**Arbitron's Portable People Meter (PPM) Service**

- Arbitron is the monopoly provider of audience measurement for radio stations in the top 50 markets in the United States. Arbitron's ratings data is the primary factor that determines station revenues. Almost all revenue for a radio station comes from advertising, and advertisers decide how much air time to purchase and how much to pay for it based on a station's Arbitron ratings.

- For decades, Arbitron has measured audiences by recruiting panelists to fill out weekly paper diaries of their radio listening habits. Diaries are collected from thousands of panelist over a 12 week period and then the results are tabulated in quarterly ratings books.

- Arbitron has developed a new electronic measurement device to replace the diaries called the Portable People Meter (PPM). Panelists clip the PPM device onto their clothing (it is slightly larger than a cell phone), and the device records exposure to radio stations throughout the day and transmits them back to Arbitron at night. In more technical terms, radio stations that want to be reflected in Arbitron's ratings encode an electronic signal in their broadcasts. The PPM device is programmed to detect the signal and note that the listener is exposed to the radio station.

- Arbitron's new PPM service has repeatedly flunked the MRC accreditation process for audience measurements systems. The "MRC," or Media Rating Council, was created at the behest of Congress to ensure the accuracy and validity of media research. MRC accreditation means that a measurement service has met the "minimum standards" established by the media industry to ensure accurate, valid and reliable audience measurement data. To date, Arbitron has flunked the accreditation process three times in the New York market, and it still has not received accreditation in New York or in the majority of the other markets where it has commercialized the PPM service.

- Arbitron's insistence on commercializing an unaccredited measurement service has had an absolutely devastating impact on radio stations targeting minority audiences. The future of minority radio is at risk. Four state attorneys general have sued or threatened to sue Arbitron over its release of this flawed product, and Arbitron has entered into consent decrees and agreements to improve the product. But Arbitron has already introduced this flawed product into other markets and has, thus far, refused to make the improvements it has been obligated to make elsewhere.

- The House Committee on Oversight and Government Reform opened an investigation of the PMM in June, 2009. Arbitron provided insufficient information to the Committee and had forbidden the MRC to release relevant material, but the Committee was able to compel the production of MRC documents under subpoena. Chairman Ed Towns (D-NY) announced in September that the Committee's investigation revealed that the MRC had found persistent problems with Arbitron's unacceptably low minority sampling and that the company had made an insufficient effort to recruit Spanish-speaking participants. Chairman Towns called the situation a "ratings disaster for minority-targeted radio stations" and predicted the problem will only get worse unless Arbitron makes corrections.

- The PPM measurement device has the potential to offer a new level of precision to audience estimates, but it only provides an accurate estimated measurement if Arbitron does a good job of recruiting a representative sample of people to wear the device and if those recruited actually wear the device all day long.

- One technical example of this problem is that many younger people do not have landline telephones – they rely on cell phones. Arbitron has under-represented the number of cell-phone-only users in its sample panels. Because the population that uses only cell phones is disproportionately young and minority, Arbitron's ratings systematically undercount Hispanic and urban radio listeners. The current national average for cell phone only users in the US is 20.2%. 25% of Hispanics live in cell phone only households, as do 21.4% of African Americans, and 41.5% of those aged 25-29. Yet Arbitron's sample panel currently includes only 10% cell-phone-only users.

- Another example is that Arbitron relies on telephone surveys to recruit panelists rather than proceeding door-to-door on an address-based recruitment. Arbitron has had difficulty convincing minorities to participate in the new sample panel over the telephone and to wear a device that tracks all of their movements and listening habits. Inability to recruit panelists causes two problems. First, it under-represents the listening preferences of minority listeners in a market. Second, small sample sizes likely mean that the panelists who do participate have a disproportionate impact on the ratings for the group.

- For example, in November 2008, Arbitron had only 44 PPM devices in Atlanta reporting data for African-Americans between the ages of 18 and 24 (24 men and 20 women). Just forty-four individuals were assumed to be representative of the 161,000 African-Americans of that age in Atlanta. And for Hispanics between the ages of 18 and 24, Arbitron mustered only 17 meters with only 10 people submitting usable data. Only 10 people were deemed to represent the 100,000 Hispanics of that age in Atlanta.

- The small numbers lead to odd results. Arbitron's data for Atlanta in November showed that over 30,600 Atlanta listeners tuned in to a station located in New York City. Investigators discovered that a single African-American family had traveled to New York for Thanksgiving, and the three of them had listened to the New York station. Because Arbitron has so few African-American panelists, it assumes that each African-American represents the views of over 10,000 African-Americans. One family's trip to New York transformed a New York station, which cannot be heard anywhere within a thousand miles of Atlanta, into the 34th ranked station in the Atlanta market.

- Arbitron's actions are particularly galling given that it has one methodology for implementing the PPM device that <u>was</u> accredited by the MRC. It used that methodology in Houston (one of the first markets to deploy PPM in 2006), but it has since decided that methodology is too expensive. So it has decided to proceed with a methodology that has repeatedly flunked the independent accreditation process of the MRC.

- There is good reason to believe that Arbitron's judgment on the effectiveness of the PPM is clouded. For starters, the Arbitron board offered and top Arbitron executives received hundreds of thousands of dollars in bonuses for rolling out the PPM device in big markets, whether or not it is accredited as valid. Moreover, Arbitron's monopoly position in the provision of audience ratings has left radio stations powerless to resist.

- Arbitron's current sampling methodology results in an under-representation of minority audiences which drastically affects stations serving these communities. Arbitron has proven unable or unwilling to do the hard work of recruiting minorities to carry the PPM device and increase the representation of African American and Hispanics within its sample panels. The result has been devastating for minority radio, which provides an important diversity of viewpoint in an era of consolidated media ownership. Stations in New York and New Jersey have been forced to lay off workers or consider changing their formats.

- The only way that Arbitron will properly count listeners is if they are required to obtain accreditation before implementing PPM in any future markets.

## Timeline on the Rollout of the Flawed Personal People Meter (PPM) System

**February 2007:** NABOB meets with Arbitron to request a delay in the rollout of PPM.

**March 2007:** PPM goes to currency in Philadelphia.

**January 2008:** The Media Ratings Council votes not to accredit the PPM system in New York or Philadelphia.

**July 2008:** Congress calls Abritron CEO to participate in the first of two informal hearings to gather information about the impact of flaws in the PPM system and their impact on minority broadcasters and listeners (the second hearing is held in September 2008)

**September 2008:** The PPM Coalition is formed, bringing together the National Association of Black Owned Broadcasters (NABOB), the Spanish Radio Association (SRA), along with a number of other organizations and companies, including Univision.

**September 2008:** The PPM Coalition and the Association of Hispanic Advertising Agencies (AHAA) file an emergency petition with the FCC urging the Commission to investigate the flaws in the PPM system.

**September 2008:** The New York City Council passes a unanimous resolution calling on the FCC to investigate the PPM system.

**October 2008:** Congresswoman Nydia Velazquez (D-NY) and six colleagues from the Congressional Hispanic Caucus (CHC) call on the FCC to address the issue of the PPM system and send a letter to Arbitron's CEO calling on him to fix the flaws in the system.

**October 2008:** New Jersey State Attorney General Ann Milgram and New York State Attorney General Andrew Cuomo separately file suit against Arbitron based on the PPM system's flaws.

**October 2008:** Then-Senator Barack Obama and Sen. Richard Durbin of Illinois send a letter to Arbitron questioning the fairness and accuracy of the PPM system and calling on the ratings provider to delay further roll out of the system until the flaws are addressed.

**October 2008:** Despite the concerns raised by minority broadcasters and advertising agencies, as well as elected officials and other stakeholders, and despite not having been accredited by the MRC for any of its new markets, Arbitron begins the commercial use of the PPM system in the nation's largest media markets including New York, Los Angeles and Chicago.

**First Quarter 2009:** Arbitron data using PPM shows staggering, inexplicable declines in listeners for Spanish-language and urban radio stations. For example, Univision's Los Angeles-based KLVE sees ratings plummet 54% from Q1 2008 to Q1 2009 – nearly half its audience simply vanishes. As a result, the Spanish-language station falls from the #1 rated radio station in the LA market to #5. Similar declines are seen by Spanish-language and urban stations in virtually all PPM markets. In the face of strong evidence of the PPM system's flaws, rather than slowing down the roll out, Arbitron announces that it will accelerate roll-out, stating their intention to move up the date for shifting to exclusive use of the PPM system in communities such as Las Vegas and San Antonio that have large Hispanic populations who stand to be undercounted in the new system.

**January/February 2009:** Arbitron reaches settlements with the state Attorneys General of New York and New Jersey who had filed suits, as well as a separate agreement with the Attorney General of Maryland. As part of these settlements, Arbitron commits to meeting a number of specific, measurable targets for improving the fairness and accuracy of the PPM system. In addition, the settlement with the New York and New Jersey AGs requires Arbitron to include a disclaimer with its data making clear that "PPM ratings are based on audience estimates and should not be relied on for precise accuracy or precise representativeness." To date, these targets have not been met in full.

**May 2009:** The Federal Communications Commission publishes a "Notice of Inquiry" stating its concerns that the PPM system may undermine diversity in media ownership.

**June 2009:** Arbitron releases "pre-currency" data using the PPM system in Miami, San Diego and Phoenix, in advance of the full commercialization of the PPM system in those markets, scheduled for July. Unwilling to use ratings data it knows to be flawed, Univision decides not to encode in these markets.

**July 2009:** The House Oversight and Government Reform Committee announced its intention to launch a formal investigation into the PPM system.

**July 2009:** A House Judiciary Committee hearing on minority broadcasting turns into an extended discussion of the flaws of the PPM system.

**July 2009:** Florida Attorney General Bill McCollum files lawsuit against Arbitron seeking to block the release of flawed radio station ratings. Rather than addressing the concerns raised by the AG's action, Arbitron *speeds up* the commercialization of its PPM data in order to get the flawed numbers into the marketplace prior to any potential legal action.

**September 2009:** Rep. Ed Towns (D – NY), Chairman of the House Committee for Oversight and Government Reform issued a press release summarizing the Committee's preliminary findings based on documents subpoenaed from the Media Ratings Council (MRC). Among the findings the Committee took from the MRC data, were indications that the PPM system suffers from "persistent problems" with minority sampling.

**September 2009:** At a conference hosted by the National Association of Black Owned Broadcasters (NABOB), FCC Chairman Julius Genachowski acknowledged that concerns have been raised regarding the PPM system, suggesting that the FCC's Media Bureau would convene an industry roundtable to examine the issues.

**September 2009:** At the NABOB conference, senior staffers for Chairman Towns indicated that if Arbitron does not make progress on addressing the flaws in the PPM system, Congress would hold hearings into the matter.

**September 2009:** Despite the indications of concern from Congress, the FCC and the Florida AG, Arbitron announces that it is expanding the reach of the flawed PPM system with a new initiative to utilize the system for additional media platforms beyond radio.

**October 15 2009**: Arbitron required to have taken all reasonable efforts to obtain MRC accreditation in NY under NY Consent Decree.

**December 31 2009:** Arbitron to have obtained MRC accreditation in Philadelphia under NJ Consent Decree

COMMITTEE ON
Oversight and Government Reform
Chairman Edolphus Towns, 111th Congress

For immediate release: Tuesday, September 22, 2009
Contact: Oversight and Government Reform Press Office, 202-225-5051

# Towns Subpoenas Media Ratings Council for Arbitron Documents

*Information reveals persistent underrepresentation of African American and Hispanic audiences*

Washington, DC – Chairman Edolphus "Ed" Towns (D-NY) today announced a summary of findings after serving a subpoena to the Media Ratings Council for documents detailing its oversight of Arbitron's use of the Personal People Meter (PPM). Chairman Towns issued the subpoena recently after Arbitron forbid MRC from releasing documents related to the Committee's investigation of the PPM.

In June 2009, Chairman Towns opened an investigation into Arbitron's use of the PPM amid allegations that methodological flaws with the device are resulting in the underrepresentation of radio listening preferences of minorities and certain age groups. The PPM is a device developed by Arbitron to measure radio station listenership.

Chairman Towns directed Committee investigators to meet with Arbitron's representatives in early July 2009 after he received many complaints from minority broadcasters about the accuracy PPM data. Although Arbitron promised full cooperation with the investigation, the company immediately prohibited MRC from providing the Committee with any documents related to the PPM. Shortly thereafter, Arbitron provided the Committee with insufficient documents that were either publicly available or biased toward the company. Chairman Towns then chose to issue a subpoena to MRC for the PPM documents.

Among the key items uncovered in MRC's documentation of the PPM:

- On multiple occasions, MRC refused to grant accreditation to PPM for use in all markets across the United States except for Houston and Riverside/San Bernardino. MRC denied Arbitron accreditation because of the company's continual failure meet MRC minimum accreditation standards.

- MRC found "persistent problems" with Arbitron's minority sample audiences across the country. For example, New York City 2008 census data indicates African Americans comprised 25 percent and Hispanics comprised 27 percent of the City's population. Meanwhile, the subpoenaed documents show that Arbitron's New York City sample audiences comprised of only 17.7 percent African-American and 21.5 percent Hispanic participants.

- The documents also show that Arbitron's radio ratings almost consistently are based on data they receive from an unacceptably low percentage of their sample audiences. For example, in New York, where there is an average of 5400 sample audience participants, Arbitron uses only the data submitted by 2700 persons or 50% of the sample audience in order to create radio station ratings. Therefore, the radio listening habits of over four million ethnic minorities are represented by only 500 Arbitron recruits. The sample audiences are simply an inadequate representation of the true listening habits of New York's diverse landscape.

- MRC found that Arbitron has made an insufficient effort to use bi-lingual interviews to recruit Spanish dominant Hispanic sample participants.

"Taken separately and together, these and other problems translate into a ratings disaster for minority-targeted radio stations. Until these items are corrected by Arbitron, the problem will only get worse," said Chairman Towns.

###

## Necessary Improvements to Existing Settlement Agreements

Attached is a chart comparing the key provisions of the settlements reached by the Attorneys General of New York, New Jersey and Maryland. These settlements, while welcome, are too lenient to ensure that Arbitron will provide representative and reliable data. The following provisions are of particular concern to the PPM Coalition:

**Accreditation**: The Maryland settlement requires Arbitron only to make a good faith reasonable effort to obtain accreditation from the Media Rating Council (MRC). This provision is meaningless because it gives Arbitron extraordinary latitude to define the effort it deems "reasonable." Any settlement with Arbitron should set a date certain by which Arbitron must obtain accreditation. In addition, the MRC accreditation process can have three outcomes: grant, denial, or a delayed vote to allow Arbitron to address specific issues identified during the process. Any settlement should make clear that Arbitron must achieve a full grant of accreditation. Finally, any settlement should create remedies for the affected radio stations if Arbitron fails to achieve accreditation within the settlement period. Proper remedies would include (1) the right for radio stations to cancel contracts with Arbitron without penalty and (2) a requirement that Arbitron continue to provide diary-based measurement at no additional cost to stations until it achieves full accreditation.

**Hybrid Recruitment & Cell Phone Only Recruitment**: All three settlements set separate targets for the percentage of panelists that must be recruited by address-based recruitment and the percentage of panelists that must be cell phone only users. In reality, Arbitron is collapsing these two separate requirements into one requirement. All of the address-based recruitment appears to be targeted at cell-phone-only users. The intention behind the separate requirements was to require Arbitron to recruit some of its panelists who have landlines though address-based recruitment. When Arbitron makes an effort to conduct in-person recruiting at homes selected randomly based on their addresses, it has a much higher success rate of convincing potential panelists to participate. This is particularly important because address-based recruitment has proven especially effective at convincing reluctant minorities to participate as panelists.

A proper study should increase the cell-phone-only targets much more rapidly and above the 10% and 15% targets in the three other settlements. Arbitron has committed to achieving 15% cell-phone-only panelists by the end of 2010. This lags far behind the national average during the first half of 2008, and there is no reason to believe that many more people have abandoned landlines in the past year. Moreover, cell-phone-only users are disproportionately minorities, and the recent Nielsen study showed that cell-phone-only individuals listen to more radio that individuals with landlines. Arbitron's unwillingness to recruit a sufficient number of cell-phone-only panelists results in further undercounting of the preferences of minority radio listeners. Any settlement should set more aggressive targets for cell-phone-only users so that Arbitron's panelists quickly begin to reflect the general public. We would suggest a requirement of 15% by September 2009 and 20% by April 2010. We note that Arbitron's refusal to actively recruit cell-phone-only users is based solely on cost and could be quickly corrected if Arbitron were willing to solve the problem.

**Sample Performance Indicator**: The sample performance indicator is the percentage of households initially targeted for participation in the survey providing usable data on an average day. It combines the response rate (the percentage of households initially asked that agreed to participate) with the in-tab rate (explained below). An SPI of 15% means that only 15% of the initially designated households are providing usable data. The higher the SPI, the more reliable and representative the estimates the survey produces. The settlements only require Arbitron to meet a minimum of 15% in the near term and 17% by late 2010. By contrast, the Nielsen television sample SPI is 45%.

Any settlement should require Arbitron to attain an SPI of 20% and maintain that number for at least three months. The SPI must not dip below 20% once that metric has been achieved.

**In-tab Rates**: In-tab rates measure the percentage of panelists who return usable data to Arbitron in any given period. If there are 100 PPM panelists and 82 wear their PPMs and transmit data back to Arbitron, the in-tab rate is 82%. The settlements require Arbitron to maintain a 75% in-tab rate for all demographic groups immediately. They also require Arbitron to ensure that in-tab rates for all sub-categories of panel participants remain at least 85% or 90% (depending on the state) of the 75% goal. In plain English, this means that Arbitron can comply with the settlements by allowing over one-third of its minority panelists not to submit usable data. Arbitron's refusal to ensure that its minority panelists submit usable data skews its results. Any settlement should require that Arbitron exceed 75% overall and 70% in each age group and in each age-ethnicity sub-group.

**Transparency**: Arbitron agreed to provide full data in each settlement. In point of fact, it has not done so. Any settlement should include explicit language requiring Arbitron to provide detailed sample information by age within ethnic and, within Hispanic groups, by language, for total sample and by county and ZIP code. This data should be provided without additional charge to radio stations. Arbitron should also provide country of origin data by geographic distribution.

Moreover, any settlement should include remedies if this data is not provided. For example, Arbitron should have one month to cure any problems, or the settlement should provide for a refund to stations and the ability to terminate their contracts without penalty.

**Bias Study**: Arbitron agreed to complete a bias study in the New York and New Jersey market by July 15, 2009. The Maryland settlement requires Arbitron to correct any problems identified by the bias study. Any new agreement should require Arbitron to complete bias studies in California as well. Someone in the government should be designated to evaluate and approve the source of the study. The source must be an independent researcher, and the report must be provided initially to the government and not to Arbitron.

**Disclaimer**: Each settlement required Arbitron to include the specified disclaimer on all of Arbitron's reports. The language in the disclaimer is much too weak. The disclaimer should also state that: (1) PPM estimates are based on a sample of respondents who agree to wear a meter. (2) PPM estimates include only radio stations that choose to participate in Arbitron's sampling by encoding their broadcast signal. (3) Not all person are equally represented in the PPM study. (4) Estimates are the opinions of Arbitron and are not accurate indicators of the precise audience of any station.

## Summary of Principal Terms from Arbitron's Settlements in New York, New Jersey and Maryland

| Principal Terms | New York | New Jersey (NJ Settlement Covers **Philadelphia** Market) | Washington, DC | Baltimore |
|---|---|---|---|---|
| **Accreditation** | Oct. 15, 2009 | Dec. 31, 2009 | Good faith reasonable effort | Good faith reasonable effort |
| | | | | |
| **Hybrid Telephone/Address Based Recruitment** | 10% by July 1, 2009 | 10% by July 1. 2009 | 10% by Oct. 1, 2009 | 10% by Sept. 2009 (1st currency month) |
| | 15% by July 1, 2010 | 15% by Dec. 31, 2010 | 15% by Dec. 31, 2010 | 15% by Dec. 31, 2010 |
| | Recruitment of racial and ethnic minorities shall be commensurate with the demographic composition of the geographic area as determined by annually updated census data | | | |
| | | | | |
| **Cell Phone Only** | 10% by July 1, 2009 | 10% by July 1, 2009 | 10% by Oct. 1, 2009 | 10% by Sept 2009 |
| | 12.5% by Dec. 1, 2009 | 12.5% by June 1, 2010 | 15% by Dec. 31, 2010 | 15% by Dec. 31, 2010 |
| | 15% by July 1, 2010 | 15% by Dec. 31, 2010 | | |
| | | | | |
| **Sample Performance Indicator** | Minimum of 15% by July 1, 2009 | Minimum of 15% by Oct. 1, 2009 | Minimum of 15% by June 1, 2010 | Comparable Terms will be applied. |
| | Minimum of 16% by Oct. 1, 2009 | Minimum of 16% by April 1, 2010 | Minimum of 17% (no timeframe specified!) | |
| | Minimum of 17% by June 1, 2010 | Minimum of 17% by Nov. 30, 2010 | | |
| | | | | |
| **In- Tab Rates** | 75% in-tab rate for all demographic groups by April 1, 2009 | 75% for overall 6+ population by April 1, 2009 | 75% for overall 6+ population (n. this is current benchmark and does not represent an improvement) | Comparable Terms will be applied. |
| | Monthly in-tab rates for all sub-categories of race, ethnicity and gender cannot fall below 90% of 75% | Monthly in-tab rates for all sub-categories of race, ethnicity and gender cannot fall below 85% of "target rate" by April 1, 2009. | beginning on Oct. 1, 2009, in-tab rates for all categories and sub-categories will not fall below 85% of "target rate"[1] | |
| | | | | |
| **Transparency** | beginning Jan. 1, 2009 – all install/in-tab, age, race, ethnicity by county and zip code. | beginning April 1, 2009 all install / in-tab by age, race, ethnicity by county and zip code | beginning April 1, 2009 all install / in-tab by age, race, ethnicity by county and zip code | Comparable Terms will be applied. |
| | | | | |

| Principal Terms | New York | New Jersey (NJ Settlement Covers Philadelphia Market) | Washington, DC | Baltimore |
|---|---|---|---|---|
| Reporting | Arbitron is required to submit reports to each Attorney General 15 days after the close of each quarter outlining the company's performance against the established metrics. | | | |
| | | | | |
| Bias Study | To be completed by July 15, 2009. Arbitron is required to address any measurable bias uncovered from its study. | | Arbitron is required to notify MD of study's findings. If any perceived bias is relevant to DC, Baltimore markets, Arbitron will agree to address | |
| | | | | |
| Disclaimer | "…PPM estimates are based on audience estimates and are the opinion of Arbitron and should not be relied upon for precise accuracy or precise representativeness of the demographic or radio market…." | | | |
| | | | | |
| Advertising Campaign | 25K toward promotion of minority radio | | | |
| | | | | |
| Contribution to NABOB/SRA | 100K | | | |
| | | | | |
| Settlement Payment and Costs | 200K for deceptive practices; 60K to cover NY AG's costs | 130K for NJ AG's costs. | | |
| | | | | |
| Enforcement | Right to reinitiate lawsuit and additional penalties | | AG may seek specific performance to compel compliance. In the event the court finds Arbitron in substantial continuing non-compliance, Arbitron could be made to pay Attorneys' fees. | |
| | | | | |

[1] Wording in the Maryland settlement allows Arbitron to maintain its 75% benchmark for the overall 6+ population, this is the current benchmark. Further, utilizing the term "target-rate" permits Arbitron to maintain its existing benchmarks for all other demographic categories and sub-categories (*e.g.*, 85% of 65% of Blacks 18-24).