

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

In the Matter of)
)
Impact of Arbitron Audience Ratings) MB Docket No. 08-187
Measurements on Radio Broadcasters)
)

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

Arso Radio Corporation (“Arso”)¹ submits these comments in response to the Commission’s *Notice of Inquiry*² to consider, inter alia, the Commission’s reliance on Arbitron data (including PPM) to determinate compliance with the Commission’s local ownership rules.

Introduction and Incorporation by Reference

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

Although this *Notice* is specifically related to the issue of Arbitron’s use of PPMs and concerns relating to same, the following comments reflect a broader concern with Arbitron data and the Commission’s utilization of same. Arso suggests, for the reasons set forth hereinafter, that the Commission’s continued reliance upon Arbitron data

¹ Arso is an FCC licensee of 8 radio stations located in Puerto Rico, and its principals have an attributable interest in 6 other radio stations in Puerto Rico.

² *Notice of Inquiry* in MB Docket No. 08-187, FCC 09-43 (rel. May 18th, 2009) (“*Notice*”).

(including PPMs) is, in some instances, misplaced and that there is a better and more reliable source of data to use, specifically the Office of Management & Budget's ("OMB") "market" definitions. Arso further suggests that prior to a Federal agency's utilization of a private entity's data for regulatory purposes, a significant inquiry must be made to determine the motivations (economic and otherwise) of the private entity creating such data and the possibility of manipulation of same for economic purposes, particularly where that data conflicts with data prepared by federal agencies.

Background

In the Commission's ***Report and Order and Notice of Proposed Rulemaking*** (FCC 03-127) adopted on June 2, 2003 and released on July 2, 2003, (hereinafter, the "***Report and Order***") the FCC adopted the Arbitron Metro Survey Area ("Arbitron Metro") as the definition of radio market for the purpose of determining compliance with the local radio ownership rule.³ In adopting the Arbitron Metro, the ***Report and Order*** reasoned that "*Where a commercially accepted and recognized definition of a radio market exists, it seems sensible to us to rely on that market definition for purposes of applying the local radio ownership rule. Arbitron, as the principal radio ratings service in the country, has defined radio markets for most of the more populated urban areas of the country. These radio markets – Arbitron Metros – are Arbitron's primary survey area, which in turn are based on Metropolitan Areas (MAs) established by the Office of Management and Budget (OMB) (emphasis added)*"⁴ The ***Report and Order***, in footnote 573, provided a further explanation of MAs and provided reference material concerning the methodology the OMB used in defining MAs and a link to information

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

⁴ ***Report and Order*** at 275

about the most recent MA listing, incorporating data from the 2000 census. The *Report and Order*, in reaching its conclusion to use the Arbitron Metro, argued that “people in the United States tend to be clustered around specific population centers”⁵ and adopted one commenter’s position that “Radio stations compete in Arbitron markets”⁶. As a result, the Report and Order concluded that the Arbitron Metro was the appropriate standard for the purpose of calculating compliance with the local ownership rule. Indeed, as stated in the *Notice* herein,

“The Commission must define a radio market in order to determine whether license transfers, mergers and acquisitions comply with the numerical limits of the local radio ownership rule. The Commission *relies on radio Metro markets, defined by Arbitron*, to determine compliance for stations located within, or garnering sufficient listeners located within, the geographically defined Arbitron radio Metro markets.⁷ For markets geographically outside Arbitron-defined Metros, the Commission relies on signal contours to determine compliance.⁸ As described earlier, Arbitron's delineation of radio markets, which is based on its audience measurement data, is the industry standard.”⁹ (*emphasis added*)

In most places in the country, the Arbitron Metro definition coincides with the actual market realities and also coincides with the OMB definition of Metropolitan Areas. In Puerto Rico, however, Arbitron defined the entire island as being a “Metro”. This definition is **NOT** consistent with the OMB’s definition of Metropolitan Areas (MAs) for Puerto Rico.¹⁰ According to the most recent OMB MA list, which incorporates information from the 2000 census, Puerto Rico has **EIGHT** (8) Metropolitan Statistical

⁵ *Report and Order* at 273

⁶ *Report and Order* at 276

⁷ 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, MB Docket No. 02-277, MM Docket Nos. 01-235, 01-317, 00-244, 03-130, 18 FCC Rcd 13620, 13725-28 ¶¶ 275-281 (2003), *aff'd in part and remanded in part, Prometheus*, 373 F.3d at 435, *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 545 U.S. 1123 (2005).

⁸ *Id.* at 13729-30 ¶¶ 282-86.

⁹ *Notice* at 15.

¹⁰ See Page SP-1 of Arbitron’s Fall 2008 Radio Market Report (*Exhibit A*)

Areas and **THREE** (3) Combined Statistical Areas (which are larger population areas consisting of combinations of Metropolitan Statistical Areas and/or Micropolitan Statistical Areas).¹¹ According to the OMB's Bulletin, Metropolitan Statistical Areas have "at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties"¹². Arbitron, presumably because of the geographic isolation of Puerto Rico from the United States and for the reasons discussed below, simply defined the entire island as one market.

Commentary

In the *Notice*, the Commission sought comments on the reliability of PPMs and whether that raises issues as to the reliability of Arbitron radio market definitions. To a certain extent, this may be somewhat analogous to putting the cart before the horse. The Commission should be concerned about the reliability of PPMs and their potential impact on defining radio markets because of Arbitron's willingness, presumably for economic considerations, to diverge from pure empirical data (i.e. the OMB defined markets) for its own purposes. As demonstrated above, Arbitron has willingly disregarded the OMB market definition in Puerto Rico¹³, to frame a "market" for its own purposes and based on economic considerations. There is absolutely nothing wrong with Arbitron choosing, as part of its business model, to do this. If the economics of revenue from ratings data sales in Puerto Rico make it untenable to adequately survey 3 (or 8) separate markets or deploy PPMs throughout the island, Arbitron is well within its responsibilities to its shareholders

¹¹ see List 5, Attachments to OMB Bulletin 03-04 (http://www.whitehouse.gov/omb/bulletins/b03-04_attach.pdf)

¹² *Id.*

¹³ The Upper Peninsula of Michigan is another geographic area where the OMB and Arbitron differ on "market" definition.

to control costs and attempt to earn a profit on its business model. However, when the Commission *relies* upon that data with the presumption that it is empirical in nature and not subject to economic considerations, and that reliance is the foundation for regulations which directly and (in some instances adversely) affect broadcasters, then the premise of *public* reliance on *privately* developed data, as opposed to that which is produced by other governmental agencies without economic-based considerations, is without foundation.

PPM is currently not utilized in Puerto Rico, and there does not appear to be any immediate plans to deploy the technology in Puerto Rico, notwithstanding the significant population living on the island. It has been suggested that one reason for Arbitron's decision to categorize Puerto Rico as one "market", contrary to the OMB definition, is that the economic expense of surveying one "market" is much less than that of three or eight separate markets on the island. Indeed, even Arbitron recognizes at least six (6) "individual marketing areas" per the attached *Exhibit B*. Arbitron ratings for Puerto Rico are **NOT** accredited by the Media Ratings Council and Arbitron is not seeking, nor planning to seek such accreditation (See *Exhibit C* attached hereto from the Arbitron Fall 2008 Radio Market Report). The "Sample Target" of diaries for the entire island population of over 3 million persons is only 2,400, according to Arbitron's Market Information section of the Fall 2008 Radio Market Report (*Exhibit D*). Puerto Rico is also the only market among the top 15 that Arbitron does not use its PPM survey methodology (although Arbitron initially suggested it would deploy PPM in Puerto Rico, current statements from the company suggest it will not).

Given the apparent economic approach to Arbitron's sampling, surveying and defining of the Puerto Rico market, it should give the Commission pause to further rely upon Arbitron standards in the application of its rules, since Arbitron appears to temper its empirical data collection and dissemination with economic considerations, unlike, for example, the OMB's data, which is not subject to manipulation based upon economic considerations.

Arso suggests, in light of the foregoing evidence that the Arbitron "Metro" definition for Puerto Rico is *not* based on the OMB's Metropolitan Areas, that the Commission should henceforth take Arbitron data with the proverbial "grain of salt" for its use in crafting and interpreting regulations regarding cross-ownership, multiple ownership etc. Arbitron data should be used in conjunction with data from appropriate federal agencies (such as the OMB, Census Bureau, etc.) and where the agency data and the Arbitron data diverge, the Commission should rely upon the regulatory data unless it can be conclusively demonstrated that the Arbitron data is more reliable. For example, the Commission has previously utilized the OMB's definitions in other rules, such as defining "smaller markets" in the context of EEO rules.¹⁴

Conclusion

In conclusion, Arso offers as recommendations to the Commission, as invited by the Notice of Inquiry, relative to the use of PPMs and other Arbitron data by the Commission for purposes of defining "markets" for various regulatory purposes, that it carefully examine Arbitron's data and consider the economic forces that may have shaped that data before adopting it as it relates to Commission rules, and consider using,

¹⁴ See 47 C.F.R. 73.2080(e) which uses OMB definitions and standards for defining "smaller market" for the purposes of determining the number of EEO initiatives a station must undertake during a license term.

for example, the OMB's definitions and standards for "market" in applying that term to Commission regulations regarding cross ownership and multiple ownership, as has already been done in the EEO rules context (see footnote 14).

Respectfully Submitted
Arso Radio Corporation

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/S/

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EXHIBIT "A"

Radio Market Report • Fall 2008

Special Notices

The Market

Metro Definition

The radio Metro definition of this market is Arbitron defined. It does not conform to the Metropolitan Statistical Area implemented by the U.S. Office of Management and Budget in 2003.

Audience trend analyses may be affected by any change in the Metro definition. However, there are no changes in the Metro definition for the reporting periods covered by the Target Listener Trends section of this report.

Survey Procedures

Second Chance Diary

Effective with the Spring 2008 survey, previously agreeing households who have not returned any diaries will be re-contacted in hopes to gain their consent to participate in the Radio Ratings during a different survey week.

The Stations

Digital Radio Stations in Total Line Reporting Combos

Effective with the Summer 2008 report period, Arbitron reports audience estimates for Total Line Reporting combos that include digital radio stations – subject to the combo's eligibility for reporting under Arbitron's Total Line Reporting guidelines, and subject to the combo meeting Minimum Reporting Standards. (The term "digital radio station" refers to radio stations broadcasting in a digital format, rather than an analog format.) Types of digital stations eligible for reporting, as part of a Total Line Reporting combo, include: digital AM stations, digital FM stations, HD-multicast stations, and the internet streams of (analog and digital) radio stations. Note: Total Line Reporting combos will be reported under the call letters of the "primary" AM or FM station selected by the combo.

Digital Radio Station Labeling

Each digital radio station reported as part of a Total Line Reporting combo in this report is identified in this Special Notices section by the legally-assigned call letters of the originating analog station – followed by a 2-character band ID indicating the digital station's "type". The table below lists the Arbitron band-ID's and the station type to which each band ID refers:

Band ID	Station	Example
AM	Analog AM station	WAAA-AM
FM	Analog FM station	WBBB-FM
HA	Digital AM station	WAAA-HA
HF	Digital FM station	WBBB-HF
IA	Internet stream of an AM Station	WAAA-IA
IF	Internet stream of an FM Station	WBBB-IF

F2, F3	HD-multicast station	WBBB-F2, WBBB-F3
G2, G3	Internet stream of an HD-Multicast station	WBBB-G2, WBBB-G3

Users of this report should be mindful that other Arbitron services (and/or services not provided directly by Arbitron but which utilize Arbitron data) may use other conventions for the labeling of digital radio station estimates.

Additional Information

Audience estimates in this report may, in some instances, include listening to internet streams whose content differed, to some extent, from that of the originating AM or FM station. Although reported audience estimates are unlikely to include substantial amounts of such listening, data indicating the precise extent of any such listening are unavailable. (See the Arbitron PPM Description of Methodology for additional information.)

Use of Digital Station Band ID

The digital radio Band ID labels referenced in this report are proprietary to Arbitron and protected under terms of Arbitron's subscriber agreements and/or Federal copyright and trademark law. Authorized subscribers and purchasers of Arbitron data may display and use the Band ID labels provided the user clearly states that the labels are proprietary to Arbitron (e.g., "Arbitron Inc. retains all copyrights or other legal rights to the Band ID labels used herein"). The reports may be used in accordance with the applicable license agreement between the subscriber and Arbitron. All other uses, unless Arbitron's prior written approval is obtained, are expressly forbidden, and may subject the user to legal action, damages and recovery of Arbitron's legal expenses incurred in enforcing its intellectual property and proprietary rights.

Current Stations/ Call Letter Changes

Current Call Letters	Former Call Letters	On-Air Date/ Date of Change	On-Air-Survey/ Survey of Change
WRXD-FM	WCMA-FM	03/17/08	WI08

Stations identified in this report are identified with their current call letters (i.e., the call letters in effect on the last day of the report period as reported to Arbitron). Audience estimates for stations that have changed call letters may reflect listening occurring both before and after the call letter change. To assist report users, Arbitron identifies the current call letters, former call letters, date of change, and survey of change for stations for which audience estimates are reported that have changed call letters within the applicable trends period. (Note: Audience estimates for simulcast combos that receive Total Line Reporting are reported with the call letters of the "primary" station selected by the combo.)

No adjustments are made to the reported estimates for a station that does not broadcast for the entire survey period. Since the

The estimates and data contained in this printed report have been obtained from Arbitron's electronic Radio Market Report ("Arbitron eBook") and are for the exclusive use of Arbitron subscribers pursuant to a written license agreement. See the Arbitron eBook for further information on limitations and restrictions on use.

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EXHIBIT "B"



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September 29, 2003

Luis Soto
President
Uno Radio Group
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Dear Luis,

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

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

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

Cordially,

Harry Clark

EXHIBIT “C”

Introduction

Arbitron Radio Description of Diary Methodology

Arbitron Radio Market Reports/Arbitron eBook

An *Arbitron Radio Market Report/Arbitron eBook™* provides clients with reliable information on the size and demographic composition of radio audiences—information essential to sound decision making for advertising sales and radio programming.

A *Radio Market Report/Arbitron eBook* contains audience estimates for the applicable survey period in a particular Arbitron-defined market, audience trends based on prior Arbitron surveys and general marketing information.

Information relating to a specific *Radio Market Report/Arbitron eBook*, such as sample size or the distribution of In-Tab Diaries, is provided in the applicable Report.

The Arbitron Radio Description of Diary Methodology

The *Arbitron Radio Description of Diary Methodology* is intended to provide a detailed description of the methodology used in the production of standard and condensed *Arbitron Radio Market Reports/Arbitron eBooks* for markets that are home to the 50 United States, the District of Columbia, and Puerto Rico. It includes information about the types of audience estimates included in the reports, the sampling methods used, the methods of obtaining and processing the data, and the statistical reliability of the resulting estimates. Such information is designed to assist users to better understand what the audience estimates published in the reports represent and their limitations. The methodology described herein is applicable only to *Arbitron Radio Market Reports*, which are published regularly at periodic intervals as defined by Arbitron. Methodology for Diary-based custom studies, custom survey area reports (CSARs), special reports, or research tests may differ from the methodology described in this document, and is described in the service and/or report (as applicable).

Timeliness and Validity of this Arbitron Radio Description of Diary Methodology

This *Arbitron Radio Description of Diary Methodology* replaces previously published descriptions of methodology and remains in effect until it is revised and/or replaced by Arbitron Inc.

Licensed users of Arbitron data may view the current version of the *Arbitron Radio Description of Diary Methodology* at any time on the Arbitron Internet site at www.arbitron.com.

To the extent that any provision(s) contained in a current *Arbitron Radio Description of Diary Methodology* are inconsistent or conflict with any provision(s) contained in a previously published summary “Description of Methodology,” the current description of methodology is deemed to supersede the previously published summary description of methodology.

To the extent that any provisions contained in an *Arbitron Radio Description of Diary Methodology* are inconsistent or conflict with any provision published on the “Special Notices” page of a market’s most current *Radio Market Report/Arbitron eBook*, the provisions published on the “Special Notices” page are deemed to supersede and/or amend the *Arbitron Radio Description of Diary Methodology*.

Any revisions, modifications or amendments in methodology or service that occur subsequent to the publication of this description of methodology are generally announced on the Arbitron Web site and via bulletins and/or similar publications provided to Arbitron Licensed users of Arbitron data and the Media Rating Council. All such issued revisions, modifications or amendments become integral and incorporated parts of this text by reference.



Accredited by
Media
Rating Council®

What MRC Accreditation Means

The Arbitron Radio Market Report service has been accredited by the Media Rating Council (MRC) since 1968. Accreditation applies to all markets measured as a part of Arbitron’s Diary service that are located in the 50 United States and the District of Columbia. To merit continued MRC accreditation, Arbitron:

1. Adheres to the Council’s Minimum Standards for Media Rating Research;
2. Supplies full information to the MRC regarding details of its operation;
3. Conducts its measurement service substantially in accordance with representations to its subscribers and the Council; and
4. Submits to, and pays the cost of, thorough annual audits of accredited Arbitron services by CPA firms engaged by the MRC.

In addition to paying sizable audit charges, Arbitron provides office and file space for MRC auditors as well as considerable staff and computer time involved in various aspects of the audit.

Further information about the MRC’s accreditation and auditing procedures can be obtained from:

Executive Director
Media Rating Council, Inc.
420 Lexington Avenue, Suite 343
New York, NY 10170

At the time of this writing, Arbitron is not actively seeking, nor is planning to seek, accreditation of the Puerto Rico Diary service.

EXHIBIT "D"



Diary Placement/Return

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	Metro	TSA
Estimated Usable Households in Sample	3,121	3,121
Listed	0	0
Unlisted Mailable	0	0
Unlisted Unmailable	3,121	3,121
Estimated Persons in Usable Households	7,918	7,918
Listed	0	0
Unlisted Mailable	0	0
Unlisted Unmailable	7,918	7,918
Contacted Households	2,849	2,849
Listed	0	0
Unlisted Mailable	0	0
Unlisted Unmailable	2,849	2,849
Households Accepting Diaries	1,966	1,966
Listed	0	0
Unlisted Mailable	0	0
Unlisted Unmailable	1,966	1,966
Persons Sent Diaries	5,087	5,087
Listed	0	0
Unlisted Mailable	0	0
Unlisted Unmailable	5,087	5,087
Diaries In-Tab	2,549	2,549
Listed	0	0
Unlisted Mailable	0	0
Unlisted Unmailable	2,549	2,549
Metro Sample Target	2,400	
Metro In-Tab/Target Index	106	
Metro Response Rate %		
*Weighted	33	
Unweighted	32	

*Weights reflect variations in selection probabilities across sampling units. In the weighted Response Rate Calculation, a weight is applied to each household or phone number to adjust for this variation.

For information on Sampling and Measurement Techniques, see "Description of Methodology."

The estimates and data contained in this printed report have been obtained from Arbitron's electronic Radio Market Report ("Arbitron eBook") and are for the exclusive use of Arbitron subscribers pursuant to a written license agreement. See the Arbitron eBook for further information on limitations and restrictions on use.