

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

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

NOTICE OF INQUIRY

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Comment Date: [30 days after publication in Federal Register]
Reply Comment Date: [60 days after publication in Federal Register]

By the Commission: Acting Chairman Copps and Commissioners Adelstein and McDowell issuing
separate statements.

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I. INTRODUCTION

1. In this Notice of Inquiry ("NOI"), we seek comment on issues relating to the commercial
use of a radio audience measurement device, developed by Arbitron, Inc. ("Arbitron"), known as the
portable people meter, or "PPM."

1 Sections 4(i) and 403 of the Communications Act of 1934, as amended (the "Act") gives the Commission broad
authority to initiate inquiries such as this one. The Commission's authority to initiate investigations under Section
403 is not limited to adversarial proceedings involving allegations of wrongdoing. Section 403 broadly authorizes,
inter alia, inquiries "concerning which any question may arise under any of the provisions of this Act" 47
U.S.C. § 403. We have frequently issued Notices of Inquiry under Section 403 in non-adversarial settings to seek
information and comment to determine whether we should take further regulatory action. See, e.g., Broadcast
Localism, MB Docket No. 04-233, Notice of Inquiry, 19 FCC Rcd 12425 (2004); Annual Assessment of the Status of
Competition in the Market for the Delivery of Video Programming, MB Docket No. 06-189, Notice of Inquiry, 21
FCC Rcd 12229 (2006); Annual Assessment of the Status of Competition in the Market for the Delivery of Video

(continued....)

about the use of the PPM and its potential impact on audience ratings of stations that air programming targeted to minority audiences, and consequently, on the financial viability of those stations. They claim that the current PPM methodology undercounts and misrepresents the number and loyalty of minority radio listeners.² They assert that, because audience ratings affect advertising revenues, undercounting minority audiences could negatively affect the ability of these stations to compete for advertising revenues and to continue to offer local service to minority audiences. They express concern that such undercounting could particularly affect the ratings of local, urban-formatted radio stations that broadcast programming of interest to African-American and Hispanic audiences.³ This NOI investigates the impact of PPM methodology on the broadcast industry as well as whether the audience ratings data is sufficiently accurate and reliable to merit the Commission's own reliance on it in its rules, policies and procedures. According to its proponents, the PPM methodology represents a technological improvement in measuring radio listening. We have a strong interest in encouraging innovative advancements that lead to improved information and data. We seek information on whether and how the PPM technological changes adversely affect diversity on the airwaves as well as the integrity and reliability of the Commission's processes that rely on Arbitron ratings data. If there is an adverse impact, we seek comment on further steps the Commission can and should take to address these issues.

2. Requests that the Commission institute an inquiry have been made in several contexts. The FCC's Advisory Committee on Diversity for Communications in the Digital Age ("Diversity Committee") has passed a resolution requesting a Commission investigation of Arbitron's PPM measurement system to determine whether the system is having or will have a detrimental and discriminatory effect upon stations targeting minority audiences.⁴ Noting that Arbitron is the only company that currently provides quantitative audience data for radio stations, the Committee states that the financial success of a radio broadcast station often depends upon demonstrating to potential advertisers that the station has a substantial audience of desirable consumers.⁵ According to the Diversity

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Programming, MB Docket No. 05-255, Notice of Inquiry, 20 FCC Rcd 14117 (2005); *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Notice of Inquiry, 11 FCC Rcd 4912 (1995).

² PPM Coalition, Emergency Petition for Section 403 Inquiry ("PPMC Petition") (filed Sept. 2, 2008) at i.

³ See, e.g., Testimony of James L. Winston, Executive Director and General Counsel, National Association of Black Owned Broadcasters, Inc., Before the Federal Communications Commission *En Banc* Hearing and Conference on Overcoming Barriers to Communications Financing, July 29, 2008, at 2-3 ("Winston *En Banc* Testimony").

⁴ See Resolution of the Federal Communications Commission Advisory Committee on Diversity for Communications in the Digital Age, Requesting an Investigation of the Arbitron Portable People Meter (July 28, 2008), available at <http://www.fcc.gov/DiversityFAC/072808/resolution072808.pdf>. The resolution states that "[t]he Advisory Committee on Diversity for Communications in the Digital Age ("Committee") requests that the Commission investigate Arbitron's new PPM measurement system to determine whether the system is having or will have a detrimental and discriminatory effect upon stations targeting minority audiences, to determine whether the Commission possesses authority to address such discrimination, and to determine whether the Commission should submit the results of its investigation to the Congress for consideration of possible legislative action or action by sister agencies." *Id.* In addition, at the Commission's July 29, 2008, *en banc* hearing on access to capital, a number of panelists raised concerns about the impact of Arbitron's implementation of its PPMs. See http://www.fcc.gov/ownership/hearing-newyork_072908.html.

⁵ We note that, in November 2008, Nielsen and Cumulus Media Inc. announced that Nielsen would begin providing radio ratings on a limited basis, in 50 small- and mid-sized U.S. markets, in 2009. The companies also announced that Clear Channel Radio will subscribe to the service in 17 of the markets in which the service will be offered. See e.g., The Nielsen Company, *Nielsen to Measure Radio Audiences in 50 Cumulus Markets* (press release), Nov. 18, (continued....)

Committee, Arbitron's use of an audience measurement service that may not accurately measure minority audiences could lead to "irreparable" financial harm to stations serving such audiences and, thus, lead to the loss of service that such stations provide to the public.⁶

3. In addition, the PPM Coalition ("PPMC") has filed an Emergency Petition for a Section 403 Inquiry ("PPMC Petition"), requesting that the Commission immediately commence a fact-finding inquiry into the current PPM methodology.⁷ PPMC and others that supported PPMC's request for a Commission investigation express concern that the PPM methodology has had a detrimental effect on the ratings measurements for urban- and Hispanic-formatted stations and state that this is due to the under-representation of minorities in the sample panels and a failure to distribute PPM devices within minority groups. PPMC alleges that the PPM sample is deficient because only five to six percent of the PPM sample is comprised of cell-phone-only households, while a significant and growing percentage of young adults and Hispanics and African-Americans live in cell-phone-only households.⁸ PPMC asserts that 19.3 percent of Hispanic households and 18.3 percent of African-American households are cell-phone-only, whereas 12.9 percent of non-Hispanic white households are cell-phone-only.⁹ Among other things, PPMC also complains that: (1) PPM has a 66 percent smaller sample size than the diary, often making it impossible to target age or gender subsets of minority audiences because standard industry metrics require at least 30 respondents in a cell to run ratings data;¹⁰ (2) PPM samples are not built using street addresses, and therefore fail to ensure statistically representative inclusion of cell-phone-only households;¹¹

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2008, available at http://en-us.nielsen.com/main/news/news_releases/2008/october/nielsen_to_measure. The first sweep is expected in the third quarter of 2009.

⁶ *Id.* CBS, which is represented on the Committee, issued a statement to explain its "no" vote on the resolution based on procedural concerns. See CBS Statement on PPM Issue (July 28, 2008), available at <http://www.fcc.gov/DiversityFAC/072808/cbs-statement072808.pdf>.

⁷ PPMC Petition at i. The PPMC consists of the National Association of Black Owned Broadcasters, Spanish Radio Association, Minority Media and Telecommunications Council, American Hispanic Advertising Association, Border Media Partners, Entravision Communications Corporation, ICBC Broadcast Holdings, Inc., Spanish Broadcasting System, Inc., and Univision Communications Inc. The Media Bureau sought comment on the Emergency Petition. Comments were due September 24, 2008; replies were due October 6, 2008. See *PPM Coalition Files Petition Seeking Commission Inquiry Pursuant to Section 403 of the Communications Act (47 U.S.C. § 403)*, MB Docket No. 08-187, Public Notice, 23 FCC Rcd 13302 (MB rel. Sept. 4, 2008). Comments were received and reviewed. Under the inquiry sought by PPMC, the Commission would use subpoenas for document production, conduct witness testimony under oath, and fashion appropriate protective orders as necessary to avoid disclosure of confidential information. We note also that the New York City Council convened a hearing on September 10, 2008, regarding a proposed resolution seeking an FCC investigation of Arbitron's PPM methodology and its potential effect on the diversity of radio (Proposed Res. No. 1583-A). Representatives from Arbitron, Inc., the National Hispanic Media Coalition and the National Association of Black Owned Broadcasters, among others, testified at the hearing. The New York City Council passed the resolution by unanimous vote on Sept. 24, 2008. See Letter from Christine C. Quinn, Speaker, New York City Council, to Kevin J. Martin, Chairman, FCC (Sept. 24, 2008).

⁸ PPMC Petition at 24-26, citing Blumberg SJ, Luke JV, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July 2007-December 2007 (National Center for Health Statistics, 2008).

⁹ *Id.*

¹⁰ *Id.* at 22-23.

¹¹ *Id.* at 26.

(3) young minorities are reluctant to carry visible PPMs;¹² (4) Hispanic PPM recruitment methods skew toward English-dominant persons because potential panelists are identified by origin rather than by language;¹³ (5) PPM response and compliance rates fall below industry norms;¹⁴ (6) PPMs record exposure to radio signals, but they do not capture listener loyalty, which is high among minorities;¹⁵ (7) PPM reports provide less granular data in terms of geography;¹⁶ (8) PPM reports do not contain income data, country of origin data, or data that accounts sufficiently for language preferences;¹⁷ and (9) PPM panelists may be corrupted more easily by radio personnel because the PPM device often visibly identifies them and their expected participation is two years instead of the usual one-week participation in the diary system.¹⁸

4. PPMC states that radio programmers are taking the preliminary PPM under-reporting of minority radio listening so seriously that programmers who can do so are already beginning to abandon formats that target minority audiences.¹⁹ PPMC and others are concerned that the stability of the radio industry is at stake because radio broadcasters rely on the sale of commercial advertising for their only revenue stream, and Arbitron's data has a direct impact on advertising sales.²⁰ While PPMC concedes that Arbitron has indicated its willingness to re-examine its sampling methods and make improvements by 2010, it contends that those improvements would be "far too little and far too late."²¹ According to PPMC, most advertisers are likely to accept Arbitron's assertions that PPM results are more accurate than diary results, and will rely on flawed PPM data.²²

5. New Jersey Broadcasters Association has alerted the Commission of the "unique and urgent circumstances" in the State, arguing that "the PPM sampling process employed by Arbitron in New

¹² *Id.* at 27-28.

¹³ *Id.* at 28.

¹⁴ *Id.* at 28-30.

¹⁵ *Id.* at 31-33.

¹⁶ *Id.* at 33.

¹⁷ *Id.* at 34-35.

¹⁸ *Id.* at 37-38.

¹⁹ *Id.* at 12.

²⁰ PPMC Comments at 10, 12. PPMC states that minority broadcasters fear that their annual gross revenues would decline by 30 to 40 percent if the current PPM methodology is commercialized nationwide. *See also* New York City Council Comments at 2. The Hispanic Technology and Telecommunications Partnership, et al. ("HTTP") supports PPMC and alleges that Arbitron's flawed PPM methodology likely would eliminate half of the nation's minority broadcasters because it fails to capture minority radio listeners' unparalleled loyalty to stations serving their needs. HTTP Comments at 2-3.

²¹ PPMC Petition at ii.

²² *Id.*

Jersey is suspect in its erratic deployment and intrinsic underrepresentation of the population” of many New Jersey counties, specifically Monmouth, Ocean, Morris, and Atlantic.²³

6. Arbitron opposes PPMC’s Petition and challenges the Commission’s jurisdiction and the availability of remedies it can offer.²⁴ Arbitron challenges PPMC’s assertion that the ratings of minority-oriented stations suffer when PPM methodology is used. Arbitron provides several examples where the rankings of such stations remained the same or improved when PPMs were used.²⁵ Arbitron maintains that PPM samples effectively represent Blacks and Hispanics in the 18-34 age group, and across other factors such as geographic location and language preferences.²⁶ Arbitron is also implementing improvements to PPM methodology, as discussed below. Comments in support of Arbitron were filed by Allscope²⁷ and J.L. Media, Inc.²⁸

II. DISCUSSION

A. Background

7. Arbitron, Inc. Arbitron, Inc. is an international media and marketing research firm serving radio, television, cable, online radio, and out-of-home media as well as advertisers and advertising agencies in the United States and Europe. Arbitron’s main businesses include measuring network and local market radio audiences in the United States; surveying the retail, media, and product patterns of local market consumers; and providing application software used for analyzing media audience and

²³ “To demonstrate this fact, consider the disparity in PPM deployment in two adjacent New Jersey counties, Monmouth (pop. 588,000) and Middlesex (pop. 732,000). Arbitron deployed 347 PPMs in Middlesex County, but only 96 PPMs in Monmouth. This represents 261% greater PPM sample size in Middlesex County, which only has a 25% greater population! Likewise, Morris County (pop. 454,000) has only 87 PPMs collecting listenership data, while its next door neighbor Union County (pop. 480,000) has 260 PPMs; an almost 200% greater population. Ocean County (pop. 564,000) has no PPMs at all resulting in two different sampling methodologies being used in one New Jersey market.” Letter from Paul S. Rotella, Esq., President & CEO, New Jersey Broadcasters Association, to Jonathan S. Adelstein, Commissioner, FCC (Jan. 28, 2009).

²⁴ Arbitron Comments at 3-4. Arbitron contends that none of the statutory provisions cited as alleged jurisdictional bases for Commission action, Sections 1, 257, 303(g) or 309(j) of the Communications Act, provides the Commission authority over Arbitron’s audience survey methodologies or over Arbitron, or enables the Commission to determine the reliability of PPM.

²⁵ *Id.* at 23-28 and Appendix 2.

²⁶ *Id.* at 35.

²⁷ Allscope Media (“Allscope”) states in its comments that although PPM still has some “bugs to work out,” further delay of the PPM service will harm the radio industry as a whole. Allscope asserts that release of the New York PPM already was delayed a year to address concerns of minority-owned and minority-oriented broadcasters. Allscope Comments at 3. Allscope Media is an independent media and communications firm. It offers media consulting, planning, and implementation services. *See* Allscope Media, <http://www.allscope.com> (last visited Apr. 9, 2009).

²⁸ J.L. Media cautions the government from getting involved in the dispute over PPMs because Arbitron is already continuously improving the PPM system – a much needed and anticipated alternative to the diary system, and the Commission also lacks precedent for such involvement. J.L. Media Comments at 1-2. J.L. Media is a media buying company with investments in the radio marketplace. *Id.*

marketing information data. Stations and advertisers use these ratings to negotiate advertising prices. To provide service to local stations and local advertisers, Arbitron has delineated more than 300 local geographic markets (called Metro Survey Areas or Metros) based on radio stations' audience ratings. More than 60 percent of commercial radio stations and three-fourths of the U.S. population of at least 12 years of age reside in these radio markets. Arbitron publishes listening data on commercial radio stations that obtain a minimum audience share in the radio market.

8. These radio market definitions are considered the industry standard and are used by the Commission for purposes of applying its ownership rules and evaluating them periodically to determine whether they remain necessary in the public interest. In its quadrennial ownership review proceedings, the Commission relies on the information produced by Arbitron to define local radio markets for purposes of fulfilling its statutory obligation to evaluate the continued necessity of its local radio ownership rule as well as the cross-ownership rules. Moreover, the Commission relies on Arbitron-defined radio Metro markets, where these exist, when it makes its determination whether a particular license application, transfer, merger, or acquisition complies with the local radio ownership rules.²⁹

9. Diaries. For many years, Arbitron has relied on a diary-based audience measurement system.³⁰ A diary is a small foldout, pamphlet-style journal in which diary keepers record the radio stations, satellite radio channels, or Internet radio stations they listen to during each day of the survey week. A diary keeper records the time of day, the location, and the start and stop times of each listening occasion. The diary also requests certain demographic, socioeconomic, and lifestyle characteristics.³¹ Arbitron contacts potential diary keepers by calling a sample of households across the country. The company places over five million calls every year to potential diary keepers for participation in the survey. On average, nearly 75 percent of those asked to do so consent to filling out a radio diary. Potential diary keepers are first contacted by telephone and then sent the survey via mail. Arbitron mails 2.6 million diaries to survey participants each year.

10. Portable People Meters. Arbitron has recently replaced its diary-based rating system in certain markets with the PPM system. According to Arbitron, the PPM is a mobile-phone-sized device that consumers wear throughout the day. The PPM detects inaudible identification codes that are embedded in the audio of certain programming to which the consumer is exposed. An encoder at the programming or distribution source inserts the inaudible identification codes. In addition, a station monitor is installed at the programming source to ensure audio content is encoded properly. At the end of each day, each survey participant places the PPM device in a base station to recharge the battery and to send collected codes to a household collection device known as a "hub." The household hub collects the codes from all the base stations in the survey household and transmits them to Arbitron.³² Arbitron describes the PPM as an enhancement over the diary method because it relies on a passive measurement

²⁹ See *infra* Section II.B. Arbitron has not defined radio markets for all areas of the country.

³⁰ Radio markets are surveyed by the diary method twice a year (Spring and Fall). About 100 of the largest markets are also surveyed two additional times a year (Summer and Winter). See Arbitron, Inc., *2009 Market Code Guide – Radio Markets Effective Spring 2009*, <http://www.arbitron.com/downloads/marketcodes.pdf> (last visited Apr. 9, 2009).

³¹ Arbitron, Inc., *Diary Research Information – Home*, <http://www.arbitron.com/diary/home.htm> (last visited Apr. 9, 2009).

³² Arbitron, Inc., *Portable People Meter – Electronic Audience Measurement with the PPM System*, http://www.arbitron.com/portable_people_meters/ppm_service.htm (last visited Apr. 9, 2009).

of actual exposure, rather than memory recall; it delivers more detailed data that can be utilized by program directors; and PPMs allow Arbitron to provide audience measurement for children ages 6 to 11 and cell-phone-only households.³³

11. Arbitron has indicated that it plans to replace its diary-based audience measurement system with the PPM in the top 50 radio markets by 2010. It has already implemented PPMs in 14 local markets: New York, Los Angeles, Chicago, San Francisco, Dallas-Ft. Worth, Houston, Atlanta, Philadelphia, Washington DC, Detroit, Nassau-Suffolk, Middlesex-Somerset-Union, Riverside-San Bernardino and San Jose.³⁴ According to Arbitron, these markets account for 51.7 percent of the estimated radio station revenue in the top 50 radio markets.³⁵ As discussed below, Arbitron has committed to improving its PPM methodology and has taken steps to do so. Arbitron states that its has steadfastly demonstrated its willingness to work with all stakeholders, including advertisers, stations, the Media Rating Council, and the Commission to help bring the measurement of radio audiences into alignment with the measurement of audiences for competing media.³⁶

12. Media Rating Council. The Media Rating Council (“MRC”) sets industry standards for audience measurement. These standards are designed to ensure reliability. Among other activities, MRC establishes and administers “Minimum Standards” for rating operations; performs accreditation of rating services on the basis of information submitted by these services; and conducts audits, through independent certified public accounting firms, of the activities of rating services. Arbitron reports that it has received MRC accreditation for its PPM services in the Houston and Riverside-San Bernardino markets.³⁷ More generally, however, in his statement at the Commission’s July 29, 2008 *en banc* hearing, George Ivie, MRC Executive Director and Chief Executive Officer, stated that MRC has “important ongoing concerns” about the implementation details of the PPM measurement system.³⁸ Concerns and

³³ See Arbitron, Inc., *The Portable People Meter – Home*, http://www.arbitron.com/portable_people_meters/home.htm (last visited Apr. 9, 2009). Arbitron utilizes “cellular hubs” to collect data from PPMs in cell-phone-only households. Arbitron, Inc., *Arbitron Radio Advisory Council Minutes (Nov. 11, 2008)*, http://www.arbitron.com/radio_stations/racmin11_08.htm.

³⁴ Arbitron, Inc., *Arbitron Commercializes the Portable People Meter Radio Ratings Service in Four New Local Markets* (press release), Dec. 31, 2008, available at <http://www.onlinepressroom.net/arbitron/>.

³⁵ *Id.* Arbitron plans to implement PPM in Boston in April 2009. *Id.*

³⁶ Arbitron Reply Comments at 25.

³⁷ Arbitron, Inc., *Arbitron Receives Media Rating Council Accreditation for the Portable People Meter Radio Ratings Data in Houston* (press release), Jan. 27, 2007, available at <http://www.onlinepressroom.net/arbitron/>; Arbitron, Inc., *Arbitron Receives Media Rating Council Accreditation for the Portable People Meter Radio Ratings Data in Riverside-San Bernardino* (press release), Jan. 9, 2009, available at <http://www.onlinepressroom.net/arbitron/>. The PPM system in Riverside-San Bernardino uses a telephone-based sampling and recruitment methodology and includes both landline and cell-phone-only households.

³⁸ Statement from George Ivie, Executive Director and CEO, Media Rating Council, Inc., Hearing – Overcoming Barriers to Communications Financing, Federal Communications Commission, July 29, 2008 (“Ivie Statement”); see also FCC *En Banc* Hearing and Conference on Overcoming Barriers to Communications Financing, Public Notice, 23 FCC Rcd 11268 (MB rel. July 25, 2008). Ivie stated that Arbitron has failed to demonstrate that it can roll out its Radio-First Methodology PPM services in a manner that fully complies with MRC’s evaluation criteria at the time of implementation. Ivie Statement at 4-5. Radio First is the PPM methodology used in New York and Philadelphia, where Arbitron did not receive MRC accreditation. The Radio First methodology is based on telephone recruitment, as opposed to the accredited PPM methodology used in Houston, which is address-based. PPMC Petition at 6.

ongoing dialogue with Arbitron surround “two key measurement issues: response rates and panelist compliance with the PPM technique.”³⁹ In February 2008, MRC announced that its audit committee voted not to grant accreditation to the PPM service in the Philadelphia and New York PPM markets.⁴⁰ MRC is currently reviewing the PPM services in Philadelphia and New York, as well as in a number of other major markets including Atlanta, Chicago, Dallas-Ft. Worth, Detroit, Los Angeles, San Francisco, and Washington, DC.⁴¹

13. Media Bureau Inquiry. The Chief of the Media Bureau wrote, separately, to Arbitron and MRC seeking a response to the concerns raised by minority and other broadcasters.⁴² Both Arbitron and MRC responded. MRC submitted several documents detailing various aspects of Arbitron’s implementation of the PPM system and MRC’s accreditation of it.⁴³ While acknowledging that the PPM technology has the potential to be “disruptive” on a short term basis, Arbitron claimed that PPMs provide audience measurements that are superior to the diary method.⁴⁴ It added that it is committed to working

³⁹ See Letter from George W. Ivie, Executive Director and CEO, Media Rating Council, to Monica Shah Desai, Chief, Media Bureau, Federal Communications Commission (Aug. 15, 2008) at Attachment, Ivie Statement, at 4-5. (“Ivie Aug. 15, 2008 Letter”)

⁴⁰ Media Rating Council, Inc., *MRC Statement on Philadelphia and New York PPM* (press release), Feb. 28, 2008, available at <http://www.mediaratingcouncil.org/0208MRC%20PPM%20Statement.pdf>. In January 2007, MRC accredited the PPM ratings data for Houston. Arbitron, Inc., *Arbitron Receives Media Rating Council Accreditation for the Portable People Meter Radio Ratings Data in Houston* (press release), Jan. 29, 2007, available at <http://www.onlinepressroom.net/arbitron/>.

⁴¹ See Media Rating Council, *Accredited Services and Services Under Review*, <http://www.mediaratingcouncil.org/Accredited%20Services.htm> (last visited Apr. 13, 2009).

⁴² See Letter from Monica Desai, Chief, Media Bureau, Federal Communications Commission, to Steve B. Morris, (former) President and Chief Executive Officer, Arbitron, Inc. (July 17, 2008); Letter from Monica Desai, Chief, Media Bureau, Federal Communications Commission, to George Ivie, Executive Director and CEO, Media Rating Council (July 17, 2008). See also Ivie Aug. 15, 2008 Letter. Background materials attached to the Ivie Aug 15, 2008 Letter include: (1) Statement, George Ivie, Executive Director and CEO, Media Rating Council, Inc., Hearing – Overcoming Barriers to Communications Financing, Federal Communications Commission (July 29, 2008); (2) Letter from Deborah Platt Majoras, Chairman, Federal Trade Commission, to Sen. Conrad Burns (Mar. 25, 2005); (3) Department of Justice Press Release (Apr. 11, 2008); (4) Voluntary Code of Conduct Media Rating Council, Inc. (Nov. 29, 2005); (5) Minimum Standards for Media Rating Research, MRC, Inc.; (6) “The Media Rating Council – Our Purpose, Process and Value” – Private Briefing for Senate Judiciary and Senate Commerce Staff (July 17, 2008); (7) MRC E-mail on Cell Phone Impact on Telephone Sampling. The letters to Arbitron and MRC from the Bureau Chief, as well as Arbitron’s and MRC’s responses, will be included in the docket of this proceeding.

⁴³ See Ivie Aug. 15 Letter and its attachments.

⁴⁴ Letter from Timothy T. Smith, Executive Vice President and Chief Legal Officer, Arbitron, Inc., to Monica Shah Desai, Chief, Media Bureau, Federal Communications Commission (Aug. 22, 2008) (“Smith Letter”) at Attachment (PPM Fact Sheet) at 2. Background materials attached to the Smith Letter include: (1) Transcript of Remarks of Steve Morris – FCC En Banc Hearing, July 29th (“Smith Attachment 1”); (2) PPM Fact Sheet (“Smith Attachment 2”); (3) Differences Between Diary-Based and Electronic Measurement (“Smith Attachment 3”); (4) Minority and Young Adult Representation in PPM (“Smith Attachment 4”); (5) Minority and Young Adult PPM Initiatives (“Smith Attachment 5”); (6) Report on PPM Research Questions from Hispanic Radio Broadcasters (“Smith Attachment 6”); (7) PPM Outreach Efforts (“Smith Attachment 7”); (8) Radio and Records article, “Mega Recipe for Success,” (Aug. 8, 2008) (“Smith Attachment 8”); (9) Statement of George Ivie, Executive Director of MRC, as prepared for delivery to the FCC’s En Banc hearing on July 29th (“Smith Attachment 9”). See Smith Attachment 2 (continued....)

with minority and Spanish-language broadcasters regarding their concerns that the PPM method is having a disproportionate impact upon them and their audiences as reflected in decreases in their ratings.⁴⁵ Arbitron detailed specific measures it takes with respect to Black, Hispanic and Spanish-dominant panelists to enhance their participation in PPM surveys, adding that the sample proportion of Blacks, Hispanics and young adults is higher, on average, for PPM service than it was for the diary service.⁴⁶ Arbitron also asserted that broadcasters operating in markets where PPM methodology has been introduced are learning from the data and executing new programming and marketing strategies designed to optimize the ratings results for an electronic meter rather than a diary methodology.⁴⁷

14. State Settlements. The Attorney Generals of New York, New Jersey, and Maryland have investigated Arbitron's PPM implementation in their respective states to assess whether the PPM methodology undercounts minority audiences. Earlier this year, Arbitron entered into separate settlement agreements with the three states and agreed to improve its sample participant recruitment methods. On January 7, 2009, the New York Attorney General and the New Jersey Attorney General announced separate settlement agreements with Arbitron, in which Arbitron agreed, among other things to: (1) ensure a higher level of participation across racial demographics by increasing the recruitment of individuals who only use cell phones and by combining an address-based sampling methodology with telephone-based sampling; (2) make reasonable efforts to obtain MRC accreditation in those markets; (3) promote minority radio by funding advertising campaigns and by making monetary contributions to minority trade associations; and (4) make payments to the states to resolve the claims against it.⁴⁸ In addition, Arbitron entered into an agreement with the Attorney General of Maryland on February 6, 2009,

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and Smith Attachment 3 (alleging that PPMs are superior to diaries because they do not rely on panelists' recall of their listening).

⁴⁵ Smith Letter at 2. Arbitron submitted materials that it has presented to minority broadcasters to demonstrate that it is addressing their questions and concerns regarding the quality of the PPM technology and the adequacy of their samples of minority listeners. Smith Letter, at Attachment (Report on PPM Research Questions from Hispanic Radio Broadcasters, June 6, 2008 - Average Daily Compliance Rates, Total New York Metro, April 2008). Overall, according to Arbitron, it has made special efforts to assist minority broadcasters in making the transition from paper diaries to electronic measurement above and beyond the efforts the company has made for its general market customers. Smith Attachment 1.

⁴⁶ Smith Letter at 2 and Smith Attachment 2 at 1. According to Arbitron, incentives include enhanced monetary incentives (generally, 2-4 times the standard amounts); bilingual written materials, interviewers and panel relations staff for Hispanic households; a youth-oriented website to maintain interest and motivation levels among younger minority panelists to personalize and customize the look of their PPM. *Id.*

⁴⁷ Smith Attachment 2 at 2. Morris notes that in Houston, Arbitron's first commercialized PPM market, though the number 1- and number 2-ranked stations, which are "urban-formatted" stations, initially suffered ratings declines after the initiation of PPM measurement, they re-gained their rankings by making programming changes, while still retaining their urban formats. Arbitron added that according to an independent third party source of radio ad sales transactions (SQAD) the cost of an advertising purchase on a per ratings basis (cost per point) has increased in Houston and Philadelphia since the transition to PPM data. *Id.*

⁴⁸ Office of the Attorney General, State of New York, *Attorney General Cuomo Secures Landmark Agreement with Arbitron to Cure Defects in Radio Ratings System that Threatened to Drive Minority Broadcasters Out of Business* (press release), Jan. 7, 2009, available at http://www.oag.state.ny.us/media_center/2009/jan/jan7a_09.html; Office of the Attorney General, State of New Jersey, *AG Milgram Announces Settlement with Arbitron; Company Agrees to Modify Ratings Method, Promote Minority Radio* (press release), Jan. 7, 2009, available at <http://www.nj.gov/oag/newsreleases08/pr20090107c.html>.

to improve its ratings methodology for the Washington, D.C. and Baltimore radio markets. Arbitron agreed to: (1) increase its recruitment of cell-phone-only households; (2) recruit racial and ethnic minorities commensurate with the racial and ethnic composition of the geographic areas being surveyed, using home addresses and not just telephone numbers, to identify potential participants; (3) meet numerical measures of proportionality between Arbitron's sample results and the actual populations in those radio markets; and (4) provide additional information about the PPM sample results to broadcasters, advertisers, and other users of the data.⁴⁹ Arbitron reports that it is successfully meeting its obligations under these agreements. Michael Skarzynski, President and Chief Executive Officer of Arbitron, stated that "[a]s an integral part of the company's continuous improvement programs, Arbitron is on track to meet or exceed 100 percent of the settlement agreement criteria with the Attorneys General of New York, New Jersey and Maryland."⁵⁰

15. Arbitron has also committed to extending some of these improvements to all PPM markets.⁵¹ It confirmed in March 2009, that it has been implementing in all PPM markets "a number of the key methodological enhancements that the company committed to in its agreements with the Attorneys General of New Jersey, New York and Maryland."⁵² Arbitron's methodology improvements for all PPM customers focus on four areas: (1) cell-phone-only sampling; (2) address-based sampling; (3) in-tab compliance rates;⁵³ and (4) response metrics.⁵⁴ Arbitron promised to increase the sample target for cell-phone-only households in all PPM markets to an average of 15 percent by year-end 2010, and in the interim, raise the current target of 7.5 percent to 12.5 percent in PPM markets by the end of 2009.⁵⁵ PPMC asserted that Arbitron's previous five to six percent cap on cell-phone-only households in its PPM samples under-sampled households with young adults and Hispanics and African-Americans, who are

⁴⁹ Maryland Attorney General, *Attorney General Gansler Announces Radio Ratings Agreement with Arbitron Inc.* (press release), Feb. 6, 2009, available at <http://www.oag.state.md.us/Press/2009/020609.htm>.

⁵⁰ Arbitron, Inc., *Arbitron Confirms Continuous Improvement Commitments in All PPM Markets* (press release), Mar. 2, 2009, available at <http://www.onlinepressroom.net/arbitron/>.

⁵¹ Arbitron announced its plans to extend these improvements nationwide in a press release and also in a February 27, 2009 letter to Senator Robert Menendez. See *id.*; Letter from Michael P. Skarzynski, President and CEO, Arbitron Inc., to Hon. Robert Menendez, U.S. Senate (Feb. 27, 2009), available at http://www.arbitron.com/downloads/senator_menendez_ltr_2_27_09.pdf. On March 17, 2009, Senator Menendez responded that the settlement terms with New York, New Jersey, and Maryland established the legal minimum that the PPM methodology must include and that he hoped Arbitron would exceed those standards. Letter from Robert Menendez, U.S. Senate, to Michael P. Skarzynski, President and CEO, Arbitron Inc. (Mar. 17, 2009), available at <http://menendez.senate.gov/newsroom/record.cfm?id=309923>.

⁵² Arbitron, Inc., *Arbitron Confirms Continuous Improvement Commitments in All PPM Markets* (press release), Mar. 2, 2009, available at <http://www.onlinepressroom.net/arbitron/>.

⁵³ *Id.* (stating that "Arbitron is applying its average-daily in-tab benchmark of 75 percent of installed sample to all PPM markets"). "In-tab" refers to the number of people in a PPM panel actually being counted on a given day. See Association of Hispanic Advertising Agencies, *AHAA PPM and Arbitron Meet In New York To Discuss Industry Concerns About PPM Implementation* (press release), Aug. 21, 2008, available at <http://www.ahaa.org/media/PPM%20Advisory%20Council%20August%2021%20Statement.htm>.

⁵⁴ Arbitron, Inc., *Arbitron Confirms Continuous Improvement Commitments in All PPM Markets* (press release), Mar. 2, 2009, available at <http://www.onlinepressroom.net/arbitron/>.

⁵⁵ *Id.*

more likely than other demographics to use only cell phones.⁵⁶ Based on data from 2007, PPMC stated that the percentage of cell-phone-only households is nearly 16 percent among all U.S. households, 19.3 percent for Hispanics, and 18.3 percent for African-Americans.⁵⁷ In addition, Arbitron expressed its commitment to use address-based sampling for at least 10 percent of its sampling efforts by late 2009 and for at least 15 percent of its recruitment efforts by the end of December 2010 in all PPM markets.⁵⁸ PPMC contends that address-based sampling increases the likelihood that cell-phone-only households are included.⁵⁹ Furthermore, Arbitron claimed that all PPM customers will see greater transparency for more of the sample metrics in the Arbitron PPM survey research, including the distribution of sample by zip code and by cell phone status.⁶⁰ Arbitron also stated that it will continue to share with all customers any current and future findings of the impact of nonresponse on the PPM service.⁶¹

16. In addition, Arbitron has created a training program, called “Feet on the Street,” which is designed specifically to reach out to young African-American and Hispanic respondents in Arbitron PPM panels to help them improve their use of the meters.⁶² If such a respondent has not demonstrated good habits of carrying the meter within the first eight days of being on a PPM panel, a bilingual Arbitron representative will meet with him in person within his first 28 days on the panel, attempt to show him how to use the meter, and provide incentives to use the meter properly.⁶³ Arbitron states that the program is scheduled to have bilingual representatives “knocking on the doors” of newly-recruited Hispanics and African-Americans aged 18-34 in the top ten PPM markets by the end of April 2009.⁶⁴ Arbitron reported

⁵⁶ PPMC Petition at 24-26. According to PPMC, Arbitron’s stated reason for the cap was the higher cost of recruiting cell-phone-only households due, in part, to the fact that recruitment calls to cell phones must be by hand instead of by auto-dialers. *Id.* at 25 n.68.

⁵⁷ *Id.* at 24-26.

⁵⁸ Arbitron, Inc., *Arbitron Confirms Continuous Improvement Commitments in All PPM Markets* (press release), Mar. 2, 2009, available at <http://www.onlinepressroom.net/arbitron/>. Arbitron states that it is already using address-based sampling for cell-phone-only households in PPM markets and that the initial returns from the first round of address-based sampling are indicating that markets such as Nassau-Suffolk and Middlesex-Somerset-Union have a cell-phone-only penetration that is significantly less than 15 percent. *Id.*

⁵⁹ PPMC Petition at 26.

⁶⁰ Arbitron, Inc., *Arbitron Confirms Continuous Improvement Commitments in All PPM Markets* (press release), Mar. 2, 2009, available at <http://www.onlinepressroom.net/arbitron/>. PPMC argued that broadcasters need to know ratings by zip codes in order to tailor program schedules and advertising schedules to advertisers that serve geographically discrete minority communities. PPMC Petition at 33.

⁶¹ Arbitron, Inc., *Arbitron Confirms Continuous Improvement Commitments in All PPM Markets* (press release), Mar. 2, 2009, available at <http://www.onlinepressroom.net/arbitron/>. PPMC argued that the fewer people who agree to participate in a random sample, the less representative the sample is. PPMC Petition at 28-29.

⁶² Arbitron, Inc., *Arbitron Puts More ‘Feet on the Street’ to Boost PPM Survey Compliance Among Young African-Americans and Hispanics* (press release), Feb. 4, 2009, available at <http://www.onlinepressroom.net/arbitron/>.

⁶³ *Id.*

⁶⁴ *Id.* (The program was first deployed as a pilot in New York and Philadelphia in April 2008, introduced in Dallas and San Francisco in June 2008, and in Los Angeles in December 2008. Subsequent deployments were scheduled for Houston in February 2009, Chicago and Washington D.C. in March 2009, and Boston and Atlanta in April 2009).

that the program's pilot tests in April 2008 in New York and Philadelphia resulted in double digit gains in the in-tab rates of young African-Americans and Hispanics and a decreased turnover rate.⁶⁵ Arbitron therefore anticipates that the program will improve the representation of these groups on its PPM panels.⁶⁶

B. Discussion and Request for Comment

1. Effect of PPMs on Diversity and Competition

17. Broadcasters, particularly minority broadcasters, have raised serious concerns that the PPM methodology is flawed and that its undercounting of minority audiences will harm diversity and competition by harming the revenues of minority and urban-formatted broadcasters. National Association of Black Owned Broadcasters ("NABOB") Executive Director James L. Winston, in testimony at the Commission *en banc* hearing, indicated that the financial well-being of minority-owned stations is dependent on their ability to generate advertising revenue based on audience shares, as measured by Arbitron.⁶⁷ Winston characterized the PPM methodology as "critically flawed," adding that the methodological flaw results in a "clear bias against the reporting of minority audiences." Specifically, Winston pointed to PPM test data from New York, Chicago, and Los Angeles that revealed a decline in average quarter hour (AQH) ratings and market rank for virtually all of the stations serving African-American and Hispanic communities.⁶⁸ According to Winston, some of the concerns with the PPM are attributable to Arbitron's deficiencies in the recruitment, retention, and participation of young African-Americans and Hispanics in the sample panel. In addition, NABOB asserts that MRC's PPM accreditation process may have uncovered additional factors that impact the reliability of the ratings computed for minority-owned broadcast stations.

18. We seek comment and empirical evidence with respect to PPM methodology and its effect on minority and urban-formatted station revenues in markets where PPM is currently being used. Commenters should describe any changes or projected changes in program service to their local communities as a result of lowered advertising sales revenue based on a decline in audience ratings as measured by PPMs. What has been the experience in other radio markets where the PPM methodology is being used? Do PPMs measure active and sporadic listening in the same manner and, if not, what impact does the difference in treatment have on ratings?⁶⁹ Are these concerns that the Commission can or should address?

19. We also seek information concerning Arbitron's sampling methods to determine the impact on the radio market of commercialization of PPMs, particularly with respect to the shift to collecting audience data by PPMs rather than by diaries. Broadcasters and others have raised concerns that the samples for the electronic data collection may produce inaccurate estimates, particularly in some

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Winston *En Banc* Testimony at 2. Winston states that minority broadcasters provide important local programming on social, political, economic, health and other issues of concern to minority communities, and that such programming – as well as the viability of the stations that air it – is potentially jeopardized by flawed reporting on African-American and Hispanic audiences. *Id.* at 4-5.

⁶⁸ *Id.* at 2-3.

⁶⁹ *See id.* at 3.

demographic groups and in certain states like New Jersey. Arbitron, on the other hand, defends PPM methodology, asserting that the sampling approaches used for PPM and diaries are essentially the same.⁷⁰ Further, as noted above, Arbitron has claimed that PPM methodology is superior to diary ratings in measuring listening.⁷¹ We have a strong interest in encouraging technological innovation and do not wish to inhibit the introduction of a new methodology that represents a significant improvement. Accordingly, we invite comment as to whether PPM methodology produces ratings that are more accurate than diary ratings.

20. Reliable audience ratings are important to determine critical demographic information about listeners, which radio stations compete for the same listeners, and how many listeners each radio station attracts according to specific demographic characteristics. This information is used by stations and potential advertisers to develop station-specific advertising strategies. With these concerns in mind, we seek comment on the issues raised regarding Arbitron sampling, particularly samples selected for deployment of PPMs. Specifically we seek comment on the issues raised in several analyses of the implementation of PPMs in Houston, Philadelphia, New York, and any other markets in which PPMs are being used.⁷² We seek comment on allegations that the sampling methodology undercounts and misrepresents audience sizes, particularly minority audiences.⁷³ Are these allegations valid?⁷⁴ If so, we seek comment on means that could be employed to correct the problems to ensure that the reported audience ratings accurately reflect actual listening. We also seek comment on the difference in ratings between markets where an address database was used to select the sample and markets where samples were chosen using telephone-based surveys.⁷⁵ Could ratings changes have resulted from a flawed sample selection process? Are cell-phone-only households underrepresented, as some allege, and if so, what is the effect of the alleged undersampling of cell-phone-only households?⁷⁶ Does this skew the results and, if so, how? Is there a disparity, as PPMC alleges, between minority and non-minority groups in terms of cell-phone-only usage, and if so, to what extent?⁷⁷ Commenters are invited to provide statistics on current

⁷⁰ Arbitron Reply Comments at 11.

⁷¹ See para. 13 *supra*.

⁷² See Letter from David Honig, Executive Director, Minority Media & Telecommunications Council, to Marlene Dortch, Secretary, Federal Communications Commission (Aug. 7, 2008) (MB Docket 07-294) at Attachment “PPM Coalition Issues Regarding the Portable People Meter”; PPM: The First Year – A Tale of Two Cities (“Tale of Two Cities”), <http://www.rbr.com/media-news/research/7701.html> (last visited Apr. 9, 2009); Testimony of James L. Winston, Executive Director and General Counsel of the National Association of Black Owned Broadcasters, Inc., before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce of the U.S. House of Representatives, Dec. 5, 2007 (“Winston Congressional Testimony”).

⁷³ See, e.g., PPMC Petition at 22-30; PPMC Comments at 11-14; HTTP Comments at 3; New York City Council Comments at 1-2; Letter from Benjamin Todd Jealous, President/CEO, National Association for the Advancement of Colored People, to Kevin Martin, Chairman, Federal Communications Commission (Oct. 3, 2008) (“NAACP Oct. 3, 2008 Ex Parte”) at 2.

⁷⁴ See Winston *En Banc* Testimony at 4.

⁷⁵ PPMC Comments at 3-6; Tale of Two Cities at 1; Winston Congressional Testimony at 4; NAACP Oct. 3, 2008 Ex Parte at 2.

⁷⁶ See PPMC Comments at 5-6.

⁷⁷ See PPMC Petition at 25-26.

cell-phone-only use in the United States. How should we assess Arbitron's level of cell-phone-only households in its panel samples in comparison to these statistics? What changes could be made to improve sample selection to deal with alleged problems? We seek comment on the suggestion of an Arbitron executive that differential compensation between demographic groups could be useful to improve the size of underrepresented demographic groups.⁷⁸ We further seek comment on the likely difference in results between the diary and PPM sampling methods, such as the effect of the alleged undersampling of demographic subgroups on the resulting ratings data and the ability to determine the audience of radio stations targeting specific demographic groups (e.g., African-American women aged 18-34). We also request comment on allegations that PPM response rates are below suggested averages and that Arbitron's failure to raise the average response rate is a factor in its failure to receive accreditation for the PPM surveys.⁷⁹ What could be done, and what is being done, to increase response rates? PPMC observes that ratings by zip code are important for programming and sales operations, and also notes that country of origin is often a significant factor in format selection for Spanish radio.⁸⁰ We seek comment on the lack of zip code and country of origin data to accompany PPM ratings. Will this impair stations' and advertisers' ability to assess the accuracy of the results? We also seek comment on the collection of data on listeners aged 6 to 11 years old and whether the sample from this age range should be reallocated to the 12 and over age groups.

21. We note that Arbitron has reached settlements regarding its PPM methodologies in New York, New Jersey and Maryland, has adopted improvements to the methodology, and has committed to continuing to improve its PPM methodology. Have these improvements resolved the problems in whole or in part? Are the commitments made by Arbitron to improve PPM methodology in the settlement markets and voluntarily in others sufficient to cure the problems cited by commenters? Are these improvements consistent with MRC's standards for accreditation?

22. Finally, we seek comment on the importance and adequacy of MRC accreditation in ensuring the integrity of the sampling methodology and the resulting audience measurements.⁸¹ We also seek information on the status of Arbitron's MRC accreditation applications and any objections, problems or concerns that have been raised regarding them.

2. Use of Arbitron Data by the Commission

23. The Commission's local multiple ownership rules limit the number of radio and television stations one entity may own in a local market, and they also limit the cross-ownership of radio stations,

⁷⁸ See Smith Attachment 2.

⁷⁹ PPMC Petition at 28-29.

⁸⁰ *Id.* at 33-34.

⁸¹ Arbitron Reply Comments at 1-2. In addition, Arbitron states that PPMC has mischaracterized the MRC accreditation process. According to Arbitron, MRC's members are industry participants who actively and directly compete with each other, and therefore the members of MRC's Audit Committee often have divergent interests in voting to recommend the granting or the withholding of accreditation for a new ratings service. Arbitron Reply Comments at 4. Arbitron further explains that the Department of Justice, which approved MRC's formation in 1964, has acknowledged that some of MRC's processes had the potential effect of restraint-of-trade, and MRC's proposed Voluntary Code of Conduct therefore specifically provides that the accreditation process shall not preclude the offering of audience measurement products by a measurement service that is not accredited. *Id.* at 5.

television stations and/or newspapers in the same geographic market.⁸² The local radio ownership rule limits the number of radio stations one entity can own within a local radio market.⁸³ The Commission must define a radio market in order to determine whether license transfers, mergers and acquisitions comply with the numerical limits of the local radio ownership rule. The Commission relies on radio Metro markets, defined by Arbitron, to determine compliance for stations located within, or garnering sufficient listeners located within, the geographically defined Arbitron radio Metro markets.⁸⁴ For markets geographically outside Arbitron-defined Metros, the Commission relies on signal contours to determine compliance.⁸⁵ As described earlier, Arbitron's delineation of radio markets, which is based on its audience measurement data, is the industry standard.

24. How do the concerns regarding the reliability of the PPM methodology implicate the Commission's use of Arbitron data in reviewing transactions to determine compliance with the Commission's broadcast ownership rules? Do the alleged declines in audience ratings for some stations when PPMs are utilized impact radio market definitions or Arbitron's designation of radio Metro markets? Do issues regarding the reliability of Arbitron's PPMs raise concerns about the Commission's reliance on Arbitron radio markets to determine compliance with the Commission's local ownership rules?⁸⁶ Are there any other more reliable data available on which the Commission should rely?

25. In addition, the Commission relies on the information produced by Arbitron to fulfill its statutory obligation to evaluate the continued necessity of its local radio ownership rule as well as the cross-ownership rules. The Commission is statutorily required to quadrennially review its multiple ownership rules to determine whether the rules remain necessary in the public interest. The Commission is required to repeal or modify any regulation it determines to be no longer in the public interest.⁸⁷ In past reviews, the Commission has evaluated the performance of media markets as part of its effort to determine whether the multiple ownership rules remain necessary in the public interest. For the 2006 Quadrennial Review, for example, the Commission sponsored three studies of the radio industry. Each of these studies relied on the Arbitron Metro market definitions and/or Arbitron audience ratings in its

⁸² 47 C.F.R. § 73.3555.

⁸³ An entity may own, operate, or control: (1) up to eight commercial radio stations, not more than five of which are in the same service (*i.e.*, AM or FM), in a radio market with 45 or more full-power, commercial and noncommercial radio stations; (2) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) full-power, commercial and noncommercial radio stations; (3) up to six commercial radio stations, not more than four of which are in the same service, in a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations; and (4) up to five commercial radio stations, not more than three of which are in the same service, in a radio market with 14 or fewer full-power, commercial and noncommercial radio stations, except that an entity may not own, operate, or control more than 50 percent of the stations in such a market. 47 C.F.R. § 73.3555(a).

⁸⁴ *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, MB Docket No. 02-277, MM Docket Nos. 01-235, 01-317, 00-244, 03-130, 18 FCC Rcd 13620, 13725-28 ¶¶ 275-281 (2003), *aff'd in part and remanded in part*, *Prometheus*, 373 F.3d at 435, *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 545 U.S. 1123 (2005).

⁸⁵ *Id.* at 13729-30 ¶¶ 282-86.

⁸⁶ *See* 47 C.F.R. § 73.3555(a), (c).

⁸⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), Section 202 (h).

analysis.⁸⁸ Commenters are asked to address the integrity of future Commission analyses or trend reporting using Arbitron data derived from PPM measurements. Would the Commission's use of Arbitron data based on PPM data affect its policies and rules regarding media ownership, ownership diversity, and competition? If so, how would use of PPM data impact the reliability of Commission analysis and decision-making? Should licensees be able to rely on ratings obtained through the use of PPM methodology for Commission purposes, such as in demonstrating compliance with local ownership rules in transfer and assignment applications? Should MRC accreditation be required before licensees can rely on PPM methodology in filings with the Commission?

3. Commission Action

26. PPMC supports its argument for Commission jurisdiction in this matter by noting that the Commission relies upon the accuracy of Arbitron's market definitions as a central component of its multiple ownership analysis. PPMC contends that the Commission has ample authority to seek information about the validity and accuracy of Arbitron's ratings data that may potentially affect the formulation of the Commission's own rules and regulations.⁸⁹ Arbitron opposes this investigation, stating that the Commission lacks jurisdiction and relevant expertise and cannot address the role of advertisers and the impact of their decisions regarding the stations on which they decide to purchase advertising time.⁹⁰

27. Commenters that advocate particular actions should specifically address the Commission's statutory authority to take such actions. Does the Commission have jurisdiction to require the submission of information concerning PPM methodology or to regulate PPM methodology? If so, what is the basis of that jurisdiction? Is the Commission's reliance in its rules and procedures on Arbitron ratings data and market definitions a sufficient basis to require submission of the data necessary to evaluate their reliability? Does the impact of Arbitron ratings data on diversity and competition in the radio industry, which the Commission is charged with fostering, provide a basis for the Commission to require submission of information concerning the new ratings methodology or to take other action? Is the operation of PPMs so intertwined with a type of broadcasting transmission that the Commission's jurisdiction extends to this matter? Arbitron provides participating broadcasters encoding equipment at

⁸⁸ See Study 4.2: "Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical Analysis of Radio Airplay" by Kenneth Lynch; Study 5: "Station Ownership and programming in Radio" by Tasneem Chipty; Study 10: "Review of the Radio Industry, 2007" by George Williams. These studies are posted at www.fcc.gov/ownership/studies.html.

⁸⁹ PPMC Reply Comments at 3-4. PPMC adds that if the investigation concludes that there is evidence to suggest the imprudent roll-out of PPM would likely discriminate against or validate advertisers' discrimination against minority consumers, the Commission "could recommend congressional action" to regulate Arbitron. *Id.* at 5. PPMC asserts that Section 403 provides the Commission authority to conduct an investigation into PPMs. PPMC Comments at 3.

⁹⁰ Arbitron Comments at 16-19. Bonneville International Corporation and eight other broadcast group owners ("Bonneville, et al.") support Arbitron's position that the Commission lacks jurisdiction to review PPMC's claims and initiate an inquiry. They also urge the Commission to refrain from interjecting itself into what they consider to be private disagreements between Arbitron and PPMC members. Bonneville, et al. Reply Comments at 1-4. In addition to Bonneville, Bonneville et al. include Buckley Radio Group; CBS Radio Inc.; Citadel Broadcasting Corp.; Emmis Communications; Entercom Communications Corp.; Greater Media, Inc.; Lincoln Financial Media Co.; and Megamedia Group. *But see* note 1, *supra*.

no cost, which broadcasters use to embed a unique inaudible code into their audio signals.⁹¹ PPMs receive and record these codes.⁹² Does the transmission of encoded broadcast signals to Arbitron's PPMs, made possible with Arbitron's encoding equipment, bring the operation and use of PPMs under the Commission's oversight? If so, what statutory provisions would govern the Commission's jurisdiction over PPMs?

28. If the Commission has jurisdiction over this matter, we also seek comment on the specific actions, if any, the Commission should take in response to the information it receives in this investigation. Should the Commission modify its own reliance on Arbitron market data in applying its multiple ownership rules if it determines that PPM data are unreliable? Commenters are also invited to suggest any steps that they believe would be useful in the conduct of the Commission's investigation.

III. PROCEDURAL MATTERS

A. Comment Filing Procedures

29. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.⁹³

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary,

⁹¹ Arbitron Inc., PPM Encoding Handbook for Radio (2008) at 2, 5, *available at* http://www.arbitron.com/downloads/ppm_encoding_handbook.pdf.

⁹² *Id.* at 2.

⁹³ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

30. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

31. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

B. Ex Parte Information

32. The NOI is an exempt proceeding. Ex parte presentations regarding the issues addressed in the NOI are permitted, except during the Sunshine Agenda period, and need not be disclosed.⁹⁴

33. The Media Bureau contact is Julie Salovaara at (202) 418-0783. Press inquiries should be directed to David Fiske at (202) 418-0513.

IV. ORDERING CLAUSES

34. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in Sections 1, 4(i) & (j), and 403 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) & (j), and 403, that this *Notice of Inquiry* **IS ADOPTED**.

35. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Notice of Inquiry*, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹⁴ See 47 C.F.R. § 1.1204(b)(1).

**STATEMENT OF
ACTING CHAIRMAN MICHAEL J. COPPS**

*Re: Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters,
MB Docket No. 08-187.*

We launch this inquiry to examine the concerns that have been raised regarding Arbitron's Personal People Meter (PPM) ratings methodology. Minority broadcasters question PPM's accuracy and assert that it has had a devastating effect on their ability to compete in markets where it has been introduced. The legal actions initiated by the Attorneys General of New York, New Jersey and Maryland reflect similar concerns.

The Commission also has an independent interest in ensuring the accuracy and reliability of PPM. First, we have a strong interest in promoting ownership diversity—both under our general public interest authority and the express directive of Section 257 of the Communications Act. If our renewed commitment to promote minority broadcast ownership is to succeed, we must understand the ecosystem in which minority owners operate. We do not regulate Arbitron, but then we do not regulate banks either, and yet we should—indeed, we must—take into account the difficulties of access to capital if we are going to develop effective rules. Anything that affects media diversity and minority ownership—and the instant item does not draw any conclusions—affects our ability to do our job. Moreover, the Commission relies on Arbitron data to evaluate broadcast radio transactions, issue periodic industry trend reports, and conduct congressionally mandated reviews of our media ownership rules. Without confidence in the underlying data, those important functions could be undercut.

I want to emphasize that this proceeding is not about preserving the status quo or inhibiting technological progress. To the contrary, Arbitron should be commended for trying to improve its ratings methodology and for committing significant resources to that effort. I also appreciate the constructive attitude that all of the stakeholders, including Arbitron, have adopted and hope that will continue as we move forward.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Impact of Arbitron Audience Ratings Measurement on Radio Broadcasters,
MB Docket No. 08-187.*

Late last year, I called on the Commission to initiate an inquiry into whether Arbitron's deployment of its new audience measurement system, the portable people meter (PPM), was undermining the Commission's efforts to promote media diversity and expand ownership opportunities for businesses owned by people of color. Over the months, there has been a growing chorus of concerns regarding the methodology, deployment and results of PPM from broadcasters, both big and small, including state and minority broadcasters' associations, independent media ratings companies, state attorneys general, Members of Congress, and the Commission's Advisory Committee on Diversity. Concerns have ranged from Arbitron's practices to recruit cell-phone only households to the underrepresentation of racial and ethnic groups on PPM panels and the lack of accreditation from the Media Ratings Council. After initially disregarding these concerns, Arbitron now acknowledges the need for improvements to its new measurement system.

I am pleased that the Commission is prepared to conduct our own fact-finding and examination to determine whether PPM is "sufficiently accurate and reliable to merit the Commission's own reliance on it in its rules, policies and procedures." If the Commission does not conclude that PPM *is* in fact reliable and accurate, or if there are still many unanswered questions, the Commission may have to reconsider whether its reliance on Arbitron's market definitions and audience ratings calls into question the reliability and integrity of the Commission's own analysis that uses Arbitron information. The Commission may have to also consider whether prohibiting broadcasters' participation in PPM altogether is in the public interest.

This open and neutral inquiry is the first step of Commission action. I look forward to public comment to these important questions to determine if additional measures are necessary.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters,
MB Docket No. 08-187.

This Notice of Inquiry provides the Commission with a more formal opportunity to consider issues that have been raised about the reliability of the new “portable people meter” (“PPM”) automated audience-rating measurement device being rolled out by Arbitron, Inc., the major ratings service for the nation’s commercial radio broadcasters. Thus far, we have heard from some broadcasters who are concerned about certain research methodologies employed in connection with the device and their potential effect on ratings. We also have heard from Arbitron and other broadcasters that the new automated approach to ratings measurement offers significant improvements over the older, manual diary-reporting system. I look forward to receiving comment from a broad array of interested parties on the questions raised in the Notice. I expect to pay particular attention to analyses of the Commission’s authority to take any further action in this arena.