Testimony
of
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Subcommittee on Telecommunications and the Internet
of the
Committee on Energy and Commerce
of the
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Good Morning Chairman Markey and members of the Subcommittee. 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 13 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 our existence, NABOB has been involved in Congress's efforts to determine the amount and type of regulation to impose upon the ownership of radio and television stations. NABOB actively opposed the enactment of the Telecommunications Act of 1996, because we knew that it would result in massive industry consolidation of ownership and have a negative effect on the ability of minorities to acquire broadcast stations. Now, eleven years later, our fears have been realized, and the American public is not well served as a result.

Since enactment of the Telecommunications Act of 1996, the number of African American owned companies holding broadcast station licenses has fallen by 40%. Fortunately, some minority owned companies were able to grow during this period of consolidation so that the aggregate number of stations owned by African Americans did not fall as precipitously as the fall in the number of companies owning stations. However, many of the stations that were sold were the only stations serving African American audiences in their communities and those communities have been left without a voice.

I am here today to make three requests of the Committee:

1. Please support reinstatement of the minority tax certificate policy to promote minority ownership of broadcast facilities.

2. Please prevent the FCC from further relaxing any of its broadcast ownership rules until it has adopted meaningful policies to promote minority ownership of broadcast facilities.

3. Please investigate Arbitron's new Portable People Meter ("PPM") Audience Measurement system, because it appears that within its design is a critical flaw in the gathering and processing of the audience data which has resulted in a clear bias against the reporting of minority audiences. That bias is compounded by Arbitron's failure to implement the PPM service in the manner in which Arbitron committed that it would. 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 would be at stake if Arbitron were to implement PPM across the nation in the form it has been initially introduced. As it stands today, PPM is a greater threat to the survival of minority owned media than even the FCC's threatened ownership rule changes.

The Minority Tax Certificate

In 1978, through the use of a tax code change enacted by Congress, the FCC adopted the minority tax certificate policy which provided companies selling broadcast stations a deferral of the capital gains tax on the sale, if the sale was made to a company owned and controlled by minorities. From 1978 to 1995, the tax certificate policy was the single most significant factor in the growth of minority ownership of broadcast stations. For African Americans, the number of stations owned grew from 40 radio stations and 1 television station, to 240 radio stations and 20 television stations. While this growth was substantial in comparison to where we started, in 1995 African Americans still only owned 2% of the total broadcast stations, although we were 12% of the US population. In spite of these dismal numbers, Congress repealed the tax certificate policy in 1995.

Today, as I have mentioned above, minority ownership of broadcast stations is falling. The only proven policy that might help to reverse that slide is the tax certificate. I am pleased to report that Congressman Charles Rangel has introduced H.R. 3003 and Congressman Bobby Rush, has introduced H.R. 600, both designed to reinstate the tax certificate policy. NABOB requests that the members of the Subcommittee join Congressmen Rangel and Rush in working to reinstate the tax certificate policy.

The FCC Ownership Proceeding

In 2003, then-Chairman Michael Powell attempted to further relax broadcast station ownership rules, but the Third Circuit Court of Appeals reversed the Commission's decision. Now, Chairman Kevin Martin is again contemplating further relaxation of the Commission's broadcast ownership rules. NABOB has consistently opposed further relaxation of those rules.

The evidence in the record before the Commission has demonstrated that minority ownership of broadcast stations is declining at a precipitous rate. The evidence before the FCC also demonstrated that minority owners are more likely to provide programming, including news and public affairs programming, that serves minority audiences neglected by mainstream media. Therefore, before any consideration can be given to allowing further ownership consolidation, an effort must be made to stop the erosion of minority ownership in the broadcast industry.

NABOB has been advised that the Commission will in the very near future adopt one or more policy changes that will be announced as policy changes to increase minority ownership of broadcast facilities. However, from the reports that we have heard, the contemplated policy announcements will have little or no benefit for minority owners or potential minority owners, because they will only be directed at "small businesses," as defined by the Small Business Administration. Moreover, Chairman Martin has proposed relaxing the newspaper/broadcast ownership rule, an action that will definitely harm ownership growth opportunities for minority entrepreneurs. Thus, the ownership rule change that has been proposed will harm minority ownership opportunities, and the proposed small business policy changes will have no offsetting benefit to promote minority ownership growth.

NABOB requests that the Subcommittee direct the Commission to adopt policies either specifically designed to promote minority ownership, or, at a minimum, adopt policies to promote ownership by "socially and economically disadvantaged businesses." Also, the Subcommittee should direct the Commission to delay any action on changes in its ownership rules until a task force to establish policies to promote minority ownership, as proposed by Commissioner Jonathan Adelstein, has been created, and it has completed its work and reported back to the Commission with its recommendations.

The Arbitron PPM Ratings Methodology

NABOB would like to take this opportunity to bring to the Subcommittee's attention a new threat to minority ownership of broadcast stations coming from the Portable People Meter audience measurement system adopted by Arbitron. 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.

Arbitron has recently created the PPM methodology, an unaccredited electronic audience measurement tool, to replace the paper diary methodology, an accredited methodology which Arbitron has used for decades. Initial results from the PPM system have shown drastic declines in the audiences for stations serving African American and Hispanic audiences.

One clear cause of these audience declines is Arbitron's deficiencies in the recruitment, retention and participation of young African Americans and Hispanics in the sample panel, and these deficiencies have resulted in a significant under representation of young African Americans and Hispanics in the PPM panel results. In addition, PPM's attribution of sporadic listening and the lack of a metric that reflects listener engagement also add to the under representation of minorities in the panel results.

However, it seems clear that there are other not so obvious factors affecting this decline. NABOB suspects that these additional factors have been uncovered in the Media Rating Council ("MRC") accreditation review. The MRC is the industry group that accredits audience research used in the advertising industry. The MRC was created by the advertising industry in response to a request from Congress. The MRC's accreditation process is confidential, so the MRC has provided no public statement on the status of the PPM accreditation process. In addition, when the MRC denies accreditation, it allows a confidential appeal process, which also is not public.

Although the MRC has made no public statement about the status of PPM accreditation, it is clear that the PPM methodology has been under accreditation review far longer than needed to obtain accreditation in Philadelphia and New York. In addition, the Houston PPM methodology is up for reaccreditation, and no announcement has been made that it has been reaccredited. (A PPM methodology was previously accredited in Houston, but Arbitron no longer uses that methodology.)

The failure of Arbitron to obtain MRC accreditation for PPM in Philadelphia and New York and to obtain reaccreditation in Houston is a situation that calls for investigation by this Subcommittee, because that failure suggests that there are other deficiencies in the methodology that are not yet apparent. NABOB therefore requests that the Subcommittee 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 Nielsen and the MRC when the Local People Meter was being investigated by Congress in 2004.)

1. NABOB submits that the Subcommittee should ask Arbitron to produce: all correspondence, meeting minutes, requests for information, and all other communications between Arbitron and the MRC regarding: (a) reaccreditation of the Houston PPM methodology, (b) accreditation of the Philadelphia PPM methodology (c) accreditation of the New York PPM methodology, and (d) accreditation sought by Arbitron for any other PPM methodology.

2. A similar request should be directed to the MRC for: all correspondence, meeting minutes, requests for information, and all other communications between Arbitron and the MRC regarding: (a) reaccreditation of the Houston PPM methodology, (b) accreditation of the Philadelphia PPM methodology (c) accreditation of the New York PPM methodology, and (d) accreditation sought by Arbitron for any other PPM methodology.

3. We would request that the Subcommittee ask Arbitron:

- Why is there such a large discrepancy between the ratings results for radio stations serving African American and Hispanic audiences under the diary methodology versus the PPM methodology?
- Why has Arbitron consistently failed to reach the targets that Arbitron sets for young African Americans and Hispanics in their survey results?
- What is Arbitron doing to reach its targets for young African American and Hispanic listeners?
- Why is Arbitron unwilling to wait until it reaches its targets for young African Americans and Hispanics before making the PPM methodology "currency?"
- Why is Arbitron unwilling to await Media Rating Council accreditation before making PPM methodology "currency?"
- What is the status of Arbitron's accreditation applications for PPM in Philadelphia and New York, and its reaccreditation application in Houston?
- What objections, problems and concerns has the MRC raised regarding Arbitron's accreditation applications in Philadelphia and New York, and its reaccreditation application in Houston?

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. Therefore, defective ratings information being spread by Arbitron is more than a business crisis for African American and Hispanic station owners; it is a civil rights crisis for all of America.

NABOB applauds the Committee's decision to investigate the Federal Communications Commission's effort to allow further consolidation of ownership in the broadcast industry. However, NABOB submits that the Committee must investigate this even more sinister threat to minority ownership of media properties posed by Arbitron's PPM system. If Arbitron is allowed to

use its monopoly position in the audience ratings business to force its defective PPM methodology on stations nationwide, the loss of minority media ownership that may result could be far more devastating than the loss which may result from the proposed further relaxation of the FCC's ownership rules being proposed by Chairman Martin.

We thank you in advance for considering this request, and we look forward to working with you to investigate and rectify this very serious situation.

Thank you for the opportunity to appear before you today.