

FCC Initiates Inquiry Into Use of Arbitron's PPM



The FCC has issued a Notice of Inquiry (“NOI”) into the use of Arbitron’s portable people meter (“PPM”) radio audience measurement device. The PPM methodology has been criticized as flawed by some broadcasters and media organizations who allege that PPMs do not accurately measure minority audiences, thereby adversely affecting the advertising rates and financial viability of minority and urban-formatted stations. Arbitron maintains that PPMs effectively represent minority audiences, and that it has implemented improvements to address perceived flaws.

The FCC seeks comment on the impact of PPMs on the broadcast industry, the accuracy of the data that the PPM methodology produces, and the effect any inaccuracies may have on the FCC’s use of Arbitron data for purposes of its multiple ownership rules. The FCC also asks whether it has the legal authority to investigate or regulate PPMs, which Arbitron maintains is not the case.

Specific issues on which the FCC seeks comments include:

- The effect PPMs have on broadcast diversity and competition – in particular, on minority and urban-formatted station revenues and program services.
- The accuracy of ratings produced by PPMs as compared to Arbitron’s diary-based audience measurement system.
- The allegation that the PPM methodology undercounts and misrepresents minority audience sizes by, for example, undersampling cell-phone-only users, who are alleged to be disproportionately Hispanic and African-American.
- The allegation that PPM response rates are below suggested averages, and the impact those response rates may have on the Media Rating Council’s decision not to grant accreditation to the PPM service in certain Arbitron markets.
- The adequacy of PPM improvements adopted by Arbitron as part of settlement agreements entered into with the Attorney Generals of New York, New Jersey and Maryland.
- The FCC’s continuing reliance on Arbitron data when reviewing transactions to determine compliance with its multiple ownership rules.
- The specific statutory authority granting the FCC jurisdiction to investigate and regulate PPMs, based on of its use of Arbitron data, the transmission of encoded broadcast signals to PPMs, or some other basis.

- The actions the FCC should take in response to the information received in its investigation of PPMs.

Comments addressing use of PPMs will be due 30 days after publication of the NOI in the Federal Register, with reply comments due 30 days thereafter. We will notify you when Federal Register publication occurs. If you have any questions concerning Arbitron's PPM radio audience measurement device or would like to submit comments in this proceeding, please contact any attorney in our office.

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

Copyright © 2009, Lerman Senter PLLC

2000 K STREET NW, SUITE 600 | WASHINGTON, DC 20006-1809
TEL. 202.429.8970 | FAX 202.293.7783 | WWW.LERMANSENTER.COM