

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

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

ORDER

Adopted: May 3, 2011

Released: May 3, 2011

By the Commission:

1. In this *Order*, we grant PPM Coalition’s (“PPMC”) request to withdraw its Emergency Petition for Section 403 Inquiry and to terminate the Commission’s inquiry in the above-captioned proceeding without further action (“Withdrawal Request”).¹

2. On September 2, 2008, PPMC filed an Emergency Petition requesting that the Commission commence a fact-finding inquiry into the commercial use of a radio audience measurement device developed by Arbitron, Inc. known as the portable people meter, or “PPM.”² The PPM is a portable, mobile phone-sized device worn by consumers that electronically tracks exposure to radio, television, and cable media as consumers wear it throughout the day.³ Arbitron implemented PPMs in certain markets across the country. PPMC raised concerns about the use of the PPM and its potential impact on audience ratings of stations that air programming targeted to minority audiences. Specifically, PPMC and others that supported the request expressed concern that the PPM methodology was having a detrimental effect on the ratings measurements for urban- and Hispanic-formatted stations because the sample panels under-represented minorities and the PPM devices were not sufficiently distributed within minority groups.⁴ It expressed concern that because the PPM methodology undercounted minority radio listeners that these stations experienced reductions in audience ratings as reported by Arbitron, following the inception of PPM measurements. Consequently, PPMC claimed that as a direct result of PPMs, such stations suffered a loss of advertising sales and revenues.

¹ Letter from Antoinette Cook Bush and David H. Pawlik, Skadden, Arps, Slate, Meagher & Flom LLP, counsel to PPMC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 08-187 (Oct. 13, 2010). 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. Withdrawal Request at n.1.

² PPM Coalition, Emergency Petition for Section 403 Inquiry (Sept. 2, 2008) (“PPMC Petition”).

³ Arbitron, Inc., *About Arbitron*, <http://www.arbitron.com/about/home.htm> (last visited Feb. 22, 2011).

⁴ See, e.g., PPMC Petition at 22-30; Hispanic Technology and Telecommunications Partnership *et al.* (“HTTP *et al.*”) Comments at 3; New York City Council Comments at 1-2; National Association for the Advancement of Colored People (“NAACP”) Reply at 1-2.

3. On September 4, 2008, the Media Bureau issued a Public Notice seeking comment on the issues.⁵ Subsequently, on May 18, 2009, the Commission released a Notice of Inquiry to investigate the impact of the PPM methodology on the broadcast industry as well as whether audience ratings data are sufficiently accurate and reliable to merit the Commission's own reliance on such data in establishing and implementing its rules, policies, and procedures.⁶ The Commission stated that it had a strong interest in encouraging innovative advancements that lead to improved information and data. Thus, it sought information on whether and how the PPM technological changes adversely affected diversity on the airwaves as well as the integrity and reliability of the Commission's processes that rely on Arbitron ratings data.⁷

4. In addition, on July 28, 2008, the FCC's Advisory Committee on Diversity for Communications in the Digital Age ("Diversity Committee") passed a resolution requesting a Commission investigation of Arbitron's PPM measurement system to determine whether the system was having a detrimental and discriminatory effect upon stations targeting minority audiences.⁸ According to

⁵ *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). The Commission received eight comments and six reply comments. A number of commenters expressed support for a Commission inquiry into the PPM methodology. See, e.g., HTTP *et al.* Comments at 1; Leadership Conference on Civil Rights Reply at 2; NAACP Reply at 2-3; New York City Council Comments at 2; PPMC 9/24/08 Comments at 1-3; PPMC 10/6/08 Reply at 1-4; Spanish Broadcasting System Comments at 1. Others, including Arbitron, challenged the Commission's jurisdiction to initiate an inquiry. See, e.g., Arbitron 9/24/08 Comments at 2-3; Bonneville *et al.* Reply at 2-3. In addition, several commenters generally supported the use of the PPM as an improvement over the diary system. See, e.g., Allscope Media Comments at 1; Arbitron 9/24/08 Comments at 35-40; Arbitron 10/6/08 Reply at 11-12, 18-20; Bob Michaels Comments at 1; Horizon Media Reply at 1.

⁶ *Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters*, MB Docket No. 08-187, Notice of Inquiry, 24 FCC Rcd 6141 (2009) ("NOI"). See also *Media Bureau Announces Deadlines for Filing Comments and Reply Comments for Notice of Inquiry Regarding Arbitron's Use of Portable People Meters*, MB Docket No. 08-187, Public Notice, 24 FCC Rcd 7419 (MB rel. June 2, 2009). Comments were divided with respect to the soundness of the PPM methodology. PPMC and others asserted that flaws in the PPM methodology could result in lower ratings, and consequently financial harm, for minority-formatted stations. See, e.g., Association of Hispanic Advertising Agencies Comments at 4; ICBC Comments at 6; ICBC Reply at 1-2; KCRW Comments at 3; New Jersey Broadcasters Association Comments at 1; PPMC 7/1/09 Comments at 9-12; Taxi Productions Comments at 2-4. By contrast, other commenters, including Arbitron, maintained that the PPM methodology was reasonably reliable, particularly in comparison with the diary system. See, e.g., Arbitron 7/1/09 Comments at 22-29; Arbitron 7/31/09 Reply at 16-17; Emmis Communications Comments at 2; Radio One Reply at 1-2. Commenters also were divided with respect to the Commission's jurisdictional authority to request information concerning PPM technology. See, e.g., ICBC Reply at 6-7; Media Access Project Comments at 2-8; Media Access Project Reply at 2-8; PPMC 7/1/09 Comments at 46-50; *but see*, Arbitron 7/1/09 Comments at 3-4; Arbitron 7/31/09 Reply at 3-5; Emmis Communications Comments at 3-4.

⁷ *NOI*, 24 FCC Rcd at 6142, ¶ 1. As described in the *NOI*, the Commission relies on Arbitron-defined radio Metro markets to determine compliance with the local radio ownership rule, which limits the number of radio stations one entity can own within a local radio market. *Id.* at 6154-55, ¶ 23. For markets geographically outside Arbitron-defined Metros, the Commission relies on signal contours to determine compliance. *Id.* Furthermore, in the past, the Commission has relied on information produced by Arbitron, including Metro market definitions and audience ratings, to fulfill its statutory obligation to evaluate the continued necessity of its local radio ownership rule as well as the cross-ownership rules. *Id.* at 6155-56, ¶ 25.

⁸ 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) ("*Diversity Committee Resolution*"), available at <http://www.fcc.gov/DiversityFAC/072808/resolution072808.pdf>. Also, in July 2008, Monica Desai, Chief, Media Bureau separately asked Arbitron and the Media Rating Council to respond

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the Diversity 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.⁹ In June 2009, the Diversity Committee's Media Issues Subcommittee convened a task force to focus on issues with Arbitron's PPM methodology.¹⁰ On December 3, 2009, the task force recommended that the Commission investigate whether certain radio industry ratings practices, such as use of the PPM, have a negative effect on certain formats and whether there is any impact on diversity of ownership in radio.¹¹

5. In its Withdrawal Request, PPMC states that under the leadership of the House Oversight and Government Reform Committee, it worked with Arbitron and the Media Rating Council to implement a series of steps designed to enhance the recruitment methodology of the PPM ratings service, including the addition of address-based sampling with targeted in-person recruiting to increase PPM panelist participation in key market segments.¹² Based on months of study and negotiations in finding ways to improve the PPM methodology, on April 21, 2010, PPMC and Arbitron "agreed on a plan that presents a framework to address the Coalition's concerns."¹³ Thus, based upon the progress that has been made to date, PPMC asserts that no further investigation by the Commission is warranted.¹⁴ In addition, pursuant to the April 2010 Action Plan, the Diversity Committee withdrew its request for a Commission investigation into the use of PPMs.¹⁵ In light of the agreement reached between the parties in the Action Plan and the withdrawal of the Diversity Committee's request, we hereby grant the Withdrawal Request and terminate the proceeding without further action or decision on the merits.

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to the concerns raised by minority and other broadcasters. See Letter from Monica Desai, Chief, Media Bureau, Federal Communications Commission, to Steve B. Morris, 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). The Media Rating Council accredits audience measurement services, such as Arbitron, that are relied on by buyers and sellers in the advertising industry. Media Rating Council, *MRC About Us*, <http://mediaratingcouncil.org/About%20Us.htm> (last visited Feb. 22, 2011).

⁹ *Diversity Committee Resolution* at 1. 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>.

¹⁰ FCC Advisory Committee on Diversity for Communications in the Digital Age, Recommendations of the Media Issues Subcommittee, Personal People Meter Task Force (Dec. 3, 2009), available at <http://www.fcc.gov/DiversityFAC/120309/recommend-ppm.doc>.

¹¹ *Id.*

¹² Withdrawal Request at 2. See also "Arbitron and PPM Coalition Settle Outstanding Disputes – Both Groups Commend Leadership of House Oversight Committee Chairman Towns," Arbitron and PPMC, Press Release, Apr. 22, 2010.

¹³ Withdrawal Request at 2.

¹⁴ *Id.* at 3.

¹⁵ Letter from Henry M. Rivera, Chair, Advisory Committee on Diversity for Communications in the Digital Age, to Hon. Julius Genachowski, Chairman, FCC (June 25, 2010). The Diversity Committee recommended that the FCC's Office of Communications Business Opportunities ("OCBO") monitor the progress of Arbitron, the MRC, and PPMC for compliance with the settlement agreement and periodically confer with the House Oversight and Government Reform Committee in order to provide updated reports to the Commission. *Id.* at 2-3. The Media Bureau will coordinate with OCBO to implement the Diversity Committee's recommendation.

6. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. §§ 154(i) and 154(j), that PPM Coalition Request to Withdraw its Emergency Petition for Section 403 Inquiry **IS GRANTED**.

7. **IT IS FURTHER ORDERED**, that PPM Coalition's Emergency Petition for Section 403 Inquiry **IS DISMISSED**.

8. **IT IS FURTHER ORDERED**, that this proceeding is **TERMINATED**.

9. **IT IS FURTHER ORDERED**, that this Order **IS EFFECTIVE** upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary