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## **Groups Seek To Sic FCC On Arbitron**

### **Accuracy of People Meter questioned, effect on minority audience count bemoaned**

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In this age of increasingly atomized audiences, the ability accurately to identify and target a particular audience component – by age, gender, ethnicity, etc., etc. – is of paramount importance. Advertisers aboard the promotional carousel must be able to reach just the right audience if they want to snag the gold ring. Obviously, an advertising medium is most valuable when it allows advertisers to more precisely reach a particular audience

In the radio business, a station's likely ability to deliver a particular audience to a prospective advertiser is generally based on one factor above any other: Arbitron ratings.

Historically, those ratings have been compiled through an archaic "diary" system, in which a relatively small universe of listeners complete, by hand, diaries reflecting the stations they listened to. Arbitron then extracts the data from those diaries, slices and dices the data exhaustively, and sells the results for use in the purchase and sale of advertising time.

One problem with Arbitron's historic approach has been the potential for inaccuracy inherent in the diary system. Aside from prosaic problems such as deciphering handwriting and understanding exactly which station a listener's shorthand terminology might refer to, diaries suffer a more fundamental potential flaw: are reporting diarists accurately reporting what they in fact listened to? Since even the most diligent diarists are routinely subjected to frequent and varied distractions, it is at least possible, if not likely, that the data amassed from the diaries are not 100% accurate.

In an effort to improve the accuracy of its reports, Arbitron developed a new approach. Instead of relying on the diligence of reporting individuals, Arbitron sought to remove (or at least minimize) the potential for human error (whether or not that error was intentional) by automating the data collection process with new digital "Portable People Meters" – or "PPMs". With this new system, the reporting listeners need do nothing more than carry around a cellphone-sized PPM device all day long. The PPM detects and records ID

codes embedded in the audio signals of radio stations. The data so accumulated are then electronically transmitted back to Arbitron daily.

In theory, at least, the PPM is able to record every exposure to any radio stream – including those often forgotten or subconsciously blocked as mere background din by manual diary-keepers: station choices imposed by cashiers, taxi drivers and boom box picnickers in the park will all be included in the overall compilation of stations generated by the always-on and always-vigilant PPMs.

That's the theory: greater accuracy whenever, wherever, and however – actively or passively – a surveyed listener encounters a radio station. And for purposes of the advertising industry, Arbitron's goal can't be faulted. Arbitron is simply trying to assure that the data which Arbitron is peddling are as accurate as possible.

But Arbitron's claims of greater accuracy are under fire. Critics point to statistical and anecdotal evidence which suggests that PPMs may introduce inaccuracies by undercounting ethnic, racial and linguistic minorities. At least one independent industry group – the Media Ratings Council – reportedly denied accreditation to the PPM methodology in New York and Philadelphia.

While there do appear to have been significant, post-PPM drops in audience reporting among a number of stations offering ethnic formats, the reason for those drops is not clear. According to Arbitron critics, a wide range of flaws plague the PPM methodology. For example: the overall PPM sample size – which is reportedly 66% smaller than the diary sample – is said to be too small; young (18-34) people, African-Americans and Hispanics are not adequately represented in the sample; and cell-phone-only households, which reportedly skew higher for African-Americans and Hispanics, are not adequately represented.

While these may be valid criticisms, other claims advanced by the anti-PPM coalition seem more problematic. It is said, for example, that PPMs are less likely to be carried by 18-34 year old minority individuals because the PPM device resembles a pager – as a result of which the person carrying the PPM “might be marked as either a police informant or as a drug dealer.” Critics also claim that response rates among Hispanic participants, in particular, are alarmingly, and unacceptably, low.

On a more methodological – but no less questionable – point, critics assert that the PPM approach fails adequately to acknowledge the supposed fact that “minorities are by far the most brand-loyal of all consumers.” A listener's brand loyalty to a radio station, it is said, is reflected by misreporting in the diary system: “some diary participants may recall listening longer than they actually listened.” This odd criticism seems to be based on the

notion that acknowledged inaccuracy is not only acceptable but desirable. Since the PPM system is not based on the potentially subjective, and inaccurate, recall of the diarist, the PPM system does not on its face permit “brand loyalty” factors to influence the results. And this – that is, the fact that the PPM system precludes the injection, intentional or otherwise, of subjective inaccuracy into the results – is supposedly a flaw.

Whatever the reason, though, it appears that when Arbitron relies on PPMs, many stations enjoying predominantly minority audiences suffer precipitous ratings slides when compared to manually-entered diary ratings of recent vintage.

And that has led a group of minority-oriented broadcasters and organizations to file an emergency petition asking the FCC to investigate Arbitron’s methodology. The petitioners include a number of organizations and broadcasting companies including the National Association of Black Owned Broadcasters (NABOB), the Minority Media and Telecommunications Council (MMTC) and Univision. They say the viability of minority-oriented media is at stake because the alleged under-reporting of minority listenership cuts ad revenues and makes financing harder to find.

While the interplay of ratings and economic consequences is pretty much undeniable, the ability of the FCC to do anything about it is far from clear. The petitioners want the FCC to use its investigative powers in this dispute. But Arbitron and its ratings methodology are not regulated by the FCC, as the company holds no broadcast licenses, runs no cable systems and provides no satellite transmission services. The FCC is, after all, the Federal *Communications* Commission, *not* the Federal Audience Ratings Commission.

The petitioners thus face a daunting threshold jurisdictional issue: Can the FCC regulate Arbitron?

The FCC, of course, is a creature of Congress – as an agency created by legislation, it can do only what that legislation says it can do. The question, then, is whether the Commission has any statutory authority to start to fish around in the inner workings of a company which has thus far not been subject to the FCC’s routine regulatory control. On the face of the Communications Act (the first place to look for the FCC’s job description), you’d be hard-pressed to find anything that would appear to green light the requested inquiry (although at least two Senators have taken up the cudgel against Arbitron – far short of a Congressional majority, but every little bit helps).

But this is Washington, where – apart from some buildings and monuments – little is set in stone. The petitioners, doubtless recognizing that their request lacks any solid and specific imprimatur from Congress, have crafted a somewhat seductive back-door argument, which goes something like this: The FCC regulates broadcasting; the FCC

(with the blessing of the Courts and Congress) has identified diversity in broadcast content as a desirable goal subject to some level of Commission regulation; minority-programmed stations will suffer severe competitive disadvantage from inaccurate audience reporting, to the point that their continued existence might be threatened; if minority-programmed stations cease to exist, so too will diversity of programming; therefore, the Commission can act to prevent inaccurate audience reporting because such action is necessary to protect diversity in programming.

If a court were to assess that argument, it is far from clear that the argument would get very far. But at this point the argument is addressed to the Commission, and this particular Commission has already demonstrated (perhaps most obviously in its Diversification Initiatives proceeding, *see, e.g.*, the March, 2008, and June, 2008 *Memos to Clients*) an overriding interest in matters supposedly affecting “diversity”. So it’s possible that all the Commission will need will be some, any, colorable argument to justify opening the door. If a court might decide some years down the line that the door should not have been opened, well, the Commission can cross that bridge when it gets there.

And getting the door open may really be all that the petitioners are looking to do. After all, if the situation is as dire as the petitioners describe it – and “dire” is probably an understatement when the petitioners hyperventilate that, for example, implementation of PPM “would drop a financial nuclear bomb on America’s minority radio stations” – an FCC investigation probably won’t help much. Such an investigation would likely drag on for several years, providing little help in the meantime.

But an investigation would very possibly cause a host of political problems for Arbitron, which presumably would prefer to avoid the harsh glare of publicity, particularly if subpoenas might be involved. So if the concept of an investigation starts to get traction, we might see some conciliatory gestures by Arbitron in an effort to head things off before it’s too late.

Perhaps in the same spirit, PPM opponents have also been busy elsewhere, seeking to open additional fronts. They have succeeded in both New York and New Jersey, where those states’ respective attorneys general have opened official inquiries. The New York City Council has even held hearings on the matter. None of these developments is in and of itself a knock-out punch – but all of them add incrementally to the pressure building against the PPM methodology.

While the situation remains, as of this writing, fluid, the FCC has invited comments on the petition. The first round of comments were due on September 24, 2008; replies are due by October 6, 2008.