

FCC Issues a Notice of Inquiry Seeking Public Comment Regarding Arbitron's Use of Portable People Meters

by Richard R. Zaragoza and Paul A. Cicelski

The FCC's Notice of Inquiry seeks answers to the controversial question raised by "broadcasters, media organizations and others" whether Arbitron is undercounting the audience for stations that air programming targeted to minority audiences, potentially harming the financial viability of those stations. At issue is Arbitron's commercial use of equipment called the Portable People Meter ("PPM"), a mobile-phone-sized device that consumers wear throughout the day to track their radio listening. Arbitron has replaced the audience-based rating systems with PPM in certain markets and intends to replace audience-based diaries with PPM in the top 50 radio markets next year.

According to the FCC, while it has "a strong interest in encouraging innovative advancements that lead to improved information and data," it nonetheless wants to know "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."

A number of parties contend that Arbitron's PPM methodology fails to include a sufficient number of minorities in the sample panels and fails to distribute the PPM devices within the minority groups, particularly among cell-phone-only homes, resulting in artificially low ratings for stations that target minority audiences. Acting Chairman Michael Copps said in a statement that minority broadcasters claim that the PPM "has had a devastating effect on their ability to compete in markets where it has been introduced." Arbitron challenges this assertion and stated that the sample group using PPM "effectively represents Blacks and Hispanics in the 18-to-34 age group." Moreover, Arbitron claims that the FCC does not have the jurisdiction to regulate ratings services or the methodology that Arbitron uses.

Among other items, the FCC specifically seeks comment on the following issues:

- Is the PPM methodology flawed and does it undercount minority populations?
- Is Arbitron correct in asserting that the PPM methodology produces ratings that are more accurate than diary ratings?
- What improvements, if any, can be made to the PPM system?
- Are cell-phone-only households underrepresented in the PPM methodology, and if so, what is the effect of under-sampling of cell-phone-only households?
- What is the impact of the settlement agreements Arbitron has signed with State Attorneys General in a number of states agreeing to continue to improve its PPM sampling process?

- What is the importance of Media Rating Council's "minimum standards" accreditation in ensuring the integrity of the PPM sampling methodology and the resulting audience measurements?
- Does the PPM methodology adversely impact the Commission's use of Arbitron data to define radio markets for multiple ownership purposes?
- Does the FCC have jurisdiction to review Arbitron's PPM methodology given that Arbitron is not a Commission licensee?
- If so, what specific actions should the Commission take in response to the information it receives during its investigation?

Comments concerning the Notice of Inquiry are due 30 days after the Notice is published in the Federal Register and reply comments are due 30 days later. Federal Register publication has not occurred as of the date of this Advisory. Those interested in filing comments should contact any of the attorneys in the Communications section.

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