

## **Exhibit H**

**Arbitron PPM Hispanic Measurement Review**

**PPM Methodology Report / Interim Report**

**Submitted on June 17, 2008**

**Prepared by the National Measurement PPM Review Panel**

**Chairman Raul Yzaguirre**

**This is a project of the ASU Center for Community Development and Civil Rights**

**Arizona State University – Downtown Phoenix Campus**

## **Background**

The following draft report regarding Arbitron's PPM (Portable People Meter) methodology and service was prepared by James E. Garcia and Dr. Paul J. Lavrakas in close consultation with and on behalf of the ASU Hispanic Measurement PPM Review Panel and the ASU Center for Community Development and Civil Rights. The members of the Review Panel were appointed by Chairman Raul Yzaguirre. Note: James E. Garcia, senior research fellow at the Center for Community Development and Civil Rights, serves as project director. Dr. Paul J. Lavrakas is the panel's principal investigator.

Members of the ASU Review Panel (listed alphabetically):

- Carlos Arce, founder and chief strategist at NuStats
- Marianne Barrett, associate dean, Walter Cronkite School of Journalism (ASU)
- Thomas Castro, president, CEO and vice chairman of Border Media Partners
- Earl de Berge, chairman and director of research, Behavior Research Center
- Stephen Doig, professor, Walter Cronkite School of Journalism (ASU)
- Daisy Expósito, chairman and CEO of d'expósito & Partners
- Felix Gutiérrez, professor, USC Anneberg School of Communication
- Alex Nogales, president and CEO of the National Hispanic Media Coalition
- Bob Perry, international radio consultant
- Rick Rodriguez, professor, Walter Cronkite School of Journalism (ASU)
- Isabel Valdés, founder of Isabel Valdés Consulting
- Raul Yzaguirre, executive director, Center for Community Development and Civil Rights (ASU)

(Detailed biographies, Appendix 1)

## **Purpose**

Arbitron commissioned the ASU panel review (and a corresponding review to be conducted by Howard University's John H. Johnson School of Communications) to analyze the PPM methodology and service, based on questions and concerns related to the representation of minorities.

The ASU Review Panel is focusing on PPM issues related to the Hispanic/Latino community in the United States. The Howard University panel is focusing on PPM issues related to the African American community. According to Arbitron, the independent reviews are intended to serve as "an additional source of input for Arbitron's continuous improvement plans" and to "ensure that multicultural voices are represented in the measurement of audiences for ethnic radio in an electronic measurement world."

## **About Arbitron's PPM technology**

The PPM is an electronic radio audience measurement system that tracks exposure to any encoded broadcast signal. (As opposed to Arbitron's traditional diary-style measurement system, the PPM automatically collects encoded electronic data on which forms of encoded audio programming consumers are exposed to on the radio, including any encoded radio programming delivered via the Internet or other sources.

The mobile-phone-sized device is worn throughout the day by participants, and detects identification codes embedded in the audio portion of any transmission that is inaudible to the human ear. The system consists of:

- an encoder, which is installed at the programming or distribution source to insert an inaudible identification code into the audio system
- a station monitor, installed at the transmission source to ensure that content is properly encoded
- the PPM, worn by the measurement panel participants (also referred to as panelists) six years of age and older
- a base station, used by the Arbitron survey participants to recharge the battery and send codes to a household collection device
- a portable recharger, which enables the PPM to store multiple days of media exposure data; and
- a household hub, which collects codes from all the base stations in survey households and transmits them nightly to Arbitron.

## **Arbitron PPM Rollout Schedule**

Arbitron implemented use of its PPM ratings service in Philadelphia in March 2007 and in the Houston-Galveston market in July 2007. Arbitron's PPM system in the Houston-Galveston market was accredited by the Media Ratings Council (MRC) in January 2007. (The MRC was established in the 1960s at the behest of Congress to "secure for the media industry and related users audience measurement services that are valid, reliable and effective...." Source: [MediaRatingsCouncil.org](http://MediaRatingsCouncil.org))

In November 2007, Arbitron announced that it was delaying the rollout of the PPM service in order to make changes to the system based in part on feedback provided by the MRC and radio industry leaders. In January 2008, the MRC declined to accredit Arbitron's PPM service in Philadelphia and New York. The MRC has not released a public statement explaining its decision to deny accreditation to Arbitron in these cities, because both the MRC's accreditation and appeal processes are confidential.

In a June 12, 2008, statement, Arbitron announced it would resume its rollout of the PPM service. (Note: MRC accreditation is not required in order for Arbitron to continue implementing PPM service in current or future markets.) In its statement, Arbitron wrote: "Eight markets—New York, Nassau-Suffolk, Middlesex-Somerset-Union, Los Angeles, Riverside-San Bernardino, Chicago, San Francisco, and San Jose will commercialize the release of the September PPM survey report on October 8, 2008. On that date, the company's diary-based radio ratings will be withdrawn from those eight markets and radio transactions among Arbitron-subscribing stations and agencies will take place solely using PPM-based radio ratings." The statement did not address the status of PPM service in Philadelphia.

According to a June 13, 2008, news report by [Mediapost.com](http://mediapost.com): "The decision [to resume the commercialization of the PPM system] comes despite demands by several broadcasters that Arbitron delay commercialization of PPM in these markets until it earns accreditation from the Media Rating Council in either New York, where the service is already running in a 'pre-commercial' phase, or Philadelphia, where it has already been commercialized. To date, the service has only received MRC accreditation in Houston."

Cox Radio, Inner-City Broadcasting and Saga Communications assert that Arbitron has failed to meet its own target numbers for sample sizes. According to [Mediapost.com](http://mediapost.com), some industry leaders claim that sampling flaws have resulted in swings in the ratings and "drops in audience for stations with formats targeting African-American and Hispanic audiences."

Arbitron has stated publicly that it is fully committed to gaining accreditation for the PPM system from the MRC in all of the markets where it will be deployed, and added that the company intends to work closely with industry groups to continue to improve the system.

Arbitron Chairman/President/CEO Steve Morris issued the following statement: "We have improved our PPM samples in the four key areas we outlined last November. We have enhanced our ability to deliver PPM sample targets. We've improved the composition of our PPM panels, especially among the 18-34 demographic. We've raised the day-to-day cooperation rate of our PPM respondents. We've also put in place a number of programs designed to have a positive impact on response rates. Our commitment to continuous improvement means that we will keep working on these metrics as we go forward."

At a telephone conference meeting on June 13, 2008, several members of the Review Panel expressed concern about whether its input would be properly incorporated by Arbitron, given the announced decision earlier in the day to move forward with commercialization. The Review Panel's Chairman Mr. Yzaguirre noted that while the Review Panel has no control over the scheduled rollout of the PPM system that the Review Panel's stated goal is to provide analysis and recommendations to improve how the PPM system impacts Hispanics/Latinos.

## **Arbitron PPM Hispanic Measurement Review Panel Activities**

On May 28, 2008, the Arbitron PPM Hispanic Measurement Review Panel conducted an extensive discussion about Arbitron's PPM methodology and service. (Dr. Lavrakas and Mr. Garcia participated in this meeting, although they are not voting members of the panel.) The discussion was based on:

- Information provided by Arbitron about the PPM system
- Additional background materials collected by the project director, Review Panel members, and
- The extensive expertise of the panel.

As a result of the May 28 meeting, a series of questions about the PPM system were compiled and presented to Arbitron. On June 5, 2008, two representatives of the Review Panel (Garcia and Lavrakas) attended a meeting at Arbitron headquarters in Columbia, MD, and met with the ratings company's staff (Appendix 2). Dr. Lavrakas, former chief methodologist with Nielsen and an expert on the methodologies of surveying and audience measurement, led the day's questioning.

On June 13, ASU Review Panel Chairman Raul Yzaguirre held a telephone conference to discuss Arbitron's responses to the Panel's questions. This interim report, a product of the Review Panel's combined activities to date, was delivered to Arbitron on June 16. Per the proposed project calendar, Arbitron is scheduled to respond to the Review Panel's interim report by June 26.

### **Review Panel Mission**

The ASU Review Panel views its role in providing an independent analysis of Arbitron's PPM system as critical to the complete and accurate measurement of the U.S. Hispanic/Latino radio-listening audience. The Hispanic/Latino community is currently estimated to at approximately 15 percent of the U.S. population, based on the U.S. Census Bureau's definition of anyone in the United States who is self-identified as being "Spanish, Hispanic or Latino." The community's rapidly growing and distinct demographic makeup includes a larger-than-average proportion of children and young adults (and also covers the radio industry's coveted 18-to-34-year-old age group), as well as a large segment of Spanish-Dominant radio listeners who provide unique challenges to Arbitron and other companies that collect and distribute audience-measurement data and provide related commercial services.

The accurate measurement of Hispanic/Latino audiences for radio, television, online and print media is directly related to and directly impacts the decisions made by the world's manufacturers, creators and distributors of products and services aimed at the U.S. market. As such, ready access to these products and services directly affects the economic vitality and overall quality of life for U.S. Hispanics/Latinos – a community that is undergoing rapid advancements, such as the growth of its middle class, and an increased number of public officials, business owners and executives in both private industry and nonprofit organizations.

The Hispanic/Latino community's civic and political involvement, likewise, depends greatly on its engagement in civic society, including local, state and national politics. For example, the accurate measurement of a station's radio-listening audience can help determine whether a government agency or political candidate decides to advertise commercial messages or other information to Hispanics.

The Review Panel strongly believes that the methodologically sound and conscientious implementation of Arbitron's PPM system could directly impact the social, economic and political advancement of Hispanics/Latinos and other minority communities in the United States.

### Summary

This interim report focuses on the Review Panel's analysis of Arbitron's PPM methodology and technology. Forthcoming analysis and review of the PPM system by the panel will place special emphasis on qualitative issues, including a variety of social, socio-economic, cultural and political questions that may affect how Arbitron implements its PPM service nationally.

The panel's review of Arbitron's PPM methodology and service presented in this draft report is focused on five major areas of inquiry:

1. Hispanic/Latino Audience Definition and Measurement
2. Methods of Sampling Hispanics/Latinos
3. Hispanic/Latino PPM Panelist/Participant Recruitment/Maintenance
4. Other PPM Issues affecting Hispanics/Latinos

#### 1a. Audience Definition of "Hispanics/Latinos"

Of central interest to the Review Panel is Arbitron's definition of who is a Hispanic/Latino, as it applies to how the company identifies and ultimately recruits people to participate in the PPM data-gathering service, and how it weights the data gathered from and about these individuals. When Arbitron representatives contact potential PPM participants, the company asks that he or she self-identify based on a Yes/No answer to whether they are of "Spanish, Hispanic or Latino origin."

The consensus of the Review Panel is that the use of the term "origin" poses a serious conceptual and methodological problem. When Arbitron was asked to identify the proportion of Hispanics/Latinos in Designated Market Areas -- the geographic area used to measure and report viewing and listening behavior where the PPM system is used -- company officials stated that this number is determined based on Universe Estimates (UEs) provided by Claritas, which uses U.S. Census data as the primary basis for its estimates. Claritas is acknowledged by the Review Panel as the most respected source of "demographic data and target marketing information about the population, consumer behavior, consumer spending, households and businesses within any specific geographic market area in the United States." (Source: Claritas.com)

However, the parameters of source data used by Claritas are based on the following 2000 U.S. Census Bureau question: "Are you Spanish, Hispanic or Latino?" These parameters are updated each year by Claritas using various Census update data

(e.g., the American Community Survey results) and other sources. It must be noted that there is no use of the word "origin" by Claritas or the U.S. Census Bureau in this ongoing measurement of who is a Hispanic.

Despite the fact that it uses Claritas data to establish its Universe Estimates, Arbitron acknowledged that it uses the term "origin" when asking a "householder" (commonly known as "head of household") or someone who agrees to speak on behalf of the householder to self-identify as Hispanic.

Arbitron officials contend that there is no measurable difference between how people answer the self-identity question, whether or not it includes use of the word "origin." To support this argument, Arbitron cited a 1996 Census report, which subsequent analysis by Dr. Lavrakas and other researchers have found to be seriously flawed. Dr. Lavrakas in 2002 and 2005 presented professional/scholarly papers on the flaws of the 1996 Census report. Arbitron officials disagreed with Dr. Lavrakas' findings on this matter.

According to Dr. Lavrakas, a specific problem that arises is that by using the term "origin" in its recruitment process, Arbitron is able to more easily achieve its target sampling goals, given that more people are likely to answer "yes" to the question if it includes the term "origin," and that these additional "yes" respondents are more likely to be English-Dominant than Spanish-Dominant for language purposes. Thus, the easier attainment of Arbitron's sampling goals pertaining to Hispanics/Latinos comes at the expense of Spanish-Dominant households – which most survey research professionals agree are traditionally more difficult and costly to identify, contact, and recruit.

Arbitron also acknowledged that in the company's view it would be prohibitively expensive to retool its computer systems and related information technology to omit the term "origin". (It is relevant to note that Nielsen spent millions of dollars to reprogram its computers to make this very change and others as a result of the 2000 Census.)

Furthermore, Arbitron pointed out that its ratings diaries/booklets, which the PPM will ultimately replace in Arbitron markets across the country; do not use the term "origin" to identify Hispanics/Latinos.

Review Panel members also voiced concern regarding Arbitron's policy involving situations in which a householder does not self-identify as a Hispanic/Latino. If that occurs, no matter which version of the question is utilized during recruitment, it is the panel's understanding that Arbitron does not ask whether anyone else in the household is a Hispanic/Latino, even if individuals who are not householders would identify themselves as Hispanic/Latino.

Among the Review Panel's preliminary recommendations regarding the use of the term "origin" is that Arbitron ask the question in both ways:

This will enable Arbitron to use both types of data (Hispanic self-identity and Hispanic origin) in more varied ways that can benefit the interests of Hispanic/Latinos, as well as Arbitron's commercial clients who provide programming to this population segment.

#### **1b. Audience Measurement of "Hispanics/Latinos" by Language Usage**

Arbitron buys/uses Nielsen-generated language Universe Estimates for each Designated Market Area. No one else, including the U.S. Census, collects data in this

manner. Nielsen conducts a very high-quality Hispanic language enumeration survey nationally, in cooperation with RTI International, one of the world's largest non-profit survey organizations. The survey gains a 90 percent-plus response rate to measure the in-home language usage of Hispanics (again, identified as anyone who reports being "Spanish, Hispanic or Latino;" i.e., no use of the word "origin.").

Nielsen's so-called five-tier, in-home language question, the same question used by Arbitron, asks if a person – a potential PPM participant – speaks only Spanish, mostly Spanish, mostly English or only English in the home. (The middle/fifth tier is explained below.) People who say they speak only Spanish or mostly Spanish are classified as Spanish-Dominant. People who say they speak English or mostly English are classified as English-Dominant. If a person insists that he/she speaks both languages "equally" then the Arbitron interviewer asks the question again to try to determine which language is spoken more often at home. If the respondent continues to insist that he/she uses both languages equally, then the interviewer records and codes that as the answer. (Note that extensive R&D studies were done by Nielsen in 2004 to re-validate that this question wording is the best possible wording to use for this purpose.) Householders who maintain that they use both languages equally (placing them into the aforementioned fifth tier) are nevertheless collapsed into the category that classifies them as English-Dominant. According to Arbitron, less than 5 percent of householders interviewed say they use English and Spanish equally.

Several members of the Review Panel expressed concern that the "both equally group" was categorized by Arbitron to be English-Dominant, because such language classifications can have an important effect on how companies or organizations reach out to Latino consumers to advertise and market products/services to people who identify themselves as "bilingual," even though they may not claim to be "equally" proficient in English and Spanish, such language classifications can have an important affect on how companies reach out to Latino consumers. Earl de Berge, a member of the Review Panel and director of research for the Behavior Research Center, cited a recent survey of Hispanics in Maricopa County, Ariz., (which contains most of the Phoenix metropolitan area) where nearly one-third of those surveyed identified themselves as "bilingual."

Several panelists expressed concern that if the householder does not self-identify as being Hispanic, then the language-usage question is not asked for that household. That would be the case, even if there were other individuals in the household who would self-identify as Hispanic. Also, it is the panel's understanding that the language question is not asked if a householder does not self-identify as Hispanic, regardless of whether or not they are responding to the Arbitron interviewer in Spanish.

Note that anyone who has access to Arbitron data, including its subscribers, as well as third-party companies that purchase the information, can use the data to determine if a Hispanic householder exhibits so-called "bilingual listening behavior" by constructing his or her own definition of what constitutes a bilingual person.

Arbitron gathers language-usage data at the personal level for all persons aged 2 years or older, but only if a household is first identified as having a householder that is Hispanic.

- **2. Methods of Sampling Hispanics/Latinos**

As noted earlier, the question of what proportion of households in Arbitron's PPM markets is defined as Hispanic/Latino is related to the use of Claritas as the source for the Universe Estimates of population makeup in a given geographic area. Regardless of what method Arbitron uses to sample its PPM households, the definition issue will affect the proportion of households sampled that later are defined and counted as being Hispanic/Latino.

In Houston, Arbitron used an "area probability" sampling design (based on a combination of telephone and in-person interviews) to recruit a randomly selected pool of households for its PPM sample group. It is the understanding of the Review Panel, however, that this sampling methodology will no longer be used in Houston.

This method was not used in New York or Philadelphia, and Arbitron says it does not intend to use the "area probability" method to identify Hispanic households in any other PPM markets. As for why the method was used in Houston and not elsewhere, Arbitron officials noted the sampling conducted there was part of a joint operating agreement with Nielsen that since has been discontinued. Additionally, Arbitron officials acknowledged that the "address-based" sampling method is far more costly than the telephone-based recruitment surveys it usually conducts. As noted below, the Review Panel finds this to be a concern, as it pertains to the successful recruitment of Hispanics/Latinos. The reason for this concern is that Spanish-Dominant Hispanics in particular often require a considerable period of "rapport building" time before they will trust and like someone enough to agree to participate in a research-based study such as the PPM ratings service. Experience has shown that this rapport building process is especially effective when done in person, as opposed to via the telephone.

On a related note, there is no oversampling done of any demographic group in PPM. It instead takes a random approach to sampling. The procedures used, in theory, will sample the correct number of Hispanic households for recruitment into PPM over extended periods of time. Dr. Lavrakas noted that there would be no scientific justification for oversampling of any demographic group, as long as adequate response rates were gained from all demographic groups. However, from a business standpoint, for the sake of clients, oversampling low-level cooperation and low-level compliance households could be advantageous.

Review Panel members, however, agreed that "area probability" sampling is a preferred, albeit admittedly more costly alternative, as compared to exclusively "telephone-based" sampling. Several Review Panel members pointed out (and experts agree) that trying to identify and recruit Hispanics, especially Spanish-Dominant Hispanics, is comparatively difficult, in part because of language and cultural barriers, and partly due to high levels of cell phone use in this population.

- **Cell Phone Usage**

According to recent U.S. government statistics projected to mid-year 2008, more than 20 percent of Hispanics rely solely on cell phones, and it is reasoned that Spanish-Dominant Hispanics cell phone-only use is at a higher proportion than that of the English-Dominant Hispanic population. For its part, Arbitron uses a dual-frame "telephone-based" RDD (landline and cell phone) method that assumes only 7.5 percent of telephones in a PPM market are exclusively cell phones. This is of major concern to

the Review Panel, due to the implied vast undercoverage of Hispanics who rely on only cell phones. This is further underscored when considering that the highest rates of cell phone-only users in the U.S. are Spanish-Dominants and the coveted 18- to 34-year-old age group (no race or ethnicity).

### 3. Hispanic/Latino PPM Panelist/Participant Recruitment/Maintenance

- **Financial Incentives**

Once identified, Spanish-Dominant Hispanics receive more financial incentives during the PPM recruitment process than English-Dominant Hispanics, who in turn receive the same incentives as non-Hispanic Whites. Research shows that once identified, the response rate for English-Dominant Hispanics is comparable to the response rate for non-Hispanic whites.

Similarly, the incentive structure for encouraging Hispanics to wear the PPM and fulfill the agreed tenure as a PPM participant includes enhanced rewards for Spanish-Dominant Hispanics, while English-Dominant Hispanics receive the same incentives as non-Hispanic whites.

The specific amount paid by Arbitron to each individual or household is considered proprietary information. However, Arbitron agreed to provide details on the formula it uses in dispensing these incentives.

If "X" represents a fixed incentive amount, then an individual in a PPM household receives \$X amount per month, regardless of their performance, and as long as their household remains in the PPM panel. Every individual, regardless of demographic makeup, is eligible for a weekly performance bonus of  $\frac{1}{2}X$  per week, with the exception of Spanish-Dominant individuals, who are eligible for \$X per week. And anyone in the 18-to-24-year-old age group is eligible for \$2X per week, regardless of their ethnic makeup or dominant language.

Performance bonuses are based on a PPM participant's ability to remain "in tab" (the term applied to regular and active usage of the PPM device) for minimum target levels set forth by Arbitron.

Spanish-Dominant households also are eligible for a higher initial incentive when they first agree to participate.

Using \$Y as the fixed amount for agreeing to participate, any English-Dominant household receives \$Y during the pre-recruitment process, whereas a Spanish-Dominant household receives \$2Y. If the household is Spanish-Dominant, individuals get \$4Y for agreeing to participate in PPM when mailed their PPM packages. English-Dominant households, no matter what their race or ethnicity, receive no further incentive.

Arbitron also provides more ongoing contingent incentives for Spanish-Dominant Hispanics than English-Dominant Hispanics, who receive the same incentives as non-Hispanic Whites.

For all of its demographic groups, Arbitron acknowledged that cooperation rates using the diary system are far higher than those for the PPM system. In Houston, 19 percent of those contacted agreed to cooperate, while in New York City only 12 percent agreed to cooperate.

The Review Panel does not have any recommendations to Arbitron at this time regarding these issues.

- **Translation of Recruitment Materials**

Arbitron stated that all written materials used in PPM recruitment steps are translated into Spanish. The translations are completed in-house by individuals who are formally certified as fluent in Spanish (Berlitz, Level 8 or higher). All of these documents are reviewed by a multiethnic, multicultural steering committee of Arbitron employees, each of whom is formally certified as fluent in Spanish.

The Review Panel does not have any recommendations to Arbitron at this time regarding these issues.

- **Financial Incentives for Staff**

Arbitron recruitment staff members are not paid a commission for their "successes". These staff members, however, may earn bonuses based on exceptional staff performance over an extended period of time. (We will request information on the criteria used to award such bonuses and what portion of the staff who work with Hispanics receive such bonuses.)

On a related note, bilingual staff members, whether they are recruiters or other in-house personnel involved translating materials, receive an annual stipend when they are hired, based on whether they possess certified Spanish-language skills.

The Review Panel does not have any recommendations to Arbitron at this time regarding these issues.

- **PPM Panelist/Participant Tenure**

The in-tab rates at the household and individual level for Spanish-Dominant Hispanics is comparatively higher than those for English-Dominant Hispanic households, and somewhat higher than those for non-Hispanic white households. According to charts provided by Arbitron, Spanish-Dominant Hispanic households in New York City have a daily in-tab rate of 84 percent, versus 73 percent for English-Dominant Hispanic households.

More detailed information regarding the average tenure in a PPM panel for Hispanic households has been requested, but Arbitron stated that once a Spanish-Dominant household is recruited, they are no more likely to cut their tenure short than non-Hispanic whites.

Note that the recruitment of households/individuals to replace those lost over the course of a 24-month panel period is ongoing, according to Arbitron, and is based on a random sample of potential PPM participants.

The Review Panel does not have any recommendations to Arbitron at this time related to these issues.

#### 4. Other PPM Issues affecting Hispanics/Latinos

- PPM Technology

- i. Data Collection

Arbitron has been developing the PPM device for approximately 13 years. As noted above, the technology was designed to replace the traditional, long-standing diary-based system where panelists manually entered information on the radio stations they listened to in the course of a day.

All persons 6 years of age or older are supposed to use the PPM in agreeing households. As long as the wearer of a PPM device remembers to carry it with them, the device will automatically collect information about any radio stations within hearing range of the wearer. In households where there is more than one person wearing the PPM device, Arbitron explained that it has safeguards in place to help ensure that each person issued a particular device is actually using it to collect data. These reliability checks appear to be sound, and should preclude any long-term irregularities from occurring.

In order to collect the data, radio stations within the normal human hearing range of a PPM panelist must have their broadcast signals encoded. Arbitron reports that it offers to encode the signal of any radio station that is licensed by a government agency. For example, some stations in Tijuana (Baja California, Mexico) are asked to be measured as part of the San Diego market.

The Review Panel does not have any recommendations to Arbitron at this time regarding these issues.

- ii. Signal Encoding

Radio stations encoded with the signal need not be Arbitron subscribers. In some instances, radio stations decline to be encoded.

Arbitron officials said they do not know what percentage of Spanish-language radio stations have their signals encoded. The company said it does not take into account the relative signal strength of a radio station.

The Review Panel does not have any recommendations to Arbitron at this time regarding these issues.

### **Preliminary Conclusions and Recommendations**

The Review Panel greatly appreciates and applauds Arbitron for engaging them on this key evaluation of the PPM measurement service as it relates to Hispanic/Latino radio listeners in the United States. The panel also is very pleased with the amount and nature of information Arbitron has willingly shared about PPM.

At this time, the Panel makes the following major preliminary recommendations:

1. The Panel believes that Arbitron needs to re-examine its approach to defining who is and who is not a Hispanic for the PPM service. Although this will be discussed in greater detail in upcoming deliberations, several panelists recommended that Arbitron measure this by using 1) the standard U.S. Census Bureau question format that does *not* contain the word "origin," and 2) a follow-up question that asks about a person's possible Hispanic/Latino origin/descent/ancestry. Using both these data will greatly benefit the needs and interests of Arbitron's Hispanic/Latino clients and the Hispanic/Latino population of the United States.

2. The sampling design that Arbitron uses in PPM markets should be shifted away from the all-telephone approach. It should include an address-based (area probability) sampling design where some level of in-person recruitment is deployed, especially for Spanish-Dominant Latinos.

3. Until it is possible for Arbitron to use an address-based sampling design, the assumption that 7.5 percent of their telephone samples come from cell phones is seriously inadequate. Arbitron should change as soon as possible its all-telephone RDD sampling designs to assume that at least 25 percent of sampled households use a cell phone-only frame, and no more than 75 percent of its sampled households use a landline frame.

The Panel believes that only by following these recommendations can an accurate balance of Hispanics/Latinos (including the equally Spanish-Dominant/English-Dominant) eventually hope to be represented in the PPM market samples.

## APPENDIX 1

### National Measurement PPM Hispanic Review Panel Members

- Carlos Arce, founder and chief strategist at NuStats

Dr. Arce is founder and chief strategist of NuStats, a survey science consultancy serving an international clientele. His duties include strategic planning, design and direction of major research projects, client communications, and executive management. He is an executive business leader with more than 30 years of domestic and international experience in applying survey science to strategic planning and policy decision making. Prior to founding NuStats, he held academic research appointments at the Survey Research Center of the Institute for Social Research at the University of Michigan.

- Marianne Barrett, associate dean, Walter Cronkite School of Journalism (ASU)

Marianne Barrett is an associate dean at the Walter Cronkite School of Journalism. Barrett joined the faculty of the Cronkite School as an assistant professor in 1994. She received her doctorate in mass media from Michigan State University in 1993, and her Master of Professional Studies in media administration from Syracuse University in 1988. Prior to beginning her graduate studies, Barrett worked for almost 15 years in the television industry, primarily as a programming executive. In March 2002, Barrett was named the Frank Stanton Fellow by the International Radio and Television Society (IRTS). The award recognizes "outstanding contributions to electronic media education" and was presented at the IRTS's annual Faculty-Industry Seminar in New York.

- Thomas Castro, president, CEO and vice chairman of Border Media Partners

Tom Castro is a radio entrepreneur who bought his first station at age 25. He is the founder, president and CEO of Border Media Partners (BMP), which primarily targets Hispanic listeners across the Southwest. BMP is Castro's third radio start-up. The company reaches 1 out of 5 Hispanic listeners who live and shop in the U.S. He was named among Newsweek's 10 people in the U.S. to watch in 2005. Castro serves on the Board of Time Warner Cable.

- Earl de Berge, chairman and director of research, Behavior Research Center

Earl de Berge enjoys a national reputation for innovative and insightful public opinion research. A trusted advisor to business leaders and frequent television and radio commentators on public affairs and business issues, Mr. de Berge pioneered the development of regional, nonpartisan, public information polls with the creation of the award-winning Rocky Mountain Poll and the BusinessTRACK™ and HispanicTRACK™ surveys of consumer and business markets. He has served as director of research for BRC since 1969, and is the editor and director of the Rocky Mountain Poll. His articles and critical analysis of research techniques, methodologies, and significant findings have been published in journals of business, marketing, and public opinion research. Mr. de Berge is a specialist in the design, administration, and analysis of market research programs including attitude, behavior, use and need studies. Mr. de Berge holds degrees from Antioch University and the University of Arizona.

- Stephen Doig, professor, Walter Cronkite School of Journalism (ASU)

Stephen Doig is Knight Professor of Journalism, specializing in computer-assisted reporting, at the Walter Cronkite School of Journalism and Telecommunication of Arizona State University. One of his major research interests is helping journalists use U.S. Census data. Before joining ASU in 1996, he was research editor for The Miami Herald, working on projects that won the Pulitzer Prize for Public Service, the Investigative Reporters and Editors Grand Prize, the Goldsmith Prize for Investigative Reporting, and other awards. Doig also actively consults with print and broadcast news media outlets around the country on computer-assisted reporting problems. He has served as a speaker and panelist at national meetings of such organizations as Investigative Editors and Reporters, the Society of Professional Journalists, the Associated Press Sports Editors, the Special Libraries Association, the American Association for Public Opinion Research, the American Society of Criminology, and the American Meteorological Society. Doig is a political science graduate of Dartmouth College. He also graduated from, and later taught at, the Defense Information School.

- Daisy Expósito-Ulla, chairman and CEO of d'expósito & partners

Daisy Expósito-Ulla is Chairman & CEO of *d'expósito & Partners*, an independent, woman- and minority-owned, full-service Hispanic marketing and communications agency. She is the founder and former Chairman/CEO of The Bravo Group, a WPP company. Daisy has achieved a stellar career in advertising and marketing communications, successfully building her clients' brands through consumer-centric strategies and effective, holistic campaigns known to engage and move consumers. Following her entrepreneurial spirit, she founded *d'expósito & Partners* in 2006. At *d'expósito & Partners* her client partners include McDonald's, Mazda, Anheuser-Busch, Novartis Consumer Health, V-me, NYC & Company, Kare Distribution and The Philharmonic Orchestra of the Americas. A top authority on the Hispanic market, Expósito-Ulla is frequently consulted about ethnic trends and on the multicultural future of marketing and communications in America. She is a board member of the Advertising Council, the American Education Foundation and the National Campaign to Prevent Teen Pregnancy, where she acts as chairman of the Campaign's Latino Initiative. She is also founder and board member of both the New America Alliance and the Association of Hispanic Advertising Agencies (AHAA). Daisy served as president of AHAA in 2000, where she conceived and launched one of her most ambitious public service efforts, *FuturaMente* (FutureMinds), a campaign to motivate Hispanic Americans to become teachers and promote education of children and Latino youth.

- Felix Gutiérrez, professor, USC Annenberg School of Communication

Félix Gutiérrez is a Professor of Journalism and Communication in the University of Southern California's Annenberg School for Communication and an Affiliate Professor of American Studies & Ethnicity. He is a former Senior Vice President of the Freedom Forum and the Newseum. His career in higher education includes tenured faculty positions at the University of Southern California and California State University Northridge, and administrative posts at USC, Stanford University and California State University Los Angeles. He was the first Executive Director of the California Chicano News Media Association from 1978 through 1980. He is author or co-author of five books and more than 50 scholarly articles or book chapters. In 2004 his most recent co-authored book, *Racism, Sexism, and the Media: The Rise of Class Communication in Multicultural America*, was awarded the Society of Professional Journalists Sigma Delta Chi Award for Excellence in Research About Journalism. A native of East Los Angeles, he earned a B.A. in Social Studies from California State College Los Angeles, an M.S.

from Northwestern University's Medill School of Journalism, and an A.M. and Ph.D. in Communication from Stanford University.

- Alex Nogales, president and CEO of the National Hispanic Media Coalition

Alex Nogales is an activist who fights for rights of Latinos in the media and for improving Hispanic employment in the field. Nogales began his career at Bicultural Children's Television for KNBC-TV. He wrote for shows like "Villa Alegre (Happy Village)," and "Treasures of Mexico." Nogales left TV in 1989 and went into a career of business marketing, advertising and public relations. He has served as President for the Hispanic Academy of Media Arts & Sciences (HAMAS), and now heads the Hispanic Film Project. Nogales is also the president, CEO and national chair of the National Hispanic Media Coalition. He is dedicated to improving the level of Latino employment in all forms of media, and is dedicated to the eradication of negative stereotyping of Hispanics in film, radio and TV.

- Bob Perry, international radio consultant

Bob Perry has 30 years of broadcasting experience in both radio and television. He has programmed and consulted 35 top rated radio stations in 20 different markets throughout the United States and Mexico, and has a proven track record of increasing ratings for stations that target the Hispanic audience, including the English-speaking, bilingual, and Spanish-speaking audience. In addition to clients throughout the United States, Perry is the programming consultant for Mexico's largest broadcasting company, Grupo Acir based in Mexico City which consistently has the top-rated stations in markets throughout Mexico. Perry has an extensive background in market research including market perceptual studies, auditorium music testing, weekly callout research, and audience focus groups. Also, Perry is experienced in effective marketing strategies which include television, billboards, direct mail, telemarketing, station contesting, and station events and concerts. His biggest enjoyment is finding and teaching the future programming and air talent superstars of the radio industry. Perry attended Louisiana State University and is based in Houston, Texas. He comes from a broadcasting family with family members in both radio and television.

- Rick Rodriguez, professor, Walter Cronkite School of Journalism (ASU)

Rick Rodriguez, former executive editor of the Sacramento Bee and the first Latino president of the American Society of Newspaper Editors, is a Southwest Borderlands Initiative Professor at the Walter Cronkite School of Journalism and holds the faculty rank of professor of practice. Rodriguez is developing a new cross-disciplinary specialization at the Cronkite School in the coverage of issues relating to Latinos and the U.S.-Mexico border. Rodriguez was the Bee's managing editor for five years before being named executive editor. He was the first Latino to serve as president of the American Society of Newspaper Editors. Both in the newsroom and as president of ASNE, Rodriguez was known as a champion of watchdog journalism. He continues to serve as a consultant to the vice president for news at The McClatchy Co., which owns the Bee. A Salinas, Calif. native, Rodriguez graduated from Stanford University in 1976 with a bachelor's degree in communications.

- Isabel Valdés, founder of Isabel Valdés Consulting

Isabel Valdés is an In-Culture marketing expert, business development consultant, published author, public speaker and trainer. She is a pioneer in Hispanic marketing, author and public speaker. She is recognized as the founder of "In-Culture Marketing™", a methodology that capitalizes on consumer culturally determined values, expectations and behaviors that impact purchase decision making. She founded and managed for 15 years Hispanic Market Connections, (HMC) Inc., an award winning marketing research company. Recently, Ms. Valdés founded Isabel Valdés Consulting, (IVC,) a consulting firm that advises corporations, non-profits and government agencies on a broad range of business issues in the U.S. and abroad. Late in 2002, Ms. Valdés released her third book, "Marketing to American Latinos, A Guide to the In-Culture Approach, Part II." (Paramount Market Publishing, Ithaca, N.Y.) Ms. Valdés is a member of PepsiCo/Frito-Lay's Latino Advisory Board and the Advisory Board of Scholastic, Lee y Serás, as well as a board member of NCLR (National Council of la Raza), the largest and most influential Hispanic non-partisan civic rights organization, and the National Hispana Leadership Institute, both in Washington D.C. Ms. Valdés has received numerous honors, including being selected by *Fortune Small Business* in 2001 as a "Woman Entrepreneur Star," and Business Woman of the Year by the New York Hispanic Chambers of Commerce in 1995. Before founding HMC, Ms. Valdés conducted communications research for Stanford University and was a member of the clinical faculty in the Division of Family Medicine, at Stanford's Medical School. She earned an M.A. in Communications and an M.A. in Education from Stanford University.

- Raul Yzaguirre, executive director, Center for Community Development and Civil Rights (ASU)

Raul Yzaguirre is presidential professor of practice and executive director of the Center for Community Development and Civil Rights at Arizona State University. From 1974 to 2004, Yzaguirre was president of the National Council of La Raza, the nation's leading Hispanic advocacy organization and the largest constituency-based national Latino organization. In 1964, he founded NOMAS, the National Organization for Mexican American Services. A proposal he wrote for NOMAS led to the creation of what is now National Council of La Raza, which he joined as its executive director in 1974. In 1969, Yzaguirre founded Interstate Research Associates, the first Mexican-American research association, which he built into a multimillion-dollar nonprofit consulting firm. He helped establish several key national groups that have brought together a host of organizations in the Hispanic community including the National Hispanic Leadership Agenda (NHLA), the New American Alliance (NAA), and the Hispanic Association for Corporate Responsibility (HACR). His legacy includes building NCLR from a regional advocacy group with 17 affiliates into an organization of more than 300 affiliates serving 41 states, Puerto Rico and the District of Columbia. Mr. Yzaguirre earned the Rockefeller Public Service Award from Princeton University and also received the Order of the Aztec Eagle in 1993, the highest honor awarded by the Government of Mexico to citizens of another country.

## APPENDIX 2

### Arbitron Staff in Attendance during June 5, 2008 Meeting (listed alphabetically)

- Stacie de Armas, Director, Office of Multicultural Business Affairs
- Clara Carneiro, Vice President, Office of Multicultural Business Affairs
- Owen Charlebois, President, Technology, Research and Development
- Dan Estersohn, Senior Demographer
- Brad Feldhaus, Vice President, Product Management
- Dottye Gould-Smith, SVP, Respondent Acquisition and Compliance Operations
- Richard Griffiths, Senior Statistician
- Jay Guyther, Senior Vice President, Ratings Services
- Claire Kummer, Executive Vice President, Operations, Integration & Manufacturing
- Bob Patchen, Senior Vice President, Chief Research Officer
- Richard Possett, Manager, Sampling Department
- Nancy Weissman, Director, Panel Compliance Management

# **Exhibit I**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,  
by ANDREW M. CUOMO, Attorney General of the State  
of New York,

Petitioners,

- against-

ARBITRON INC.,

Respondent.  
-----X

STIPULATED  
ORDER ON CONSENT

Index No. 402516/08  
IAS Part \_\_\_\_\_

Assigned to Justice Diamond

This Stipulated Order on Consent ("Order") is entered into by and between petitioners, THE PEOPLE OF THE STATE OF NEW YORK, by ANDREW M. CUOMO, ATTORNEY GENERAL OF THE STATE OF NEW YORK, and respondent ARBITRON INC., a corporation organized under the laws of the State of Delaware;

WHEREAS New York State Law Executive Law § 63(12) prohibits repeated or persistent fraudulent or illegal acts in the transaction of business; New York General Business Law §§ 349 and 350 prohibit deceptive and misleading business practices and false advertising; and New York Civil Rights Law § 40-c and New York Executive Law § 290 et seq. ("New York State Human Rights Law") prohibit any person or firm, corporation or institution from discriminating against any person because of race, creed, color, or national origin;

WHEREAS, pursuant to the provisions of Section 63(12) of the New York State Executive Law, the Office of the Attorney General ("Attorney General") conducted an investigation into the policies, procedures, and practices of Arbitron Inc. ("Arbitron"), regarding allegations of fraudulent and unlawful business practices;

WHEREAS Arbitron, which is headquartered in New York, is one of the largest media ratings companies in the United States, and the only major provider of listener measurement services to radio broadcasters in the State of New York;

WHEREAS Arbitron for decades based its radio ratings on surveys using a "diary" system which utilizes journals kept by listeners who record their daily radio listening habits;

WHEREAS Arbitron in New York replaced the diary system with the Portable People Meter ("PPM"), an electronic device that tracks the radio stations that listeners are exposed to, and has developed a methodology to recruit radio listeners to serve as panelists in their geographic area by carrying the PPM ("PPM methodology");

WHEREAS the reliability and accuracy of the media measurement of PPM depends on the reliability of the PPM methodology, because the ratings will only be reliable and accurate if the samples are representative of the communities measured, and the persons carrying the PPM are compliant with Arbitron's instructions on how to use the PPM;

WHEREAS the Media Rating Council, Inc. ("MRC"), a not-for-profit organization that for over forty years has been the primary accrediting agency for ratings services in the United States, denied accreditation in November 2007 to Arbitron's PPM methodology in New York;

WHEREAS the Attorney General received complaints that the PPM methodology as applied to New York is not reliable or fair in that it undercounts New York African-American and Hispanic radio listeners, potentially depriving New York minority broadcasters of advertising revenue and these New York listeners of their primary media resources;

WHEREAS, the Attorney General commenced, through the filing of a complaint, the above captioned lawsuit in the Supreme Court of the State of New York, New York County ("Lawsuit") seeking injunctive and monetary relief on grounds that the PPM methodology is not

reliable or accurate, Arbitron made representations regarding the accreditation, fairness, representativeness and reliability of the PPM Methodology in New York that are fraudulent and deceive or have the capacity or tendency to deceive consumers and violate New York's Civil Rights and Human Rights Laws;

WHEREAS, the parties herein desire to resolve this matter without further litigation or adjudication; and

WHEREAS, in consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, the Attorney General, on behalf of itself and the petitioners, and Arbitron, have agreed to the terms of this Order;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

#### **PART ONE: DEFINITIONS**

- 1.1 "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
- 1.2 "Arbitron" means Arbitron Inc. and all of its executives, officers, directors, managers, representatives, employees and all individuals who act on their behalf.
- 1.3 "Order" means this Stipulated Order on Consent.
- 1.4 "Diary system" means Arbitron's long-standing methodology of collecting journals written by panelists of their daily radio listening habits and utilizing them to create ratings based on an estimate of the number of listeners of radio broadcasts.
- 1.5 "Effective Date" means the date this Order is executed by the parties hereto.
- 1.6 "Including" means without limitation.

- 1.7 “Media Rating Council” and “MRC” mean Media Rating Council, Inc., a trade organization of broadcasters and advertisers that accredits media measurement services.
- 1.8 “New York Market” means all geographic areas within New York State where as of the effective date hereof PPM has been commercialized, including but not limited to Bronx, Hudson, Kings, New York, Putnam, Queens, Rockland, and Westchester counties, as well as Bergen, Essex, Fairfield, Passaic, and Monmouth counties.
- 1.9 “Portable People Meter” and “PPM” refer to the device Arbitron utilizes to identify and store information regarding radio broadcasts that panelists are exposed to and to transmit that information to Arbitron.
- 1.10 “PPM methodology” refers to the policies, procedures, and practices by which Arbitron recruits individuals to wear the PPM and obtains PPM data from a sample of persons in households within a geographic region.
- 1.11 “Recruitment efforts” means procedures used to select, contact and recruit potential PPM panelists.
- 1.12 The use of the singular form of any word includes the plural and vice versa.

#### **PART TWO: COMPLIANCE WITH THE LAW**

- 2.1 Arbitron agrees to comply fully with New York General Business Law §§ 349 and 350, New York Civil Rights Law § 40-c, and the New York State Human Rights Law.

### **PART THREE: INJUNCTIVE RELIEF**

- 3.1 Arbitron shall commence recruitment of panelists in the New York Market for the PPM using a combination of telephone based and address based methodologies beginning in January 2009. The address based methodology must be utilized in at least 10% of all recruitment efforts by or before July 1, 2009 and in at least 15% of all recruitment efforts by or before July 1, 2010. Further, Arbitron shall ensure that recruitment of racial and ethnic minorities as surveyed is commensurate with the racial and ethnic composition of the geographic area being surveyed, as determined by the most recent, annually updated United States census data.
- 3.2 Arbitron shall increase cell phone only ("CPO") sampling, based on all recruitment efforts, in the New York Market from 7.5% to 10% by or before July 1, 2009, from 10% to 12.5% by or before December 1, 2009 and from 12.5% to 15% by or before July 1, 2010. Within fifteen (15) business days at the end of each quarter, Arbitron shall provide data on the composition of the CPO sample cross-tabulated by race, ethnicity and age to the Attorney General and to subscribing broadcasters of the New York PPM data.
- 3.3 Arbitron must take all reasonable measures, including necessary front-loaded treatments and refusal conversion strategies, to increase SPI and to ensure a minimum SPI of 15 by or before July 1, 2009; a minimum SPI of 16 by or before October 1, 2009; and a minimum SPI of 17 by or before June 1, 2010 with a target SPI of 20.
- 3.4 Arbitron must take all reasonable measures, including in-person coaching and compliance incentives, to ensure in-tab rates of at least 75% by or before April 1, 2009 in all demographics in New York as defined by race, ethnicity, age, and gender. The in-tab rates of all sub-categories of race, ethnicity, age and gender cannot fall below 90% of the

target rate, excluding sub-categories that are less than 10% of the New York Market on a six (6) month basis beginning April 1, 2009.

- 3.5 Further, beginning on January 21, 2009, Arbitron shall provide to subscribing New York broadcasters install and in-tab data by individual zip code for the New York Market and provide racial and ethnic demographic data for each zip code. Thereafter, Arbitron shall continue to provide the New York zip code data fifteen (15) business days after the monthly release of the monthly e-book for the New York Market. Arbitron reserves the right to discontinue delivery of a portion or all of the zip code data based on formal, written advice from the MRC, or in the event there is substantial evidence, as determined by the Attorney General, that a person or company is using the zip code data to identify or contact PPM panel members.
- 3.6 Arbitron shall create, fund and commence a valid non-response bias study by January 15, 2009, subject to approval by the Attorney General, to identify and determine measurable bias, if any, in the PPM methodology utilized in the New York Market. The study shall be completed by July 15, 2009. If the study finds measurable bias, Arbitron shall use all reasonable measures to address the bias within six (6) months. To the extent Arbitron believes in good faith that it cannot cure such bias within six (6) months, it shall notify and confer with the Attorney General.
- 3.7 Arbitron shall fund an advertising campaign of at least \$25,000 in the New York Market promoting minority radio in major trade journals.
- 3.8 Effective immediately, Arbitron must include a prominent disclaimer in **14 font bold typeface** on all written promotional materials of the PPM on paper or internet advertising on direct links, including e-book, and any sub-links that contain promotional

materials, stating that the PPM ratings are based on audience estimates and are the opinion of Arbitron and should not be relied on for precise accuracy or precise representativeness of the demographic or radio market in New York.

3.9 Arbitron shall prepare and submit reports fifteen (15) days after each quarter in 2009 and 2010 to the Attorney General relating to all metrics outlined in paragraphs 3.1 through 3.5. Arbitron shall submit a sworn statement, certifying (1) the current PPM methodology design changes and metrics discussed in paragraphs 3.1 through 3.5, (2) whether Arbitron is in compliance with paragraphs 3.1 through 3.10 and paragraphs 4.1 and 4.4, and if not, (3) identify the paragraphs in which Arbitron is non-compliant, and (4) where Arbitron is non-compliant with paragraphs 3.3 and/or 3.4, identify all reasonable measures taken to achieve compliance.

3.10 Arbitron shall take all reasonable efforts in good faith to obtain and retain accreditation for the New York Market from the MRC. In addition to the rights reserved to the Attorney General set forth in paragraph 5.13, if Arbitron has not obtained accreditation from the MRC by October 15, 2009 and has failed to meet any of the minimum standards as set forth in paragraphs 3.1 through 3.9 of this Order, the Attorney General reserves the right to rescind the Order and reinstitute litigation against Arbitron for the above-referenced claims.

#### **PART FOUR: MONETARY RELIEF**

4.1 Arbitron agrees to pay a single lump sum in the amount of Two Hundred Thousand Dollars (\$200,000) in settlement of alleged deceptive practices and civil rights claims, as determined by the Attorney General, of Arbitron's conduct.

- 4.2 Arbitron agrees to pay the sum of Sixty Thousand Dollars (\$60,000) to cover a portion of the costs of the Attorney General's investigation and monitoring.
- 4.3 Arbitron agrees to pay a single lump sum of One Hundred Thousand Dollars (\$100,000) to the National Association of Black Owned Broadcasters for a joint radio project between the National Association Black Owned Broadcasters and the Spanish Radio Association to support minority radio.
- 4.4 Payments to the Attorney General are due no later than four (4) weeks after the time of the signing of this Order, and must be in the form of a certified check, bank check, money order, or attorney's check made payable to "The State of New York" and forwarded to the New York State Attorney General's Office, Attention: Alphonso David, Deputy Bureau Chief, Civil Rights Bureau, 120 Broadway, 3rd Floor, New York, New York, 10271-0332. Payment to the National Association of Black Owned Broadcasters is due no later than four (4) weeks after the time of signing of this Order.

#### **PART FIVE: JURISDICTION AND OTHER PROVISIONS**

- 5.1 This Order, when fully executed and performed by Arbitron to a reasonable expectation of the Attorney General, will resolve all claims against Arbitron that were raised in the complaint filed by the Attorney General in this action. However, nothing in this Order is intended to, nor shall, limit the Attorney General's investigatory or compliance review powers otherwise provided by law.
- 5.2 Notwithstanding any provision of this Order to the contrary, the Attorney General may, in its sole discretion, grant written extensions of time for Arbitron to comply with any provision of this Order.

- 5.3 This Order shall become effective upon its execution by all parties and its entry by the Court.
- 5.4 The signatories to this Order warrant and represent that they have read and understand this Order, that they are duly authorized to execute this Order, and that they have the authority to take all appropriate action required to be taken pursuant to the Order to effectuate its terms.
- 5.5 This Order may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
- 5.6 This Order is final and binding on the parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Order. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.
- 5.7 All of the terms of this Order are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all parties hereto approved by the Court or with Court approval.
- 5.8 This above captioned lawsuit shall be dismissed without prejudice. However, the Court shall retain jurisdiction over the parties and the matter and retain the power to order all applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.
- 5.9 This Order supersedes and renders null and void any and all written or oral prior undertakings or agreements between the parties regarding the subject matter hereof.

- 5.10 The parties hereby waive and shall not have any right to appeal any of the terms of this Order or in any way challenge the validity of any of the terms of this Order in any forum. Further, Arbitron hereby agrees to withdraw with prejudice any and all pending legal claims filed in any trial or appellate court, whether state or federal, involving the Attorney General relating to the marketing or commercialization of the PPM or the PPM methodology, or the Attorney General's jurisdiction to investigate and litigate claims relating to the PPM.
- 5.11 If any provisions, terms, or clauses in this Order are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Order shall remain valid and binding on the parties.
- 5.12 The parties may seek to enforce this Order by motion before the Court to the full extent of the law; however, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.
- 5.13 Failure to comply with any provision of this Order shall be considered a violation of this Consent Order. Upon such a violation, the Attorney General may take any and all steps available to enforce this Consent Order, including seeking an order of contempt pursuant to CPLR § 5104. Upon application by the Attorney General showing Arbitron has failed to pay penalties and costs pursuant to paragraphs 4.1 through 4.3 herein, the Court shall also enter a money judgment in the amount of the unpaid balance, plus interest at the rate of nine (9) percent per annum from the date of violation or nonpayment, against Arbitron, and the Attorney General shall have execution thereof.

- 5.14 In any application by the Attorney General pursuant to paragraph 5.13 above, the Attorney General may request an allowance for costs under CPLR § 8303(a)(6).
- 5.15 Failure by any party to seek enforcement of this order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.
- 5.16 All communications and notices regarding this Order shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

Office of the Attorney General

Alphonso B. David  
Deputy Bureau Chief  
Civil Rights Bureau  
Office of the New York State  
Attorney General  
120 Broadway, 3rd Floor  
New York, New York 10271-0332  
Tel. (212) 416-8250  
Fax (212) 416-8074

Arbitron Inc.

Chief Legal Officer  
Arbitron Inc.  
9705 Patuxent Woods Drive  
Columbia, Maryland 21046-1572  
Tel. (410) 312-8043  
Fax (410) 312-8613

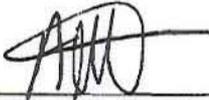
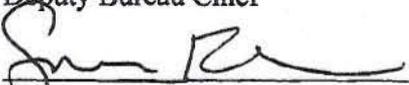
Alfred Fabricant  
Dickstein Shapiro LLP  
1177 Avenue of the Americas  
New York, NY 10036-2714  
Tel. (212) 277-6621  
Fax (212) 277-6510

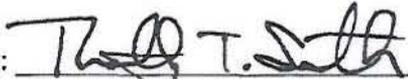
Attorneys for Arbitron

IN WITNESS THEREOF, the parties hereto, intending to be legally bound hereby, have executed this Order on Consent on the dates written below:

ANDREW M. CUOMO  
Attorney General of the State of New York  
120 Broadway  
New York, New York 10271

ARBITRON INC.  
142 West 57th Street  
New York, NY 10019-3300

By:   
Alphonso B. David  
Deputy Bureau Chief  
  
Spencer Freedman  
Counsel for Civil Rights

By:   
Timothy T. Smith  
Executive Vice President  
& Chief Legal Officer

Andrew J. Elmore  
Assistant Attorney General

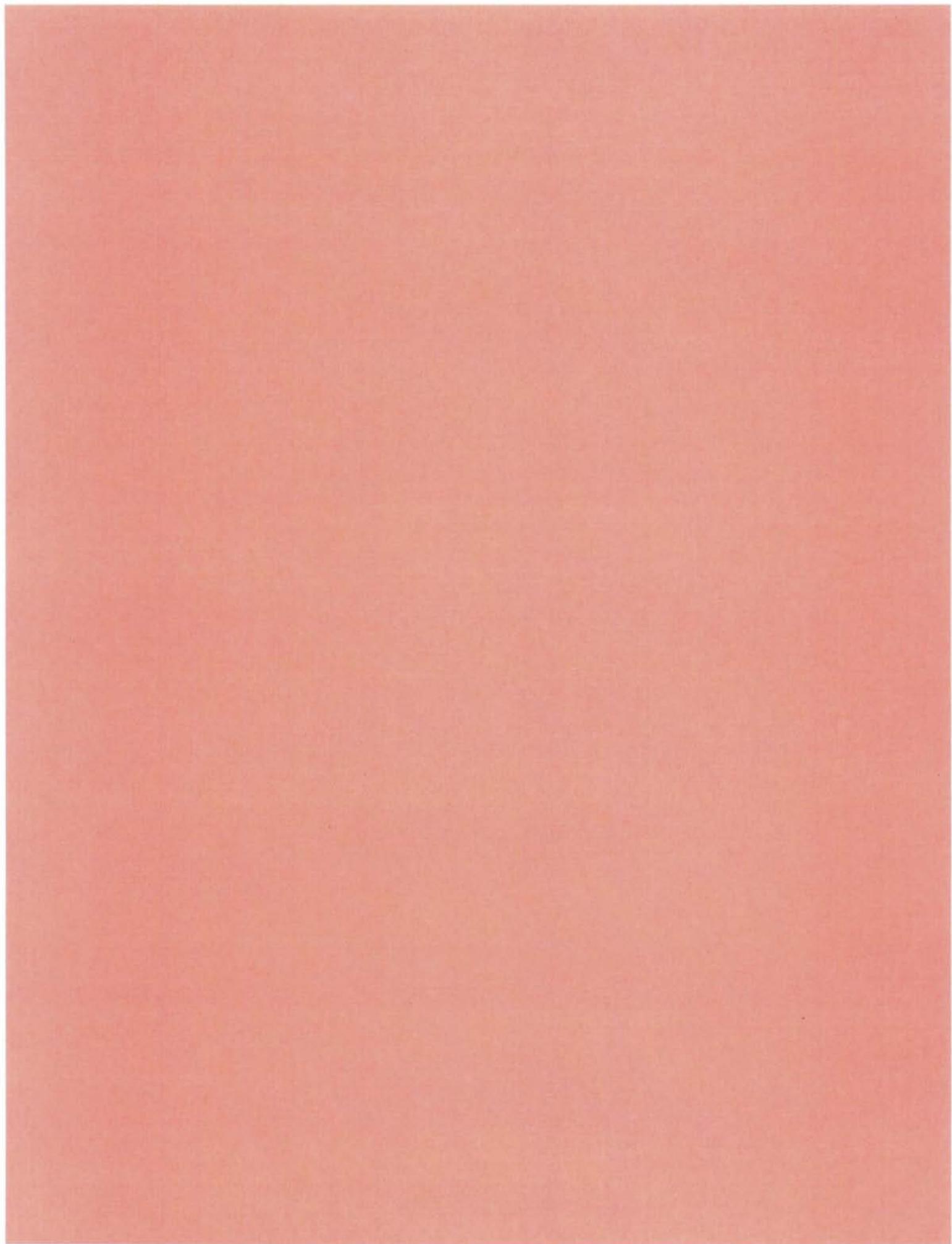
Dated: New York, New York  
~~December~~ 7, 2008  
JANUARY

Dated: New York, New York  
December 19, 2008

SO ORDERED:

  
HON. MARYLIN G. DIAMOND  
NEW YORK SUPREME COURT JUSTICE

Dated: JAN 7 2009  
New York, New York



ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
Hughes Justice Complex  
25 Market Street  
P.O. Box 112  
Trenton, New Jersey 08625-0112  
Attorney for Plaintiffs

By: James R. Michael  
Deputy Attorney General  
Tel.: (609) 984-3105

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO.: MID-L-8428-08

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ANNE MILGRAM, Attorney General of the  
State of New Jersey; DAVID SZUCHMAN,  
Director of the New Jersey Division of Consumer  
Affairs, and J. FRANK VESPA-PAPALEO,  
Director of the New Jersey Division on  
Civil Rights,

Plaintiffs,

v.

ARBITRON, INC.,

Defendant.

---

Civil Action

FINAL CONSENT JUDGMENT

1. Plaintiffs ANNE MILGRAM, Attorney General of the State of New Jersey ("Attorney General"), DAVID SZUCHMAN, Director of the New Jersey Division of Consumer Affairs, and J. FRANK VESPA-PAPALEO, Director of the New Jersey Division on Civil Rights, (collectively "Plaintiffs"), having filed a Complaint (hereinafter "the Complaint") and Defendant Arbitron Inc., a Delaware corporation ("Arbitron"), appearing through counsel, stipulate that this Final Consent Judgment ("Consent Judgment") may be signed and entered by a judge.

2. The Plaintiffs and Defendant (collectively, "Parties") having consented to the entry of this Consent Judgment for the purposes of settlement only without this Judgment constituting evidence against or any admission by any party and without trial of any issue of fact or law. This Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Defendant or any other party. Further, this Consent Judgment shall not be competent evidence in any judicial or other proceeding of any liability or wrongdoing by Defendant.

3. The entry of this Consent Judgment has been consented to by Defendant as its own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon them by this Consent Judgment, and it consents to its entry without further notice, and avers that no offer, agreement or inducements of any nature whatsoever have been made to them by the Plaintiffs or their attorneys of any employee of the Office of the Attorney General to procure this Consent Judgment.

4. In the event that the Court shall not enter this Consent Judgment, this proposed Consent Judgment shall be of no force and effect against the Attorney General of New Jersey and the Directors or the Defendant.

5. This Consent Judgment shall bind Defendant, its officers, directors, agents, representatives, parents, affiliates, subsidiaries and employees, and shall be binding on any and all successors and assigns, future purchasers, acquired parties, acquiring parties, successors-in-interest, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation or anyone acting directly or indirectly on their behalf.

6. Subject to paragraph 38 below, Defendant has, by its signature and the signatures of its respective counsel hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with entry of this Consent Judgment concerning past conduct

addressed in this Consent Judgment.

7. In exchange for the consideration set forth herein, upon execution of this Consent Judgment, the Plaintiffs agree to release Defendant, all of its parent entities, subsidiaries and affiliated entities, and the officers, directors, members, agents servants, employees of each of them, and shareholders from all civil claims, causes of action, suits and demands, of any kind or character for violation of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., or the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 et seq., arising prior to the date this Consent Judgment is filed and arising out of or based upon matters addressed in this Consent Judgment and the Plaintiffs' Complaint.

8. The Court having considered the pleadings and the proposed Consent Judgment executed by the Parties and their attorneys and filed herewith, and good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Consent Judgment may be entered in this matter as follows:

**JURISDICTION AND VENUE**

9. Pursuant the CFA and LAD, jurisdiction of this Court over the subject matter and over the Defendant for purposes of entering into and enforcing this Consent Judgment is admitted. Jurisdiction is retained by this Court for such further orders and directions as may be necessary or appropriate for the construction and modification of the injunctive provisions herein, or execution of this Consent Judgment, including punishment for any violation of this Consent Judgment. If the Plaintiffs are required to file a petition to enforce any provision of this Consent Judgment against Defendant, Defendant agrees to pay any courts costs and reasonable attorneys' fees associated with any successful petition to enforce any provision of this Consent Judgment. Pursuant to N.J.S.A. 56:8-8, venue is proper in this Court, and venue as to all matters between the parties relating hereto

or arising out of this Consent Judgment is solely in the Superior Court of New Jersey, Middlesex County.

**PART ONE: DEFINITIONS**

10. Unless otherwise specified, the following definitions shall apply:
- a. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
  - b. "Arbitron" means Arbitron Inc. and all of its executives, officers, directors, managers, representatives, employees and all individuals who act on their behalf.
  - c. "Order" means this Final Consent Judgment.
  - d. "Diary system" means Arbitron's long-standing methodology of collecting journals written by panelists of their daily radio listening habits and utilizing them to create ratings based on an estimate of the number of listeners of radio broadcasts.
  - e. "Effective Date" means the date this Order is executed by the parties hereto.
  - f. "Including" means without limitation.
  - g. "Install" means a household or person who has agreed to participate as part of a sample panel, received PPM equipment to participate, installed PPM in the household and meets all of the reporting requirements.
  - h. "In Tab" rate means the number, expressed as a percentage, of households or persons supplying usable information for reports or tabulations.
  - I. "Media Rating Council" and "M.R.C." mean Media Rating Council, Inc., a trade organization of broadcasters and advertisers that accredits media measurement services.
  - j. "New York Market" means all geographic areas in and surrounding New York City designated by Arbitron as a market where as of the effective date hereof P.P.M. has been

commercialized, including but not limited to the "embedded" market of Middlesex, Somerset, and Union Counties in New Jersey ("Middlesex-Somerset-Union"), as well as the New Jersey counties of Essex, Bergen, Passaic, and Monmouth counties.

k. "Philadelphia Market" means all geographic areas in and surrounding the City of Philadelphia designated by Arbitron as a market where as of the effective date hereof P.P.M. has been commercialized, including but not limited to which includes the New Jersey counties of Burlington, Camden and Gloucester.

l. "Portable People Meter" and "P.P.M." refer to the device Arbitron utilizes to identify and store information regarding radio broadcasts that panelists are exposed to and to transmit that information to Arbitron.

m. "P.P.M. methodology" refers to the policies, procedures, and practices by which Arbitron recruits individuals to wear the P.P.M. and obtains P.P.M. data from a sample of persons in households within a geographic region.

n. "Recruitment efforts" means procedures used to select, contact and recruit potential P.P.M. panelists.

o. "SPI" is an abbreviation for Sample Performance Indicator and refers to a surrogate measure for response rate in panel based samples.

p. The use of the singular form of any word includes the plural and vice versa.

## **PART TWO: COMPLIANCE WITH THE LAW**

11. Arbitron agrees to comply fully with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 et seq.

**PART THREE: INJUNCTIVE RELIEF**

12. Arbitron shall commence recruitment of panelists in the New York Market for the P.P.M. using a combination of telephone based and address based methodologies beginning in January 2009. The address based methodology must be utilized in at least 10% of all recruitment efforts by or before July 1, 2009 and in at least 15% of all recruitment efforts by or before July 1, 2010. Further, Arbitron shall ensure that recruitment of racial and ethnic minorities as surveyed is commensurate with the racial and ethnic composition of the geographic area being surveyed, as determined by the most recent, annually updated United States census data.

13. Arbitron shall commence recruitment of panelists in the Philadelphia Market for the P.P.M. using a combination of telephone based and address based methodologies beginning in January 2009. The address based methodology must be utilized in at least 10% of all recruitment efforts by or before July 1, 2009, and in at least 15% of all recruitment efforts by or before December 31, 2010. Further, Arbitron shall ensure that recruitment of racial and ethnic minorities as surveyed is commensurate with the racial and ethnic composition of the geographic area being surveyed, as determined by the most recent, annually updated United States census data.

14. Arbitron shall increase cell phone only ("CPO") sampling, based on all recruitment efforts, in the New York Market from 7.5% to 10% by or before July 1, 2009, from 10% to 12.5% by or before December 1, 2009 and from 12.5% to 15% by or before July 1, 2010. Within fifteen (15) business days at the end of each quarter, Arbitron shall provide data on the composition of the CPO sample cross-tabulated by race, ethnicity and age to the Attorney General and to subscribing broadcasters of the New York P.P.M. data.

15. Arbitron shall increase cell phone only ("CPO") sampling, based on all recruitment efforts, in the Philadelphia Market from 7.5% to 10% by or before July 1, 2009, from 10% to 12.5% by or before June 1, 2010 and from 12.5% to 15% by or before December 31, 2010. Within fifteen (15) business days at the end of each quarter, Arbitron shall provide data on the composition of the CPO sample cross-tabulated by race, ethnicity and age to the Attorney General and to subscribing broadcasters of the Philadelphia P.P.M. data.

16. Arbitron must take all reasonable measures, including necessary front-loaded treatments and refusal conversion strategies (incentives), to increase SPI in the New York Market and to ensure a minimum SPI of 15 by or before July 1, 2009; a minimum SPI of 16 by or before October 1, 2009; and a minimum SPI of 17 by or before June 1, 2010, with a target SPI of 20.

17. Arbitron must take all reasonable measures, including necessary front-loaded treatments and refusal conversion strategies (incentives), to increase SPI in the Philadelphia Market and to ensure a minimum SPI of 15 by or before October 1, 2009; a minimum SPI of 16 by or before April 1, 2010; and a minimum SPI of 17 by or before November 30, 2010, with a target SPI of 20.

18. Arbitron must take all reasonable measures, including in-person coaching and compliance incentives, to ensure in-tab rates of at least 75% by or before April 1, 2009 in all demographics in the New York Market as defined by race, ethnicity, age, and gender. The in-tab rates of all sub-categories of race, ethnicity, age and gender cannot fall below 90% of the target rate, excluding sub-categories that are less than 10% of the New York Market on a six (6) month basis beginning April 1, 2009.

19. Arbitron must take all reasonable measures, including in-person coaching and

compliance incentives, to ensure in-tab rates for the Philadelphia PPM Market of at least 75% for the overall population (age of 6 and over) by or before April 1, 2009. The in-tab rates of all sub-categories of race, ethnicity, age and gender cannot fall below 85% of the target rate, excluding sub-categories that are less than 10% of the Philadelphia Market on a six (6) month basis beginning April 1, 2009.

20. Further, beginning on January 21, 2009, Arbitron shall provide to subscribing broadcasters install and in-tab data by individual zip code for the New York Market and provide racial and ethnic demographic data for each zip code. For the Philadelphia Market Arbitron shall begin providing install and in-tab data by zip code on April 1, 2009. Thereafter, Arbitron shall continue to provide the zip code data fifteen (15) business days after the monthly release of the monthly e-book for the New York Market and the Philadelphia Market. Arbitron reserves the right to discontinue delivery of a portion or all of the zip code data based on formal, written advice from the MRC, or in the event there is substantial evidence, as determined by the Attorney General, that a person or company is using the zip code data to identify or contact PPM panel members.

21. Arbitron shall create, fund and commence a valid non-response bias study by January 15, 2009, to identify and determine measurable bias, if any, in the PPM methodology utilized in the New York Market. The study shall be completed by July 15, 2009. This study is intended to satisfy Arbitron's obligations in this regard both hereunder as well as under Arbitron's separate agreement to settle the case with the New York Attorney General. If the study finds measurable bias, Arbitron shall use all reasonable measures to address the bias within six (6) months. To the extent Arbitron believes in good faith that it cannot cure such bias within six (6) months, it shall notify and confer with the Attorney General.

22. Arbitron shall fund an advertising campaign of at least \$25,000 promoting minority radio in major trade journals. This advertising campaign is intended to satisfy Arbitron's obligations in this regard both hereunder as well as under Arbitron's separate agreement to settle the case with the New York Attorney General.

23. Arbitron agrees to pay a single lump sum of One Hundred Thousand Dollars (\$100,000) to the National Association of Black Owned Broadcasters for a joint radio project between the National Association Black Owned Broadcasters and the Spanish Radio Association to support minority radio. This single payment shall satisfy Arbitron's obligation in connection with the settlement of this action as well as the action in New York with the New York Attorney General.

24. Effective immediately, Arbitron must include a prominent disclaimer in **14 font bold typeface** on all written promotional materials of the PPM on paper or internet advertising on direct links, including e-book, and any sub-links that contain promotional materials, stating that the PPM ratings are based on audience estimates and are the opinion of Arbitron and should not be relied on for precise accuracy or precise representativeness of the demographic or radio market in New York and Philadelphia markets.

25. Arbitron shall prepare and submit reports fifteen (15) days after each quarter in 2009 and 2010 to the Attorney General relating to all metrics outlined in paragraphs 12 through 19. Arbitron shall submit a sworn statement, certifying (1) the current PPM methodology design changes and metrics discussed in paragraphs 12 through 19, (2) whether Arbitron is in compliance with paragraphs 12 through 19, and if not, (3) identify the paragraphs in which Arbitron is non-compliant,

and (4) where Arbitron is non-compliant with paragraphs 12 through 19, identify all reasonable measures taken to achieve compliance.

26. Arbitron shall take all reasonable efforts in good faith to obtain and retain accreditation for the New York Market and the Philadelphia Market from the M.R.C. In addition to the rights reserved to the Attorney General set forth herein, if Arbitron has not obtained accreditation from the MRC in either market by December 31, 2009 and has failed to meet any of the minimum standards as set forth in paragraphs 12 through 19 of this Order, the Attorney General reserves the right to rescind the Order and reinstitute litigation against Arbitron for the above-referenced claims.

#### **PART FOUR: MONETARY RELIEF**

27. Arbitron agrees to pay a single lump sum in the amount of One Hundred Thirty Thousand (\$130,000.00) for investigative costs and expenses associated with the Attorney General's investigation.

28. Payments to the Attorney General are due no later than four (4) weeks after the time of the signing of this Order, and must be in the form of a certified check, bank check, money order, or attorney's check made payable to "The State of New Jersey" and forwarded to the New Jersey Attorney General's Office, Attention: James Michael, Deputy Attorney General, 25 Market Street, Trenton, New Jersey 08625-0112.

#### **PART FIVE: JURISDICTION AND OTHER PROVISIONS**

29. This Order, when fully executed and performed by Arbitron to a reasonable expectation of the Attorney General, will resolve all claims against Arbitron that were raised in the

Complaint filed by the Attorney General in this action. However, nothing in this Order is intended to, nor shall, limit the Attorney General's investigatory or compliance review powers otherwise provided by law.

30. Notwithstanding any provision of this Order to the contrary, the Attorney General may, in its sole discretion, grant written extensions of time for Arbitron to comply with any provision of this Order.

31. This Order shall become effective upon its execution by all parties and its entry by the Court.

32. The signatories to this Order warrant and represent that they have read and understand this Order, that they are duly authorized to execute this Order, and that they have the authority to take all appropriate action required to be taken pursuant to the Order to effectuate its terms.

33. This Order may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

34. This Order is final and binding on the parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Order. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.

35. All of the terms of this Order are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all parties hereto approved by the Court or with Court approval.

36. This above captioned lawsuit shall be dismissed without prejudice. However, the Court shall retain jurisdiction over the parties and the matter and retain the power to order all

applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.

37. This Order supersedes and renders null and void any and all written or oral prior undertakings or agreements between the parties regarding the subject matter hereof.

38. The parties hereby waive and shall not have any right to appeal any of the terms of this Order or in any way challenge the validity of any of the terms of this Order in any forum. Further, Arbitron hereby agrees to withdraw without prejudice any and all pending legal claims filed in any New Jersey trial court, whether state or federal, involving the Attorney General relating to the marketing or commercialization of the PPM or the PPM methodology, or the Attorney General's jurisdiction to investigate and litigate claims relating to the PPM.

39. If any provisions, terms, or clauses in this Order are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Order shall remain valid and binding on the parties.

40. The parties may seek to enforce this Order by motion before the Court to the full extent of the law; however, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.

41. Failure to comply with any provision of this Order shall be considered a violation of this Consent Order. Upon such a violation, the Attorney General may take any and all steps available to enforce this Consent Order, including seeking an order of contempt. Upon application by the Attorney General showing Arbitron has failed to pay penalties and costs pursuant to

paragraphs herein, the Court shall also enter a money judgment in the amount of the unpaid balance, plus interest at the rate of nine (9) percent per annum from the date of violation or nonpayment, against Arbitron, and the Attorney General shall have execution thereof.

42. In any application by the Attorney General pursuant to paragraph 41 above, the Attorney General may request an allowance for costs.

43. Failure by any party to seek enforcement of this order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

44. All communications and notices regarding this Order shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

Office of the Attorney General

James R. Michael  
Deputy Attorney General  
Division of Law  
25 Market Street  
P.O. Box 112  
Trenton, NJ 08625-0112

Attorney for Plaintiffs

Arbitron Inc.

Chief Legal Officer  
Arbitron Inc.  
9705 Patuxent Woods Drive  
Columbia, Maryland 21046-1572  
Tel. (410) 312-8043  
Fax (410) 312-8613

Alfred Fabricant  
Dickstein Shapiro LLP  
1177 Avenue of the Americas  
New York, NY 10036-2714  
Tel. (212) 277-6621  
Fax (212) 277-6510

Attorneys for Arbitron

IT IS ON THIS DAY OF , 2009 SO ORDERED, ADJUDGED  
AND DECREED.

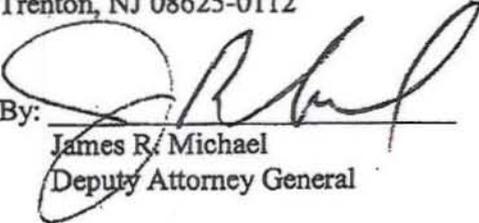
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HON. EDWARD J. RYAN, J.S.C.

Jointly Approved and Submitted for Entry:

ANNE MILGRAM  
Attorney-General of the State of New Jersey  
25 Market Street  
Trenton, NJ 08625-0112

By:

  
James R. Michael  
Deputy Attorney General

Dated:

July 7, 2009

ARBITRON INC.  
142 West 57th Street  
New York, NY 10019-3300

By:   
Timothy T. Smith  
Executive Vice President  
& Chief Legal Officer

Dated: *January 7, 2009*