but generally do not sit on an Audit Committee that is reviewing an audit for a rating service to be utilized for the radio broadcasting industry; likewise, advertisers who purchase advertising on radio stations but not print advertising are entitled to but generally do not participate on an Audit Committee that is reviewing an audit for a rating service to be utilized for the print media). MRC members voluntarily select the Audit Committees in which they will participate, and while there is a limit on the number of votes that any one member may cast, there is no limit on the number of members who can participate in an Audit Committee. All participants must agree to stringent confidentiality requirements.

The Audit Committee receives the report of the independent auditor and any responses from the applicant. The Audit Committee identifies those issues of concern to its members, and

[4] *See* Letter from Thomas O. Barnett, Assistant Attorney General of the United States, to Jonathan R. Yarowsky, Counsel for the MRC, dated April 11, 2008 (the "Barnett Letter"), at n.1. A copy of the Barnett Letter is appended to these Reply Comments as Appendix 1.

discusses them with the applicant and with the MRC's staff. The applicant typically seeks to address the members' concerns, if any. Final accreditation requires an affirmative vote by a majority of the members on the Audit Committee who have been in attendance (either in-person or by phone), in the form of a recommendation to the MRC's Board of Directors, and then an affirmative vote by the Board of Directors.[5]

As noted above, the MRC membership is made up of participants from all sectors of the industries involved, both from the "sell side" (media companies) and from the "buy side" (advertisers). MRC members actively and directly compete with each other, and as a private organization, the MRC's activities are subject to review by the United States Department of Justice (the "DOJ") for possible antitrust concerns.

Because the MRC's membership is composed of fiercely competitive commercial businesses, and their competitive interests could be differently and directly affected by changes in audience ratings methodologies that produce changes in audience ratings themselves, the members of the MRC's Audit Committee have direct and often divergent interests in voting to recommend the granting or the withholding of accreditation for a new ratings service. The DOJ has recognized that this aspect of the MRC's process could lend itself to a possible restraint of trade in contravention of the antitrust laws, and has emphasized that the DOJ's determination not to enforce those laws against certain aspects of the MRC process is in part dependent upon the fact that the process is voluntary and that a rating service which has not been accredited by the MRC may nonetheless be commercialized.[6]

---

[5] There are 101 members of the MRC, and each member has a vote on the Board of Directors. Thus, functionally, accreditation requires an affirmative vote by a majority of the entire membership in the MRC.

[6] *See* Barnett Letter.

The potential restraint-of-trade effect is specifically demonstrated by the process and conditions under which the MRC's formation was approved by the DOJ in 1964, at the time that the MRC was formed. The DOJ's approval was specifically limited and conditioned upon the accreditation process being voluntary. Indeed the MRC's own proposed Voluntary Code of Conduct (the "Voluntary Code")[7] specifically provides that the accreditation process shall not preclude the offering of audience measurement products ("AMPs") by a measurement service that is not accredited, and that the MRC's procedures for accreditation, the Voluntary Code itself, and the MRC's Minimum Standards for Media Rating Research (the "Minimum Standards")[8] shall not prevent any person, firm, or corporation (whether or not a member of the MRC) from purchasing or using the information published by a ratings service that is in the process of marketing an unaccredited AMP.[9]

In that context, the Commission may find helpful some observations that were made by the DOJ in the Barnett Letter. In early 2008, MRC notified the DOJ's Antitrust Division of proposed changes to the Voluntary Code specifically with regard to the auditing and accreditation of replacement AMPs, when the service being replaced has been accredited but the replacement service has not. In agreeing that the DOJ would not bring antitrust enforcement proceedings against MRC for the changes in the Voluntary Code, the Assistant Attorney General of the Antitrust Division specifically noted:

---

7 A copy of the MRC's draft Voluntary Code of Conduct, dated October 19, 2005 and characterized as "near final," is submitted as Appendix 2 to these Reply Comments. Arbitron understands that the Voluntary Code has not yet been officially adopted by the MRC, but that the MRC will vote on adopting the Voluntary Code following the DOJ's completion of its business review procedure. *See* Barnett Letter, at 3.

8 A copy of the MRC's Minimum Standards for Media Rating Research was appended to the Petitioners' Comments in this proceeding, filed on September 24, 2008, as Exhibit 2.

9 Voluntary Code, at Section 1.6.B.

- That the accreditation process has both an "audit phase and the accreditation decision"[10]
- That the purpose of the audit stage is "to assess the methodology"[11]
- That the MRC specifically represented that (i) participation in the MRC's audit and accreditation process is entirely voluntary; (ii) if accreditation is not sought prior to commercialization, there would be no repercussions on the previously-accredited AMP or on the proposed replacement AMP; (iii) a rating service that does not seek accreditation of an AMP prior to commercialization, but that does so at some later point, need not withdraw the product; and (iv) the proposed change in the Voluntary Code would encourage, but not require, a rating service to keep its already accredited Currency AMP on the market until the new Currency AMP has been accredited[12]
- That completion of the audit "means that an independent third party has reviewed the methodology . . . to ensure that it is valid, accurate and effective."[13]
- That under the proposed change to the Voluntary Code, "MRC's members will remain free to use unaccredited Currency AMP products, and MRC accreditation does not appear to be critical to the success of a rating service's replacement for its Currency AMP."[14]
- That "to the extent a rating service offering an existing Currency AMP wished to introduce an innovative replacement, it would have the option of doing so with or without having received prior MRC accreditation."[15]

In this case, the Radio First service was submitted to the MRC after a thorough audit by Ernst & Young that was illuminated with the MRC staff and the PPM Audit Committee through a written report and presentation by Ernst & Young, and Arbitron introduced Radio First in a "pre-currency" mode in each of the markets where it is being deployed, prior to commercialization,[16] in order to give affected parties an opportunity to acquaint themselves with the sampling and ratings results provided by the new service, all in compliance with the

---

10 *Id.* at 1.

11 *Id.* at 1-2.

12 *Id.* at 3.

13 *Id.*

14 *Id.* at 4.

15 *Id.*

16 All Comments and the Petitioners acknowledge that the PPM technology has received accreditation in the Houston market. The Radio First PPM technology has been through the audit process in each other market where it is now commercialized.

minimum requirements of the Voluntary Code. The Petitioners' Comments fail to acknowledge that Arbitron has complied with the minimum requirements of the Voluntary Code in bringing Radio First to market. The Petitioners' insistence that Radio First must be stopped in its tracks, solely because it has not yet received accreditation from the MRC,[17] is in flat derogation of MRC's and the DOJ's position, and would impose an unlawful restraint of trade.

The Voluntary Code expressly provides that it is both voluntary and cannot be used to preclude the sale, purchase, or use of an unaccredited AMP by anyone (whether a member of the MRC or not). Petitioners' efforts to rely on it to bar commercialization are entirely without foundation. Commercialization of Radio First, which has been thoroughly audited and illuminated, and for which impact data has been disclosed, all in conformance with MRC requirements, need not await a vote by members of the MRC, some of whom may be in a conflict of interest in terms of their corporate and MRC interests. To argue otherwise is contrary to MRC's own representations to the DOJ and the DOJ's decision not to initiate an antitrust enforcement action against the MRC based upon those representations.

II. THE ALLEGATION IN PETITIONERS' COMMENTS THAT ARBITRON'S COMMERCIALIZATION OF RADIO FIRST, PRIOR TO RECEIVING MRC ACCREDITATION, IS "UNPRECEDENTED" IS FALSE

In their Comments, Petitioners assert, underscoring the words for emphasis, that "no currency audience measurement product has ever proceeded to market without achieving MRC accreditation in at least one market prior to commercialization."[18] Petitioners then misuse a

---

[17] *See* Petitioners' Comments, at 11 ("MRC denied accreditation, but Arbitron nevertheless insists its product is ready for market. The Commission cannot sit idly by while this fundamental incongruity wreaks havoc on the radio broadcast industry.").

[18] *Id.* at 7.

statement of George Ivie, the Executive Director and Chief Executive Officer of the MRC, to support the statement. Petitioners' assertion is flatly wrong.

In 2004, Nielsen Media Research ("Nielsen") sought to commercialize its Local People Meter ("LPM") television audience measurement service. Like PPM, LPM represented an advancement in technology that overcame certain limitations in the then-currency AMP for television, which was a hybrid of both a diary-based methodology and a passive, electronics-based methodology.[19] And like PPM, LPM faced significant opposition from minority-oriented broadcasters, who asserted that LPM undermeasured or underreported minority viewers and who predicted drastic reductions in minority programming or ownership.[20] The sequence of relevant events is rendered in written testimony that Mr. Ivie himself gave to the United States Senate's Committee on Commerce, Science and Transportation on July 27, 2005:[21]

- Nielsen rolled out LPM in Boston beginning in 2001. At that time, it was the subject of an intensive audit as part of the MRC accreditation process that took place in 2001 and 2002.[22]
- The MRC denied accreditation for LPM in Boston, "based on strong concerns with Nielsen's implementation of the service."[23]

---

19 The technology LPM was designed to replace used a combination of electronic meters that were attached to a television set and diaries. A representative sample of homes had electronic meters installed on each television set in the home, which recorded what programs, channels, and stations the set was displaying. Panelists in a separate sample of different homes recorded their exposure to television programs, channels, and stations using a diary. The diary data were then integrated with the television set data for final audience figures. *See* Nielsen Media Research, Research Paper: Analysis of Local People Meter Usage in New York – March 2004 (issued May 11, 2004), at 5.

20 Some of the history of LPM's introduction – which in many respects is echoed by the controversy that the Petitioners have generated with respect to Radio First – is provided in a letter from Susan D. Whiting, the President and CEO of Nielsen, to United States Senator Charles E. Schumer of New York, dated July 29, 2004 (the "Whiting Letter"). A copy of the Whiting Letter is appended to these Reply Comments as Appendix 3.

21 Written Testimony of George Ivie, Executive Director and CEO of the MRC, before the U.S. Senate's Committee on Commerce, Science and Transportation, Hearing on Television Ratings Accuracy and the FAIR Ratings Bill, July 27, 2005 ("Ivie Testimony"). A copy of Mr. Ivie's written testimony is appended to these Reply Comments as Appendix 4.

22 Ivie Testimony, at 14.

23 *Id*.

- Despite concerns raised by the MRC and by the denial of accreditation, Nielsen continued the commercial implementation of LPM in Boston.[24]
- The MRC accredited LPM in Boston in the fall of 2002.[25]
- At that time, the MRC requested that Nielsen not commercialize the LPM in other markets before accreditation.[26]
- Despite that request, Nielsen commercialized LPM in other markets, including New York City, without MRC accreditation.[27]
- MRC granted a "conditional" accreditation for LPM in New York in October of 2004.[28]
- Nielsen went "live" in Los Angeles with LPM on July 8, 2004, despite the fact that the MRC had elected not to vote on accreditation until Nielsen had responded to certain audit findings. Again, the MRC granted "conditional" accreditation to the Los Angeles LPM after it was already commercialized.[29]
- The Chicago LPM service was commercialized by Nielsen on August 5, 2004, prior to even having an MRC audit. A "conditional" accreditation was later awarded by the MRC.[30]
- LPM was commercialized by Nielsen in San Francisco on September 30, 2004, again prior to an MRC audit. Field work for the MRC audit began in November, 2004, three months after Nielsen had commercialized. LPM in San Francisco was given "conditional" accreditation.[31]
- Nielsen commercialized LPM in Philadelphia on June 30, 2005, prior to an MRC audit.[32]
- Likewise, in Washington, Nielsen commercialized LPM on June 30, 2005, prior to an MRC audit.[33]

In an apparent effort to divert attention from the public record facts, Petitioners in their Comments have misused an email from Mr. Ivie to bolster their unfavorable argument. Mr. Ivie is quoted in Petitioners' Comments as stating – correctly – that the LPM was "rolled out" after

---

24 *Id*.

25 *Id.* at 14-15.

26 *Id.* at 15.

27 *Id.* at 15-16.

28 *Id.* at 16.

29 *Id.* at 17.

30 *Id.* at 18.

31 *Id.* at 19-20.

32 *Id.* at 20.

33 *Id*.

accreditation in Boston; but the implication is that LPM was not commercialized in Boston before it received MRC accreditation for use in that city. The foregoing excerpts from Mr. Ivie's testimony before the Senate in 2005 make it clear that his recent email was a shorthand reference to established history: Nielsen rolled out LPM in cities other than Boston after LPM was accredited in Boston, but without yet having accreditation in those cities. Moreover, it is clear from Mr. Ivie's testimony that Nielsen proceeded to commercialize LPM in Boston itself prior to receiving accreditation for Boston. Petitioners' misuse of the statement can only be knowing: at least one of Petitioners' members (Univision Communications, Inc.) was heavily involved in opposing the introduction of LPM, going so far as to bring suit in California in an effort to prevent the use of LPM in Los Angeles,[34] and the actual schedule by which Nielsen rolled out LPM is a matter of public record, including Congressional hearings, academic literature, and trade press. Petitioners could not have innocently mistaken the actual sequence of the Boston LPM accreditation process. It is both unfortunate and an indication of the lack of factual support that Petitioners have tried to put the error on Mr. Ivie.

By contrast to Nielsen's commercializing LPM, PPM was not commercialized in its first location – Houston – until accreditation had been received. Radio First has completed the independent audit by Ernst & Young, and the audit has been illuminated (that is, Ernst & Young have presented their findings to the MRC's Audit Committee regarding the Radio First service's compliance with MRC standards) in each additional location where commercialization of Radio First has occurred (Philadelphia; New York; Los Angeles; San Francisco; Chicago; Nassau and Suffolk Counties in suburban New York; Middlesex, Somerset, and Union Counties in suburban

[34] *See Univision Communications, Inc. v. Nielsen Media Research, Inc.*, No. BC316833, 2004 WL 3050799 (Cal. Superior Court, July 7, 2004), cited and discussed in Arbitron's opening Comments in this proceeding, filed on September 24, 2008, at n.48.

New Jersey; and Riverside-San Bernardino and San Jose in California). Petitioners' assertions regarding the lack of historical precedent for Arbitron's decision to proceed with commercializing Radio First – the emphatic declaration notwithstanding – are simply wrong.

III. PETITIONERS' COMMENTS OVERSTATE THE DIFFERENCES BETWEEN THE ACCREDITED PPM METHODOLOGY DEPLOYED IN HOUSTON AND RADIO FIRST

Petitioners' Comments take Radio First severely to task[35] for the fact that Radio First samples use a telephone sampling method known as random digit dialing ("RDD"), combined with telephone recruitment, whereas the PPM service that was accredited by the MRC for use in Houston used a combination of in-person and telephone recruitment after starting the sampling process with an address-based frame.[36]

In the first instance, it is important to note that Arbitron's diary-based service – which has been accredited for decades, and which produces audience ratings estimates that Petitioners strongly prefer to the estimates produced by Radio First – uses telephone recruitment exclusively to recruit its samples. The only distinction between the method of recruitment for Radio First is that the latter incorporates Cell-Phone Only ("CPO") households in addition to landline households.[37]

---

[35] Petitioners' Comments, at 4-6.

[36] In Houston, about half of the initial panel was recruited by telephone and half in-person. Over time, the percentage of Houston panel households recruited in-person has increased to approximately 80%, because all replacements or "alternates" needed when an original or "basic" household leaves the panel are recruited in-person.

[37] Ironically, Petitioners' Comments excoriate Radio First for not including more CPO households in its samples, while never acknowledging that the diary system that generates audience estimates that Petitioners seem to like does not include CPO households at all. Petitioners' Comments, at 5-6 & nn.11-12.

While the Radio First sample percentage for CPO households is lower than that provided with the address-based frame used in Houston, the CPO samples are "weighted up" to appropriately represent their estimated share of the total population. This form of sample weighting is a statistically valid and long-accepted part of the survey estimation process as applied to audience surveys.

Apart from those differences in sampling (*i.e.*, RDD frame and telephone recruitment in Radio First versus address frame and combined in-person and telephone recruitment in Houston), the PPM methodology that was accredited in Houston – which Petitioners' Comments characterize as the "gold seal" on audience measurement[38]– exhibits no significant differences from Radio First's methodology. The PPM equipment is installed in the same way in the homes of the persons participating; the PPM technology uses the same instructions and coaching on how to participate, and has the same length of time that panel members are expected to participate. Moreover, the exact same instrument that was accredited for PPM use in Houston is deployed as part of Radio First.

Comparisons of sample quality metrics across both the Houston and the Radio First sampling methods demonstrate that both provide high quality samples for use in PPM panels.[39] An objective review of the bottom-line sample quality results for the different panels shows that with the possible exception of Sample Performance Indicator ("SPI"),[40] which is a measure of panel response rate, they are virtually the same in all material respects. The following table compares key sample quality metrics across the markets of Houston and Philadelphia/New York, and while some outcomes are slightly higher in one market versus another, the overall results are clearly equivalent.

---

38 Petitioners' Comments, at 10.

39 Recruitment by telephone allows for more attempts to contact sampled households, in contrast to in-person recruiting. Specifically, Arbitron is able to make up to 25 attempts to recruit households by telephone, compared to only a minimum of three attempts for in-person recruitment. Telephone recruitment also does not need to deal with the limitations imposed by building security measures, gated neighborhoods, or high-crime areas, as in the case of in-person recruiting.

40 SPI rates are lower in Philadelphia and New York because they are more difficult markets to survey, not because Radio First systematically produces lower SPI rates. In fact, SPI rates for some Radio First markets are in excess of Houston's rate.

Comparison of Key Features of the Houston versus Philadelphia/New York PPM Sampling Methods:

	Houston	Philadelphia/NY
Sample frame	Addresses	Phone numbers
% of Total Households Covered	About 98%	About 97%
Includes CPO Households?	Yes	Yes
Includes no-phone Households?	Yes	No
Recruitment method, “Basic” panelists*	Phone/in-person	Phone
Recruitment method, “Alternate” panelists**	In-person	Phone
Installation method	Self-install	Self-install
Panel Relations and Coaching	Phone	Phone
Panel tenure	2 years	2 years

* “Basic panelists refer to the original panelists
** “Alternate” panelists refer to substitutes who replaced “Basic” panelists that did not remain in the sample

Comparison of the Houston, Philadelphia, and New York PPM Panel Sample Quality and Compliance Metrics:

August 2008	Houston	Philadelphia	New York*
Average Daily In-tab**	1,392	1,595	3,997
SPI***	16.0%	14.5%	13.9%
P6+ DDI****	102	104	105
P18-34 DDI	100	92	99
Black 6+ DDI	118	121	105
Black 18-34 DDI	99	103	90
Hispanic 6+ DDI	101	95	138
Hispanic 18-34 DDI	107	*****	136
Spanish dominant 6+ DDI	107	*****	136
P6+ In-tab Rate	72%	73%	76%
Black 6+ In-tab Rate	72%	67%	74%
Hispanic 6+ In-tab Rate	70%	77%	76%
Spanish dominant 6+ In-tab Rate	73%	*****	81%
P18-34 In-tab Rate	66%	64%	67%
Black 18-34 In-tab Rate	66%	60%	65%
Hispanic 18-34 In-tab Rate	67%	*****	72%
P6+ Daily motion time (hrs:mins)	14:49	14:53	15:01
Black 6+ Daily motion time	14:46	14:43	15:14
Hispanic 6+ Daily motion time	14:40	15:02	14:47

* DDIs, In-tab Rates, and Daily motion times are for the unembedded portion of the New York market, which does not include Nassau and Suffolk Counties in suburban New York, nor Middlesex, Somerset, and Union Counties in suburban New Jersey.
** In-tab refers to the number of panelists who are in compliance with the PPM's requirements on a given day.
*** Sample performance indicator, a panel measure of response rate.
**** Designated delivery index, a panel measure of sample delivery against the theoretical target based upon the designated population segment's share of population (100 = perfect sample target delivery). "P6+" refers to persons of all races/ethnic groups aged six years and older.
***** Metric either not available or not reported due to low Hispanic population penetration (6.1%) in Philadelphia.

Hence, it is apparent that Petitioners' Comments are the statistical equivalent of the "Bridge to Nowhere." While playing up the supposed importance of the differences between the recruitment methods used in Houston versus those used in the Radio First markets,[41] Petitioners fail to acknowledge that regardless of those differences, the actual compliance rates between the market in which panelists were initially recruited in part by telephone and in part in-person and the markets in which the panelists were recruited entirely by telephone are not meaningful. Recruitment differences do not, empirically, lead to material differences in panelist compliance.

More to the point is whether the Commission feels that it would be appropriate to wade into this area, not having any background in the science of audience measurement.[42] Does, for example, the Commission feel that it is in a position to intelligently evaluate the relative merits of in-person recruitment versus telephone recruitment, and to parse through the comparative metrics of panelist compliance as between samples recruited via these different methods? Arbitron urges the Commission to defer to the MRC, which is the body that was created specifically in response to Congressional concerns and charged with reviewing and accrediting audience ratings services and has both the expertise and the resources to discharge those responsibilities.[43]

---

[41] Much of the Petitioners' Comments in this regard consists of unsupported speculation. For example, the Comments state, without citation to any authority on psychology or behavior, "It is easier to say no on the telephone than in person and much more difficult to convert a no to a yes in person." Petitioners' Comments, at 6. The Commission may rightly question why such an *ipse dixit* should be given credence.

[42] Arbitron's Comments explain in detail why the Commission lacks jurisdiction to conduct an inquiry into PPM under Section 403 of the Communications Act of 1934, as amended, 47 U.S.C. § 403. Arbitron's Comments further explain why (even if the Commission possessed such jurisdiction) the Commission's lack of expertise in this area – in contrast to the expertise of the MRC, which is already deeply involved in reviewing Radio First – as well as the risk that initiating a formal, adversarial hearing would tend to freeze the parties from continuing their dialogue with the goals of refining and improving Radio First, all militate in favor of denying the Petition. *See* Arbitron's Comments, at Sections II.A and II.B.

[43] *See* Arbitron's Comments, at Sections II.A.3. and II.B.1.

IV. PETITIONERS' PREDICTION OF SEVERE ECONOMIC INJURY TO MINORITY-OWNED OR MINORITY-TARGETED RADIO STATIONS RESULTING FROM RADIO FIRST IS CONTRADICTED BY ACTUAL EXPERIENCE

The Petitioners continue in their Comments, as they did in their Petition, to predict a catastrophic loss of revenue for minority-owned radio stations and for non-minority-owned radio stations that target minority audiences, if Radio First is commercialized:

> [T]he continued unabated roll-out of Radio First PPM will result in devastating financial losses for minority radio. Initial estimates predict that if PPM were rolled out nationally in its current form, minority broadcasters' annual gross revenues would decline by 30-40%.[44]

Actual experience with Radio First to date, however, suggests otherwise. For example, Arbitron's Comments provide a detailed look at the ratings estimates that have been produced by Radio First in the pre-currency mode for a variety of minority-owned or minority-targeted stations in New York, Los Angeles, Chicago, and San Francisco,[45] as well as the experience of one minority-targeted station in Philadelphia.[46] Those stations have seen their market rankings remain steady, in some cases even improve, with the estimates produced by Radio First in comparison to the estimates set forth in the most recent diary-based reports.

---

44 Petitioners' Comments, at 10. The observation is echoed in the Comments of Hispanic Technology. *See* Comments of Hispanic Technology, submitted on September 24, 2008, at 3-4 & n.9. The only citation offered for this startling prediction is testimony supposedly given by Charles Warfield, Chief Operating Officer of ICBC Holdings, Inc. (which is one of the Petitioners) at the Commission's July 29, 2008 *En Banc* hearing at the Schomburg Center in New York, entitled, "Overcoming Barriers to Communications Financing." No copy of Mr. Warfield's written testimony has been available to Arbitron or its counsel, and his oral testimony does not include this statement. In any event, Mr. Warfield's testimony apparently does not provide any support or citation for the 30-40% annual revenue loss projection. Arbitron has previously pointed out in its Comments that the Petitioners are prone to citing their own statements, without any independent source verification or documentation, for dramatic predictions of doomsday-like outcomes if Radio First is permitted to commercialize. *See* Arbitron's Comments, at n.61.

45 *See* Arbitron's Comments, at Section II.C.1.

46 *See id.* at n.65.

V. PETITIONERS' ASSERTION OF DISPARATE IMPACT MISSTATES THE PPM DATA AND IGNORES THE SUBSTANTIAL VARIATION IN AUDIENCE ESTIMATES

Petitioners in both their original Petition and in their Comments assert that PPM results in audience estimates that will have a substantial disparate and negative impact upon minority-oriented stations. They use that assertion to try to lever the Commission into initiating an investigation under Section 403 of the Communications Act of 1934, as amended.[47] For the reasons set forth in Arbitron's initial Comments, a Section 403 investigation both is unauthorized and would be the wrong process, even if the facts supported the Petitioners' assertion, but Petitioners cherry pick their data and ignore substantial variation in audience estimates produced by Radio First. Those variations within formats in the pertinent markets establish that PPM data is estimating exactly what it was developed to measure – listener exposure, not listener recall or loyalty.

The counterfactual nature of Petitioners' assertions (in which Petitioners are joined by Hispanic Technology and the City Council) is disproved by independent data, and has been pointed out by independent commentators. For example, data from BIA, the authoritative source of data on station advertising revenues, show that within the Houston and Philadelphia markets, where PPM data is currency, from 2006 to 2007 there was no significant difference in changes in revenues for Hispanic- and Urban-formatted stations, compared to the market as a whole. Thus, there has not been a disproportionate impact on revenues of minority-oriented stations from PPM, and Petitioners have not pointed to any data that would support their argument.

---

[47] 47 U.S.C. § 403.

More pointedly, RadioCrunch, a service that works with customers in various media, specifically examined the assertion that Hispanic- and Urban-formatted broadcasters would be hurt by PPM commercialization.[48] Their conclusion:

> If you look at the data from NEW YORK, CHICAGO, LOS ANGELES, RIVERSIDE and SAN FRANCISCO from AUGUST, we believe stations targeting Hispanics and African-Americans are more than holding their own. In fact, if you look closely at the data, there is a strong argument that Spanish-language stations and Urban outlets are still doing well in PPM.[49]

Arbitron has also examined the PPM data in comparison to diary data. Indeed, precisely because some minority-oriented stations raised the concern that they would be adversely and

---

[48] *See* Kevin McCabe & Anthony Acampora, Analysis: NY AG PPM Allegations Not Reflected in Ratings (Oct. 6, 2008), appended to these Reply Comments as Appendix 5.

[49] *Id*. The specific conclusions from RadioCrunch are telling:

> * NEW YORK: The three Urban stations (WRKS, WBLS, and WWPR) are all in the top 10 25-54. Two of them are top 10 18-49 (WBLS is #11). With adults 18-34, WWPR is #2. Having stations consistently ranked top 10 in major advertiser demographics makes them extremely viable. SBS Tropical WSKQ ranks 4th 18-34, and 6th 18-49 and 25-54.
>
> * LOS ANGELES: Spanish-language stations account for four of the top-eight stations 25-54, 18-49 and 18-34 -- and six of the top 10 18-34 (if you include bilingual KXOL). In L.A,, the Urban shares are not necessarily non-existent. The African-American audience has chosen more mass-appeal stations like CLEAR CHANNEL Rhythmic AC KHHT, CBS Smooth AC KTWV and EMMIS Rhythmic KPWR, which have always had strong African-American compositions.
>
> * CHICAGO. Major Regional Mexican stations (WOJO and WLEY) are both in the top 5 18-49 and rank #1 and #3 18-34, while ranking 3rd and 8th 25-54, respectively. There are some challenges for Urban outlets WGCI and WVAZ.
>
> * SAN FRANCISCO: Regional Mexican rivals KSOL and KRZZ rank #3 and #4 18-34. They are #3 and #5 18-49, and #4 and #12 25-54. Meanwhile, CLEAR CHANNEL Rhythmic KMEL, which has always had a heavy African-American component, is #1 18-34 and 18-49, and #7 25-54. INNER CITY Urban AC KBLX was a very competitive 8th 25-54 in AUGUST.
>
> * RIVERSIDE: We've seen Spanish-language shares grow 30% 12+ from the diary to meter, and nearly double in some of the younger cells -- especially 18-24 -- so there doesn't seem to be any issue there.

disproportionately affected by commercialization of Radio First, Arbitron has recurrently examined the data to see if those fears had any support. The data have not supported those fears.

In reviewing assertions of disparate impact, it is essential to understand what is being measured and what is being compared. The basis of the comparison that the Petitioners use is diary data – but those data are themselves, of course, only an estimate of audience, and not intended to be an absolute measure of audience. And, as discussed in Arbitron's opening Comments,[50] the diary estimates are known to be affected by recall bias and other factors. Nonetheless, Petitioners treat the diary estimates as if changes in data from those estimates are *per se* suspicious.

Even assuming that the diary estimates were to be used as an absolute indicator of audience shares, a careful review of the reports from each market where PPM data are available establishes that there is substantial variability within and across format categories in each of those markets. Put differently, some stations with a minority-targeted format do have a drop in audience ratings or shares using PPM data as compared to diary-derived data – just as some general-market stations do, and some stations with other specialized formats, such as classical or country. More importantly, some stations with minority-targeted formats have experienced increases in their ratings or shares with PPM data, just as some general-market or other stations have had increases in ratings or shares.

In support of their assertion, Petitioners and others filing like-minded comments provide selected data for a few stations within an overall market, or make generic, averaged comparisons across formats within a market. Neither approach provides a proper basis upon which to

[50] *See* Arbitron's Comments, at Section II.C.3.

understand the data. For example, in the markets where PPM is being commercialized, and comparing how PPM data have changed the ratings or shares of different stations within particular formats, a review of those data[51] establishes that within each market, stations within each format have experienced different impacts:

- In Chicago, while a general comparison of averages (Spring 2008 Diary to August PPM data) would appear to show that adult contemporary and country formats retained the same average shares, and all other formats had reduced ratings and shares, an examination of the data within the specific formats shows that one station in the adult contemporary format dropped nearly half of its P12+ share, and another station more than doubled its share. Similarly, two urban contemporary stations, WKKC and WYCA, increased share; one, WGRB, was essentially even; and others dropped, some significantly. The same pattern held in Spanish-oriented stations with an index[52] range of 21 to 77 in P12+ , and index range of 16 to 84 in P25-54. The variation within a format is even more pronounced when the age groupings are more finely divided. One adult contemporary station that is shown as holding its share in P12+, lost more than 75% of its share in the 18-34 bracket, and nearly 2/3rds in the 25-54 age bracket. Other stations in the adult contemporary format that showed nearly even in the P12+, showed drops of half in the 18-34 and 25-54 brackets. The value of the PPM data is shown by the fact that in the September Radio First report, Univision Radio (one of the Petitioners' members) is confirmed as having a steady increase in audience for its "Piolin por La Mañana" show on WOJO-FM, which in September had the number one ranking in the morning drive period for one of the station's target demographics, Persons 18-34.
- In San Francisco, the results are comparable. All formats lost share when PPM data are compared to diary data, but within a given format, the results clearly show substantial variability between stations. The indices in the adult contemporary format range from an index of 58 to an index of 115 in the P12+. That is, within that one, non-minority-oriented format, some stations lost more than 40%, while another gained as much as 15%. The range in the Latino formats was from an index of 32 to an index of 124 – that is, one Latino station, KRZZ, <u>gained</u> 24% in the PPM data compared to diary data, while another lost significantly. The range in the urban-formatted stations is even more striking – an index of 71 to an index of 164 – one urban station, KMVQ, gained more than 60% in the PPM data. In the September Radio First report, KMEL, a hip-hop and R&B station, is the clear Number One for P18-34 for the total broadcast week.

---

51 The comparisons discussed in the text examine the Spring 2008 diary data (the last diary data available) to the August monthly PPM data, across similar age groups for stations in the market. Arbitron recognizes that stations properly regard the data as having proprietary value, and therefore has not, in this publicly-accessible filing, provided a full data set. Should the Commission staff request a copy of the data set for its review, Arbitron will be pleased to provide the data, subject to appropriate confidentiality treatment as proprietary information.

52 Index is calculated as the ratio of estimated audience in the specified age range under the August 2008 Radio First report to the Spring 2008 Diary report for the same station and same age group. To illustrate, an index of 100 would signify that the station's audience within that age group did not change from the Spring 2008 diary report to the August 2008 Radio First report.

- In New York, the data are again similar. The range for stations with Urban formats in the P12+ demographic is from an index of 47 to an index of 106, a range quite similar to that experienced by the adult contemporary format stations – a range of 53 to 113. Petitioners cite WBLS (which appeared to drop significantly, looking only at August Radio First data compared to Spring Diary data),[53] but Petitioners fail to point out that a different Urban-oriented station, WKTU, increased its share by more than 6% in P12+, and increased 4% in the P25-54 category. It is the case in the August 2008 Radio First report that Hispanic-oriented stations all suffered drops, but the range is quite wide – the index in P12+ is from 28 to 65. It is particularly striking that in the September 2008 Radio First report, WBLS's "Steve Harvey Show" ties as the Number One show among persons 25-54 in the AM Drive time period. It is unlikely that Petitioners will assert that WBLS having the Number One show reflects a disparate, negative impact.
- In Los Angeles, the results are similar.[54] The index for Spanish-oriented station formats ranged from 26 to 106, and adult contemporary (a much smaller group) ranged from 67 to 115. Spanish-language station KLYY gained 44% in the P12+, and 61% in the 18-49 group. In the September Radio First Report, KLYY is a solid Number One for the total broadcast week in the demographic of Persons 25-54. Petitioners point to KJLH, an Urban-oriented format that suffered a dramatic decline, but they ignore that KMVN increased its share by 30% in the P12+ category, and an amazing 75% in the important 18-49 group.

As just this brief summary comparison shows, stations do not retain their diary share in the PPM/Radio First data "because" they are general-market-oriented formats, nor do stations lose share "because" they have Urban, Spanish, or other minority-targeting formats. Rather, PPM is returning data that reflect the broader exposure and more granular listening – exactly the information advertisers have demanded and that PPM is designed to supply.[55] Some stations with minority-oriented formats increase their shares with PPM – because even if listeners who kept diaries did not recall or report their exposures, they are listening and are attracted to those stations, and PPM captures those exposures. And some stations, whether having general-market formats, specialty formats (classical, rock, or religious) or minority-oriented formats, lose share, because listeners, regardless of what they recorded in the diary from recall bias or loyalty, in fact

[53] *See* Petitioners' Comments, at 12.

[54] The Los Angeles data compare the June 2008 PPM data to Spring 2008 diary.

[55] *See* Arbitron's Comments, at Section II.C.3.

turn the dial to other stations; and PPM captures that, too. All listeners (including those who consume Urban-formatted or Spanish-language radio) are willing and able to seek out different stations, given the programming choices that are available. The tendency of diary reports to reflect recall error has the effect of masking those behaviors. PPM reveals them. And it is exactly those behaviors that advertisers sought to identify in asking for exposure data.

A full review of the PPM data sets shows that there is not a disproportionate impact of Radio First upon minority-targeted stations – there is an impact on many stations of all different formats, arising from the greater granularity and specificity of the PPM data. To succeed in competitive markets – where the competition comes from the Internet, broadcast television, print media, and other sources – radio stations must learn to use the additional, more granular data, to identify which programs and which program personalities retain or increase share, and which ones shed listeners.[56]

Petitioners' effort to kill the messenger because the message is not comforting will not assist their radio stations to retain audience share, and advertisers once aware of the data will properly focus on what those data show. The Radio First data is not disproportionately adverse to minority-focused stations – it is adverse to stations, irrespective of format, that do not or will not adjust to their listeners' programming choices.[57]

---

56 *See id.* at Section II.C.1.

57 *See, e.g.*, Comments of MediaSense:

> While it is true that Black and Hispanic stations have generally seen larger drops than non-Black and non-Hispanic stations in PPM (referred to as "Other" in the Arbitron's software), some Black and Hispanic stations initially and subsequently have ranked higher in PPM than diary. *This proves that the AQH* [Average Quarter Hour] *estimates are the function and result of the programming provided by these radio stations.*

Comments of MediaSense, at 2 (emphasis in original).

CONCLUSION

Arbitron has demonstrated in these Reply Comments that neither the original Petition nor the Petitioners' Comments offer a basis upon which the Commission should initiate an investigation into the Radio First PPM service under Section 403 of the Communications Act, as amended. Both the original Petition and Petitioners' Comments misstate some important facts, exaggerate others, and cannot be squared with the history and the purpose of the MRC or the potential restraint-of-trade considerations attendant upon its accreditation process.

The Comments that were filed in this docket by the City Council and by Hispanic Technology are equally unavailing. Both sets of Comments are completely devoid of any effort to address the Commission's lack of jurisdiction in this matter. Moreover, both the City Council and Hispanic Technology seem to diverge from the Petitioners on the issue of whether Radio First should be faulted for failing to measure the subjective characteristic of listener "loyalty" or "engagement."[58] The City Council's Comments express that body's concern over "the attribution of sporadic exposure . . ." and "the absence of a metric that reflects listener engagement, . . . ,"[59] while Hispanic Technology denounces PPM for "failing to capture minority radio listeners' unparalleled loyalty to stations serving their needs – a key factor in diary measurements for which panelists emphasize stations they recall and enjoy, and de-emphasize stations for which their listening and attention is only ephemeral or fleeting."[60] By contrast, the Petitioners – which have characterized MRC accreditation as the "gold seal" on audience

---

58 Of course, as Arbitron's initial Comments establish, the advertiser community has not asked Arbitron for, and Radio First was not developed to measure, that characteristic. *See* Arbitron's Comments, Section II.C.3.

59 City Council Comments, at 1.

60 Hispanic Technology Comments, at 2-3.

measurement,[61] presumably have no problem with the fact that the MRC accredited PPM in Houston, notwithstanding that the Houston PPM does not undertake to gauge listener engagement or loyalty.

In its opening Comments in this proceeding, Arbitron questioned the curious (and unsupported) proposition advanced in the Petition, to the effect that advertisers actually value the over-reporting of listening episodes in the diary, on the theory that such over-reporting is an indicator of listener loyalty.[62] The Comments submitted by JL Media and by Allscope Media – both of which are actually involved in the purchasing of advertising time on radio stations – thoroughly discredit that proposition:

> Both technology and economics have allowed, after far to [*sic*] long, the bringing of ratings generation into a more realistic picture of reality.
>
> . . .
>
> All of us in the industry have recognized the basic flaws in a "diary method" research survey.[63]

> The current Diary System has been around, unchanged, since 1965. It is based on recall and has a lag time of over 6 months.
>
> It is time to step into the 21st century and the age of electronics. It is imperative for advertiser [*sic*], as well as stations, to have a measurement system that is more accurate and timelier than this.[64]

Moreover, the Comments from these media buyers emphasize the perilous position that the entire radio industry (including minority-owned and minority-targeted stations) will find

---

61 Petitioners' Comments, at 10.

62 Arbitron's Comments, at n.76.

63 Comments of JL Media, filed on September 24, 2008, at 1, 2.

itself in, in competition with other media services that are migrating to electronics-based audience measurement, if PPM is further delayed:

> The PPM will allow radio to obtain what Broadcast Television and Internet advertising has – accountability that is timely and accurate.
>
> . . .
>
> The release of the New York PPM was already delayed a year in order to address the concerns of minority-owned and minority-oriented broadcasters. The current petition to delay the PPM's release again will only harm the radio industry as a whole.[65]

While Petitioners cite various sections of the Communications Act of 1934, as amended, to support their request for a Section 403 investigation, they have overlooked Section 7 of that Act, 47 U.S.C. § 157, which provides, in pertinent part, that

> It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

Although Arbitron has steadfastly maintained that it is not subject to the jurisdiction of the Commission, and its Comments provide ample authority in support of that position,[66] Arbitron has equally steadfastly demonstrated its willingness to work with all stakeholders – including advertisers, stations, the MRC, and even the Commission – to help bring the measurement of radio audiences into alignment with the measurement of audiences for competing media. Arbitron has made it clear that its goal is to secure MRC accreditation for Radio First. With all of the educational outreach that Arbitron has undertaken, especially to

(...continued)

64 Comments of Allscope Media, filed on September 24, 2008, at 1.

65 *Id.*

stations that are owned by or that target persons of color,[67] it is clear that the affected parties, working together, can resolve the concerns over the temporary disruption in established patterns that the introduction of a new technology such as PPM inevitably causes.[68] It would be a serious mistake for the Commission to insert itself into that process by convening a Section 403 proceeding, which as Arbitron noted in its Comments,[69] will unavoidably have the effect of (i) diverting the time, attention, and resources of Arbitron and its senior management from continuing the dialogue with the stakeholders and from continuing to pursue MRC accreditation for Radio First, and instead devoting themselves to producing documents and giving testimony,[70] and (ii) "freezing" Radio First in its present state, for fear that further innovations and refinements will be cited by PPM's opponents as tacit concessions that the service prior to any such innovations and refinements was somehow deficient.

For the foregoing reasons, and as set forth in its opening Comments in this proceeding, Arbitron respectfully urges the Commission to deny the Petition.

(...continued)

66 *See* Arbitron's Comments, at Sections II.A.1, II.A.2, and II.A.3.

67 *See* Letter from Timothy T. Smith, Executive Vice President and Chief Legal Officer of Arbitron, to Monica Desai, Chief of the Commission's Media Bureau, dated August 22, 2008, and the attachments thereto.

68 JL Media's Comments put the matter succinctly:

> Are the parties involved, namely Arbitron, the Stations and the Advertiser/Agencies still in discussions? Absolutely. Is more refinement required? Absolutely.
>
> However, should the Industry be required to wait further to continue doing business in a more realistic framework? Absolutely NOT! Do we need Government involvement? Absolutely NOT!

Comments of JL Media, at 1-2.

69 *See* Arbitron's Comments, at Section II.B.2.

70 Mr. Ivie of the MRC testified before the Commission that the MRC's goals for ongoing interaction with Arbitron "are to maintain their un-diverted attention on the audit and methodological issues we raise, ..." Testimony of George Ivie, Executive Director and Chief Executive Officer of the MRC, FCC *en banc* Hearing on Overcoming Barriers to Communications Financing, July 29, 2008, at 7. The Commission can rest assured that if a Section 403 proceeding were commenced, it would be nigh impossible for Arbitron and its executives to give their "un-diverted" attention to the concerns that have been raised by the MRC.

Respectfully submitted,

ARBITRON INC.

By its counsel:

John Griffith Johnson, Jr.

John Griffith Johnson, Jr.
Charles A. Patrizia
PAUL HASTINGS JANOFSKY & WALKER, LLP
875 15th Street, N.W.
Washington, D.C. 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Timothy T. Smith
Executive Vice President & Chief Legal Officer,
Legal & Business Affairs
ARBITRON INC.
9705 Patuxent Woods Drive
Columbia, MD 21046-1572

October 6, 2008

Appendix 1

Letter from Thomas O. Barnett, Assistant Attorney General of the United States, to Jonathan R. Yarowsky, Counsel for the MRC, dated April 11, 2008

DEPARTMENT OF JUSTICE
Antitrust Division

THOMAS O. BARNETT
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

April 11, 2008

Jonathan R. Yarowsky, Esq.
Patton Boggs L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037-1350

Dear Mr. Yarowsky:

This letter responds to your request, on behalf of your client, Media Rating Council ("MRC"), for a business review letter from the Department of Justice ("the Department") pursuant to our Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current antitrust enforcement intentions with respect to MRC's proposed change to its procedures for auditing and accrediting replacements for certain audience measurement products ("AMPs"). AMPs, which are designed and sold by rating services, measure the size and demographics of an audience for a particular medium. Those AMPs that are widely used and form the basis for setting the financial value of advertising are referred to as Currency AMPs. The proposed change in procedures would encourage but not require rating services to disclose certain data, submit to an independent audit, and obtain accreditation prior to commercialization of a replacement product for a MRC-accredited Currency AMP.

MRC's Organizational Structure and Mission. Based on your representations and the information you have provided to us, we understand that MRC is a non-profit industry association with a diverse membership consisting of buyers and sellers of advertising, including television and radio broadcasters, cable-casters, print organizations, Internet organizations, advertising agencies, and industry trade associations. Membership in MRC is not available to ratings services. As users of AMPs, MRC's members have a common interest in the accuracy and reliability of such products.

MRC's Current Audit and Accreditation Procedures. MRC has evaluated and accredited various AMPs since 1964. It is the only organization that provides this service to the marketplace. MRC's mission is to maintain industry confidence in audience and media research by ensuring that AMPs are valid, reliable and effective. To carry out its mission, MRC establishes minimum standards for the evaluation and accreditation of AMPs.

It is our understanding that the accreditation process is divided into two stages: an audit phase and the accreditation decision. The purpose of the audit stage, which consumes the majority of the expense associated with the accreditation process,[1] is to assess the methodology utilized by an AMP to measure an audience's size, demographics, and other characteristics. During the audit stage, the rating service applies for accreditation, discloses its product's methodology as well as the data supporting the methodology ("impact data"), consults with an independent auditor to set the scope of the audit,[2] and submits to an independent audit by a certified public accounting firm. The independent auditor prepares a report that is given to the MRC Audit Committee[3] which reviews it and makes a recommendation on accreditation to the MRC Board of Directors.[4]

During the second stage, MRC makes its accreditation decisions via a vote by the MRC Board of Directors on the Audit Committee's recommendation. You have represented that each of MRC's 101 members has a seat on the Board of Directors and that the maximum number of votes any one commonly-owned block of member companies can have is five.[5] You have further indicated that a majority vote of the members is required for accreditation.

Importance of Accreditation to Commercial Success of a Replacement Currency AMP. You have represented that MRC accreditation is not critical to the success of an AMP and that only five rating services provide MRC-accredited Currency AMPs today. MRC's members can and do use AMPs that are unaccredited. There are Currency AMPs that are not MRC accredited as well as other measurement products for each medium that are widely utilized despite their lack of accreditation. Accreditation may be even less critical to commercial success where a rating service chooses to replace its Currency AMP because of the wide use of its existing product.

MRC's Proposed Rule Change and Representations Regarding the Change. You propose to add the following language to MRC's Voluntary Code of Conduct ("VCOC"):

---

[1]You have represented that, although the costs and times can vary depending on the complexity of the methodology under review, the average audit costs between $100,000 and $200,000 and usually takes three to six months to complete. An audit of a simplistic AMP can cost as little as $35,000 and take only a few months, whereas an audit of a product with a more sophisticated methodology, involving complex data gathering processes, can cost over $1 million and take well over six months.

[2]The scope of the audit depends not only on the methodological approach of the rating service, but also on MRC's Minimum Standards. *See* MRC's November 2, 2006 submission. These minimum standards vary depending on the audience attribute, *e.g.*, audience size, demographics, and on the medium in which the attributes are being measured, *e.g.*, television, newspapers, or a website.

[3]The Audit Committee consists of MRC members who have an interest in the relevant industry sector, such as television, radio, print, the Internet or out-of-home. There is no limit to the number of MRC members who can participate on the Committee.

[4]If the Audit Committee recommends against accreditation and requests continued review of the AMP, then the auditor, MRC staff, and the rating service work together to address the AMP's compliance with MRC standards. This process can take considerable time, depending on the number of issues in the audit report. Once these issues are resolved, the Audit Committee then reviews the revised audit report, prepares its recommendation on accreditation and submits the recommendation for a vote by the MRC Board of Directors. If a measurement product is denied accreditation, it is always free to seek accreditation again at a later date. *See* MRC's September 7, 2007 submission.

[5]*See* MRC Member Voting Controls, provided in MRC's May 24, 2007 submission.

> The MRC prefers that a Participating Measurement Service seeking to replace an accredited currency measurement product with a new currency measurement product (both products provided by the same Participating Measurement Service) uses best efforts to obtain accreditation of the new product prior to its commercialization. At a minimum, disclosure of impact data as required by MRC Minimum Standards, completion of an MRC audit and MRC committee review prior to commercialization of a replacement currency product is required by the Code.[6]

You have represented that, with the exception of this provision, MRC's draft VCOC memorializes MRC's practices and procedures used since 1964 for auditing and accrediting AMPs. It is our understanding that MRC will vote to ratify the VCOC, including the provision that is the subject of this letter, upon completion of the Department's business review process. In keeping with the Department's business review procedures, this letter does not apply to any of MRC's ongoing practices.

On its face, and as confirmed by you, the above-quoted language would apply only to rating services that propose a new AMP to replace their own existing Currency AMP. Further, although the language of the new provision presented above might appear to mandate completion of the audit prior to the commercialization of a replacement for a Currency AMP, you represent that participation in MRC's audit and accreditation process, including compliance with the proposed language, is entirely voluntary and may be undertaken by a rating service at any time, including after a replacement of a Currency AMP has been commercialized. You further represent that: (a) if such accreditation is not sought prior to commercialization there would be no repercussions on the already accredited product or on the proposed replacement AMP if accreditation is sought at some later time; (b) a rating service that does not seek accreditation prior to commercialization but does so at some later point need not withdraw the product from the market at any point prior to or during the audit and accreditation process; and (c) the proposed change would encourage but not require a rating service to keep its already accredited Currency AMP on the market until the new Currency AMP has been accredited by the MRC.

Evaluation of the Effect of the Rule Change on Replacements for Currency AMPs. In general, MRC's audit and accreditation process appears to provide rating services and their users, including MRC members, with a useful mechanism for increasing confidence in AMPs. Completion of an audit means that an independent third party has reviewed the methodology of an AMP to ensure that it is valid, accurate and effective. By accrediting those AMPs whose methodology appears to be valid, MRC is providing valuable, unbiased information to the marketplace. Such transparency increases user confidence in the accuracy and reliability of AMPs, thereby enhancing their value as audience measurement tools.

MRC appears to have legitimate reasons for encouraging rating services that propose new AMPs to replace ones that are widely relied upon in calculating the price of advertising to undergo an audit prior to commercializing such products. MRC's members understandably wish to reduce the confusion and uncertainty among users (buyers and sellers of advertising) that a rating service's unilateral decision to replace a Currency AMP with an unknown and untested one might cause. Reducing this uncertainty may smooth the transition from one Currency AMP to its replacement.

---

[6]VCOC § 2.2.A.3.

Although these concerns appear legitimate, the Department has not considered whether they would justify the adoption of a mandatory requirement that proposed replacements of Currency AMPs be audited pre-commercialization as a pre-condition for their use by MRC members, or that such AMPs could never qualify for MRC accreditation unless audited prior to commercialization. Here, as discussed above, MRC's members will remain free to use unaccredited Currency AMP products, and MRC accreditation does not appear to be critical to the success of a rating service's replacement for its Currency AMP. In addition, to the extent a rating service wished to seek MRC accreditation after commercializing a replacement of a Currency AMP, you have represented that it would not suffer prejudice by virtue of having commercialized its product prior to securing accreditation.

In light of these circumstances, MRC's proposal to encourage completion of an audit prior to commercialization seems unlikely to discourage competition among rating services to introduce new or innovative AMPs. The proposed rule would not apply at all to rating services seeking to introduce entirely new AMPs. And to the extent a rating service offering an existing Currency AMP wished to introduce an innovative replacement, it would have the option of doing so with or without having received prior MRC accreditation. Such a rating service might well conclude that shifting the timing of the audit to occur prior to commercialization would have commercial advantages. Even if it viewed the burdens of a pre-commercialization audit (in terms of delayed revenues and/or actual cost of the audit) as too great, a rating service would not be deterred from making product improvements simply to avoid an audit, given the options of seeking accreditation following commercialization or not seeking accreditation at all.

The Department's Current Antitrust Enforcement Intention. For the foregoing reasons, the Department does not believe that MRC's proposed provision regarding a precommercialization audit of replacements for Currency AMPs warrants antitrust concern. Therefore, the Department has no present intention to take antitrust enforcement action against the conduct that you have described. This letter expresses the Department's current enforcement intention and is predicated on the accuracy of the information and representations that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the proposed conduct proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Yours sincerely,

Thomas O. Barnett

Thomas O. Barnett

Appendix 2

Media Rating Council's Draft Voluntary Code of Conduct, dated October 19, 2005

Media Rating
Council, Inc.

370 Lexington Avenue
Suite 902
New York, NY 10017

Tel: (212) 972-0300
Fax: (212) 972-2786

10/19/05 DRAFT
(Near Final)

Voluntary Code of Conduct
Media Rating Council, Inc.

Purpose

1. The Voluntary Code of Conduct (the "Code") of the Media Rating Council, Inc. ("MRC") consists of four sections—(1) Principles; (2) Interaction Guidelines; (3) Disciplinary Procedures; and (4) Other Matters. The Principles provide the framework for the Interaction Guidelines, which state the interaction requirements for both measurement services who voluntarily undergo audits by the MRC (the "Measurement Services") and MRC member-organizations and representatives who participate in the audit process, on audit committees, the MRC Board of Directors, the MRC Executive Committee and in other MRC functions and groups (the "Members"). The remaining two sections provide additional information on MRC administrative matters.

2. The MRC is authorized through its by-laws to promulgate internal operating procedures (e.g., voting policies, consultant policies), the Procedures for Accreditation, the Minimum Standards for Media Rating Research (the "MRC Minimum Standards") and the Code governing the interactions of the MRC staff, Members and Measurement Services. MRC internal operating procedures, the Procedures for Accreditation, the MRC Minimum Standards and the Code are subject to periodic review and revision by the MRC Board of Directors to reflect advances in techniques of audience measurement or other necessary changes that the Board may determine.

3. The Code was adopted by the MRC Board of Directors on _________ to provide guidance to all participating Measurement Services and all Members, in the performance of their professional responsibilities related to MRC accreditation and the underlying audit process.

4. Each of the Members and Measurement Services that voluntarily participate in MRC activities acknowledge that they have read and understand the Principles, Interaction Guidelines and other terms and conditions contained herein and that they agree to abide by the Code.

Definitions

Best Efforts: The advertising buying and selling marketplace and other parties such as the general public, minority population segments, the media Industry and the government, rely on the MRC accreditation process to help ensure quality and transparency in audience measurement. Accordingly, the standard of effort associated with complying with the Code should be interpreted as strong commercially-reasonable efforts considering the importance of this reliance – herein stated as "Best Efforts." Audit fees generally do not constitute a compelling reason to not perform tasks outlined in the Code, except in the case of New-entrant Measurement Services, where certain grace periods may be recognized by the MRC Board of Directors during initial product development and marketing.

Commerce-Significant Measurement Products: Syndicated products that are used for planning, expenditure tracking, auditing, reporting, modeling, integrating, fusing or processing of audience estimates or advertising information by MRC Members that are material to the accuracy of these functions. Development-stage products may be commerce-significant because of the potential impact these products could have on the marketplace.

Conflict of Interest: A business relationship (other than subscriber status or routine contract negotiation processes) between an MRC-participating Measurement Service and a Member, or other situation, which could impair the objectivity of a Member or Measurement Service. Some examples of conflicts of interest include: cross or common-ownership of Members and Measurement Services; marketing relationships for media and/or measurement products between Members and Measurement Services, ratings or contract disputes that are in formal litigation. Members and Measurement Services with a conflict of interest related to an MRC-related activity should bring this conflict to the attention of the MRC staff with a recommended course of action specified.

Currency Audience Measurement Products: Syndicated audience measurement products that are widely used and form the basis for setting the financial value of advertising in a media-type or across media types. Currency Audience Measurement Products typically are not development-stage products, unless they will be used by an established Measurement Service to replace an existing currency audience measurement product it already produces.

Custom: An audience measurement product, project, data reporting tool or application developed for the use of a single user, where that user can view unique audience estimates.

Disciplinary Action: Disciplinary action can consist of suspension or revocation of MRC membership or voting privileges, revocation or other changes in a Measurement Service's participatory status in the MRC process, public disclosure of non-compliance with the Code or referral to Government Agencies. Disciplinary actions are taken solely by the MRC Board of Directors.

Measurement Service: An organization that produces one or more syndicated audience measurement products, including "currency" audience measurement products, commerce-significant products or other ancillary products. These products can be focused on national audience measurements, local audience measurements or have other quantitative or qualitative orientations. While auditing procedures, audit risks or other product assessments may be structured differently among these various product orientations, the MRC will strive to apply the auditing and accreditation *process* consistently across these orientations. A "Participating Measurement Service" has agreed to the voluntary MRC auditing and accreditation process for one or more of its products and is engaged in the MRC annual audit process. A "New-entrant Measurement Service" produces a syndicated audience measurement product and has not previously participated in the voluntary MRC auditing and accreditation process for any of its products. In the context of the Code, on-line data providers or third-party processors which do not measure audience but do provide access to or manipulate electronic audience measurement data are considered Measurement Services.

MRC-Related Activities: All activities associated with the conduct of the MRC's audit and accreditation function and MRC administrative matters.

Public Interest: In the context of the Code, acting in the public interest is focused on MRC-related activities. For Measurement Services, serving the public interest includes adopting full disclosure, compliance with the MRC Minimum Standards, appropriate representation of all material segments of the population intended to be measured in the research results, and employing accurate production processes that maintain appropriate representation and response rates. For Members, serving the public interest includes the use of unbiased judgment and consideration of MRC Minimum Standards issues and representation-issues in applicable MRC-related activities.

Syndicated: Audience measurement products employing a consistent methodology, questionnaire or data collection tool across measurement cycles (or across time for continuous measurement applications) resulting in audience and/or qualitative data that is reported (regardless of whether reporting is electronic or hard-copy) identically between users.

Section 1 – Principles

1. General

A.) Members – Membership in the MRC is voluntary. By accepting membership, an organization and its representatives assume an obligation of self-discipline, high ethical standards and confidentiality in all MRC-related matters.

B.) Measurement Services – Participation in the MRC accreditation and audit processes is voluntary. By accepting the voluntary oversight of the MRC, a Measurement Service assumes an obligation for transparency, high ethical standards, compliance with MRC Minimum Standards, and fostering continuous product improvement and transparent dealings in all MRC-related activities.

2. Responsibilities

A.) Members – In carrying out their responsibilities as media research professionals, Members shall exercise sound professional and ethical judgments in MRC-related activities.

B.) Measurement Services – In carrying out their responsibilities in syndicated media measurement subject to MRC accreditation and audit processes, Measurement Services shall exercise sound professional and ethical judgments in their research and media-measurement activities.

3. Public Interest

A.) Members – Members undertake the obligation to act in a way that serves the public interest in their MRC-related activities.

B.) Measurement Services – Measurement Services undertake the obligation to act in a way that serves the public interest in their MRC-related research and media-measurement activities.

4. Integrity and Objectivity

A.) Members – Members shall perform their MRC-related activities with integrity and they shall maintain objectivity and use best efforts to be free of conflicts of interest in discharging their professional responsibilities. If a Member believes a conflict of interest may exist, that Member shall bring such potential conflict of interest to the attention of the MRC Executive Director. Judgments regarding member conflicts of interest will ultimately be made at the discretion of the MRC Executive Director through consultation with the MRC Executive Committee and, where necessary, the applicable measurement service. Conflicts arising in this process will be resolved by the MRC Executive Committee.

B.) Measurement Services – Measurement Services shall perform their MRC-related research and media measurement activities with integrity, objectivity and use best efforts to be free of conflicts of interest in discharging their professional responsibilities.

5. Professional Care

A.) Members – Members shall be familiar with the MRC Minimum Standards and the policies and procedures of the MRC and, when voting, with the applicable audit results, audit-related discussions and materials, and they should discharge their MRC related activities to the best of their professional ability.

B.) Measurement Services – Measurement Services shall be familiar with the MRC Procedures for Accreditation, comply with the MRC Minimum Standards, maintain transparency with the MRC and their subscribers, cooperate with, and fund, the audit process and discharge their MRC-related research and media measurement activities to the best of their professional ability.

6. Equal Access and Competition

A.) Members – Any media organization that uses or relies on audience measurements, regardless of size, is eligible to become a member of the MRC. The MRC is intended to be an equal-access organization among the users of audience measurement data and the provisions of the Code are not intended to change this orientation. Further details on membership requirements, including the requirement to pay membership-dues and other membership conditions, are contained in the MRC By-Laws. Measurement Services, pure consulting organizations and multi-relationship consultants are precluded from membership in the MRC. More information on consultant interaction with MRC is contained in the MRC Consultant Policy.

B.) Measurement Services – It is the policy of the MRC to grant accreditation to any Measurement Service which seeks accreditation, meets the accreditation requirements stated in the MRC Procedures for Accreditation and adheres to the terms of the Code. Neither the MRC Procedures for Accreditation nor the Code nor the MRC Minimum Standards shall preclude the offering of audience measurement products by a Measurement Service that is not accredited, nor shall the Procedures for Accreditation, the Code nor the MRC Minimum Standards prevent any person, firm or corporation (whether or not a member of the MRC) from purchasing or using such information.

The MRC Minimum Standards are *minimum* standards and neither they nor the Code nor Procedures for Accreditation shall prevent any Measurement Service from following improved standards of higher quality.

Section 2 – Interaction Guidelines

1. MEMBERSHIP

Members agree to accept the following responsibilities related to the activities of the MRC:

A.) Membership Requirements

Members agree to insure that their directors, officers, employees and agents, will adhere to the terms of the MRC Non-Disclosure Agreement and the other requirements set forth in MRC By-Laws, this Code and MRC's other policies and procedures (i.e., voting policy, consultant policy and the MRC Procedures for Accreditation).

B.) Membership Rights

Subject to the terms and conditions of the MRC By-Laws, Members, upon payment of all required dues, shall have the right to appoint a representative to the MRC Board of Directors, carrying voting privileges as outlined in the MRC Voting Policy, for accreditation and policy decisions of such Board (the "Member-Representative").

C.) Loss of Membership

1. Any Member that, for a period of three (3) consecutive months, has failed to pay the dues incident to membership shall have its membership revoked; provided that

membership may not be revoked, for good and sufficient cause, pursuant to conditions prescribed by the MRC Board of Directors at its sole discretion.

2. Any Member's membership may be suspended and/or revoked by the MRC Board of Directors for any act, which in the reasonable judgment of the Board constitutes a willful violation or breach of any of the provisions of the By-Laws, the Procedures for Accreditation, the Code, and other MRC Policies and Procedures by a majority vote of the entire membership of the Board and under such procedures as the Board may establish from time to time.

D.) Member Responsibilities

1. Member-Representatives shall have sufficient background and experience, to fulfill the responsibilities required in the accreditation process. The highest-ranking research professional of the Member is the recommended candidate to be the organization's Member-Representative.

2. Member-Representatives shall abide by the terms of the MRC Non-Disclosure Agreement, the MRC By-Laws and Procedures for Accreditation, this Code and MRC's other policies and procedures. Members and their Member-Representatives shall not divulge meeting results or any statements (oral, written or otherwise) made during the course of MRC meetings in any manner that is inconsistent with the MRC Non-Disclosure Agreement.

3. Member-Representatives shall follow the Principles Section of this Code in discharging their MRC-related professional responsibilities.

4. Member-Representatives shall vote on accreditation matters only when sufficiently prepared and informed of the audit and research issues associated with the applicable Measurement Service.

5. Member-Representatives will accurately represent the Accreditation status of participating measurement services to others, within the scope of the MRC Non-Disclosure Agreement and the MRC Procedures for Accreditation.

2. MEASUREMENT SERVICES

The MRC and its Members believe: (1) MRC accreditation is essential to assuring transparency, quality and continuous improvement in syndicated media-measurement products; and (2) the MRC process should be applied to all "currency" audience measurement products and other commerce-significant measurement products of media-types. Measurement Services may approach the MRC directly to initiate participation in the accreditation process, and the MRC Board of Directors, Individual Board Members, or the MRC staff may approach Measurement Services based on their assessment of the currency-status or commerce-significance of the applicable product.

Measurement Services agree to accept the following responsibilities related to their MRC-related research and media-measurement activities:

A.) Support of the Accreditation Process – Participating Measurement Services

1. MRC participation is voluntary; however, participating Measurement Services shall use best efforts to obtain MRC accreditation of all "currency" audience measurement products. Additionally, participating Measurement Services will give good faith consideration to the application of the MRC accreditation process to other commerce-significant measurement products. Accreditation procedures shall be applied to all widely-used reports (i.e., audience measurement deliverables used by numerous service-subscribers) and widely-used data-delivery tools of an audited product or service (excluding custom tools).

   The audience measurements of many participating Measurement Services are accessed and analyzed using data-delivery tools produced and maintained by third-parties. In these cases, accreditation of these products is strongly encouraged, but it is recognized that the participation of these third-party data-delivery tools in the voluntary MRC auditing and accreditation process is not in the control of the participating Measurement Service. The MRC will seek the participation of widely-used data-delivery tools associated with audited currency audience measurement products in the MRC audit and accreditation process, whether or not these are produced by the participating Measurement Service.

2. Measurement Services shall use best efforts to maintain continuous accreditation of their participating products because of the reliance placed on the accreditation process by users.

3. The MRC expects that participating Measurement Services that seek to replace an accredited currency measurement product with a new currency measurement product (both products provided by the same Measurement Service) will use best efforts to obtain accreditation of the new product prior to its commercialization because of the reliance placed on the accreditation process by users. At a minimum, disclosure of impact data as required by MRC Minimum Standards, completion of an MRC audit and MRC committee review prior to commercialization of a replacement currency product is required. In these circumstances accreditation should be vigorously pursued.

   Strong consideration should be given to discontinuing the existing accredited currency product only when the replacement currency product has successfully achieved accreditation. In instances where an accredited product is withdrawn and replaced with a new product by the same Measurement Service the MRC expects the same level of commitment to the accreditation process for the replacement (new) product. This provision, however, does not limit the participating Measurement Service from implementing and marketing the new currency product when it desires.

An MRC-participating measurement service will submit the replacement-product to the MRC when it can reasonably be expected to achieve accreditation and provide in good faith a schedule that allows for completion of an audit and review prior to its commercial introduction. Both the auditor and the MRC agree in good faith that the audit and MRC committee review will be completed in sufficient time to permit the scheduled commercial introduction.

MRC-participating Measurement Services can use the terms of "Hiatus" outlined in the Procedures for Accreditation or may withdraw an existing accredited product from the market without undergoing MRC committee review.

4. Measurement Services shall accurately represent the status of accreditation to their customers. Because of the reliance placed on the accreditation process, the language used in references to accreditation status in measurement service publications, delivery tools, marketing materials or the press (including advertisements) shall be reviewed with the MRC Staff prior to issuance.

<u>B.) Support for the Accreditation Process – New-Entrant Measurement Services</u>

1. New-entrant Measurement Services are encouraged to participate in the MRC process for appropriate products. Pre-audit assessments are available to New-entrant Measurement Services to help illuminate potential MRC Minimum Standards issues and therefore smooth the process of achieving MRC Standards-compliance as products are introduced. [Pre-audit assessments are also available to participating Measurement Services for new products they may develop.]

2. MRC participation is voluntary. New-entrant Measurement Services that develop and market "currency" audience measurement products should consider the guidance in the Code as soon as possible in the development process. The MRC believes new-entrant currency measurement products should enter the auditing and accreditation process when multiple customers begin to rely on their measurements, and thereafter follow the guidance contained in the Code as a participating Measurement Service.

3. MRC Accreditation is not a requirement to market or introduce a measurement product of any kind.

<u>C.) Execution of the Audit</u>

1. The Measurement Service acknowledges that one of the goals of the MRC is to complete audits in a timely manner so that audit results are reviewed as closely as possible to the period audited. To that end, Measurement Services shall, in a timely manner, make available to the MRC auditor documentation and information reasonably requested to complete an examination. In the event a Measurement Service objects to sharing certain documentation, then the Measurement Service shall, without delay, provide its reservations in writing to the MRC staff and auditors, so the parties can

resolve the matter as expeditiously as possible. [In those cases, after review by the MRC staff and auditors, the proprietary information may be withheld from the Members, with solely a generalized description of the audit procedures and findings released in the audit report.]

2. The Measurement Service acknowledges its responsibility to immediately inform the MRC auditor of any MRC Minimum Standards compliance issues it has knowledge of.

D.) Reacting to Audit and MRC Audit Committee Findings

1. Measurement Services shall use best efforts to maintain products that comply with the MRC Minimum Standards. When non-compliance situations are noted in an audit or by an MRC audit committee, the Measurement Service shall undertake its best efforts to resolve these situations. Timely resolution of non-compliance situations is essential.

2. The Measurement Service shall address other audit committee concerns and issues in a timely manner.

3. Measurement Services have the right to disagree with audit committee interpretations and conclusions and must follow MRC procedures to communicate disagreements. As a course of last resort the MRC Procedures for Accreditation shall be used to resolve these disagreements.

4. Measurement Services shall follow the Principles Section of this Code in discharging their MRC-related research and media-measurement responsibilities.

E.) Ongoing Methodological Research

The following provisions apply solely to methodological research conducted in response to audit findings or methodological research requested by the MRC to investigate potential product improvements or quality issues:

Consistent with MRC Minimum Standard A-1, which specifies that Measurement Services should "try constantly to reduce the effects of bias, distortion and human error," Measurement Services commit to a program of ongoing methodological research to maintain product quality and foster continuous improvement. Ongoing methodological research is critical to a successful relationship between the MRC and Measurement Services, and the following principles apply to the conduct and communication of such research:

1. The relationship between the MRC, Members and the Measurement Service shall be characterized by honesty and full disclosure.

2. Because methodological research is critical to the MRC accreditation processes, in appropriate circumstances (e.g., consistent with protection of intellectual property), prior consultation between the Measurement Service and the MRC on the design of

methodological research is strongly encouraged. Implementation drivers, goals and potential research outcomes should be discussed, and the key decision metrics should be clear and well defined in advance. Previous methodological research conducted by the Measurement Service and others should be considered in structuring testing. For research conducted in production samples, the Measurement Service shall follow the "live testing" procedures described in the MRC Minimum Standards.

3. It is the obligation of the Measurement Service to insure that communicated findings are a complete and accurate portrayal of the methodological research data and effective checks on the accuracy of findings are mandatory. Certain studies that directly relate to accreditation status may require auditing and validation by MRC auditors.

4. A Measurement Service shall not knowingly allow the dissemination of conclusions from a methodological research project that are not adequately supported by the data.

5. Documentation and technical information necessary to assess the validity of any published finding shall be maintained by the Measurement Service and made available for inspection by the MRC.

6. Measurement Services shall clearly delineate the technical findings of methodological research from *interpretation* and *recommendations* based on technical findings.

7. In presenting the results of a methodological research project, Measurement Services shall refrain from referring to MRC involvement in project discussions as proof of competence or with any implication that the MRC endorses project conclusions.

8. Measurement Services shall act on methodological research findings in good faith.

Section 3 – Disciplinary Procedures

1. Members – Any Member or Member representative found to have violated the terms of this Code are subject to disciplinary action, as determined by the MRC Board of Directors using such procedures, as the Board shall establish.

2. Measurement Services – Measurement Services found by the MRC Board of Directors to have willfully or repeatedly violated the terms of this Code are subject to disciplinary action as determined by the MRC Board of Directors using such procedures as the Board shall establish.

Process Specifics:

A.) Procedure: The procedures established by the MRC Board of Directors concerning disciplinary action will ensure that Members, Member-Representatives and Measurement Services believed to have violated the Code will be afforded appropriate due-process including hearing procedures, if requested.

B.) Scope of Sanctions: Upon a finding that a Member, Member-Representative or Measurement Service has violated this Code, the violator shall be subject to:

1. Member or Member-Representative: (1) suspension of membership or voting privileges, (2) revocation of membership or voting privileges, or (3) other disciplinary action that the Board deems appropriate.

2. Measurement Service: (1) suspension from participation in the MRC process, (2) publication of non-compliance with the Code, or (3) other disciplinary action that the Board deems appropriate, including referral to appropriate government agencies.

C.) Disputes: Two types of disputes are recognized by MRC: (1) disputes arising from the ongoing accreditation process (accreditation decisions) – these are generally between the MRC Board of Directors and Measurement Services, and (2) violations of the provisions of the Code – these arise from actions of Members, Member-Representatives or participating Measurement Services, and can be asserted by any Member, Member-Representative or participating Measurement Service.

1. Accreditation-Related Disputes: The procedure for addressing disputes related to accreditation-matters (generally the suspension, revocation or denial of accreditation) is described in the MRC Procedures for Accreditation. Ultimately disputes of accreditation decisions of the MRC Board of Directors are resolved through hearing procedures described in the Procedures for Accreditation, *Article IV – Hearing.* These procedures are not modified by the Code.

2. Violations of Provisions of the Code: Violations of the Code can be asserted by the MRC Staff, any Member, Member-Representative or participating Measurement Service.

Any Member, Member-Representative or participating Measurement Service alleging violations of this Code shall submit its allegations to the Disciplinary Committee ("Committee"), a Committee comprised of five member-representatives selected by the MRC Board of Directors. In the event that a member of the Committee must recuse themselves from the matter, remaining members of the Committee shall hear the matter. Within 10 days of receipt of the written allegations, the Committee shall notify in writing, the party against whom the allegations (alleged violator) have been made of the substance of the allegations. The alleged violator, within 30 days of receipt of the allegations, shall submit to the Committee a written response to the allegations. The Committee shall then conduct a full and impartial hearing as soon as practicable to all parties concerned. The Committee shall provide at least 30 days notice to the parties as to the date and time of the hearing. The parties may be represented by counsel at the hearing, present witnesses and documentary evidence at the hearing. There will be a stenographic recording of the hearing. The party making the allegation shall go first, followed by the alleged violator. The Committee, in its discretion may permit rebuttal by the party making the allegation. The parties agree to fully cooperate with the Committee, including complying with any request for information relevant to the investigation. The Committee decision shall be based on a "just cause" standard. The hearing shall be open to those Members and Measurement Services who are signatories to the Code. The Committee, upon reaching its conclusion, shall prepare a written statement of findings, copies of which shall be provided to the parties involved and the Executive Director (or the MRC Board Chairman, if the MRC Executive Director is the alleged violator).

Within 30 days of receipt of the Committee's statement of findings, either of the parties involved may request oral argument before the entire MRC Board of Directors ("Board") at a time and place reasonably convenient to the Board. Failure to request a hearing within the proscribed time period shall be deemed a waiver of the right to Board review. The parties shall be permitted to make a written submission to the Board of Directors. The submission shall contain the following: (1) a statement of the issues presented for review; (2) a statement of facts relevant to the issues presented for review; (3) an argument; (4) a short conclusion. The hearing can be conducted either in person or telephonically. There shall be a stenographic recording of the hearing. The Board shall base its decision upon the transcript of the Committee hearing, the Committee's statement of findings, the parties' written submission to the Board and the oral argument. The Board has the authority to reverse, affirm the Committee's decision and the authority to modify any sanction imposed by the Committee. However, any such determination shall be made only if at least two-thirds of the Board members present in the meeting concur (there must be a quorum of at minimum two-thirds of Board members present in the meeting for purposes of this proceeding).

Members, Member-representatives and/or Measurement Services that disagree with a determination of the Committee, or as applicable the MRC Board of Directors, regarding disciplinary action shall use their best efforts to settle such disagreement.

If the parties are unable to resolve their dispute within 60 business days from the Committee decision or Board hearing, then the issue shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and the judgment of the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In such an arbitration proceeding each party shall appoint an arbitrator selected from an approved list provided by the AAA, within 15 days of the referral. The two arbitrators shall mutually appoint a third arbitrator selected from the same approved list within 10 days of their appointment. If either party fails or refuses to appoint an arbitrator, the arbitrator appointed by the other party shall be the sole arbitrator. If the two arbitrators are unable to agree on the appointment of a third arbitrator within 10 days, the AAA shall appoint the third arbitrator selected from the list. The decision of a majority of the members of the arbitration panel (or a single arbitrator, as the case may be due to a default in appointment) shall be final binding and subject to the provisions of the United States Arbitration Act (Title 9, United States Code Sections 1-14; 201-208).

The arbitrators' decision shall be in writing and shall provide a reasoned basis for the resolution of each dispute. Equitable remedies, such as injunction or specific performance, shall be available in such proceedings. The substantive and procedural law of the State of New York shall apply to any such arbitration proceedings. The place of any such arbitration shall be New York City. Enforcement of the decision may be sought in any court of competent jurisdiction. Each party shall bear its own fees and expenses with respect to the arbitration and any proceedings related thereto and the parties shall share equally the fees and expenses of the AAA and the arbitrators.

D.) Referral to Government Agencies: Consistent with its mandate, the MRC Board of Directors reserves the right, in instances of egregious, repeated or willful violations of the Code, to refer such violations to the appropriate Federal agency.

Section 4 – Other Matters

1. The MRC staff, MRC-engaged consultants and CPA firms who interact with the accreditation process on behalf of the MRC agree to follow the Code insofar as applicable.

2. MRC accreditation voting is complex and based on several sources of information – for example, the Audit Report, Members' professional judgment, various relevant and material performance metrics of the Measurement Service and the intended use of the Measurement Service's data in the marketplace (the intended use of the Measurement Service's data will be stated by the Measurement Service upon application for accreditation – this intended use can be disclosed publicly by the MRC). The combination of these sources of information creates very unique circumstances for each accreditation proceeding. While no single accreditation vote should be interpreted as precedent setting, especially between different services, the MRC will strive to assure that accreditation determinations will be made in a fair and consistent manner, considering the above sources of information.

3. The MRC Staff will provide Members and MRC-participating Measurement Services with copies of the MRC By-Laws, Procedures for Accreditation, MRC Minimum Standards and the Code upon request.

4. The MRC, acting through its staff, will notify Measurement Services in writing of any contemplated changes in MRC By-Laws, MRC Minimum Standards, Procedures for Accreditation, and this Code and will afford Measurement Services an opportunity to consult with respect to such changes. The MRC agrees that such changes will be objectively derived and provided, in writing, to MRC-participating Measurement Services in sufficient time to permit Measurement Services to incorporate changes to affected services prior to the effective date of such changes.

5. The MRC will promptly and accurately communicate in writing to Members and participating Measurement Services each grant, withdrawal or change with respect to accreditation.

<u>**Appendix 3**</u>

Letter from Susan D. Whiting, the President and CEO of Nielsen,
to United States Senator Charles E. Schumer of New York dated July 29, 2004

Nielsen
Media Research

Susan D. Whiting
President & CEO
United States

770 Broadway
New York, NY 10003

t: 646-654-8855
f: 646-654-8989
e: susan.whiting@nielsenmedia.com

Via FedEx

July 29, 2004

The Honorable Charles E. Schumer
United States Senate
313 Hart Senate Office Building
Washington, DC 20510

Dear Senator Schumer:

Thank you for meeting last week with, among others, Paul Donato, the Chief Research Officer for Nielsen Media Research, to discuss Nielsen's introduction of electronic People Meter measurement into the major U.S. markets. Before addressing the specific points in your letter, I want to make two observations.

First, I want to assure you that Nielsen is committed to ensuring that all television viewers are fully and fairly represented by our TV ratings systems. We have been doing this – every day – for more than 50 years, and we think we provide a fair, impartial and accurate account of who is watching what program or what station or cable channel.

The second observation concerns the People Meter itself. The People Meter is the most accurate, the most reliable data collection technology in use anywhere in the world today. Our intention, announced four years ago at the request of our clients, is to introduce People Meter service into the major local television markets (as a replacement to the existing set-meter/diary system) so that the local data collection technology conforms to the national data collection technology. As I am sure you can imagine, having access to overnight demographic ratings information is a huge advantage to buyers and sellers of television time, and, of course, a competitive advantage for television over all other forms of commercial media. This is why the vast majority of our clients – advertisers, agencies, networks, stations, cable systems, media buyers and planners, producers, etc. – are so anxious for Nielsen to expand the electronic service.

Nielsen
Media Research

Let me turn now to the specific concerns raised in your letter.

1. Allegations of minority undercounting by Nielsen's LPM technology

While I am aware of the accusations by some that Nielsen undercounts persons of color in its research samples, I am unaware of any evidence to support this claim. In fact, the opposite is true. Let me focus on three specific areas of our research.

<u>More Viewing Choices</u> -- As you may be aware, when the campaign against us first began in March, the only justification for the "undercount" claim was that People Meter ratings in New York were down for some shows with African-American or Hispanic appeal compared to the set-meter/diary system. As we began analyzing the data, we discovered that African Americans and Hispanics were watching many more channels and many different programs than was being recorded in the paper diaries. So there was an understanding as to what happened to the audience for these programs: they went elsewhere. Here are some of the highlights from the New York LPM data we released at the end of March immediately after the campaign against us began:

- African Americans in New York spent 54.2% of their viewing time on cable programming in March; in contrast, the paper diary system reported that African Americans spent 39.2% of their time watching cable. Similarly, LPMs found that Latinos spent 43.8% of their time watching cable, compared to the 34.6% that paper diaries reported.

- Overall in March, viewership among Latino viewers in New York increased for 80 networks and decreased for 17 under the LPM system. Among African American audiences, LPM viewership increased for 90 networks and decreased for 19.

- Among African American viewers, total day viewing for BET is up 180% under LPMs. African American viewing increased more than 100% for a number of other networks, such as ESPN, LMN, Telefutura, Pax and Starz.

- Among Latino viewers, Telemundo and Telefutura ratings are up 22% and 83%, respectively, under LPMs, while cable access channels and the HBO Zone pay channel are up over 100%.

Despite the release of these data, the campaign of disinformation against Nielsen continued unabated.

Nielsen
Media Research

Sample Composition -- We also looked at the composition of our samples, and found no "undercount" there. When we compare the ethnic and racial compositions of persons in our LPM samples in New York, for example, we find that the number of African Americans and Latinos exceeds the population estimates (see information enclosed).

New York TV Market

Demographic	Total New York TV Market	Set-Meter Sample	LPM Sample
African-American	17.3%	16.9%	19.6%
Latino	16.1%	15.0%	17.8%
Asian	6.7%	4.5%	4.5%

Los Angeles TV Market

Demographic	Total Los Angeles TV Market	Set-Meter Sample	LPM Sample
African-American	8.8%	10.3%	9.1%
Latino	31.3%	28.4%	33.4%
Asian	10.9%	7.4%	9.8%

Chicago TV Market

Demographic	Total Chicago TV Market	Set-Meter Sample	LPM Sample
African-American	17.5%	17.2%	19.5%
Latino	12.4%	12.2%	12.2%
Asian	4.2%	1.9%	3.5%

Boston TV Market

Demographic	Total Boston TV Market		LPM Sample
African-American	5.0%		6.7%
Latino	4.8%		4.2%
Asian			

(The People Meter service was launched in Boston in April 2002)

Note: Sample characteristics are for the week of 7/12/04 - 7/18/04

Nielsen
Media Research

<u>Fault Rates</u> -- We looked at fault rates within sample homes. For a sample household's viewing information to be included in the ratings for the day, Nielsen examines the tuning and persons information collected from each household daily to evaluate its accuracy and completeness. A household may fault or go out of tabulation for a variety of reasons, including unplugged meters or improper use of the People Meter, or perhaps the household has bought a new TV set or new attachments (VCR or DVR or satellite connection) and we receive a communications error message from the equipment. Our clients do not want such incomplete information included in the data that is used as currency. The good news about faulting in a metered panel is that we know right away when something is wrong and can fix it. Also, fault rates in a metered system are transparent to all clients – we publish fault information every week. With a paper diary system, however, incomplete or missing data are lost, entirely.

Faulting is not new, or unique to Local People Meters. Nielsen has been operating metered panels in the US since 1950. Better equipment, better training and larger sample sizes help offset the effects of faulting, particularly among African-American or Hispanic households.

In all of our samples, African American and Hispanic fault rates are higher than the average. The reason is that homes that watch more television are more likely to fault. It has nothing to do with race or ethnicity or our ability to service requests to these homes. African American and Hispanic households are larger than other households and this is one of the base reasons for the higher levels of viewing in these households.

The reason that the amount of television viewing drives fault rates is that in households with more television viewing, there are more television sets. More television sets mean that there is a greater chance that one of them will be unplugged or that someone might tune to cable channel that has recently changed its lineup number. In these cases, we receive an unidentified source flag and take the household out of tabulation until it is corrected. This is the way our clients want the data reported.

As part of the Media Rating Council accreditation process, Ernst & Young conducted an audit of the New York LPM system. The audit found that at one point the fault rate for African-American households temporarily reached 25%, compared to an overall average of 16%. (Some of this may have been due to the active campaign to discredit Nielsen in communities of color.) Since late May, fault rates have been well within target levels and consistent with fault rates in our National People Meter Sample (16-18%).

Nielsen
Media Research

2. MRC accreditation

There are two issues involved here. One concerns those services that have or have not been accredited by the Media Rating Council, and the other issue concerns Nielsen's decision to begin a service before it applies to the MRC to accredit that service.

Your letter states that we are rolling out Local People Meter service "despite the fact that the Media Rating Council has not yet accredited the Local People Meter methodology and technology." The MRC first accredited Nielsen's People Meter methodology and technology in 1988 for our national service, and has done so every year thereafter. The MRC accredited the People Meter methodology and technology for the Boston market (local service) in 2002. Boston was the first local market to receive the service. The People Meter service, however, has not yet been accredited in New York (the MRC voted earlier this summer to withhold accreditation in New York until certain issues were resolved), and we are working with the MRC to gain accreditation.

Your related question concerned Nielsen's decision to begin a service before applying to the MRC to accredit that same service. While we acknowledge the concerns of individuals and groups who have asked us to postpone our LPM launches until after we gain accreditation by the MRC, we believe that doing so would raise antitrust issues.

The Media Rating Council, which was formed in 1964 at the urging of the United States Congress, is an independent, non-profit industry association created to maintain the quality and credibility of audience research by securing audience measurement services that are valid, reliable and effective. MRC members include television and radio broadcasters, cablecasters, print organizations, advertisers, Internet organizations, advertising agencies and industry trade associations.

Among its various responsibilities, the MRC offers all research firms an opportunity to participate in a voluntary program for accreditation of their ratings services, which are voted on by those members representing the media and advertising industries. The MRC consists of fiercely competing firms with different commercial interests affected by the adoption or delay of audience measurement innovations. A majority vote to deny or withhold not only accreditation but also the commercial launch of a technology such as the Local People Meter - which would be to the competitive benefit of some and the disadvantage of others - would present a restraint of trade. For precisely this reason, the antitrust clearance the MRC received in 1964 was very limited, and was expressly predicated upon the accreditation process being voluntary rather than mandatory.

Nielsen
Media Research

To emphasize that point, the MRC's Procedures for Accreditation specifically state that: "Neither these Procedures nor the criteria shall preclude the offering of electronic media audience measurement information by a Service that is not accredited, nor shall the Procedures or Criteria prevent any person, firm or corporation (whether or not a member of the Council) from purchasing or using such information."

We have consulted with well-known antitrust experts who have advised us that these antitrust concerns also apply to the notion of obtaining accreditation before launching the service in any of our local markets. Instead, as has been done for the past 40 years, and consistent with the antitrust restrictions recognized by the MRC at that time, it is our intention to launch our service, then seek MRC accreditation in each market.

3. Nielsen's joint venture relationship with BBM in Canada and BBM's implementation of the Arbitron Portable People Meter

Your questions to us on this subject appear to be based (1) on unclear reports in the news media with respect to the Nielsen-BBM Joint Venture agreement, and (2) an overestimation by some industry sources about the current readiness of the PPM system to serve as the currency for television audience measurement. I will summarize by saying: (1) neither Nielsen nor the Joint Venture is deploying the Arbitron Portable People Meter (PPM) technology in Canada, and (2) Nielsen Media Research and Arbitron have jointly been testing the Portable People Meter system in the U.S. for the past two years. We do not believe that the PPM system is ready yet for commercial deployment as the currency of television measurement, and I am including more details below and as an attachment to this letter about our ongoing work with Arbitron.

Let me begin, first by highlighting the major points of the agreement between BBM and Nielsen Media Research in Canada:

- Under the terms of the Canada Joint Venture, which is subject to regulatory approval, Nielsen Media Research and BBM plan to operate a National television measurement service in Canada as well as local measurement service in Vancouver, Toronto, Calgary and the Ontario region. The technology used in these markets will be Nielsen Media Research's People Meter, which has been used for television ratings in the U.S. and Canada for a number of years.

Nielsen
Media Research

- The Canada Joint Venture involving BBM and Nielsen Media Research is in response to Canadian clients' requests to find ways for both companies to work together to eliminate the confusion and costs associated with having two different ratings services in any single market.

- BBM will use Arbitron's Personal People Meter (PPM) for the Quebec region, which is not part of the Joint Venture at this time, and will be operated solely by BBM. The choice to deploy PPM in Quebec was solely BBM's.

- With regard to the future, both JV partners will continue to evaluate all alternative technologies, including PPM and Nielsen's Active/Passive meter, to determine if they meet the standards of the Canadian television industry.

- For the last several years, Nielsen Media Research has been evaluating Arbitron's PPM technology in the U.S. The decision by BBM to utilize the PPM technology in Quebec will not change Nielsen's due diligence plans, which were made at the request of U.S. television clients.

With this as background, I will address some of the specific references and questions in your letter concerning the Arbitron PPM system, at least as far as Nielsen is concerned.

> *"It is reported that such a system (PPM) would more accurately measure audience viewership (especially out-of-home viewing) than Nielsen's current system, which requires active involvement from participants and may lead to unacceptably high 'fault rates.'""*

At this point in the R&D program, testing has not demonstrated that the PPM will more accurately measure television audiences. Therefore, we do not believe, at this point, that the PPM system is ready to serve as a currency for the television industry, and I believe that it is fair to say that the majority of our clients think the same way we do. The major issues, from Nielsen's standpoint, involve unintended audience crediting, accuracy, cooperation and unacceptably high fault rates. (At this point in the PPM research process, we are seeing much higher fault rates in the PPM system than the LPM system. For example, a high – 25% – proportion of respondents fail to carry their PPM on a given day.) We are working through these issues, however, and our engineering and methodological research teams will continue to work with Arbitron in the U.S. In the near term, Nielsen does agree that the PPM system has attractive possibilities for out-of-home measurement, and may provide some further opportunities in custom applications.

Nielsen
Media Research

> *"I am concerned that Nielsen is deploying a passive audience measurement system in Canada while it continues with its rollout of LPM technology in the United States…"*

Nielsen is not deploying a passive audience measurement system in Canada. The Arbitron PPM system, which has been licensed to BBM, is for BBM's use in Quebec and Montreal. Nielsen has not endorsed the PPM system in Canada or anywhere else. We are testing it in the U.S. Also, while the PPM system may intuitively seem more "passive" than Nielsen's button-pushing People Meter, it is not a clear how "passive" it actually is. People have to wear it or carry it with them at all times, and remember to place it in the docking station every night so the data can be downloaded. The PPM is certainly "portable" but not necessarily "passive."

In Canada, the PPM system apparently has the support from the broadcasters (the measured media) who are the "sellers" of advertising. These broadcasters make up the majority of BBM's membership. However, the "buyers" of advertising (the advertisers and their agencies) represented by the Association of Canadian Advertisers has issued a paper detailing a number of concerns about the PPM, declaring that it will not endorse the PPM until a number of tests have been conducted. In fact, the ACA has just issued an "alert" to its members discouraging use of PPM data for buying advertising. (Information attached.) So it remains to be seen how commercially successful the PPM will be in these markets.

> *"What differences, if any, exist between U.S. and Canadian markets that justify using passive people meters in one, but not the other?"*

I think this is a question for BBM to answer, since Nielsen sees no justification whatsoever for introducing a PPM system into any market as the currency for commercial television transactions. This opinion, as mentioned above, appears to be shared by the Association of Canadian Advertisers.

> *"What factors did Nielsen and BBM Canada consider in determining that use of Arbitron's passive measurement system is appropriate in Canada?"*

As previously discussed, there were no factors considered, since the PPM deployment is outside the scope of the Joint Venture – at least at this time and until further R&D work is completed – nor does Nielsen agree that the PPM system is appropriate as the TV ratings currency for any market.

Nielsen
Media Research

> *"What technological barriers, if any, exist to deploying passive measurement tools for television ratings in the U.S. at this time?*

Nielsen is exploring many technologies as part of our continuing effort to remain on the cutting edge of audience measurement capabilities. In fact, no other media research company in the world has spent more time, money, and management resources pursuing these capabilities. Whether the approach is facial recognition, motion detection, infrared sensing, audio encoding, video encoding, audio signatures, or any number of additional approaches, Nielsen is investigating all these different technologies.

> *"Please describe Nielsen's efforts in making [a] transition to the passive people meter system in U.S. markets. When will this technology be ready for use in the U.S.?"*

For nearly two years, Nielsen Media Research and Arbitron have jointly been testing the Portable People Meter system in the U.S. Although confidentiality agreements have restricted the disclosure of more complete information about those tests, extensive trials in Philadelphia have revealed several areas of concern, which are the subject of further, joint tests. Both companies agree that response rates from Arbitron's initial PPM market test in Philadelphia were unacceptable, and that a better understanding of in-home and out-of-home audience behavior is needed. In addition, while the system does an excellent job of identifying audio codes, more testing needs to be done to determine how it functions in households with multiple television and radio sets.

I am attaching our report to clients following the first round of testing in 2002, along with a cover letter highlighting some of the conclusions and the scope of the work. For your convenience, however, here is a summary of our work with Arbitron on PPM development:

- <u>1999-2000: Initial Due Diligence.</u> Soon after Arbitron announced initial results from its test in Manchester, U.K., Nielsen became interested in the potential of the PPM. We soon began negotiations with Arbitron to form a joint venture in the United States, whereby TV and radio clients would share the joint venture's panel costs. Nielsen conducted initial engineering tests on the encoding technology, but the methodological data available at that time was limited. Nielsen nonetheless entered into an Option Agreement with Arbitron in 2000.

- 2001-2002 Philadelphia Testing: Nielsen paid additional funding to help support Arbitron's market test of the PPM in Philadelphia. Nielsen had no role in this test, but did review data as soon as Arbitron was able to provide it.

- 2002 Roundtables: In the fall of 2002, Nielsen and Arbitron hosted a series of meetings with clients. Arbitron and Nielsen jointly presented data from Philadelphia and laboratory tests representing one of the most comprehensive presentations of PPM research and engineering issues ever provided to clients. Key clients from both the "buy" (agencies and advertisers) and "sell" (broadcasters and cable) sides of the industry attended.

- 2003-2004 Collaborative tests: Nielsen's clients were concerned with test results shown at the Roundtable meetings, especially with regard to exceedingly low response rates and the potential "spillover" of audio codes beyond the room with a TV. Nielsen's television clients requested that we actively work with Arbitron to further develop and test the PPM. Nielsen agreed and contributed additional funding to Arbitron as well as engineering support, methodology experts, and field force personnel to help make these collaborative tests with Arbitron a reality. We have joint teams working together, often meeting on a weekly basis.

Now, the key question which you, and many of our clients have asked: Will the PPM ever be ready for commercial deployment, and if so, when? While I don't have the ultimate answer, we are working towards an answer on various fronts:

- Testing: By early fall of 2004 we will have completed our collaborative tests on research and engineering issues and shared them with television clients. Clients' reactions to the results could lead us to accelerate commercialization efforts or to continue with another round of testing. By spring of 2005, the Houston test market results (conducted by Arbitron only) will indicate whether the modified methodology tested there delivers the same level of response rates seen in our Philadelphia collaborative test. Finally, over the next 6-9 months, the engineering testing of the PPM, its recent modifications and its future R&D program should be complete.

- Financial Due Diligence: As data from Houston comes in, we can begin detailed financial analyses. Eventually we need to estimate the price increases we will need to charge clients.

- Market Acceptance: Nielsen has the option right to form a joint venture with Arbitron that serves both television and radio. Both sets of clients need to accept the methodological changes and pricing. (Nielsen does not have enough knowledge of the radio marketplace to understand its issues.)

- Software Systems Development: At some point Nielsen and Arbitron will decide it is worth making the investment in the data collection/processing infrastructure and client reporting systems to turn the PPM from market test to operational service. Nielsen and Arbitron do not currently have a detailed estimate on how much work or time this would involve, so it may or may not impact any larger timetable for deployment.

- MRC Accreditation: The same process that took the Local People Meter several months to complete in Boston has not yet begun with the PPM. Moreover, whereas the MRC is familiar with the Local People Meter technology and methodology due to the many years of use of the People Meter in our National business, the MRC has virtually no experience with the PPM. It is too early to estimate when the accreditation process will be complete, but it may not happen until after PPM data are made available to clients for commercial use.

To summarize, the likelihood of and timetable for PPM commercialization as a currency in the U.S. is not yet clear for either television or radio, despite the considerable efforts of both Nielsen and Arbitron. But to be clear, Nielsen wants to arrive at an answer as soon as possible. Since 2000, Nielsen has invested millions of dollars in the testing, evaluation and development of the PPM. It is the largest investment that Nielsen has ever made in a third-party's technology to which Nielsen did not already own license rights. Obviously, Nielsen would prefer to achieve a return on this investment and as quickly as possible. But we can commit to the PPM only if and when the PPM is ready for deployment.

In closing, I would like to make one observation taken from your final remark that, "the ratings provided by Nielsen are the basis for programming decisions and thus determine what we are able to view on television."

To be sure, the ratings for programs already on the air are an important factor in any program's ability to survive in a highly competitive environment, one in which the average household has at least three TV sets, each capable of receiving more than 100 channels. Ratings also can help programmers determine what kind of shows tend do well among various audiences. So ratings are an enormously helpful diagnostic tool in the hands of skilled researchers. What Nielsen does not do, however, is determine what gets on the air, or what programs go into a network's schedule, or how many persons of color a network hires, or how broadcasters reach out to minority audiences or even how advertisers should target their budgets to reach minority audiences and consumers. We do our very best to estimate who is watching what television program. That's all we do. In the end, our ratings are our opinion, our expression of audience, one based on years of experience, dedication and a commitment to accuracy.

I look forward to our continuing conversations.

Sincerely,

Susan D. Whiting

Enc.

Appendix 4

Written Testimony of George Ivie, Executive Director and CEO of the MRC, before the U.S. Senate's Committee on Commerce, Science and Transportation, Hearing on Television Ratings Accuracy and the FAIR Ratings Bill, July 27, 2005

Written Testimony of George Ivie
Executive Director and CEO
The Media Rating Council, Inc.

Before the Committee on Commerce, Science and Transportation
U.S. Senate

Hearing on Television Ratings Accuracy and the FAIR Ratings Bill

July 27, 2005

I. Introduction to the MRC

I am George Ivie, Executive Director and CEO of the Media Rating Council (MRC), and I am grateful for the opportunity to present our views on Nielsen's implementation of the local people meter (LPM) measurement methodology in general-market media research. I would like to begin by thanking Senator Burns and Ranking Member Inouye for your leadership in focusing congressional attention on this technical and important subject.

The MRC is a non-profit organization that reviews and accredits audience-rating services through the use of rigorous audits. An MRC audit includes an independent, detailed, and objective examination of each aspect of the operations of a rating service (including methodological protocols) through data provided to it by participating rating services. The central mission of the MRC is to secure for the media industry, audience measurement services that are valid, reliable, and effective through an independent evaluation process, without regard to outcome. The MRC is independent of, and external to, any rating service and guards its independence zealously.

1. History and Mission of the MRC

During 1963 and 1964, regulation of the TV and Radio industries including the purpose and accuracy of audience research were the subjects of extensive public hearings. This process culminated with a progress report issued to the 89th Congress of the United States (House Report No. 1212)[1] in January 1966. These hearings were held by a Special Subcommittee on Investigations of the House of Representatives Committee on Interstate and Foreign Commerce and are commonly referred to as the "Harris Committee Hearings on Broadcast Ratings."

After an extensive investigation and three days of testimony, the Committee determined that Industry self-regulation, including independent audits of rating services (such as Nielsen Media Research, Arbitron or MRI) was preferable to government intervention. In its report, the Committee concluded as follows: "The enactment, at this time, of legislation providing for government regulation of broadcast audience measurement activities is not advisable. The administration of a statute providing for such regulation would place an unnecessary burden on the Federal Government, and it is doubtful that more would be accomplished than can be accomplished by effective industry regulation."[2]

The Harris Committee hearings resulted in the formation of an Industry-funded organization to review and accredit audience-rating services called the Broadcast Rating Council (now referred to as the MRC). At that time, the Broadcast Rating Council's proposed Industry

[1] House Rpt. No. 1212, 89th Congress (1966). (Exhibit A)

[2] *Id.* at p. 21.

self-regulation procedures were reviewed by the U.S. Justice Department and were found not to be in violation of the antitrust laws.[3]

Aligned with the actions deemed necessary by the Committee, the activities of the MRC include, but are not limited to the following:

- The establishment and administration of Minimum Standards for rating operations;
- The Accreditation of rating services on the basis of information submitted by such services; and
- Auditing, through independent CPA firms, of the activities of the rating services.

The MRC's mission as stated in its By-laws is: "to secure for the media industry and related users audience measurement services that are valid, reliable and effective; to evolve and determine minimum disclosure and ethical criteria for media audience measurement services; and to provide and administer an audit system designed to inform users as to whether such audience measurements are conducted in conformance with the criteria and procedures developed."[4] This mission was established with the support and guidance of the House Committee.

2. Standards

Consistent with the By-laws of the BRC and its mission, it developed minimum standards by which media research is to be measured, which became effective on March 31, 1964 and have been maintained and updated by the MRC Board of Directors.[5] The Standards relate to: (a)

---

[3] Letter from William Orrick, Jr. Assistant Attorney General, Antitrust Division, U.S. Department of Justice to Douglas A. Anello, General Counsel, National Association of Broadcasters (July 16, 1964) (Exhibit B).

[4] MRC By-Laws. – Board of Directors, Media Rating Council, Effective March 1964, Updated (Exhibit C)

[5] See Minimum Standards for Media Rating Research, Media Rating Council, Inc. (last updated = 10/97)(Exhibit D)

ethics and operations, and (b) disclosures. Ethical and Operational Standards govern the quality and integrity of the entire process by which ratings are produced. Disclosure Standards specify the detailed information about a rating service's methodology and each specific survey, which must be made available to users, the MRC and its CPA firm, as well as the form in which the information should be made available.

3. MRC Accreditation Process

The MRC Accreditation process is completely voluntary and there is no legal or compulsory requirement that a rating service submit to an MRC audit. MRC is often compared to similar private industry self-regulatory organizations such as the Joint Commission on Accreditation of Healthcare Organizations (JACHO), which is an organization that audits and accredits participating hospitals for institutional fitness and high quality patient services. Similarly, the MRC lends its "seal of approval" to rating services that demonstrate compliance with MRC's standards of media rating research and that make complete methodological and survey-performance disclosures to their customers after completing an extensive audit. Over thirty-five rating service products were submitted to the MRC Accreditation process last year. Of these thirty-five products, many represented media-types other than television.

Accreditation is granted by the MRC Board of Directors if a rating service complies with the MRC's Minimum Standards for Media Rating Research and makes materially complete methodological and survey-performance disclosures to their customers.

The MRC has used several nationally known CPA firms throughout the years to perform these audits. At present, the audits are conducted by Ernst & Young, under contract to the MRC. Each rating service agrees to pay MRC assessments to cover their audit cost; the MRC collects no funds from rating services other than the direct cost of the Ernst & Young audits. To be clear, the MRC derives no benefit, financially or otherwise, from the rating service. MRC's revenue is solely derived from the dues paid to it by its members. In addition, unlike most CPA firms, Ernst & Young maintains a specialized group of personnel who have responsibility for auditing rating service operations and assessing compliance with the MRC's unique Standards. This Ernst & Young team only works on media rating service audits.

The central element in the monitoring activity of the MRC is its system of annual external audits of rating service operations. MRC audits serve these important functions:

- They determine whether a rating service merits Accreditation (or continued Accreditation); the audit report and related insight provided by the CPA firm is the primary input into the Accreditation decision,
- They provide the MRC with the results of detailed examinations by CPA auditors which become the basis for quality improvements in the service, either by voluntary action or mandated by MRC as a condition for Accreditation, and
- They provide a highly beneficial psychological effect on rating service performance. Knowledge that CPA auditors may review their work is a powerful spur for quality work by all field and home-office personnel of the rating service.

The specific methodological approach of the rating service and the MRC Minimum Standards for Media Rating Research are the primary drivers of the audit scope for each participating rating service to be executed by the CPA firm, on behalf of the MRC. Audits are required to be conducted at least annually. The MRC establishes an audit committee made up of member organizations that use research of that media-type to evaluate audit results and recommend a position on "Accreditation" to the Executive Director of the MRC, who then submits such recommendation to the MRC Board of Directors. Provision is also made for the suspension or withdrawal of Accreditation and a documented, formal hearing procedure applies in such instances.

The MRC's audit includes an independent, detailed and objective examination of each significant aspect of the operations of a rating service. In the event that a rating service uses outside professional vendors (for example, for sampling procedures or for editing and tabulation of data) these sources are also audited and reported upon.

Resulting audit reports are very detailed (typically 150-300 pages); containing many methodological and proprietary details of the rating service and illumination of the primary strengths and weaknesses of its operations. The reports are confidential among the MRC members, who all sign non-disclosure agreements, Ernst & Young and the rating service. Audit reports include detailed testing and findings for:

- Sample design, selection, and recruitment
- Sample composition by demographic group
- Data collection and fieldwork
- Metering, diary or interviewing accuracy
- Editing and tabulation procedures
- Data processing
- Ratings calculations
- Assessment of rating service disclosures of methodology and survey performance

Pursuant to the last bullet above, the MRC mandates that rating services disclose many methodology and performance measures, which would be otherwise unknown, for example:

- Source of sample frame
- Selection method

- Respondents by demographic group versus population
- Response rates
- Existence of special survey treatments for difficult to recruit respondent groups such as young or ethnic persons
- Editing procedures
- Minimum reporting requirements for media
- Ascription and data adjustment procedures employed
- Errors noted in published reports
- Data reissue standards and reissue instances

As a result of the disclosures that a rating service must make in complying with the MRC Accreditation process, specific audit findings are <u>not</u> disseminated to the public or the press unless waived by the service, the MRC, and the CPA firm that conducts the audit. Public disclosure of proprietary techniques can be detrimental to a rating service's core business, for example endangering patented information, and the MRC takes very seriously its obligation to keep proprietary information confidential as well as the audit reports. Recently a controversy erupted between the MRC and Nielsen Media Research regarding the apparent leak of information related to the audit of Nielsen's Los Angeles LPM service to the Los Angeles Times. MRC in no way endorsed or condones that behavior as it goes directly against its code of confidentiality. As a result of this incident, the MRC, in conjunction with its members, have implemented new rules for the viewing and discussion of draft and final audit reports among its membership.

What should be made clear, however, is that the MRC can only publicly comment on its decision to grant, deny, suspend or withdraw Accreditation without the consent of the rating service and the independent CPA auditing firm.

Rating services that are awarded MRC Accreditation are given permission to display the MRC's logo on the audited research product indicating compliance with our Standards. MRC Standards are publicly available; more importantly, the extensive methodological and survey performance disclosures mandated by the MRC are required to be available to all rating service customers.

II. MRC Membership, Membership Participation and "Due Process"

1. Membership

Membership in the MRC is completely voluntary and members pay annual dues of $10,500 (for reference, MRC dues were $7,500 per year in 1964). The dues are universal in the sense that each member pays the same amount regardless of the overall size of its organization and are set at a level that allows participation by organizations of all sizes. The Board of Directors of the MRC is comprised of one appointed representative, generally a top media research executive, for each member organization. Currently there are approximately 95 Board members in total representing television and radio broadcasting, cable, print, Internet and advertising agency organizations as well as advertisers and other trade associations.[6] As indicated by our membership list, MRC represents a very broad and diverse amalgamation of the media industry as well as the largest clients of rating services. Additionally, we have a provision for formal liaison relationships with the American Association of Advertising Agencies, the Advertising Research Foundation and the Association of National Advertisers. Membership is

[6] Full membership list is attached (Exhibit E).

open to any media organization that relies on, or uses media research and presently includes both general-market media (e.g., the ABC, CBS, FOX, NBC networks) and ethnic media organizations (e.g., Black Entertainment and Television and Univision). Conversely, organizations such as Nielsen or Arbitron that produce media ratings data are not allowed to be members of the MRC.

2. Membership Participation

MRC members play a critical role in the Accreditation process and provide valuable insight. MRC's "Television Audit Committee" comprised of individual representatives from various member organizations that have an interest in the accuracy and quality of the rating service's research. The individuals that sit on this committee are often the top media researchers of their organizations and generally do not include television executives or representatives of an organizations' marketing division. <u>It is in this committee, along with the oversight of the MRC Staff, that true industry oversight of the quality and accuracy of television audience measurement services is performed</u>.

As discussed earlier, it is through the MRC Accreditation process and the use of rigorous and independent audits, that a rating service gains MRC Accreditation. However, before Accreditation can be achieved, the Audit Committee has the task of reviewing a draft of the rating service audit and discussing the results in detail with the auditor (Ernst & Young) and the staff of the MRC. Additionally, the rating service has the opportunity to provide its comments, verbatim, in the audit report or in a separate letter supplied to the audit committee. This is a confidential process and strict guidelines and procedures are followed during this review because of the transparency requirement that a rating service must meet in order to gain MRC Accreditation.

Once a full review of the audit has been completed, the MRC presents a "staff recommendation" to the full committee on whether in its opinion taking all the available data in front of it; the rating service should be accredited. This recommendation is prepared to help guide the committee as it weighs its decision on Accreditation. The audit committee will then vote on Accreditation, which in turn serves as a recommendation for the MRC Executive Director to take to the full MRC board of directors for final approval. At this point the Executive Director will present the recommendation of the audit committee to the full Board of Directors along with his assessment. The full Board then has the responsibility and <u>ultimate authority to vote to grant or deny Accreditation</u>.

3. "Due Process"

One very important aspect of the voting and approval process is the controls and safe guards that are in place to assure that a vote of the audit committee is fair and impartial. The MRC has a formal policy for membership voting on MRC Accreditation issues that provides stringent controls and eliminates the potential for outside influence, during and subsequent to the voting procedure. The policy is not intended to stifle in any way the thoughtful discussion that takes place in preparation of the proposals. The policy is designed to insure a more proper accounting of ballots and to further maintain the confidentiality of meeting proceedings. Specifically, it:

- Verifies that all votes are accounted for
- Reduces the likelihood of miscounting votes
- Limits the influence of any one member organization, or collective segments of the Industry

- Minimizes the information that can potentially be divulged to Non-Members, in violation of the signed confidentiality agreement.
- Maintains a physical record of the vote
- Provides a means for verification

Voting within the MRC can occur at various levels and follows a pre-established hierarchy. Below is an outline of the levels at which voting may take place including a summary of the MRC members that are entitled to participate, and the responsibility of each group.

- *Sub-committee(s) –*

Subcommittees are comprised of a sub-set of individuals from the MRC Committee(s) responsible for oversight of the measurement service. Any committee member claiming to have a business or professional interest in the matter at hand can elect to participate in a sub-committee. The MRC Staff will work to ensure that the various segments of the industry are represented in the sub-committee. The sub-committee is responsible for undertaking a detailed review of the issue. Multiple sub-committee meetings may be held depending on the complexity of the issue. The sub-committee vote is designed to make a recommendation to the Committee(s). A tie vote will necessitate a detailed review by a larger sub-committee group or the committee.

- *Committees –*

MRC Committees are comprised of MRC members who have a business or professional interest in the medium for which the committee has oversight. These committees may be asked to undertake a detailed review based on the complexity of the issue. The committee votes whether to accept the recommendation of the sub-committee and the committee vote is structured to make a recommendation and provide guidance to the Executive Director. A quorum is required on all voting matters and a tie vote will necessitate a detailed review by the Board of Directors.

- *Board of Directors*

The Board of Directors represents all active members of the MRC and vote on the recommendation submitted by the Executive Director. In addition, the Board is responsible for the final vote on all Accreditation issues and a quorum is required on all voting matters.

- *Executive Director*

The Executive Director is responsible for making a recommendation to the Board of Directors and considers the recommendation of the committee(s), though he is not required to recommend the committee(s) position to the Board. However, the Executive Director must convene a board meeting to discuss in detail any recommendation whereby the executive director's position differs from that submitted by the Committee. The Executive Director may take any issue directly to the Board of Directors for a vote.

- *Voting Guidelines*

All active Board Members are entitled to a vote in the Accreditation process. A member company designates the representative(s) to attend meetings and vote. The MRC recommends the voting representative be a senior ranking individual with knowledge of the subject matter. When a detailed review of the subject matter is called for, the voting representative must be in attendance for the majority of the review meeting. Anyone not in attendance for the full meeting will be allowed to vote at the discretion of MRC Executive Director. A member company representative may participate in-person, via phone or video-conference and is allowed to represent a maximum of two votes, for multi-vote organizations. In addition, this representative is required to submit vote(s) in writing with the exception of those participating via phone or conference call. Individuals participating via electronic means (e.g. phone, etc.) have the option to cast votes via personal call to MRC Staff, fax, or e-mail. Verbal votes require follow-up written (e.g. fax, e-mail, etc) confirmation.

- *Special Circumstances*

Special circumstances occur when an MRC member whose company has a vested interest in the matter being considered. When this occurs, that member may participate in the review meeting but will not be allowed to vote. Situations of this nature will be disclosed prior to the start of the meeting. Any un-anticipated voting conflicts are to be resolved by the MRC Executive Director

- *Voting Results*

When a vote takes place the rating service will be advised of the final outcome as soon as possible and summary-voting results may be divulged to the Rating Service when deemed appropriate by the Executive Director. Individual Member votes will not be divulged by the MRC and members are free to state their voting intention prior to the official vote. However, members may divulge their individual vote outside of the meeting subject to the policy of the signed Non-Disclosure Agreement on record at the MRC.

III. Status of LPM Audits – Boston, New York, Los Angeles, Chicago, San Francisco, Philadelphia, and Washington D.C.

Nielsen's primary products cover national programs, local programs, syndication, cable, satellite, as well as dedicated research for Hispanics and by implication the advertisements for all of these vehicles. Nielsen also provides several electronic tools and applications used to deliver ratings to their customers. The MRC accredits several, but not all, of Nielsen's products.[7]

[7] See Exhibit F (Complete List of MRC Accredited Services)

Nielsen's National Service based on a people-meter methodology has been MRC-Accredited since the late 1980s; Nielsen's meter-diary based Local Service was originally Accredited in the 1960s; Nielsen's National Hispanic Service (NHTI) has been Accredited since 2000. We believe these services materially comply with our Standards, although the MRC does maintain a separate ongoing dialogue with Nielsen regarding quality issues noted in the audit process in an effort to improve the quality of research. Other Services such as Nielsen's Hispanic Station Index (NHSI), and certain other Black and Hispanic Audience Reports are not currently Accredited or audited.

1. Boston

Nielsen Media Research first "rolled out" its local people meter (LPM) in Boston in 2001. This was Nielsen's first experience with the LPM in a general-media local market environment. It is our understanding that Boston was chosen as the first market by Nielsen because of several factors, including its more homogenous population and smaller size. While one can argue about this characterization of the Boston media market, it became clear that Nielsen's assumptions about easily measuring the market proved to be inaccurate. During calendar years 2001 and 2002, the MRC audited Nielsen's LPM rollout in Boston. The audit of the service was extensive and subsequently the MRC denied its Accreditation to the Boston LPM based on strong concerns with Nielsen's implementation of the service. However, despite the concerns raised by the MRC audit and denial of Accreditation, Nielsen continued a commercial implementation of the Boston LPM. At the same time, most local broadcasters in Boston did not utilize Nielsen's LPM services. However, during the ensuing year, Nielsen took extensive actions to cure the issues raised by MRC's audit. Upon Nielsen making the recommended changes, MRC gave its Accreditation to the Boston LPM in the Fall of 2002 approximately nine months after its initial audit.

After its Boston experience, the MRC Television Committee took the unusual step of recommending to Nielsen that future LPM implementations only be commercialized after Accreditation is achieved and that new LPM sample households not be integrated into Nielsen's National panel prior to achieving Accreditation.

2. New York

The MRC began its audit process of the New York LPM (NYLPM) during the early part of 2004. The New York market is arguably the most difficult market to measure particularly in obtaining the cooperation of households. The market is highly diverse and represents unique challenges in compiling accurate and reliable data. Fieldwork began in this market in April of 2004 and the MRC utilized its full audit scope and procedures for assessing the service. Ernst & Young conducted the audit using its standard Nielsen auditing team, which included bi-lingual personnel. There were many problems identified in the audit, including race and origin classification errors, excessive and excessively disproportionate faulting and metering issues. The market's performance was further complicated by an on-going media campaign in the New York market, which could have potentially influenced household participation. Concurrent with the introduction of the LPM, the MRC closely monitored the existing meter/diary service in New York and found that this service had degraded.

Subsequently on May 27th, the MRC audit committee met to discuss the audit and the MRC staff recommendation. The audit committee voted to withhold Accreditation of the NYLPM at that time based on a number of problems identified in the Ernst and Young audit as well as issues identified by the MRC staff and the audit committee members. The MRC sent a letter to Nielsen that communicated detailed areas of concern and deficiencies with the NYLPM as identified by the audit process and suggested actions that Nielsen should take to improve the quality of the service and gain Accreditation. Nielsen commercialized the NYLPM on June 3, 2004.

On August 26th, 2004 the MRC convened a meeting of the audit committee to assess the results of a re-audit performed by Ernst & Young to assess performance of certain prior audit issues. Nielsen was given opportunity to address the committee during part of the meeting to share their perspective on the improvement initiatives and the performance status of the NYLPM. After private deliberations the committee chose to continue to withhold Accreditation of the NYLPM service. On August 31st, 2004 a letter was sent to Nielsen informing them of the committee decision and outlining the steps necessary to elevate the Accreditation status of the NYLPM, namely a plan for updating race information and fault rate stabilization which would be observed through regular monitoring by the committee.

On October 29, 2004 after review of a credible plan submitted by Nielsen to address the race classification issues, and observed improvement in fault rate levels the television committee voted to grant Conditional Accreditation status to the NYLPM allowing Nielsen to apply the MRC's Accreditation logo to the New York LPM rating reports.

Since Conditional Accreditation was granted in October 2004, the television committee has continually monitored the performance of the NYLPM, including update meetings with Nielsen management and periodic reviews to reassess the Accreditation status of the NYLPM. As of this date, the NYLPM service remains Conditionally Accredited.

3. Los Angeles

On July 1st, 2004 an MRC audit committee met to review an Ernst & Young audit of the Los Angeles LPM service (LALPM); at that time Nielsen had not provided their response to the audit findings, a key component of the MRC review process. The MRC decided that it was important to at least conduct a preliminary review of the audit findings (i.e. absent Nielsen's response) so that it could provide some illumination of the performance of the LALPM in advance of its planned commercialization on July 8th. To maintain the integrity of the MRC process, the committee elected not to vote on Accreditation at the conclusion of this preliminary review until Nielsen submitted their response for review. The Los Angeles market is a difficult market to measure due to its ethnic diversity which presents unique challenges in compiling accurate and reliable data

Despite the open Accreditation status of the LALPM Service, Nielsen went "live" with the service on July 8th, 2004. It was clear through our experiences in Boston and New York that Nielsen was not yet implementing LPM services in a manner that is fully compliant with the MRC's standards.

The audit committee met on July 30, 2004 to conclude the review of the audit results, including Nielsen's response which was presented in-person by Nielsen management. After careful consideration the committee chose to recommend Conditional Accreditation of the LALPM service pending Nielsen's submission of an adequate, accepted action-plan to address: (1) two matters of non-compliance with the MRC's Minimum Standards for Media Rating Research cited in the audit, and (2) two performance areas of the Los Angeles LPM Service considered needing improvement. In addition, an on-going monitoring process was required by the Television Committee to assure that Nielsen completes the improvement initiatives specified in its response to the Los Angeles audit, including the pending action-plan.

On August 19, 2004 upon receipt and acceptance of Nielsen's action-plan the Conditional Accreditation period began and Nielsen was authorized to apply the MRC's Accreditation logo to the Los Angeles LPM rating reports.

Since Conditional Accreditation was granted in august 2004, the television committee has continually monitored the performance of the LALPM, including update meetings with Nielsen management and periodic reviews to reassess the Accreditation status of the LALPM. As of this date, the LALPM service remains Conditionally Accredited.

4. Chicago

The Chicago LPM (CHLPM) Service was commercialized by Nielsen on August 5, 2004 prior to an MRC audit. Timing for MRC audits is controlled by Nielsen and fieldwork was not scheduled to begin until July 2004 leaving insufficient time for completion of the MRC process prior to the LPM service going "live". The Chicago market contains a high concentration of minority population groups posing a particular challenge to measuring accurate and reliable viewing behavior.

An audit committee of the MRC met on September 22, 2004 to review the findings of the Ernst & Young examination of the CHLPM and based on the results the audit committee voted to follow the precedence set in Los Angeles and move to grant Conditional Accreditation to the CHLPM. The Conditional Accreditation status was scheduled to begin following receipt and acceptance of an action-plan structured to address specific audit issues and would also require ongoing monitoring of key performance metrics for this service. On October 1, 2004, after receipt of an accepted action-plan, Conditional Accreditation of the CHLPM began and Nielsen was permitted to apply the MRC Accreditation logo to the service reports.

Since Conditional Accreditation was granted in October 2004, the television committee has continually monitored the performance of the LALPM service, including update meetings with Nielsen management and periodic reviews to reassess the Accreditation status of the CHLPM. As of this date, the CHLPM service remains Conditionally Accredited.

5. San Francsico

The San Francisco LPM (SFLPM) was commercialized on September 30th, 2004 prior to an MRC audit and before providing comparative data to the existing Meter-diary service that would allow the marketplace to understand the impact of this significant methodological change. MRC Standards require that measurement services disclose in advance the estimated impact of a methodological change. The San Francisco market is racially diverse, containing a high concentration of Asians, and this diversity presents specific challenges to accurately measure television viewing behavior.

Fieldwork for the MRC audit began in November 2004, three months after Nielsen commercialized the service. Because of the voluntary nature of the MRC process, the timing of the audit is controlled by Nielsen.

On March 8th, 2005, five months after the SFLPM service was commercialized by Nielsen, an audit committee of the MRC met to review the Ernst & Young examination report of the SFLPM and recommended that the service be granted Conditional Accreditation allowing Nielsen to apply the MRC Accreditation logo to the SFLPM reports. Nielsen was informed of specific actions including ongoing monitoring and performance improvements that would be required for the committee to consider removal of the conditional aspect of the Accreditation. On May 6th, 2005 the television committee met with Nielsen management to review the status of the LPM improvement initiatives and performance metrics and in a private discussion voted to elevate the status of the SFLPM to full Accreditation.

6. Philadelphia

Nielsen commercialized the Philadelphia LPM on June 30th, 2005 prior to an MRC audit, consequently this service is not Accredited. An MRC audit is in process for this market with an expected committee review in October 2005. Because of the voluntary nature of the MRC process, the timing of the audit is controlled by Nielsen.

7. Washington

Nielsen commercialized the Washington LPM on June 30th, 2005 prior to an MRC audit, consequently this service is not Accredited. An MRC audit is in process for this market with an expected committee review in October 2005. Because of the voluntary nature of the MRC process, the timing of the audit is controlled by Nielsen.

IV. Status of Nielsen Hispanic Measurement Services – National Hispanic Station Index – Los Angeles and National Hispanic Television Index

1. Nielsen Hispanic Station Index – Los Angeles (NHSI-LA)

The NHSI–LA Service was audited by MRC during 2000-01 and, despite ongoing commercial use of the service, Nielsen chose to not address the audit issues and terminated the

Accreditation process after two unsuccessful attempts. Nielsen never submitted other NHSI markets to the Accreditation process.

2. Nielsen Hispanic Television Index (NHTI)

Nielsen's NHTI Service has maintained MRC Accreditation since 2000.

The broadcast television industry members of the MRC, as well as cable operators and the advertising industry have all voiced their support for the MRC process in this matter. Central among the organizations expressing this support are the National Association of Broadcasters, the Cabletelevision Advertising Bureau, Radio Advertising Bureau, and the American Association of Advertising Agencies.[8]

V. Conclusion

Once again, the MRC would like to thank the Committee for holding this important hearing on TV Ratings accuracy and the FAIR Ratings Bill and for allowing the MRC to provide testimony. I continue to believe that Congress was right in finding that industry self-regulation is preferable to direct governmental intervention -- provided that the independence and integrity of such an auditing process can be preserved.

I believe that all of the stakeholders involved in this issue would agree that the accuracy of Television Ratings is of critical importance and that the MRC should play a central role in assessing the accuracy and quality of the new service.

---

[8] See Exhibit G (Press releases and Organizational statements on the LPM)

Appendix 5

Kevin McCabe & Anthony Acampora, Analysis:
NY AG PPM Allegations Not Reflected in Ratings (Oct. 6, 2008)

The PPM COALITION hopes that ARBITRON will respond to Attorney General CUOMO's actions by voluntarily postponing the roll out of the PPM system until its flaws can be corrected. Should ARBITRON choose that constructive route, the members of the PPM COALITION are committed to working with ARBITRON to develop a system that will provide reliable ratings data.

back to menu

Analysis: NY AG PPM Allegations Not Reflected In Ratings

The Eye Of The Hurricane

When NEW YORK Attorney General ANDREW CUOMO filed suit against ARBITRON last FRIDAY (NET NEWS, 10/3) for rolling out PPM despite what he asserts are "design flaws that will disproportionately impact minority communities, broadcasters and businesses," RADIOCRUNCH principals KEVIN McCABE and ANTHONY ACAMPORA crunched the ratings numbers to see if the allegation held water.

"In fact, if you look closely at the data, there is a strong argument that Spanish-language stations and Urban outlets are still doing well in PPM."

Their analysis: Not so much.

"Technology is sometimes met with challenge," McCABE commented, "That doesn't change the fact that the PPM is going to be great for the industry. The proven PPM technology combined with its ability to produce quality audience measurement data will affect many positive changes. We eagerly anticipate the markets that ARBITRON plans to commercialize this week."

"Our company works with clients in all formats -- which includes Hispanic and African-American-targeted stations," added ACAMPORA, who also does ratings analysis for ALL ACCESS. "If you look at the data from NEW YORK, CHICAGO, LOS ANGELES, RIVERSIDE and SAN FRANCISCO from AUGUST, we believe stations targeting Hispanics and African-Americans are more than holding their own. In fact, if you look closely at the data, there is a strong argument that Spanish-language stations and Urban outlets are still doing well in PPM."

* NEW YORK: The three Urban stations (WRKS, WBLS, and WWPR) are all in the top 10 25-54. Two of them are top 10 18-49 (WBLS is #11). With adults 18-34, WWPR is #2. Having stations consistently ranked top 10 in major advertiser demographics makes them extremely viable. SBS Tropical WSKQ ranks 4th 18-34, and 6th 18-49 and 25-54.

* LOS ANGELES: Spanish-language stations account for four of the top-eight stations 25-54, 18-49 and 18-34 -- and six of the top 10 18-34 (if you include bilingual KXOL). In L.A,, the Urban shares are not necessarily non-existent. The African-American audience has chosen more mass-appeal stations like CLEAR CHANNEL Rhythmic AC KHHT, CBS Smooth AC KTWV and EMMIS Rhythmic KPWR, which have always had strong African-American compositions.

* CHICAGO. Major Regional Mexican stations (WOJO and WLEY) are both in the top 5 18-49 and rank #1 and #3 18-34, while ranking 3rd and 8th 25-54, respectively. There are some challenges for Urban outlets WGCI and WVAZ.

* SAN FRANCISCO: Regional Mexican rivals KSOL and KRZZ rank #3 and #4 18-34. They are #3 and #5 18-49, and #4 and #12 25-54. Meanwhile, CLEAR CHANNEL Rhythmic KMEL, which has always had a heavy African-American component, is #1 18-34 and 18-49, and #7 25-54. INNER CITY Urban AC KBLX was a very competitive 8th 25-54 in AUGUST.

* RIVERSIDE: We've seen Spanish-language shares grow 30% 12+ from the diary to meter, and nearly double in some of the younger cells - especially 18-24 - so there doesn't seem to be any issue there.

You can reach ACAMPORA at anthony@radiocrunch.com or McCABE at musicrunch@rocketmail.com.