

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)
)

COMMENTS OF TAXI PRODUCTIONS, INC.

1. Taxi Productions, Inc. (“KJLH”), licensee of Station KJLH(FM), Compton, California, hereby submits these Comments in response to the Commission’s Notice of Inquiry in the above-captioned proceeding, FCC 09-43, released May 18, 2009. KJLH is 100% African-American owned.¹ It is a stand-alone Class A FM station in the Los Angeles Arbitron Metro area. Its limited facilities and stand-alone status make it very difficult for the station to compete against the media giants which dominate the market. The station has been hard hit and badly hurt by the implementation by Arbitron of the Portable People Meter (“PPM”) technology. KJLH encourages the Commission to investigate PPM technology in detail and to take remedial action to prevent this flawed technology from destroying much of the inroad that minority owners have made into the broadcasting industry in recent years.

2. There can be little doubt that Arbitron methodologies have been flawed in the past using diaries and are flawed today using PPM. The Commission need not engage in independent fact-finding to reach that conclusion. Arbitron itself has as much as admitted flaws in the diary

¹ Taxi’s sole stockholder is Stevland Morris, more widely known as entertainer Stevie Wonder.

method in the course of defending PPM. Settlements with attorneys-general in at least three states, while not an admission of guilt as a matter of law, establish that Arbitron was not comfortable enough defending PPM -- at least at the initial stages where we are today -- to engage in a legal fight over the validity of its PPM methodology. In other words, Arbitron's own words and actions indicate that both diaries and PPM are not accurate audience measurement techniques. The fact that Arbitron has little success in obtaining accreditation from the Media Ratings Council is further evidence of the frailty of PPM.

3. The harm from these flaws is real, not theoretical. As the economy contracts and everyone tries to cut costs, advertising agencies are relying more and more heavily on Arbitron data to buy air time and are eliminating personnel who can look behind the data and make more analytical buys. Minority broadcasters cannot even meet with agencies to explain their stations' true audience reach if the agencies do not have personnel beyond those who make buys by pushing computer keys without analyzing whether those buys are as effective as they could be.

4. The impact of the flaws is severe. KJLH has an urban format, with an acclaimed public affairs component, that has been highly popular in the marketplace; yet its ratings dropped by almost **two-thirds** when PPM was introduced (*i.e.*, PPM ratings are about one-third of diary ratings). This sudden and precipitous drop cannot be an accurate reflection of true audience levels, but it has threatened the survival of KJLH as a business enterprise. If KJLH does not survive, a minority-owned, small business enterprise that is not part of a conglomerate will die; and important policy goals of the Commission and our government as a whole will be frustrated.

5. The flaws are not necessary, are not an inevitable part of the introduction of a new technology, and need not be tolerated as part of a general policy to encourage new technologies. As many have discussed in urging the Commission to initiate this Inquiry, the sample of

minorities is too small, is below their statistical representation in the community at large, and is small enough that errors are magnified rather than smoothed out when statistical formulas are applied to report survey results. Arbitron's settlements with state attorneys-general show that the sample of cell phone-only homes is too small. That flaw short-changes minority-oriented formats because of the prevalence of cell phone-only homes in the African-American community and the fact that under-sampling cell phone homes also under-samples young demographic elements that are found in KJLH's audience. But the problem goes further. Many young people who listen to KJLH use ear buds that confine the sound to their ears. If they carry a PPM device, how does it detect the station to which they are listening? Also, PPM devices pick up music placed in public gathering places and thus credit a station played on a public address system with listening by any PPM within earshot. Stations played in public places tend to be those with the most general, lowest common denominator formats; so minority-oriented stations are short-changed as their competitors pick up credits for PPM wearers who may not even be aware that a particular station is being played in their presence.

6. The diary system was criticized because users supposedly could essentially "vote" for their favorite station by filling in a diary when they were in fact not listening. But PPM also gives credit for stations to which the wearer is not actually listening, whether in a public place or a private place where someone else is listening to the radio. The relevant question is who is "listening" to a station, not who is in the presence of a certain sound, if the objective is to

determine how many people consciously hear an advertisement. It is not at all clear that PPM is any better than diaries at measuring who is consciously listening, and it may well be worse.²

7. Commitments in state settlements to fix some of the flaws by the end of 2010, such as cell phone home samples, are too little, too late. The Commission must analyze the problem now and take whatever prompt action it can to ameliorate the negative impact on minority broadcasting and frustration of the important public policy goal of encouraging minority ownership. Steps taken to open doors to acquisition of more stations by minority groups -- whether by restoration of the tax certificate program or otherwise -- will not be of much benefit if a monopoly audience measurement system is allowed to crush stations after minorities acquire them by shutting them out of the advertising market.

8. KJLH is aware of challenges that have been raised to the Commission's legal authority and jurisdiction to do anything about Arbitron's methods, PPM or otherwise. KJLH is an active member of the National Association of Black Owned Broadcasters ("NABOB") and knows that NABOB will analyze the legal authority issue in detail. KJLH supports NABOB's effort in that regard.

9. But regardless of whether the Commission can directly restrict the use of PPM, there are things it can do that will create incentives for Arbitron to accelerate efforts to improve the system. First, the Commission gives Arbitron an *imprimatur* of credibility by relying on Arbitron market definitions and audience shares in applying its multiple ownership rules. The

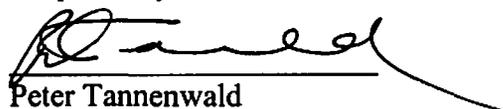
² Arbitron apparently recognizes that audiences in public places are qualitatively different, as it plans to use PPM to develop out-of-home information with respect to television viewing for separate sale to its subscribers. See *Communications Daily*, June 24, 2009. It is not clear how the PPM device can determine where the wearer is physically located or whether the same qualitative difference will be measured or recognized by Arbitron in radio.

Commission can and should stop relying in Arbitron for anything, so that no government action suggests that Arbitron's research and decisions are valid reflections of the actual marketplace. Second, PPM technology depends on radio stations broadcasting an encoded signal that is recognized by PPM devices. The components of signals that are transmitted by radio stations are well within the Commission's jurisdiction. Taxi urges the Commission to forbid the transmission of PPM signals until its investigation has been completed and conclusions are reached regarding the public policy harms resulting from PPM and the remedial steps that are required in the public interest before use of the technology should be permitted to resume.

10. A serious problem is at hand, and an immediate remedy is needed. The Commission must do whatever it can, without delay, to ameliorate the adverse impact on the important public policy goal of encouraging and fostering minority broadcast station ownership.

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Respectfully submitted,


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