Testimony
of
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Hearing on
"TRENDS AFFECTING MINORITY BROADCAST OWNERSHIP"
Before the
Committee on the Judiciary
of the
United States House of Representatives
July 9, 2009

Good Morning Chairman Conyers and members of the Committee. My name is James Winston, and I am the Executive Director and General Counsel of the National Association of Black Owned Broadcasters, Inc. ("NABOB"). I thank you for inviting me to testify this morning.

NABOB is the only trade association representing the interests of the 245 radio and 10 television stations owned by African Americans across the country. The association was organized in 1976 by African American broadcasters who desired to establish a voice and a viable presence in the industry to increase minority station ownership and to improve the business climate in which these stations operate.

Throughout its existence, NABOB has been involved in Congress's efforts to promote diversity of ownership within the broadcast industry. Unfortunately, in recent years we have seen a substantial decline in the number of minority companies owning broadcast stations. I come before the Committee today to discuss the current state of the broadcasting industry from the perspective of minority broadcasters and the issues that threaten to further erode minority broadcast station ownership. As result of these threats, as I shall explain below, NABOB requests that the Committee consider investigations of the principal lenders to the broadcast industry, and of the Arbitron ratings company, which has a monopoly over radio ratings.

I. Minority Broadcasters Need Relief from Lenders Unwilling to Enter Into Fair and Reasonable Loan Workout Arrangements

Minority broadcasters are faced with some serious challenges. The economic recession has hit minority broadcasters hard. Advertisers have substantially cut their advertising budgets, which means that these companies are spending less money advertising on most radio and television stations. Stations serving minority audiences are most affected by this, because advertising targeted toward minority audiences has historically been a secondary advertising consideration for most major advertisers. When advertisers cut their budgets, they frequently begin with the budgets targeting

minority audiences.

As advertising revenues fall, the broadcast companies soon find themselves having difficulty with their lending institutions. Most broadcasters have substantial amounts of debt incurred in acquiring or upgrading their stations. The loan agreements entered into when the debt is acquired usually contain covenants which require the broadcast companies to maintain a specified minimum amount of cash on hand as a ratio to the amount of debt, and to maintain other specified ratios. When revenues fall, companies often find themselves unable to maintain these minimum cash positions, and they become in technical violation of their covenants. These loan agreements define failure to maintain these covenants as an event of default, which means that a company can be placed into default even though it has not missed making a single loan payment.

When a broadcast company is in default under its loan agreements, lenders have the right to initiate litigation to foreclose on the loan and seize the broadcast company's stations. Technical defaults are not something new in broadcasting. Broadcast companies and lenders have gone through these periods during previous recessions. However, the situation today is quite different from prior periods in several major respects.

There is a new breed of lender in the broadcast industry today – hedge funds. Historically banks have been the primary lenders to the broadcast industry, and when making substantial broadcast loans banks have formed consortia, with one bank acting as the lead, getting other banks to make part of the loan to distribute the risk. In recent years, banks have brought in hedge funds to make part of the loan. In good times, the existence of hedge funds in the consortia was of no consequence. However, now that we are in the worst recession since the Great Depression, the existence of hedge funds in these broadcast loan consortia has had a very negative effect.

Hedge funds tend to operate with very short investment horizons. With the stock market at a very low level, hedge funds are no longer providing the high returns that drew investors to them, and the hedge funds are being pressured by investors demanding their money back. This causes the hedge funds to look for quick liquidity and changes the traditional relationship between broadcasters and lenders. Historically, in a recession, banks have been willing to engage in workouts, which restructured loans with broadcasters. Such restructuring frequently extended the term of the loan and adjusted interest and principal payments so that the broadcast company could reduce its payments until the economy improved.

Hedge funds, because of their interest in gaining quick liquidity in the current recession, are refusing to make the traditional loan workout concessions needed for broadcast companies to weather the recession. Instead, minority broadcast companies find themselves being threatened with foreclosure unless they sell stations at fire sale prices or turn over ownership and control of their companies to the lenders. For some minority owned broadcast companies, a filing under Chapter 11 of the Bankruptcy Code may be their only defense. Obviously, none of these options serves the goal of diversity of ownership in the broadcast industry.

Therefore, I am here to request that this Committee investigate the practices of the leading

lenders to the broadcast industry: lenders, such as Goldman Sachs, GE Credit, Wachovia Bank, Wells Fargo, J.P. Morgan Chase, and Bank of America. While these companies are not hedge funds, they have allowed hedge funds into their consortia and now are acting at the behest of the hedge funds in refusing to enter into workout arrangements that will provide minority broadcasters an opportunity to keep their companies intact and restructure their loans for a brief period until the economy turns around.

The reasonableness of this request is underscored by the fact the companies listed above are all beneficiaries of government relief through billions of dollars of Troubled Asset Relief Program ("TARP") funds. The purpose of TARP was to provide these banks some relief so that they could return to financial stability and begin making reasonable lending decisions again. The relief NABOB is seeking today is exactly the result TARP was intended to provide. Thus, it is reasonable for the Committee to investigate why these TARP beneficiaries are unwilling to restructure the loans of minority broadcasters in accordance with the objectives of TARP.

Alternatively, NABOB requests that the Committee help NABOB seek assistance from the Treasury Department or Federal Reserve under one of their programs, such as the Term Asset-Backed Securities Loan Fund or the Commercial Paper Funding Facility, which provide loan guarantees for businesses. In this regard, we thank you, Chairman Conyers and Congresswoman Waters, for signing on to Congressman James Clyburn's letter to Treasury Secretary Geithner requesting this assistance, and we hope to work with you to pursue that request.

II. Minority Broadcasters Need Fair and Accurate Ratings from Arbitron's New PPM Audience Measurement System

If financial relief were the only major problem threatening the survival of minority broadcasters, I would be here today asking for your assistance, because this single problem has the potential to decimate the ranks of minority broadcast station owners. Unfortunately, minority broadcasters face an additional threat that is equally important for us to bring to your attention. This second threat is posed by Arbitron, Inc., an audience measurement company that for decades has been the sole provider of audience measurement data for the radio industry.

Arbitron maintains a monopoly over the business of measuring the audiences of radio stations, which means that, if radio stations do not subscribe to the Arbitron ratings service, those stations will have no ratings data to present to advertisers who purchase advertising time on radio stations.

Recently Arbitron developed the Portable People Meter ("PPM"), an electronic tracking device (slightly larger than a pager) that survey panelists carry with them throughout the day – generally clipped to a belt – which records signals from the radio stations that they encounter. At the end of each listening day, panelists are required to place their PPM device into a docking station that transmits the recorded data to Arbitron for tabulation. Arbitron compiles PPM data on a weekly basis and then releases ratings reports based on a four week average approximately two weeks after the close of each month. Arbitron intends to replace its existing Diary service with PPM in the top

50 radio markets in the U.S. by the end of 2010.

Under the Diary system respondents are provided paper "diaries," in which panelists confidentially record their radio listening habits by hand. In contrast to PPM, where panelists remain in the sample for up to two years, in the Diary system, respondents are mailed a log in which to write down the radio stations they listen to over a one week period and then return their diaries to Arbitron at the end of the week. The next week, Arbitron uses an entirely different sample group. Arbitron mails diaries to thousands each week and tabulates the results of the diaries over a 12 week ratings period; then it compiles the information in ratings books which are released each quarter.

Arbitron's ratings are the "currency" that is used by commercial radio stations to price and sell advertising time and sponsorships to media buyers.

The problems created by inaccurate audience measurement services are not new to Congress. In 1964, Congress created the Harris Committee which held hearings to address the issue of research auditing. Seeking to avoid a legislative intervention, Congress asked the advertising and media industries to develop a voluntary organization to ensure fair and accurate ratings. In response, the industries created a nonprofit organization called the Media Rating Council ("MRC").

The MRC conducts audits designed to scrupulously analyze every element of an audience measurement service and employ stringent safeguards, including specific voting policies, staff executed process controls and formal appeal procedures, to ensure that accreditation decisions are based only on merit. To that end, participating audience measurement firms are required to provide full transparency to the audit team and staff of the MRC.

Accreditation by the MRC is intended to ensure that an audience measurement service and its implementing methodology have met the minimum standards for reliable audience measurement research as established by the industry itself. Yet, in the two years since Arbitron prematurely released PPM into the market, Arbitron has failed to achieve accreditation in almost all markets in which PPM has been released. PPM initially did receive MRC accreditation in the Houston-Galveston market utilizing a different recruitment methodology with an address-based sample. Subsequently however, Arbitron abandoned address-based sampling and in-person recruitment in all other PPM markets. In all other PPM markets, Arbitron has deployed a sampling methodology predicated on telephone-based recruitment which is cheaper to implement than Houston's accredited, address-based recruitment methodology.

Arbitron's telephone-based methodology is entitled "Radio First." Radio First relies on random digit dialing, which is a computer process that generates landline telephone numbers based on known area codes and exchanges for the relevant market area. Of the 15 markets where PPM is now in commercial use, Arbitron's Radio First recruitment methodology has achieved accreditation in only *one* of those markets, Riverside-San Bernardino. In all other markets, including the top five markets of New York, Los Angeles, Chicago, San Francisco and Dallas-Fort Worth, Arbitron has not yet received accreditation by the MRC.

Initial results from the PPM measurements have shown such huge rating declines for stations serving Black and Hispanic audiences that the financial survival of these stations is at stake. Moreover, the financial survival of every minority station in future PPM markets could be at stake if Arbitron is allowed to continue the rollout of PPM across the nation in the form it has been initially introduced.

The damages to minority broadcasters that I am referring to are not theoretical – they are real, quantifiable and devastating.

Since PPM became operational in New York in October 2008, minority broadcasters have experienced an average 40 – 60% drop in their average quarter hour ratings ("AQH"); coupled with a corresponding drop in the average rates minority broadcasters are able to charge to advertisers who have been unwilling to accept higher ad rates to reach what appears to be a smaller audience. Spanish Broadcasting System ("SBS") owns two stations in the New York market: WSKQ reports a 55% decline in its AQH Rating year-to-year; and WPAT has experienced a 67% decline in its AQH Rating year-to-year. In the New York market alone, SBS has been forced to reduce staff by 37% as a result of corresponding revenue declines.

Recent estimates indicate advertising revenue in the New York market is down on average by approximately 28%. However, while radio industry revenues as a whole are down given the current economic crisis, NABOB member Inner City Broadcasting Corporation estimates that the introduction of PPM is responsible for an *additional* 30% revenue loss for its stations as compared to the general market. Since the introduction of PPM in New York, Inner City has significantly reduced the staff of its programming departments. And Inner City's San Francisco station, KBLX, has been forced to lay off 13% of its staff and cut salaries by 10%.

In Los Angeles, the outlook is just as grim. NABOB member KJLH(FM) in Los Angeles, owned by Stevie Wonder, has seen its revenue fall dramatically, over 48% year-to-date since PPM was introduced in LA, almost twice the average revenue decline in the overall Los Angeles market, which is estimated at approximately 29%. Shrinking cash flow has forced KJLH to lay off 13% of its staff, the majority of whom have been cut from its programming department, including the elimination of news segments, traffic announcers, promotions coordinators, producers, a co-host and overnight disc-jockeys. Under the Diary system, the station's audience share was around 1.3 percent, but dropped to 0.4 percent when PPM came into the market. As a result of Arbitron's switch to its PPM ratings service, KJLH lost over 70 percent of its market share – (representing approximately 100,000 listeners) essentially overnight. The financial impact of such ratings declines is huge. The Southern California Broadcasters Association indicates that under the Diary service, a rise or drop of just 0.1 share points translated into a corresponding increase or decrease of $1.2 million in annual revenue.

Because of the disproportionate impact that PPM has had on minority owned broadcasters, the Attorneys General of New York and New Jersey sued Arbitron for implementing its PPM system in those states. The attorneys general alleged fraud, a deceptive business practice, false advertising, and discrimination on the basis of race and national origin. The attorneys general and Arbitron

settled the law suits, and the Maryland Attorney General also entered into a settlement with Arbitron, prior to actually filing suit. The settlements require Arbitron to make improvements in the PPM service. Unfortunately, the settlements only apply in the states in which they were entered. In addition, Arbitron still lacks MRC accreditation for PPM in each of the states in which it has entered into settlements as well as almost all other markets in which it is being used.

Recognizing the potential negative impact upon its statutory obligation to promote diversity of ownership in the telecommunications industry, the Federal Communications Commission ("FCC") has initiated a Notice of Inquiry to investigate PPM. However, the FCC has only limited regulatory authority, and the problem created by PPM may need Congressional action to be adequately addressed.

After hearing that PPM has been investigated by three attorneys general and is currently being investigated by the FCC you might ask, "Why is Arbitron putting out a product that is receiving such a negative reaction from government investigators and its own customers?" This is a good question and the answer will not surprise you – money. Many independent researchers have examined the PPM system and determined that Arbitron has attempted to create a product that can be produced cheaply instead of producing an accurate product. (Of course, the product is priced 65% higher than Arbitron's Diary service.) Arbitron's PPM system uses a telephone-based system directed at landline phone numbers. However, many Americans no longer use landline telephones, they only use cell phones, and those cell phone only households are not ordinarily picked up in Arbitron's sample. In addition, the sample size of panelists being used by Arbitron is too small to adequately represent minority groups.

While Arbitron claims to be taking measures to sample more cell phone only households, the cell phone only problem highlights the fundamental problem with Arbitron's PPM system – it does not use address-based sampling and in-person recruitment. Address-based sampling and in-person recruitment have been demonstrated to be the most effective ways to reach young and minority audiences. However, these sampling and recruitment methods are more expensive to implement than PPM's landline telephone sampling and recruitment.

Thus, Arbitron has gone for a "quick and dirty" approach, as opposed to the most accurate approach, and Arbitron continues to roll-out a sub-standard product with a flawed sampling methodology to the detriment of the radio broadcast industry and the radio listening public. Additionally, Arbitron has continually failed to meet its own self-established benchmarks for improving its PPM sampling of minority radio listeners and continues to take lackluster steps to offer improvements to its recruitment methodology. As a result, minority radio stations continue to experience precipitous declines in ratings and above average revenue losses as compared to the overall market.

NABOB is not opposed to the introduction of electronic measurement for radio. Let me repeat --NABOB is not opposed to electronic measurement. Arbitron contends that NABOB is opposing progress, which is a disingenuous assertion intended to deflect attention from NABOB's true objection -- the faulty implementation of electronic measurement. NABOB believes that, if implemented properly, electronic measurement could indeed lead to improved information and data. However, Arbitron has not implemented PPM correctly, and the refusal of the MRC to accredit it only reinforces the accuracy of NABOB's assessment.

Arbitron has rolled out an electronic measurement system established by taking short cuts and cost-saving measures that have compromised the potential of its product and the information and data it has released into the marketplace – all at the expense and harm to minority broadcasters.

The failure of Arbitron to obtain MRC accreditation in 13 of the 15 markets in which it is being used calls for investigation by this Committee. NABOB therefore requests that the Committee investigate the PPM methodology and obtain information on the PPM accreditation process from Arbitron and the MRC. (There is precedent for such a request. Congress requested such information from the Nielsen rating company and the MRC when Nielsen's Local People Meter was being investigated by Congress in 2004.)

If Arbitron is allowed to move forward issuing flawed reports on African American and Hispanic audiences, it will result in huge financial losses for the radio stations serving those audiences and might even force some stations out of business. This would be a tremendous loss for the communities that rely on those stations. The stations serving the African American and Hispanic communities are the voices of those communities. They carry the messages of those communities on social, political, economic, health, and all other issues of concern to those communities. Without stations serving them, the African American and Hispanic communities will become even more isolated and ignored by mainstream media than they are already.

III. Conclusion

These two problems, the refusal of lenders to restructure broadcast loans to allow these otherwise healthy businesses to weather the current recession, and Arbitron's abuse of its monopoly position in the radio ratings industry, are more than an antitrust issue for this Committee, they are more than a business crisis for African American and Hispanic station owners; they are a civil rights crisis for all of America. Without minority communities with strong, vibrant, independent voices, America loses an important part of what makes our democracy great – a government in which all of its people participate and are heard.

Thank you for the opportunity to appear before you today.