



January 2009

PPM Settles In As Litigating Parties Settle Out

Davina Sashkin
sashkin@fhhlaw.com
703-812-0458

There's been a lot of activity in the realm of Arbitron's Portable People Meter (PPM) since our last update in the October *Memo to Clients*. No, PPM is not going away. The settlement of two major lawsuits and the announcement of another PPM market Media Rating Council (MRC) accreditation seems to confirm that PPM is here to stay and gaining acceptance. PPM has also been in the news for its continued alteration of the radio landscape, in sometimes surprising ways.

Settle Down

As reported in the October *Memo to Clients*, a rash of PPM-related litigation erupted last Fall. As so often happens, though, cooler heads appear to have prevailed. In early January, settlements were reached between Arbitron and the states of New York and New Jersey. As we mentioned in October, N.Y. Attorney General Andrew Cuomo had implored N.Y. businesses to boycott PPM for its alleged discrimination against minority-oriented formats and cellphone-only households, and Arbitron returned the favor with a lawsuit, which the state of NY then countered with a suit of its own. Not to be outdone, New Jersey filed suit against Arbitron the same day, alleging violations of New Jersey consumer protection and civil rights laws relating to the marketing and commercialization PPM.

Arbitron has now entered consent decrees with each state, in which decrees Arbitron has agreed to pay the states nearly \$400,000 in legal costs, and to pay a single lump sum of \$100,000 to the National Association of Black Owned Broadcasters (NABOB) for a joint radio project between NABOB and the Spanish Radio Association designed to: (a) support minority radio; (b) complete a non-response bias study in the New York radio market (to be overseen by Cuomo's office and due by July 15, 2009); and (c) and fund a trade press advertising campaign promoting minority radio. Arbitron also agreed to make changes to its PPM methodology both in general and in certain specific respects regarding the Philadelphia and NYC markets.

The M-R-C K-e-y

One of the central bones of contention in the PPM dust-up has been the lack of MRC accreditation, a lack which could be seen by PPM skeptics as an indication that the PPM system may somehow be flawed. While there is still no word on the coveted MRC accreditation of PPM in New York and Philadelphia, MRC recently awarded accreditation to a PPM market using the "Radio First" telephone-based panel recruitment methodology. Arbitron can now count Riverside-San Bernardino, CA-The Inland Empire as its second MRC-accredited market (the other, Houston, uses an address-based recruitment methodology). Baby steps, we suppose.

PPM Losers... and Winners

Much of the radio industry remains entrenched in opposition to the adoption of PPM, particularly stations with minority-oriented formats who find that their audience ratings under PPM have plummeted. Now you can count talk radio and Steve Dahl among those opposed. Dahl, a popular on-air talk personality in Chicago for 30 years (could anyone possibly forget the Comiskey Park climax of his "Disco Sucks" campaign in 1979?), hung up his headphones in December due to a decline in his numbers after CBS Radio switched him to mornings on an otherwise all-music station. Published reports indicate that he blames his numbers dip on Arbitron's switch to PPM. (Don't cry too much for Dahl, though – CBS still has to pay out the remainder of his contract at more than \$1M per year through June, 2011.)

Not everyone is at odds with PPM, though. Tiny, non-commercial, Contemporary Christian station WGTS(FM) in the Washington, D.C., market is enjoying a ratings bonanza under PPM. The station ranked sixth overall in the market in November, and seventh in December. According to the *Washington Post*, "over one recent three-week period tracked by Arbitron, WGTS (91.9) achieved what is surely a first for a religious station in Washington, and maybe in any major metropolitan area: It landed at the top of the ratings for an entire weekday time period (7 p.m. to midnight)." Perhaps there are some things to like about PPM after all?