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TRENDS AFFECTING MINORITY BROADCAST OWNERSHIP

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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CONTENTS

JULY 9, 2009

TRENDS AFFECTING MINORITY BROADCAST OWNERSHIP

THURSDAY, JULY 9, 2009

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Watt, Jackson Lee, Johnson, Quigley, Gutierrez, Gonzalez, Smith, Sensenbrenner, Coble, Goodlatte, Lungren, Jordan, and Poe.

Staff present: Jason Everett, Majority Counsel; Stewart Jefferies, Minority Counsel; and Benjamin Staub, Majority Professional Staff Member.

Mr. CONYERS. Good morning, everybody. Glad you are all here. Sorry we couldn't have a little background music before we started without violating any copyright law or anything.

This hearing concerns trends affecting minority broadcast ownership, and within it are several issues that to me are important. They face minority radio broadcasters in particular, but they affect all small radio broadcasters in general.

One is decreased advertising revenues due to general economic recession and the Arbitron Company's Portable People Meter. And the fact that advertising revenues from minority and small radio broadcasters were always small to begin with would make that, from my point of view, consideration number one.

Then there is media consolidation, and the Committee's antitrust and competition oversight are involved in those concerns. And then there is House Resolution 848, the Performance Rights Act, and what impact that might have on small radio broadcasters.

We are very pleased about having the witnesses with us today: Mr. Winston, Mr. Skarzynski, Mr. Schwartzman and Mr. Minter—Attorney Minter.

There are other witnesses that we would have hoped to have been able to join us. First is the founder and chairperson of the board of Radio One Inc., Cathy Hughes. We also invited Alfred C. Liggins, III, president and CEO of Radio One. Invited was Reverend Al Sharpton, president of the National Action Network. Invited was the Reverend Jesse Jackson, Sr., founder of Rainbow Push Coalition.

Invited was Tom Joyner, syndicated radio host and founder of REACH Media. Invited was Mildred Gaddis, radio host, Inside Detroit. Invited was David Honig, executive director of Minority Media and Communications Council. Invited was Hilary Shelton, director of the NAACP Washington Bureau. Invited was Francisco Montero, co-managing partner with the law firm of Fletcher, Heald & Hildreth.

Invited was Oscar Joyner, president of REACH Media, who I understand is in the hearing room but declines to be a witness. And if at any time throughout this proceeding he changes his mind, we would be pleased to invite him to the witness stand.

I have got a much longer than usual opening statement, which I will put in the record, and recognize our friend, the Ranking Member of the Judiciary Committee, the gentleman from Texas, Lamar Smith.

[The prepared statement of Chairman Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Several issues bring us to the Full Committee today for our discussion of the range of issues facing minority radio-broadcasters today:

1. **Decreased Advertising Revenues,** due to the general economic recession and the Arbitron company's Portable People Meter;
2. **Media Consolidation** and the Committee's antitrust and competition oversight; and,
3. **H.R. 848,** the "Performance Rights Act."

I am disappointed that several witnesses to whom the Committee had extended an invitation have decided not to appear. Nonetheless, we will proceed today because the issues facing minority broadcasters are too critical to go unheard.

1. Decreased Advertising Revenues

During the legislative hearing that the Committee held on March 10, 2009, on H.R. 848, we heard testimony that revenues for AM/FM broadcasters may be off by as much as twenty percent this year. A confluence of factors has caused these sharp declines, not the least of which is the decreased revenues from advertisers suffering from the economic recession. Car dealers and the auto-industry have historically comprised some of the largest advertisers, and we all are painfully aware of the current state of the U.S. auto-industry.

Compounding the effects of the economic recession, practices within the advertising industry have historically undercut the value of minority broadcasters' airtime. Federal Communications Commission (FCC) studies and investigations have uncovered wide-spread "No Urban, No Hispanic" dictates under which businesses discourage advertising agencies from promoting their products on stations with large African American and Latino audiences. An FCC-sponsored study by the Civil Rights Forum on Communications Policy in 1998 concluded that minority-formatted stations earn on average 63% less than their counterparts with comparable market shares.

According to many minority-owned broadcasting companies, audience rating companies like Arbitron have further complicated matters. For years concerns have surfaced over Arbitron's analyses of minority listenership, and the companies development of the Portable People Meter, or PPM, has incurred considerable criticism.

Arbitron's PPM is a cell-phone sized device that electronically tracks exposure to radio and other broadcast media as a consumer wears it throughout the day. Based on this device's records, Arbitron develops ratings figures that advertisers and stations use to negotiate advertising prices. As opposed to old diary-based systems that relied on people to remember and self-report their media consumption, Arbitron argues that the PPM provides more reliable, accurate data for stations and advertisers.

Minority broadcasters and industry experts have raised concerns that the PPM methodology is flawed and that minorities are under-represented in Arbitron's survey samples.

As a result, I am preparing with other Members of this Committee to ask the GAO to conduct a study on Arbitron's survey methodology, share of the market, and the effect their data has had on radio's advertising revenues.

In addition to our concerns about the accurately counting minority listeners, this Committee is particularly concerned by the antitrust implications of Arbitron's rating system. The fact that one company so dominates the marketplace negates the market from offering alternative ratings schemes for advertisers and radio stations. Accurate or not, the broadcast industry has no one but Arbitron to turn to for information on its listeners.

2. Media Consolidation

In addition to the competition concerns the Committee has involving Arbitron, we cannot ignore the greater competition concerns within the broadcasting industry as a whole. Since the passage of the Telecommunications Act of 1996, which deregulated radio station ownership rules, the industry has become alarmingly consolidated and woefully less diverse. Free Press, a non-profit organization that promotes diversity in media ownership, found in 2007 that although minorities make up 33 percent of the U.S. population, minorities own only 3 percent of full-power television stations and 8 percent of full-power radio stations.

Consolidation within the industry has vastly affected consumers' listening experiences as programming has become more nationally syndicated and less locally generated. National play-lists dominate the airwaves, and locally aired programming featuring local personalities have become rare exceptions.

3. H.R. 848, the "Performance Rights Act"

On May 13, 2009, the Judiciary Committee voted to recommend H.R. 848, the "Performance Rights Act," favorably to the Full House in a bipartisan vote of 21–9. I have championed granting artists a full performance right for more than a decade, and I am proud to have joined my good friends Howard Berman, Darrell Issa, Marsha Blackburn, Sheila Jackson Lee, and many Members of this Committee in sponsoring the measure this Congress.

Those of you who tune-in to AM and FM radio have no doubt heard about this bill. The debate on the AM/FM airwaves has been intense and critical, and some might say rather one-sided.

On the one hand, H.R. 848 is about justice: making sure that artists are fairly paid for their property—property that radio stations use to turn a profit. The United States needs to leave the company of countries like North Korea, China, and Iran behind and enact a full performance right. Artists, as workers, must receive just compensation for their labor.

On the other hand, radio stations have seen their profits suffer in the current economic climate, and no one wants to see the fiscal solvency of any radio station put in jeopardy simply because of a performance royalty. Minority-format radio is sometimes the only broadcast media that covers issues of importance to minority communities.

And so I look forward to hearing the testimony today, but I also look forward to all of us sitting down together after this hearing concludes to negotiate an amicable, workable compromise.

Conclusion

We have many issues to discuss today—not the least of which will be: what should Congress do? How should Congress react to the antitrust concerns that the Arbitron ratings system presents? In the face of massive media consolidation, should tax credits and other incentives to promote minority ownership be developed?

I look forward to the testimony and discussion we will have today, and thank all of our witnesses for their participation.

Mr. SMITH. Thank you, Mr. Chairman. And Mr. Chairman, I will be briefer than usual, too, simply because I know we have a number of votes coming up shortly.

Mr. Chairman, today we are considering among other things the effect of the Federal Communication Commission's media ownership rules on competition and minority ownership of media outlets.

The FCC imposes caps on the number of television stations that a broadcast network can own nationwide, as well as on the number of radio stations and television stations that an entity can own in a particular market.

In addition, the FCC imposes limits on when a broadcast station can own a newspaper in a particular market and when a television station can own a radio station in a particular market.

These rules were put in place at a time when the options were limited to broadcast television, over-the-air radio, and newspapers. In the last decade, the options for receiving music, sports, news and other programming have increased dramatically.

It was not so long ago that listeners were confined to whatever channels they could receive on the AM or FM bands. Today, consumers also have the Internet, cable channels dedicated to music, high-definition radio, and can download legally music and other content to portable devices to enjoy whenever and wherever they want.

Minority ownership is another one of the issues being considered today. Minority owned and other small radio stations face challenges from changes to the way that listenership is measured for advertising purposes.

Recently, Arbitron, which measures radio listenership, has shifted to a new People Meter. These small stations are concerned that these changes are disproportionately affecting their listener ratings and make it harder for them to compete for advertising dollars.

Specifically, some claim that Arbitron's method for recruiting young African-Americans and Hispanics in their sample panel is faulty, resulting in lower ratings for the stations that these listeners prefer. And minority owned radio stations have expressed concerns about the effect of proposed changes to the performance royalty structure.

In May, the Chairman and I joined in requesting a study of the economic impact of some of these proposals from the Government Accounting Office. The GAO has agreed to study these issues for us.

Americans expect that the publicly owned airwaves will serve the needs of all citizens, regardless of race, creed or national origin. Whatever Congress does in this arena should be done with an eye toward keeping radio and television accessible and attractive to all.

Many issues that are being raised by today's hearing are not race specific. Small, locally owned radio stations face obstacles due to access to capital, lower ratings, and potentially, payment of performance royalties regardless of whether the person who owns the station is White, Black, Hispanic, male or female.

Even local religious stations with a long history of serving communities have fallen on hard times. In my home state, KVTT-FM radio, which serves the Dallas-Fort Worth area, recently agreed to be acquired by North Texas Public Radio. The loss of such inspirational programming is a blow to their devoted listeners.

Mr. Chairman, this issue extends beyond just minority owned radio stations. It is also about the survival of many small radio stations across the country. I think you for the time and I now yield back.

Mr. CONYERS. Thank you very much.

I would now like to recognize for an opening comment Hank Johnson of Georgia, former magistrate, distinguished lawyer, now Subcommittee Chairman of the Courts, Competition, and Policy Subcommittee.

Mr. JOHNSON. Thank you, Mr. Chairman. And I want to first begin by thanking the Chairman for hosting this town hall meeting, actually hosting it after calling it.

And I also want to thank all of the witnesses who are present for taking the time out of your busy schedules to come and shed the truth on H.R. 848.

I want to note the absence of a representative from Radio One on our distinguished panel today, and it wasn't because they were not invited. To the contrary, despite their claims on the radio that they have never been invited, that there have been no opportunities for them to discuss this issue, it is not true. They had many opportunities and many invitations throughout this process before the bill actually came to the full Committee for markup.

But informally, what Radio One says is that I am not going to pay one penny to the starving artists out there, who deserve to be paid for their work. And so they have taken that scorched earth approach to dealing with this legislative issue, which would simply remove the exemption from the antitrust law that the AM and FM radio stations enjoy over other platforms, such as satellite radio.

And the other day I was listening to satellite radio, by the way—Whitney Houston, "I will Always Love you." Everybody knows that, right? That song was written by Dolly Parton, and it went nowhere until Whitney sung it. And it is a very sweet song, and Dolly is a great songwriter, no question about that. But it is Whitney's version that went over with the people.

And every time that song is played on XM radio, Whitney Houston gets a residual, if you will—gets paid for that publication of her version. But if you turn to the AM/FM broadcast radio, and you hear the same song, the same version by Whitney Houston, Whitney is not getting paid.

So that is unfair on two levels. One, it gives the AM/FM broadcasters an unfair competitive advantage, which they have enjoyed for the last 70 years or so during the time when, I guess, piano rolls were still in operation back then. The world has changed. It is time to make things more fair.

And it is also not fair that that Whitney Houston and others are not able to make any money every time that song plays on AM/FM radio. And so this hearing and H.R. 848 are based on righting this wrong.

And you know, we have invited Cathy Hughes. She didn't show up again. She is out spending some of that 700 percent increase last year in her salary over the previous year, I suppose. And then her son, Alfred Liggins, who is the president of Radio One, I guess he is out spending the $10 million bonus that he received last year in the midst of these difficult economic times for everybody else.

And Reverend Sharpton, my good friend, not here. I know, you know, he has got a radio show. I am not sure if it is Radio One or not, but I am suspicious of that. And Reverend Jackson—Jesse Jackson—my good friend, perhaps he has changed his mind about this issue and just doesn't want to come. There is no need to revisit it.

And, of course, Tom Joyner, popular radio talk show host, makes a lot of money. But we should know that he is owned, almost lock, stock and barrel, by Radio One. Cathy Hughes owns 51 percent of Tom Joyner, and so therefore, she makes the call. She makes the decision. She determines what song is going to play and how he would dance to the song, either physically or just verbally.

And so Mildred Gaddis, a radio host in Detroit, where they have been attacking our great Chairman on radio relentlessly. Can you believe that last week during the trauma that the Conyers family was going through, a difficult time, and there were reports that specifically excluded Chairman Conyers from being anywhere near what happened with his wife—no props for him, no nothing?

And despite that assertion on the public record by law enforcement, a U.S. attorney who is handling that case up there, Radio One puts out an ad saying go to the Detroitnews.com and learn about the Conyers corruption, falsely demeaning this giant reputation and telling lies, basically.

It is not right to use your public broadcasting license, because the airwaves belong to the public, right? It is not fair for a for-profit corporation to use those airwaves in a reckless manner. And this has happened repeatedly on this issue, particularly by the folks at Radio One.

And that is something that really needs to be looked into, when you couch your discussions in terms of, you know, what is the reality or whatever they call it, and then they go ahead and lie about things in that, and then style it as a public service announcement. So they are just being misleading throughout. Everything they do and everything they said is not worthy of belief, given their track record.

And so the other witnesses have not shown. And I understand that there is at least one person here. Would everyone who is affiliated with the broadcasters raise your hand?

I say even the one that—even though one who is reported to be here representing Radio One refuses to raise his or her hand. Isn't that something? You know, I mean that is really something. I suppose that there are more than one. I suppose that there are probably quite a few broadcast supporters in here that are too ashamed to let us know that they are here.

So ladies and gentlemen, I have spoken long enough. And I hope I have not bored anybody. But thank you for your time and coming.

Mr. CONYERS. Are there——

Mr. JOHNSON. And I will yield back the balance of my time.

Mr. CONYERS. You don't have any balance of your time. [Laughter.]

Do any of my other colleagues wish to make a comment?

Okay. I turn now to the gentleman from North Carolina, Mel Watt, a senior Member of the Committee and Chairman of the Domestic Monetary and Policy Committee in the Finance Committee.

Mr. WATT. Thank you, Mr. Chairman. And thank you for convening the hearing.

I am not inclined to box with shadows who are not here, so—but I do think the hearing and the purpose of the hearing is important, which is examination of minority broadcast ownership in the United States and focusing on the impact that the recession and lack of access to capital and competition for advertising revenue and media consolidation and the change in public policies that at one point supported and encouraged and incentivized minority broadcast ownership, television and radio, are extremely important.

And if we lose sight of that focus of this hearing, boxing with a minor issue of performance rights, which is an important issue in which we have had independent hearings about and have marked up the bill already, I think we probably do ourselves a disservice.

For that reason I have been able to separate these two issues, not that they are completely separate. I am sure that the performance rights obligation would have some financial impact on minority and non-minority broadcasters. I don't think there is any question about that, although I would certainly question any notion that passage of the bill out of the Judiciary Committee resulted in any collateral damage that has already taken place to minority ownership.

But I think I have the ability to separate these issues and deal with the performance rates issue in one context and deal with the serious challenges that are being faced by minority broadcasters in the general economic environment in which we are operating.

And it was for that reason that I joined in the letter to the Administration, encouraging aggressive steps to try to look for ways to support minority broadcasters, and will continue to pursue those efforts.

In fact, at this very moment in Financial Services, there is a hearing going on about bringing TARP funding to Main Street, and I need to be at that hearing as well as I need to be at this hearing. Both of them are important hearings.

And I thank the Chairman for convening this one to address some of the challenges that are facing minority broadcasters and perhaps stimulate some innovative thinking about how we can get back to a time when we used the tax code or tax incentives or the kinds of things that we were previously using to incentivize and support and expand minority ownership in the broadcast industry, which is sorely lacking, if you look at the statistical data.

It is one of those bastions. Even though there are one or two minorities that have been successful in the area, they are few and far between. So I thank the Chairman. And with that, I yield back the balance of my time.

Mr. CONYERS. Thank you, Mel.

I am pleased to recognize Ms. Sheila Jackson Lee of Houston, Texas, senior Member of the House Judiciary Committee and Chairperson of the Subcommittee on Homeland Security on Transportation Security and Infrastructure Protection. The gentlelady is recognized.

Ms. JACKSON LEE. Let me thank you very much for this hearing. I know that Members are hearing the bells that are calling us to the floor of the House, but I thank you and I thank the Ranking Member of the full Committee for what has to be an important question on the economic survivability of what I view as part of the Nation's jewels of communication.

Let me first of all note that over these past 2 weeks I know that the industry broadly recognizes that we have suffered a great loss. And to the musicians in the audience, my deepest sympathy and understanding for this iconic figure that has left off, but has left us with a legacy that we will forever cherish.

I think it speaks to the point that we are interrelated—as Martin Luther King said, that we are with mutuality and we cannot do without each other. And I hope the hearing today will reflect upon the greatness of someone like a Michael Jackson, who has been played consistently now for 2 weeks, and as individuals have taken whatever mode or medium that they could to listen to his music, that we recognize that music needs to be conveyed, but the conveyor has to have music.

And so there is no doubt that we want to preserve what I have grown up to love and to appreciate, and that is minority radio. We want it to be balanced economically. We want to have insight on how we can improve it.

I, too, joined with Congressman Watt, as many others, in signing on a letter to ensure the provenance and survivability of our minority, small, women-owned businesses. The legislation that is not before us today clearly had a very, very strong protection language for those individuals or ownership.

I happen to be a very strong supporter for battling advertisers, to insist that they advertise on minority radio, broadly speaking, because those audiences communicate in the same kind of monetary vehicle, a green dollar, unless they are trading in gold.

So I am looking forward to this hearing, because I want the insight to make me a better legislator. For those who felt that they could not be present today, our offices remain open for you to engage and dialogue with us. And I cannot thank the Chairman enough for being of that kind of so right leader that is welcoming to all.

My last point is that I hope as we proceed, Mr. Chairman, all the friends that we have made throughout all the years, through our radio stations at which we have spent so much time in and out, particularly our local minority radio stations, all those anchors and friends, I hope they will get the message today that regardless of what is going on at the top, we still love you.

You are still our constituents. We still believe in what you do for our communities. And if we continue to do that, we will have the kind of vehicle that is necessary that has continued to educate our population throughout the time.

I yield back, Mr. Chairman.

Mr. CONYERS. Thank you very much.

I think that we will recess and then start off with Subcommittee Chair Maxine Waters when we come back. I would like to declare the Committee in recess for 1 hour. And when we finish with our responsibilities on the floor, this hearing will resume. So we stand at recess now. Thank you very much.

[Recess.]

Mr. CONYERS. Now that we have covered 15 or 16 votes, we are now able to resume our hearing. And I would like to continue the hearing by calling on the distinguished gentlelady from California, Maxine Waters, who, in addition to being a senior Member of the

Committee, is the Chair of the Subcommittee on Housing and Minority Opportunity in the Finance Committee. She hails, of course, from Los Angeles, California. I recognize her at this time.

Ms. WATERS. Thank you very much, Mr. Chairman. I thank you for holding this hearing for so many reasons. However, this is consistent with the work that you have been doing for a lifetime. I appreciate the fact that you have been on the cutting edge of issues dealing with the criminal justice system, dealing with civil rights, and of course, African-Americans in all aspects of our society.

So I am appreciative for this hearing today that may have been born out of a bill that was in this Committee having to do with performance rights. But today we are really talking about trends affecting minority broadcasters. And this is extremely important.

This is a busy session. As you know, a lot is going on, and there is a hearing going on right now over in the Financial Services Committee, where I serve. And we are talking about how we are going to take some of the repayment of the TARP money to put it back into our economy by way of neighborhood stabilization programs to clean up some of these foreclosed houses in communities that are devastated by the foreclosures and the subprime meltdown and to try and offer some help to people who have lost their jobs so that they can pay their mortgage payment, the money going directly to their—the banks and whatever institution is holding their paper, and of course, creating a housing trust fund because of the homelessness and the need for housing.

So we are in a bad economic time, and it is very appropriate that we talk about trends affecting minority broadcasters. Let me just say that I have alluded to your work over the years and your commitment to all of these important issues, but, Mr. Chairman, I, too, see as part of my work, an important part of my work, a focus on minority institutions.

And basically, since I have been elected, I have tried to do whatever I could to protect and preserve minority institutions, and all of them are at risk all the time. All of my career, all of my life that I have been involved with public policy, I have been forced to have to deal with trying to save minority institutions. That is not simply the broadcast institutions broadcast community.

Right now, with this economic meltdown and the problems that we are having with the economy, the automobile Black dealerships are just about to be wiped out. All of the investment bankers on Wall Street are fighting and scratching to try and get a part of the asset management business of the government based on the billions that we put into the bailout, and it is a real struggle.

So whether I am talking about automobile dealers or I am talking about the broadcast community or any of the other communities where African-Americans and minorities have tried to make a breakthrough, many with extremely important entrepreneurial skills, some coming with investments that they have hobbled together in any number of ways, we have got a problem.

We have a problem, and today we are focusing on our broadcasters and our radio stations. And I want to talk about what I know is happening with the minority broadcasters.

First of all, most of them are small, relatively small. They certainly do not attract the kind of advertising dollars that are attracted by the majority community and the big stations. Many of them have loans with the banks, who are not renegotiating those loans, not moderating those loans, not doing anything. They are calling them in.

Many of them are faced with whether or not they are going to fail or be caught up in mergers. And so they can't pay the bills for the most part, and they are struggling with all kinds of issues that cause me great concern, because I feel the loss of these minority stations. They are our talking drum.

You don't see us, no matter what issues we are working on, in the corporate media—ABC, NBC, television, radio, you name it. We don't have access in the way that we should as public policymakers.

And I think it is just one thing you taught me, Mr. Chairman, is that long years ago was the use of our Black radio stations. And you taught me in every town that I go to, to have them schedule for me the Black radio stations, and you break out sometime in between your speaking engagements to do Black radio stations and to get that air time to talk about public policy issues in between the records and what have you. And I have always done that, and I have a great appreciation for that, and I don't intend for us to lose it.

And so today when we talk about trends, we have got to take a look at how we are going to preserve them, given the risks that they are confronted with. As I understand it, corporate mergers have already had a devastating impact on small to medium size minority radio broadcasters, and we have to be very aware of that.

We have limited oversight in this Committee of the Federal Communications Commission, but some of their actions during the previous Administration had very disturbing impact on minority broadcasters. And I shared some of these concerns with my colleagues last year on the floor. I pointed out that the FCC has neglected to deal with the crisis in minority ownership.

Only 44 of the more than 1,200 TV stations are owned by people of color. This situation is particularly rare for the African-American community. The number of African-American owners has dropped 60 percent from 2006 to 2007, and there are only eight TV stations in this country owned by African-Americans that add to the problem of African-Americans and the media, not just radio stations.

Unfortunately, the FCC's vote in 2007 to let the newspaper broadcasts cross ownership rules would take direct aim at minority broadcast owners. According to the FCC, the new rule allows a newspaper to buy a television station in our Nation's largest markets, if the outlet is ranked outside the top.

I don't want to talk a lot about television today, but I just wanted to add to our discussion here today about the plight and the trend of what is happening kind of across the media landscape here.

Let me—you have been very generous with me with your time, and just as you told one of my other colleagues, there is no time to yield back. I won't even say it, because I know I have talked over my time. And I thank you very much.

Mr. CONYERS. Thank you. It was very worthwhile. You reminded me that since we went to these more than a dozen and a half votes, I met with the minority auto dealers. And I can echo the concern about their circumstances, as you have.

I turn now to my dear friend from Chicago, Illinois, the Honorable Luis Gutierrez——

Mr. GUTIERREZ. Thank you very much, Mr——

Mr. CONYERS [continuing]. Who is the Chair of the Subcommittee on Financial Institutions in the Financial Services Committee.

Mr. GUTIERREZ. Thank you so much, Mr. Chairman.

So I came today to say thank you to all of those that that did decide to accept the invitation to be with us here this afternoon and to say to the broadcasters, both those that work with the broadcaster and the owners of broadcast stations, that you are always welcome here, and you always have our ear, and to say to those that measure audience participation, we have always had issues with how well you measure audience participation and therefore impact the revenue of those radio stations and TV stations in our community and the viability of which many times directly correlated with numbers that are issued in which we have very little or no control.

I only say that I and many others are a product of minority owned radio stations. I know that I am here today because I had an opportunity to meet Chairman Conyers back in 1983, because there was a small Black radio station called WDON, still in Chicago.

And Lu Palmer actually had a drum, Chairwoman, in the morning. And I listened to the radio. I don't know how many watts it was. It wasn't very much, but I guess my Volkswagen radio was poor enough to hear the poor reception. And so every morning Lu Palmer would get out there and say, "We will see in 1983."

And you know what happened in 1983, right, Mr. Chairman? They elected Harold Washington. That is the way it began. That is my memory of it.

I know that today we have radio stations throughout this country in the Latino community, who are the first ones to be helpful, whether we call public hearings, whether we call public meetings, whether we issue demands through the public service announcement and through radio time that they afford us, being present at the rallies and the activities, and informing people and raising a level of consciousness and awareness among our people that we would not have.

I know that Univision doesn't need our help. They are prosperous and making money and a powerful institution in terms of their both radio and television. But I have to say that where would we be in the Latino community and the immigrant community that is going through its own civil rights movement today without institutions like Univision and Telemundo and other smaller radio stations that help us each and every day reach a level of awareness and cognizance?

So we are here with you. And I am here to say that when I began this process here in this Committee, I kind of said to myself, sounds to me like maybe, you know, the Temptations should get more money. Marvin Gaye should get more money. All those idols that I grew up listening to when I was young in the 1960's and the 1970's that maybe didn't—I am not so worried about—no offense to Juan and Shakira—they got tens of millions of dollars. I am not too worried about them.

But I am worried about other artists in our community that bring forth their fruit so to make sure that they have some just compensation, all right? Not everybody can go like Jersey Boys and put a musical play back on, right, like Frankie Valle and the Four Seasons and see a million people. That just doesn't happen. It would be lucky if that could happen to other bands and—but that usually doesn't happen.

So we are here to say that my concern has always been, and I know it is a driving concern of this Committee under the leadership of our Chairman—it has always been for that—those at the bottom rung getting the least out of it, but providing in many times the most entertainment value, and in many cases driving the whole industry with their music.

So that is where I am at, and I want to hear from those in the radio community to see how we can best address their issues and their concerns as we move forward, that we might find a way to also help those at the bottom rung, which I am sure, if we understand it, we are all in it together.

And I do want to say one thing to the Chairwoman. And that is we both work on Financial Institutions together, and we know that loans aren't being reorganized by banks. They are not doing it. You owe them a couple of hundred thousand dollars or three hundred or whatever you owe them—they just say, "Pay me," or they cut off your line of credit. And there is nobody else there to offer you another line of credit.

We deal with that every day in Financial Institutions, and we should take that into consideration as we move forward.

And we know that there are advertisers that the first place that they pull their advertising from is from minority owned radio stations and minority owned TV stations. That is the first place they pull it from and leave it in other places, which are already very, very profitable.

So I just want to say I never hear on the radio or on the TV a constant attack against those that have denied us those opportunities, and I am here to say in an undefensive manner, we understand what we are products of, and we are here to say thank you to all of you who have come forward this afternoon to be here with us, and want to be helpful.

Thank you so much, Mr. Chairman.

Mr. CONYERS. Okay. Thank you very much. I remember those fondly, those Chicago days, and that was before you came to the Congress, as a matter of fact. You were an activist and a leader, and so was the gentleman next to you, also from Chicago. We have a great team here on Judiciary.

We welcome Attorney Minter, Attorney Schwartzman, Mr. Skarzynski and our first witness, the executive director and general counsel for the National Association of Black Owned Broadcasters—NABOB—established in 1976 with aims to increase the number of African-American broadcast owners and improve the climate in which they must operate. He has served as NABOB's director since 1982 and is also partner in the Washington law firm of Rubin, Winston, Diercks, Harris & Cooke.

We have all of your prepared statements. They will all be entered into the record.

And we welcome you to become our first witness, Attorney Winston.

TESTIMONY OF JAMES L. WINSTON, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS

Mr. WINSTON. Okay. I thank you for inviting me to testify this afternoon.

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 issues that threaten to further erode minority broadcast station ownership.

As a result of these threats, as I shall explain, NABOB requested the Committee to consider investigations of the principal lenders to the broadcast industry and of Arbitron's ratings company, which is a monopoly over radio ratings.

Broadcast station advertising revenues have fallen drastically this year, and minority broadcast companies often find themselves unable to maintain the minimum cash positions required by their bank loan agreements. These loan agreements define failure to maintain these minimum cash positions as an event of a default, which means that a company can be placed into default even though it has not missed making a single loan payment.

This situation is then made worse because of a new breed of lender in the broadcast industry—hedge funds. Because the banks brought hedge funds into their bank consortiua, many broadcast companies find themselves being threatened with foreclosure unless they sell stations at fire sale prices or turn over ownership and control of the 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, this situation does not serve the goal of diversity of ownership in the broadcast industry.

Therefore, I am here today to request that this Committee investigate the practices of the leading lenders to the broadcast industry, such as Goldman Sachs, GE Credit, Wachovia, 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 that the banks listed above are all beneficiaries of government relief through billions of dollars of the 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 then begin making reasonable lending decisions.

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 requested 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. These programs provide loan guarantees for businesses.

In this regard we thank you, Chairman Conyers, Congresswoman Waters, Congressman Watt and Congresswoman Sheila Jackson Lee, for signing onto Congressman James Clyburn's letter to Treasury Secretary Geithner requesting this assistance. And we hope to work with you to pursue this request.

Minority broadcasters face an additional threat that is equally important for us to bring to your attention. The second threat is posed by Arbitron, Incorporated, 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 audience of radio stations, which means that if radio stations do not subscribe to the Arbitron ratings service, those stations have no ratings data to present to advertisers.

Recently, Arbitron developed a Portable People Meter, PPM, an electronic tracking device which records signals from the radio stations to which the wearer is exposed. Initial results from the PPM measurement have shown such huge ratings declines for stations serving Black and Hispanic audiences that the financial survival of the stations is at stake.

Moreover, the financial survival of every minority station in future PPM markets will be at stake, if Arbitron is allowed to continue to roll out the PPM across the Nation in the form in which it has been initially introduced.

The damages to which minority broadcasters that I am referring to are not theoretical. They are real, quantifiable and devastating. Since PPM became operational in New York City in October 2008, minority broadcasters have experienced an average 40 to 60 percent drop in their Arbitron ratings, coupled with the corresponding drop in the average rates on which broadcasters are charge to advertisers.

For example, Spanish Broadcasting System, SBS, owns two stations in the New York market. WSKQ reports a 55 percent decline in its Arbitron rating, and WPAT has experienced a 67 percent decline in its Arbitron rating. As a result of the decline of revenues precipitated by PPM in the New York market alone, SBS has been forced to reduce staff by 37 percent.

Inner City Broadcasting, owner of radio station WBLS and WLIB in New York, reports that advertising revenue in the New York market is down approximately 28 percent. However, Inner City estimates that the introduction of PPM is responsible for an additional 30 percent revenue loss for its stations as compared to the general market.

This means that while the market is down 28 percent, Inner City is down 58 percent. As a result, since the introduction of PPM in New York, Inner City has significantly reduced the staff of its program department, and Inner City's San Francisco station, KBLX, has been forced to lay off 13 percent of its staff and cut salaries by 10 percent.

In Los Angeles the situation is just as grim. NABOB member KJLH in Los Angeles, owned by Stevie Wonder, has seen its revenue fall dramatically—over 48 percent since PPM was introduced in L.A., almost twice the average decline in the overall Los Angeles market, which is estimated at 29 percent. Let me repeat that. The market is down 28 percent. KJLH is down 48 percent.

As a result KJLH has been forced to lay off 13 percent 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 the overnight disc jockeys.

Arbitron has been sued over PPM by two attorneys general, settled with them and a third attorney general, and is currently being investigated by the FCC. This might cause us to 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 a product that can be accurate. Of course, the PPM product is priced 65 percent higher than its former diary product.

In addition, this new PPM product has been denied accreditation by the Media Rating Council. The Media Rating Council was created at the urging of Congress to prevent the kind of situation we are faced with today. NABOB therefore requests that the Committee investigate the PPM methodology and obtain information on the PPM accreditation process from Arbitron and the MRC.

In conclusion, these two problems—the refusal of lenders to restructure broadcast loans to allow these otherwise healthy businesses to weather the recession and Arbitron's abuse of its monopoly position—are more than an antitrust issue for this Committee.

Mr. COBLE. Mr. Chairman?

Mr. WINSTON. They are more——

Mr. COBLE. Mr. Chairman? I hate to interrupt Mr. Winston, but don't you think it might be about time to wrap up?

Mr. WINSTON. I have got two more sentences, Sir.

Mr. COBLE. I am glad to hear that. Thank you. I was thinking about the other witnesses.

Mr. WINSTON. This is more than a business crisis for African-American and Hispanic station owners. This is 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 be here today. I apologize for going over my time.

[The prepared statement of Mr. Winston follows:]

PREPARED STATEMENT OF JAMES L. WINSTON

Testimony
of
JAMES L. WINSTON
Executive Director and General Counsel
of the
NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

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.

7

Mr. CONYERS. That is okay. There is appropriate punishment for that violation. [Laughter.]

We are now pleased to welcome the president and CEO of Arbitron, Michael Skarzynski. He has graduated from Georgetown, MBA Northwestern, is currently a member of the National Defense Industrial Association, the Navy League of the United States, the Association for Corporate Growth, among others.

We welcome you to this hearing, Sir.

TESTIMONY OF MICHAEL P. SKARZYNSKI, PRESIDENT AND CEO, ARBITRON, INC.

Mr. SKARZYNSKI. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman and Members of the Committee.

I am Michael Skarzynski, chief executive officer of Arbitron. On behalf of the 1,100 people of Arbitron, I am very pleased to have this opportunity to participate in the Committee's hearing today and to share with you our commitment to help Black and Hispanic owned broadcasters succeed.

Arbitron is a 60-year-old company with headquarters in Columbia, Maryland. We are a leader and innovator in the radio ratings business. Arbitron is an integral part of the radio industry, with a strong record of community involvement.

We recognize the critical role and importance of Black and Hispanic owned radio. Black and Hispanic radio are the voice of their local communities and a trusted and credible source for news and information. As the voice of the local community, Black and Hispanic broadcasters are a vital link to democracy for our country.

There are three major challenges that, taken together, create a perfect storm for radio broadcasters. These include: number one, the recession has caused a drastic decline in advertising; number two, this drop in advertising has created a precipitous decline in radio industry revenue; and number three, many radio broadcasters, including Black and Hispanic broadcasters, are highly leveraged and are having difficulty servicing their debt.

Against this backdrop, Arbitron is standing with our customers to generate new ideas and solutions to help the industry weather this storm.

The radio business model is driven by advertising sales. Sixty percent of radio advertising comes from the four industries: automotive, real estate, financial services and tech. These four sectors have been hit hard by the recession. This hit to radio advertising has been devastating to all broadcasters, but especially to Black and Hispanic owned broadcasters.

During the first quarter of 2009, the entire radio industry, including the general market as well as Black and Hispanic owned groups, have all had dramatic and devastating declines in revenue in the range of 20 percent to 30 percent as compared to the first quarter of 2008.

Let me cite the declines in revenue for five companies: CBS radio down 29 percent, Cumulus down 24 percent, Spanish Broadcasting System down 27 percent, Univision Radio down 26 percent, Radio One down 20 percent.

Many radio broadcasters are struggling with debt loads that can not—they cannot sustain in the current economic environment. These companies assumed this debt at a time when there was every expectation of continued economic growth.

In addition to these pressures, radio broadcasters are now forced to compete with a host of new audio delivery platforms, including podcasting and Internet streaming. These new media have the inherent ability to measure themselves electronically.

Similar to the television industry, radio broadcasters and advertisers have made it clear that for radio to survive it must have more detailed and timely audience information that only electronic measurement can provide.

Arbitron's Portable People Meter, or PPM, is our company's innovative solution to address that need. Arbitron has spent over 16 years developing the PPM with input from a wide variety of industry players, including radio broadcasters and ad agencies.

Arbitron has been and continues to be engaged with and involved with members of the National Association of Black Owned Broadcasters and the Spanish Radio Association to address their concerns and discuss improvements to the PPM measurement service.

With inputs from our customers, Arbitron is implementing several improvements to our PPM service, including expanding cell phone only sampling, adding country of origin sampling, and working to increase participation of Black and Hispanic panelists by providing one-on-one coaching and adding recruitment incentives and retention bonuses.

In this difficult environment, all stakeholders in the radio industry—broadcasters, advertisers, ad agencies—must work together with policymakers, investors and bank lenders to help the radio industry survive.

Mr. Chairman, allow me to repeat this very important point. All stakeholders in the radio industry—broadcasters, advertisers, ad agencies—together with policymakers, investors and bank lenders, must work together to help the radio industry survive.

In summary, Arbitron is committed to working with all stakeholders in the radio industry to help radio broadcasters, especially Black and Hispanic owned broadcasters, survive and prosper in the face of this perfect storm of economic and financial challenges. Arbitron will work with all industry stakeholders to demonstrate the value of radio in today's competitive marketplace.

Mr. Chairman, Arbitron welcomes the opportunity to work with you and Members of this Committee to address the challenges of Black and Hispanic owned broadcasters. Thank you very much.

[The prepared statement of Mr. Skarzynski follows:]

PREPARED STATEMENT OF MICHAEL P. SKARZYNSKI

Written Testimony of
Michael Skarzynski, President and CEO of Arbitron Inc.

Before the United States House of Representatives Committee on the Judiciary
Hearing on: Trends Affecting Minority Broadcast Ownership

Thursday, July 9, 2009

Mr. Chairman and members of the Committee, on behalf of the 1,100 employees of Arbitron Inc. (Arbitron), I thank you for the opportunity to discuss the importance of instituting electronic measurement in the major U.S. radio markets. Arbitron, headquartered in Columbia, Maryland, is a publicly-traded media and marketing research company that has provided audience measurement data for 60 years, including measuring network and local market radio audiences across the U.S.

Arbitron is a part of the fabric of the radio industry, and we embrace the critical role and importance radio has in the community. We measure radio listening in 300 markets across the country. And we work every day with broadcasters and advertisers to prove the value of radio. Because radio is our business, we are committed to helping broadcasters – and especially Black and Hispanic-owned broadcasters – increase their revenue by using the rich tapestry of information about radio listening habits that our innovative electronic measurement system, the Portable People Meter™ (PPM™) service provides about radio listening habits.

Based on more than 16 years of research and technology development and consultations with broadcasters and advertising agencies, the PPM technology is a state-of-the-art electronic audience measurement tool for media and marketing research in the 21st century. Arbitron plans to use the PPM service to replace the current pencil-and-paper Diary in the top 49 radio markets. The Diary relies solely on a survey participant's recall or self-reporting. The PPM reports the radio station to which listeners are exposed.

The country is in the midst of a deep recession and radio stations across the country have been hard hit by the economic downturn. The current economic conditions have cut radio broadcast revenue across the board—negatively impacting markets with and without the PPM service (*Appendix 1, "Radio Broadcasters Revenue Q1 2009 vs. Q1 2008"*). In order for radio to survive, it must stay competitive with all other electronic and now wireless options by embracing a more electronic-based audience measurement system that provides advertisers with timely and granular listening estimates. Arbitron's introduction of the PPM service will level the playing field and help to prevent the migration of advertising dollars to competitors in the media already measured electronically, including television, podcasting and Internet streaming. It was the advertising and broadcast industries that asked for electronic audience measurement for radio. The PPM technology is our innovative solution designed to address that need.

Integral to any change of this magnitude is the need to work with all radio broadcast customers to ensure reliable representation of listening audiences. Since joining Arbitron in January of this year, I have continued Arbitron's regular and frequent dialogue with all of our customers, and have had ongoing discussions with members of the National Association of Black Owned Broadcasters and the Spanish Radio Association and other groups.

PPM As Compared With Diary

The PPM device is the size of a small cell phone. It is carried by survey participants and automatically records encoded inaudible radio station signals to which the survey participant was exposed in the course of his or her day. An encoder at each radio station inserts an inaudible identification code into the station's signal. There is no charge to the stations to activate this encoding and stations do not have to subscribe in order to be encoded and included in the estimates. Arbitron's encoding equipment and the PPM device do not interfere with or degrade the broadcast signal in any way. At the end of each day, each participant places the PPM device in a base cradle to recharge and send collected codes and compliance data through a hub in the home that transmits the data to Arbitron for use in the production of the PPM estimates.

Arbitron is in the process of bringing this electronic measurement service to the 49 largest radio markets by the end of 2010. The PPM methodology has already been implemented in 15 markets and Arbitron is intending to commercialize an additional 18 markets over the next six months. A key advancement of the PPM method over the Diary method is that it records listener exposure without relying on a participant's recall and is not subject to the tendency to put down his or her favorite station or program format and to round listening times (*Appendix 2, "Diaries Are Recall-Based"*). To measure this tendency, in 2003 and 2004, Arbitron conducted tests to compare PPM-recorded exposure against Diary self-reporting involving exactly the same persons. This comparison occurred one year apart in Philadelphia, PA (*Appendix 3, "PPM Captures Listening Exposure"*).

The results showed that these same participants listened to:

- Twice as many stations as reported in the Diary (6.3 versus 3.1).
- More than 70 percent more episodes of radio listening each week, but roughly half as long as reported in the Diary (36 minutes versus 83 minutes).

An additional study was conducted in Chicago, Illinois in 2008 with similar results. In the Chicago study, Arbitron asked participants to fill out a paper Diary during the same time period that those participants carried a PPM meter. The PPM estimates showed 74 percent more episodes of radio listening each week than reported in the Diary (23.3 versus 13.5), but each listening episode was roughly half as long (44 minutes versus 92 minutes). The PPM data showed 60 percent more stations (4.6 versus 2.9), and the listening start times in the PPM estimates were evenly distributed across the clock-quarter hours, compared to the Diary estimates where 43 percent of all episodes started at the top of the hour and 30 percent of all episodes started at the half past the hour.

Not surprisingly, these differences are seen in the transition from Diary to PPM ratings. For stations and formats with extremely loyal listeners who tend to report long periods of uninterrupted listening in the Diary, such as Black and Hispanic-Owned stations, talk radio formats, and morning drive programs, the more reliable PPM reporting has seen ratings go down compared with Diary estimates.

For example, on WABC in New York, the ratings for Sean Hannity's talk show dropped 60 percent after the switch from Diary to PPM methods. The Nielsen Company (Nielsen) saw the same phenomenon when it moved from Diary to electronic measurement.

In measuring exposure by Diary or the PPM method, Arbitron continues to follow the recommendation of the National Association of Broadcasters' (NAB) Committee on Local Radio Audience Measurement, adopted in 1988. The NAB Committee determined that listening means any time you can "hear" a radio – whether you chose the station or not. This is what diary keepers are instructed to report. What the PPM technology provides is a near-passive, more reliable technique to detect and record "exposure" to any encoded station, as compared with the Diary service.

As a result of our introduction of the PPM service, it is important to note that many smaller stations that never showed up in the Diary are now getting credit for the audience they actually deliver. And stations that are using PPM estimates, as well as the tools and training Arbitron offers, are fine tuning their programming, resulting in rating improvements.

Fully Participating in MRC Process

In the 1960s, a subcommittee of the U.S. House of Representatives known as the "Harris Committee" undertook an extensive review of audience rating services and recommended that a voluntary, industry-organized body that would include independent audits of rating services was preferable to government regulation. This resulted in the formation of an industry-funded, non-profit organization to review and accredit audience rating services, now called the Media Rating Council (MRC).

The MRC is comprised of board members representing television and radio broadcasting, cable, print, Internet, advertising agencies, and media trade associations. Membership is based upon the potential member's business interests and payment of the annual membership fee. The core of the MRC's voluntary process are the Minimum Standards which are tied to external audits of rating services conducted by a team of independent auditors, a specialized practice of Ernst &Young in the case of Arbitron. Such audits are funded by the measurement service. These audit reports are detailed and voluminous and evaluate the audited service against the Minimum Standards. Arbitron fully participates in these annual audits of many of its services and is in compliance with the MRC's Minimum Standards. The PPM service is audited in every market prior to commercialization in that market.

The MRC process consists of two steps: an audit conducted by independent auditors and a review of the audit report by an MRC subcommittee comprised of board members. The company submits its service for accreditation and, after answering a detailed initial questionnaire, the audit is conducted. At that point, the audit is presented to an appropriate MRC subcommittee by the independent auditors without the presence of the measurement company. MRC members and staff ask questions, offer comments, and then decide on a course of action which may lead to more inquires, meetings, or a vote. These are initial steps; any positive vote must be ratified by the MRC Committee for the medium (i.e., the MRC radio committee) and the full MRC board. In no way does the MRC process preclude a research firm like Arbitron or Nielsen from offering a new service technology prior to accreditation. Because the MRC membership is composed of private firms in competition with one another, the U.S. Department of Justice (DOJ) has indicated that the behavior of the MRC and its members are subject to scrutiny and possible antitrust violations. It is reasonable to expect members of the MRC board could vote to recommend granting or withholding accreditation to reflect their competitive interest.

In light of this potential restraint of trade, the MRC sought DOJ's approval for its proposed changes to its Voluntary Code of Conduct with respect to audit and accreditation of audience measurement services. DOJ's decision not to seek relief on antitrust grounds was based on the fact that the MRC "represented that [an audience ratings service] would not suffer prejudice by virtue of having commercialized its product prior to seeing accreditation."[1]

If Congress were to decide to impose mandatory accreditation, it would be difficult for some emerging innovative companies with the next generation of advanced rating technology to enter this marketplace. It is important to note that MRC accreditation of an innovative technology market by market involves a significant investment of resources and money and takes years to achieve. There is no clearly defined timeline or benchmarks that an organization must meet in order to be accredited. Clearly, the result of government regulation would be outdated technology.

Arbitron is fully committed to the MRC process, taking major steps in seeking accreditation:

- Before commercializing the PPM service in Houston, Texas Arbitron sought and obtained MRC accreditation of the monthly average quarter-hour radio ratings.
- Since Houston, Arbitron has submitted to exhaustive and costly audits of its Radio First methodology, market-by-market, and obtained MRC accreditation of the monthly average quarter-hour PPM radio data in the growing Riverside/San Bernardino market.
- Arbitron has consistently sought MRC involvement with the PPM service in contrast with Nielsen, which offered its Local People Meter rating service for

[1] *See* Letter from Thomas O. Barnett, Assistant Attorney General, Antitrust Division, United States Department of Justice, to Jonathan R. Yarowsky, Esq. of Patton Boggs L.L.P, counsel to the MRC, dated April 11, 2008, at 4.

television in some instances without waiting for the completion of an independent MRC audit, and in many instances without waiting for any initial accreditation of this service for television markets.

Arbitron competes in the business of radio audience measurement. We welcome competition and do not create barriers to entry for other companies. Our license fees are a function of the market and are negotiated with our customers. Clients have chosen the preferred service provider model as evident by the recent client requests for proposals for the Diary and electronic radio audience measurement services. Specifically, in 2005, Clear Channel Communications Inc. issued a request for proposals to which more than two dozen potential competitors responded. Arbitron maintained that business by responding as any competitor would: better service, lower price, faster to market, more innovative, and wider acceptance. In response to a request by Cumulus Media Inc. for a new form of small market radio audience measurement, Nielsen and Arbitron submitted proposals among other competitors. Nielsen was awarded the contract and this year introduced its "sticker Diary" service for a number of smaller and mid-sized markets, which is in direct competition with Arbitron's Diary service in those markets. Nielsen has the potential to expand its services to larger markets where it would compete head-to-head with Arbitron's PPM service. Competition is alive and well.

Arbitron is a dynamic, forward-looking innovator that introduced an electronic measurement service in response to the request by broadcasters and advertisers for faster delivery of more reliable data. The PPM service is a significant investment by Arbitron which supports the growth, financial health, and competitive future of the radio industry. There is an inherent disruption with the introduction of any innovation, and the commercialization of the PPM service was no different. Stations have found, however, that once they transition to the PPM service, it is highly beneficial. This innovation was necessary to keep radio competitive in the media market place in the 21st century.

Providing A Representative PPM Sample

Arbitron is committed to ensuring reliable representation of all radio listening audiences. Moreover, as part of the continuous improvement of all of our audience measurement services, Arbitron has implemented specific initiatives for the recruitment and retention of Hispanic and Black survey participants. Arbitron supports Black and Hispanic-owned radio and the communities they serve.

The sampling approaches for the Radio First PPM methodology are largely the same as those for the Diary service. The Diary data are fully accredited by the MRC and enjoy wide-spread acceptance, including among some of the PPM critics. Under both services, Arbitron's sampling methodology starts with the selection of telephone numbers by using the Random-Digit-Dial (RDD) method to ensure that both listed and unlisted telephone numbers have a chance of selection. From this initial sample frame, panel participants under both Diary and PPM methods are recruited in the same manner – through the use of telephone recruitment. The primary difference in the sampling approach between the two services is with regard to cell-phone-only households. Arbitron has taken extensive steps to include this growing number of households in the PPM sample. As a result, the PPM sample frames cover over 95 percent of all U.S. households. Starting in 2009, the Diary service has also begun including cell-phone-only households as PPM has done from the outset.

In order to ensure the final sample represents key demographic and ethnic groups within each radio metro market, both PPM and Diary use a "stratification" method (widely accepted within the industry and with statisticians in all industries), in which households within the sample frame are sorted out by key geographic data, such as county, area code, zip code, exchange, and hundred block. This allows Arbitron to focus its recruiting efforts with geographic precision – reaching areas with historically low response rates and with large minority and ethnic populations. The PPM service includes additional stratification as replacement households are stratified by presence of a young adult and specific race/ethnicity prior to recruitment selection. With this method, Arbitron is able to ensure that the final PPM survey sample represents key demographic and ethnic groups.

With regard to sample size, the PPM methodology has some advantages over the Diary service by measuring survey panelists every day for a period up to two years, which generates far more "person days" of data than the one-week long Diary service for each metro media market. This allows Arbitron to sample fewer persons for each market while still providing customers with reliable listening estimates market by market. Because audience estimates represent averages of listening across a given demographic or age group, increasing the sample size would not deliver different station ratings. With regard to quality sample metrics, the PPM service reliably estimates the key demographic groups, including young adults 18-34, which for all survey researchers is one of the most difficult groups to survey. The representation of Black and Hispanic groups is strong. Arbitron would be pleased to provide this data for your review.

Since the commercialization of the PPM service in 15 major media markets, the sample performance metrics across these markets are strong for all age groups, genders, Blacks, Hispanics including Spanish-language dominant, and Other Persons (non-Black and non-Hispanic). Arbitron can also provide these metrics as well.

Continuous Improvement

In making these points, I want to be clear that Arbitron recognizes that there is always room for improvement. While survey research is based on social science and statistics, its implementation is subject to the human factor. With that in mind, Arbitron remains committed to continuous improvement of the PPM service just as we have invested to improve the Diary service since its inception. Arbitron has taken a series of affirmative steps, often with the invaluable input of both Black and Hispanic radio broadcast owners and advertising agencies, to improve the PPM service (*Appendix 4, "PPM Hispanic and Black Initiatives"*). Arbitron has also extended portions of agreements with the Attorneys General of New York, New Jersey and Maryland beyond those states and applied them nationally to all PPM markets. In summary, to highlight several key enhancements Arbitron has added:

1. As mentioned earlier in my testimony, Arbitron is increasing cell-phone-only (CPO) sampling in all PPM markets on an accelerated basis. While the National Health Interview Survey, conducted by the Centers for Disease Control's National Center for Health Statistics, provides the most comprehensive estimate of total CPO households in the U.S., the data only provide national or regional estimates, while the PPM estimates are based on individual market. Nevertheless, Arbitron is committed to having an average of 15 percent CPO households in its PPM samples by the end of this year. A particular focus is recruiting persons 18-34 as well as Hispanics and Blacks, identified in the CDC survey as more likely to be CPO households. Arbitron is employing an address-based recruitment method to the CPO households that offers greater coverage yet still remains in compliance with federal law, rather than the pure random-digit-dial technique that was previously used.

2. Going beyond its agreements with the Attorneys General of New York, New Jersey and Maryland, Arbitron is providing zip code information regarding PPM panelists, including data on Blacks, Hispanics and Others for each individual zip code as each PPM market commercializes. This is an enhancement over the Diary service.

3. As a result of testing that Arbitron conducted in Houston, Los Angeles and New York during the first quarter of this year and at the urging of Hispanic broadcasters and advertising agencies, Arbitron will include a country of origin (COO) demographic to the data collected in its PPM sample that will begin to be reported in March 2010 in all Hispanic markets. Arbitron will provide interim reports with a distribution of installed panelists by COO for Chicago, Miami, Riverside and San Francisco in July 2009 and for Dallas, Washington, DC, Tampa, and Phoenix in November 2009. In addition, COO test market data for New York, Houston and Los Angeles will be provided in July 2009.

4. Arbitron has created a coaching program in which a personal telephone coach is assigned to certain households to provide more one-on-one coaching to increase the compliance and participation rates of those households.

5. Arbitron has initiated special recruitment incentives, compensation programs, compliance and retention bonuses to boost participation among key demographic groups including young adults and Black and Hispanic households.

6. Arbitron is providing greater transparency with regard to sample performance and other metrics for each of the PPM markets, which Arbitron's customers indicated they would find useful.

In Arbitron's submission of comments to the FCC's Notice of Inquiry regarding the impact of PPM, Arbitron has detailed how Black and Hispanic stations that have used PPM to make changes to their programming and promotion practices were able to recover and even improve on their former rankings under the Diary service. KBXX and KMJQ in Houston have shown gains in the PPM reports. In fact, what the PPM estimates show are increasing numbers of listeners tuning in to Black and Hispanic radio.

Arbitron is committed to and has already expended significant resources toward instituting a proactive and affirmative program to ensure that our sample surveys are a fair representation of radio audience demographics and that the methods are responsive to Black- and Hispanic-owned radio concerns. As we continue our dialogue with customers and other stakeholders, Arbitron expects that further improvements to the PPM service will be made.

The PPM service is a critical tool to help radio broadcasters – especially Black and Hispanic-owned broadcasters – weather the perfect storm of economic challenges they face. It will take the hard work of many stakeholders to help radio survive this storm. All of us at Arbitron are committed to work with broadcasters, lenders, advertisers, and advertising agencies to prove the value of radio in today's increasingly competitive media marketplace.

Arbitron welcomes the opportunity to work with you and members of the Committee.

###

ATTACHMENT

Appendix 1

Radio Broadcasters Revenue
Q1 2009 vs Q1 2008

	$ in Millions USD			
	Q109	Q108	% Decline	NOTES
Citadel Broadcasting Corporation	$158.9	$205.8	-23%	Source: 10Q
Cox Radio	$75.5	$97.8	-23%	Source: Hoovers (Not Available from 10Q)
Cumulus Media Inc.	$55.4	$72.9	-24%	Source: 10Q
Radio One Inc.	$57.8	$72.7	-20%	Source: 10Q (Radio Segment Only)
Spanish Broadcasting System	$24.2	$33.0	-27%	Source: 10Q (Radio Segment Only)
Entercom Communications Corporation	$75.4	$95.4	-21%	Source: 10Q
Entravision Communications Corporation	$13.4	$19.5	-31%	Source: 10Q (Radio Segment Only)
CBS Radio	$259.7	$363.5	-29%	Source: 10Q (Radio Segment Only)
Univision Radio	$66.5	$90.0	-26%	Source: 10Q (Radio Segment Only)
Clear Channel Communications Inc.	$603.6	$769.6	-22%	Source: 10Q (Radio Segment Only)

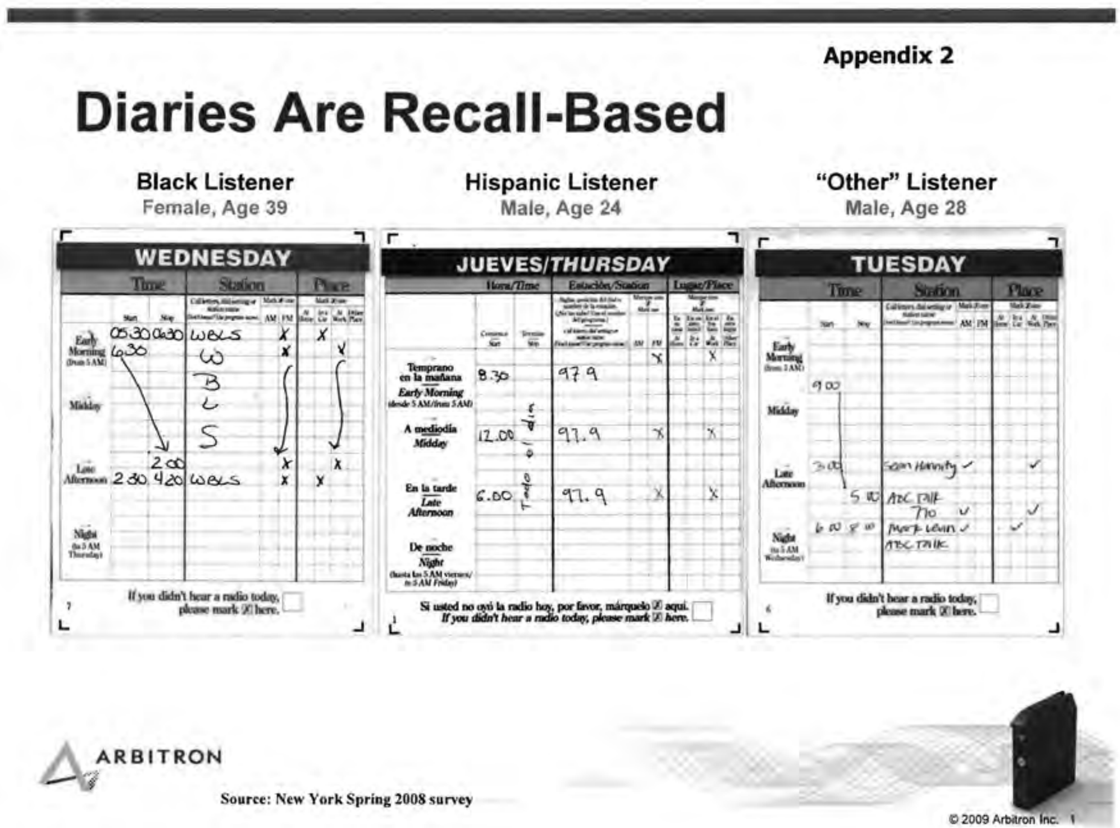
Excerpts from 10Qs - Most compelling section of MD&A which talks about Advertising and the industry in General:

Citadel - Page 29 - MD&A

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS
"Net revenue for the three months ended March 31, 2009 decreased by approximately $46.9 million, or 22.8%, from approximately $205.8 million during the three months ended March 31, 2008 to approximately $158.9 million. This decline was due to lower revenue of $30.3 million from our Radio Markets and $17.4 million from the Radio Network, due primarily to an industry wide decline in radio advertising. Radio Market national revenue was down approximately 10.0% and local revenue was down approximately 20.7%. As a result of the current economic environment, the Company believes net revenue will continue to decline in the remaining quarters of 2009 as compared to the same quarters in the prior year."

Cumulus - Page 17 - MD&A

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations
"The current economic crisis has reduced demand for advertising in general, including advertising on our radio stations. In addition, the recent capital and credit market crisis is adversely affecting the U.S. and global economies. This has and could continue to have adverse effects on the markets in which we operate. Continued slow economic growth could lead to increasingly lower demand for advertising. The recent economic downturn and resulting decline in the demand for advertising could continue to have future adverse effects on our ability to grow revenues."

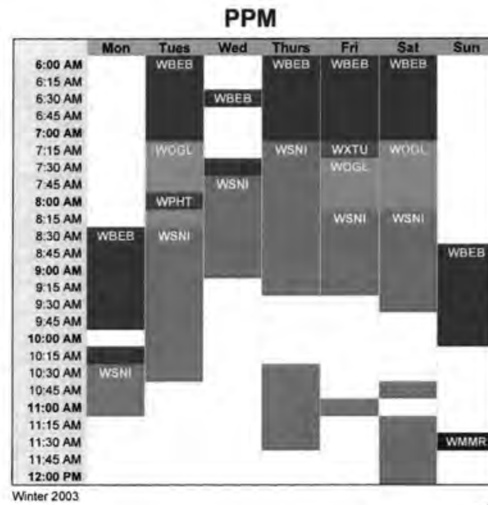


Appendix 2
Diaries Are Recall-Based
Black Listener
Female, Age 39
Hispanic Listener
Male, Age 24
"Other" Listener
Male, Age 28
WEDNESDAY
JUEVES/THURSDAY
TUESDAY
Time
Station
Place
Hora/Time
Estación/Station
Lugar/Place
Early Morning
Midday
Late Afternoon
Night
Temprano en la mañana
Early Morning
A mediodía
Midday
En la tarde
Late Afternoon
De noche
Night
If you didn't hear a radio today, please mark here.
Si usted no oyó la radio hoy, por favor, márquelo aquí.
If you didn't hear a radio today, please mark here.
ARBITRON
Source: New York Spring 2008 survey
© 2009 Arbitron Inc.

Appendix 3

PPM Captures Listening Exposure

Survey records from same respondent: white male (one year apart)



ARBITRON

Source: Philadelphia Radio Metro

ARBITRON

Appendix 4

PPM™ Hispanic and Black Initiatives

Hispanic & Black PPM Initiative Planned for 2009

***CPO Sample Increase:** Average CPO sample target per market scheduled to be increased to 15% by December 2009.

Hispanic PPM Initiatives Planned for 2009-2010

***Hispanic Country of Origin Collection & Reporting**: Hispanic Country of Origin planning is underway with targeted implementation in March 2010 for all Hispanic markets. In March 2010, Hispanic Country of Origin will be reported in all Hispanic markets within eBook lead-in pages and in the PPM Analysis Tool as a Hispanic characteristic. Tapscan Web will incorporate Country of Origin data later in 2010.

- In 2009, interim reports for select markets will provide a distribution of installed panelists by Country of Origin:
    - July 2009: Chicago, Miami, Riverside and San Francisco. In addition, Country of Origin test market data for New York, Houston and Los Angeles will be provided.
    - November 2009: Dallas, Washington, DC, Tampa and Phoenix.

Procedures Implemented in 2009 to Improve Black Recruitment and Compliance

A variety of different techniques and initiatives have been developed in the past year to improve the recruitment and compliance. These techniques are used in selected markets based upon factors such as historical performance:

- Assigned personal phone compliance coaches to Black young adults (18-34).
- Gift cards used in conjunction with personal telephone compliance coaching.
- New customized accessories sent to Black young adults (18-34) and offered to others.
- Weekly incentive increases for persons in households with Black persons 25-34 years old. (All persons in 18-24 households already receive higher incentives.)
- Installation bonuses for landline and cell-phone-only households.
- Accelerated recruitment and installation of households with Black young adults in selected markets.
- Early deinstallation of households in selected markets in order to allow for the recruitment of households with young adults.

Existing Procedures to Improve Hispanic Recruitment and Compliance

- Bilingual pre-alerts sent to all High Density Hispanic Areas
    - First telephone call made by bilingual interviewer
- Bilingual materials sent to all Hispanic persons
    - Bilingual specialists assigned to Spanish-dominant persons
- Higher weekly incentives for all Spanish-dominant Hispanics
- Higher retention bonuses for all Spanish-dominant Hispanics
- Enhanced language collection procedures to increase the stability of language reporting. With this new process, any change in language usage reported by another household

*Implemented in response to PPM Coalition Requests

Mr. CONYERS. Thank you.

The head of Media Access Project, Attorney Andrew Schwartzman, has been leading this nonprofit telecommunication group for more than two decades. He teaches at Johns Hopkins University and accumulated a lot of awards, and he graduated from the University of Pennsylvania Law school.

Welcome this afternoon.

TESTIMONY OF ANDREW SCHWARTZMAN, PRESIDENT AND CEO, MEDIA ACCESS PROJECT

Mr. SCHWARTZMAN. Thank you, Mr. Chairman.

Every now and then someone asks me why I have spent a large portion of the last 37 years trying to expand minority ownership and employment in the mass media, and especially in broadcasting. Sometimes it is spoken, sometimes not. But what people really want to know is "Why is a White guy like you so concerned with expanding minority ownership in media?"

Here is why minority ownership matters to all Americans. Ownership influences content by controlling decisions on hiring, format, programming and public service. The Supreme Court has said that it is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences, which is crucial here.

A more diverse marketplace of ideas creates a more democratic society. Frankly, minorities know a lot more about the lifestyle, customs and tradition of the majority White culture than White people know about minority cultures. In short, I need widespread minority ownership at least as much as minorities do.

I have just a few points to make this morning. First, I hope and expect that the Internet will facilitate a more diverse mass media environment. This does not make broadcasting less important for the foreseeable future. Over-the-air broadcasting continues to be the principal source of information for Americans, especially at the local level, where the Internet has yet to make a big difference.

Here are a few facts. Some 235 million Americans listen to radio every week, a number that has been increasing. In this age of multitasking, the amount of time that people watch over-the-air TV is also going up. Almost half of all TV viewing is over-the-air channels, even when cable and satellite offerings are available.

Second, when I say that levels of minority ownership are distressingly low, I wish I could provide copious detail. I cannot do that, because over the last 8 years minority ownership was not a high priority for the FCC. As the GAO said in a report issued last year, the FCC's data collection has been incomplete and methodologically suspect.

Under Acting Chairman Copps, and I hope under the new Chairman Genachowski, the FCC has now significantly upgraded its data collection. More useful information will be available in a year or so, but right now the best data comes from a private source, which shows that minorities own just 7.7 percent of full power commercial radio stations and only 3.2 percent of full power commercial TV stations.

The single largest obstacle to expanding minority ownership in broadcasting by far is substantial deregulation of media ownership limits in the 1996 Telecommunications Act. Within a few years after passage, broadcasting became dominated by a small number of large companies. This has bid up the price of stations and created other barriers to entry for new and small competitors.

For years, citizens groups led by the Minority Media Telecommunications Council called on the FCC to assess the impact of these changes on minority broadcasting. But even after the U.S. Court of Appeals agreed and directed the FCC to do so, it stalled.

Fortunately, new management has arrived, and the FCC has already begun the task of completing long delayed studies on historic patterns of discrimination.

What should be done? A lot. Here are several of the most important things. Reimpose limits on national radio ownership and strengthen existing caps on local and national broadcast ownership.

Reduce the license term to 3 years and enforce meaningful rules. This will create opportunities for minorities to obtain the licenses that will be forfeited.

Restore the tax certificate policy, which was repealed in 1995.

Grant the pending application of Robert Johnson's innovative urban television proposal, which would allow vastly increased minority ownership of digital TV multicast streams.

And enact H.R. 1147, which will expand the low power FM radio service and serve as a platform for training a new generation of minority radio broadcasters.

Finally, I want to associate myself with Mr. Winston's remarks about the PPM issue. Since the fragility of minority owned radio impacts all Americans, the introduction of the PPM technology is a matter of legitimate concern for the FCC and this Committee. The problem is more with the sampling techniques than with the technology itself, so I will limit my remarks to this.

While there is ample reason to be suspicious about the validity of ratings obtained using PPM, a best case scenario for PPM is that the new ratings are more reliable. That would be that the diary-based system used for decades was a fraud. Either way, we need answers, and we may well need to regulate to ensure the integrity of the system.

Thank you.

[The prepared statement of Mr. Schwartzman follows:]

PREPARED STATEMENT OF ANDREW JAY SCHWARTZMAN

MEDIA ACCESS PROJECT

TESTIMONY OF ANDREW JAY SCHWARTZMAN
PRESIDENT AND CEO
MEDIA ACCESS PROJECT

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

TRENDS AFFECTING MINORITY BROADCAST OWNERSHIP

JULY 9, 2009

The levels of minority ownership in the broadcasting industry are distressingly low. I welcome the Committee's interest in considering why this is so and, perhaps, fashioning remedies to address this problem.

Every now and then, someone asks me why I have spent a large portion of the last 37 years trying to expand minority ownership and employment in the mass media, and especially, in broadcast. Sometimes it is spoken, sometimes not, but what people really want to know is "Why is a white guy like you so concerned with expanding minority ownership in the media?."

Here is why expanding minority ownership (as well as ownership by women) matters to all Americans: ownership influences content by controlling decisions on hiring, format, programming and public service. As the Supreme Court has said, "It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."[1] "Suitable access" means access to as many viewpoints as possible. A more diverse marketplace of ideas creates a more democratic society. Frankly, minorities know a lot more about the lifestyle, customs and traditions of the majority white culture than white people know about minority cultures. In short, I need widespread minority ownership at least as much as minorities do.

I wish to make just a few points this morning:

First, while Media Access Project devotes a substantial amount of its effort to broadband deployment, and I hope that the internet will facilitate a more diverse mass media environment, this does not make broadcasting less important today, tomorrow or for the forseeable future. Over the air broadcasting continues to be the principal source of information for Americans, especially at the local level, where the Internet has yet to make a big difference. Here are a few facts:

---

[1] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

- Some 235 million Americans listen to radio every week, a number that has been increasing notwithstanding the development of satellite and internet radio sources.
- The average person spends nearly 3 hours daily listening to radio.
- Usage patterns are steady across people of all ages.
- In this age of multitasking, the amount of time that people watch over the air TV is also going up. Almost half of all TV viewing is of over the air channels, even when cable and satellite offerings are available.
- Of the 100 most watched TV shows each week, 95 are network TV programs.

Second, when I say that levels of minority ownership are distressingly low, I wish I could provide copious detail. I cannot do that, because over the last eight years, minority ownership was not a high priority for the FCC. As the GAO said in a report issued last year, the FCC's data collection has been incomplete and methodologically suspect.[2] Under Acting Chairman Copps, the FCC has now significantly upgraded its data collection, and more useful information will be available in a year or so. Right now, the best information comes from a private source - studies done by Free Press. According to these studies,

- Minorities own just 7.7 per cent of full power commercial radio stations and only 3.2 percent of full power commercial TV stations.[3]
- Minority ownership has been declining.
- Minority ownership is more likely to be local ownership.

Third, the single largest obstacle to expanding minority ownership in broadcasting - by far - is the substantial deregulation of media ownership limits in the 1996 Telecommunications Act.

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[2] "Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and is Difficult to Assess," Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, GAO-08-383 (March 2008).

[3] Information cited comes from *Off the Dial: Female and Minority Radio Station Ownership in the United States*, http://www.freepress.net/node/45587 and *Out of the Picture: U.S. Minority & Female TV Station Ownership,* http://www.freepress.net/library/1174.

Within a few years, broadcasting became dominated by a small number of large companies. This has bid up the price of stations and created other barriers to entry for new and small competitors. For years, citizens groups, led by the Minority Media Telecommunications Council, called on the FCC to assess the impact of these changes on minority broadcasting, but even after the U.S. Court of Appeals for the Third Circuit agreed and directed the FCC to do so, it stalled. Fortunately, new management has arrived, and the FCC has already begun the task of completing long-delayed studies on historic patterns of discrimination and exclusion of minorities in broadcast ownership.

What should be done? A lot. Here are several of the most important things:

- Reimpose limits on national radio ownership and strengthen existing caps on local and national broadcast ownership.
- Reduce the license term to three years and enforce meaningful rules. This will create opportunities for minorities to obtain the licenses that will be forfeited.
- Restore the tax certificate policy which was repealed in 1994.
- Grant the pending application of Robert Johnson's innovative Urban Television proposal, which would allow vastly increased minority ownership of digital TV multicast streams.
- Enact HR 1147, which will expand the low power FM radio service and serve as a platform for training for a new generation of minority radio broadcasters.

Finally, I want to speak briefly to the radio ratings issue. Since the fragility of minority-owned radio impacts all Americans, the introduction of the People Meter (PPM) technology is a matter of legitimate concern for the FCC and this Committee. The problem is more with the sampling techniques than with the technology itself, so I will limit my remarks to one brief observation: While there is ample reason to be suspicious about the validity of ratings obtained using PPM, the best case scenario for PPM is that the new ratings are more reliable. That means that the diary based system used for decades was a fraud. Either way, we need answers, and we may well need to regulate to insure the integrity of the system.

-3-

Mr. CONYERS. Thank you very much.

Attorney Kendall Minter, head of the Rhythm and Blues Foundation, nonprofit, co-founder of the Black Entertainment and Sports Lawyers Association. And he graduated from Cornell University.

We are glad to have you this afternoon. Welcome.

TESTIMONY OF KENDALL MINTER, CHAIRMAN OF THE BOARD, RHYTHM AND BLUES FOUNDATION

Mr. MINTER. Thank you, Mr. Conyers.

Good afternoon, Chairman Conyers, Members of the Committee. I would like to thank you for inviting me this afternoon to testify on issues affecting minority broadcast ownership. My name is Kendall Minter, and I have the pleasure of serving as chairman of the Rhythm and Blues Foundation. I stand on the shoulders of our predecessor chairmen, Jerry Butler and Ray Charles.

The R&B Foundation was established about 20 years ago, and it continues to serve today as the sole organization worldwide that provides financial emergency assistance to pioneer rhythm and blues artists as well as honoring and recognizing the achievements of those legendary artists and preserving the genre known as rhythm and blues.

In fact, we assist those artists on the bottom rung that Mr. Gutierrez spoke about a little earlier. And unfortunately, but the reality is, we provide everything from medical assistance to burial assistance to financial assistance for artists that are being evicted or foreclosed on.

There is no doubt about the significant progress made by minorities in the broadcast industry, but there is also no doubt about some of the challenges and the opportunities that lie ahead. And I look forward to addressing some of those issues with you today.

One of those issues of concern is that Arbitron's PPM system and meter that we have spoken about earlier is under representing listeners for certain stations. We understand, however, and we agree with broadcasters' interest in receiving an accurate accounting of listenership in order to receive the proper payment from advertisers.

Arbitron's PPM certainly may create unfair burden for younger, trendy stations due to the size of the PPM unit. Many younger and more fashion conscious listeners find the unit cumbersome. A technology addition to the PPM that could include coverage to a cell phone could help level the playing field significantly, and we ask and encourage this Committee and the FCC to look into the effectiveness of modifying this device.

We at the foundation stand with broadcasters on this point, because we believe a simple axiom. The use of someone else's property should be appropriately compensated. When a broadcast signal is being used, a broadcaster should be appropriately compensated for that use.

In that light, the artist community hopes that we can count on broadcasters similarly to acknowledge the rights of artists to be compensated when artists' music and property is played and used.

Just as advertisers should pay for the appropriate amount to broadcasters when broadcasters play music—our music—to draw audience and broadcasters, they should serve and share a small portion of that revenue derived from broadcasters' receipts with the creators of the music that provides a revenue source for them.

And just as broadcasters would like Arbitron to accurately represent the number of listeners of their stations, we call upon the broadcast community to accurately represent the effect that H.R. 848, the Performance Rights Act, which they are now calling the performance rights tax, would have on them.

This legislation, despite proclamations, is not the end of Black radio. It is, however, an important component of fairness for minority artists, including so many of the artists that we represent at the Rhythm and Blues Foundation, and we look for some kind of grace so that we can all grow together.

This is a segment of the symbiotic relationship between creators of music and the stations that use their valuable work so that we can be in business together as real partners.

I also want to take this opportunity to address the issue of consolidation and its effect on the diversity of music broadcasted. Diversity of music is assured by diversity in ownership of stations, the ability of different stations representing a broad array of tastes within our community to select their own playlists and accommodate the preferences of their local listeners.

Unfortunately, however, we have seen an increasing amount of consolidation within the broadcast industry as large radio corporations acquire those small individual stations that have traditionally provided us with the diversity that we need.

More alarming for those of us who champion the accomplishments of Black artists and their contributions to our culture is the consolidation that has occurred within the Black broadcasting community.

Large radio corporations now threaten to destroy many of the gains minorities have made in our communities by watering down and homogenizing their programming. That is unfortunate for a developing an aspiring artist, and it is unfortunate for consumers.

Since the mid-1990's, song rotations have quadrupled. In the past the top 10 songs might play every 4 hours, at best, totalling 35 to 40 spins in a 7-day period. Today, however, corporate playlists, which have been homogenized significantly, order the play of top titles every 60 to 70 minutes rotation, totaling at times an amazing 140 spins of the same song throughout a 7-day period.

Black radio is the most syndicated music format in the country. Black adults are 25 times more likely to hear syndicated music than the White audience. What syndication is effectively does is limit opinions of local news, local information and local music.

The very essence of what has made Black radio special to hundreds of communities has been dramatically reduced through consolidation of large conglomerates.

Terrestrial radio today is not the issue. It is a question of rights and it is a question of fairness. There have been several stations over the past 2 months since May 13th that have continuously broadcast misleading PSAs or a commercial that talk about the reality of this bill, and we would like to set the record straight.

These campaigns are one-sided and skewed against 848, and they are a candid example of how consolidation and limited ownership basically equates to an on-air dictatorship aimed at only profit and the bottom line.

Mr. Conyers, you worked hard to provide many accommodations to small broadcasters, including minority owned stations, and we thank you for your tireless efforts and work on behalf of thousands of minority artists, who have created and made successful the musical art form which has become not only the sound of modern American music, including the music we hear on Black-owned stations today, but has also influenced the shape of music throughout the globe.

And we thank you for your ongoing efforts to include minority broadcasting representatives to ensure that they have a voice in these discussions. And we look forward to working with you, your Committee, and our broadcasting brethren in the month ahead to find a viable solution for the issues that we are all facing. Thank you, sir.

[The prepared statement of Mr. Minter follows:]

PREPARED STATEMENT OF KENDALL MINTER

Chairman Conyers, Members of the Committee, I would like to thank you for inviting me to testify today on issues affecting minority broadcast ownership. My name is Kendall Minter and I am the Chairman of the Rhythm & Blues Foundation.

The Rhythm & Blues Foundation was established some 20 years ago and continues to serve today as the sole organization worldwide that provides emergency financial assistance to pioneer rhythm and blues artists as well as honoring and recognizing the achievements of those legendary artists and preserving the genre known as rhythm and blues.

There is no doubt of the significant progress made by minorities in the broadcast industry, but there is also no doubt about some of the challenges and opportunities that lie ahead. I look forward to addressing some of these today.

One of those issues is the concern that Arbitron's PPM system is under-representing listeners for certain stations. We understand broadcasters' interest in receiving an accurate accounting of listenership in order to receive the proper payment from advertisers.

Arbitron's people meters certainly may create an unfair burden for younger trending stations, due to the size of the PPM unit. Many younger and fashion conscious find the unit cumbersome. A technology addition to PPM that could include coverage to a cell phone could help level the playing field, and this Committee and the FCC should look into the effectiveness of this device.

We stand with broadcasters on this point because we believe a simple axiom: the use of someone else's property should be appropriately compensated. When a broadcast signal is being used, the broadcaster should be appropriately compensated for that use. In that light, we sincerely hope that we can count on broadcasters to acknowledge our right to be compensated when they use our property. Just as advertisers should pay the appropriate amount to broadcasters when broadcasters play our music to draw an audience, broadcasters should share a very small portion of that revenue with the creators of the music that provides that revenue source for them.

And just as broadcasters would like Arbitron to accurately represent the numbers of listeners of their stations, we call upon minority broadcasters to accurately represent the effect that H.R. 848, The Performance Rights Act, would have on them. This legislation is NOT the end of black radio. It is the beginning of fairness for minority artists, including so many of the artists we represent at the Foundation, so we can all grow together. And it is the beginning of the true symbiotic relationship between creators of music and the stations that use their valuable work, so that we can be in business together as real partners.

I also want to take this opportunity to address the issue of consolidation and its effect on the diversity of the music broadcasted. Diversity of music is ensured by diversity in ownership of stations—the ability of different stations representing the broad array of tastes within our community to select their own playlists and accommodate the preferences of their local listeners. Unfortunately, we have seen an increasing amount of consolidation within the broadcast industry, as large radio corporations swallow up those small individual stations that have provided us the diversity we need.

More alarming to those of us who champion the accomplishments of black artists and their contributions to our culture, is the consolidation that has occurred within the black broadcasting community. Big radio corporations now threaten to destroy any gains minorities have made in our communities by watering down and homogenizing their programming. That's unfortunate for aspiring black artists, and it's unfortunate for consumers. Since the mid 90's song rotations have quadrupled. In the past, a top ten song would play every 4 hours at best, totaling 35 to 40 spins in a seven day period. Today the corporate playlists order the play of top titles every 60 to 70 minutes, totaling at times and amazing 140 spins of the same songs in a 7 day period.

Black radio is the most syndicated music format in the country. Black adults are 25 times more likely to hear syndicated music programming than white adults. What syndication effectively does is silence opinions, local news, information and music. The very essence what made black radio special to hundreds of communities has been taken away through consolidation by big radio corporations.

The FCC gives licenses to broadcasters to serve local communities. Consolidation has made that task for black radio more difficult.

Consolidation has also had an effect on artists by allowing massive campaigns of misinformation to be spread when it is in the financial interest of the big radio corporation. This Committee has overwhelmingly approved H.R. 848, the "Performance Rights Act." This legislation would help minority artists finally get compensated for their work by corporate radio interests. Giant companies who own the airwaves directed at black listeners have for months now been using the public airwaves entrusted to them by the government to oppose this bill for their own financial interests. A series of misleading and inaccurate 3 minute commercials airing 10 to 12 times a day on over 50 stations owned by just one company is proof of how public opinion and even Congress can be swayed when listeners get limited or misinformation.

The slanted and skewed promotion against H.R. 848, is a candid example of how consolidation and limited ownership basically equates to an on air dictatorship, aimed only at profit and the bottom line.

Chairman Conyers, you have worked hard to provide many accommodations to small broadcasters, including minority-owned stations. We thank you for your tireless work on behalf of the thousands of minority artists who created and made successful the music art form which has become not only the sound of modern American music, including the music we hear on the black-owned stations we are discussing today, but has also influenced the shape of music throughout the globe. We thank you for your ongoing efforts to include minority broadcasting representatives to ensure they have a voice in these discussions. We look forward to working with you—and with our broadcasting brethren—in the months ahead.

Mr. CONYERS. I thank you all.

Let us begin our discussion and interrogation with Maxine Waters.

Ms. WATERS. Thank you very much, Mr. Chairman.

And let me thank our panelists who are here today. I think you have all in some way very accurately described the problems that Black broadcasters and minority broadcasters are confronted with. Each one of you has described it in some particular way.

And I want you to know that some of the suggestions that I have heard can certainly be acted on, and because I am on the Financial Services Committee, along with several people on this Committee, we are concerned about the banks. And I have been troubled about aiding the Black banks, trying to save them, so I don't mind adding to my trouble with the banking institutions, trying to get them to do the right things.

But I want to go to Arbitron, because it just so happens that despite the fact that you certainly speak with a cooperative spirit about all of the stakeholders having to involve themselves in the solution, but really you are at the core of it. What you do will decide what the advertisers do. The advertisers are that which decide whether or not there is going to be enough revenue for these radio stations to really be in business.

So there is obviously a great difference of opinion that has been developed between you and the Black broadcasters about the accuracy of what you are doing. You determine whether or not the advertisers—what they buy and whether or not they buy.

So let me ask you. What can you do to assure us that what you are measuring, the way that you are doing it, is the best way, even though you described it as creative and innovative and cutting-edge? And what can you do, aside from all of the other kind of cooperation that you alluded to, what can you do to assure the broadcasters that your technology is not denying them revenue?

Mr. SKARZYNSKI. Congresswoman Waters, thank you for the question.

Arbitron is in the audience measuring business, so we are focused on looking at metrics or exposure to radio.

With respect to what can we do to be helpful to Black-owned radio stations to show their value to advertisers, we are in the process of developing, and will have this month, a prototype of an engagement metric, which couples exposure to engagement.

So that if you were to examine a particular audience measurement of a particular station in L.A., and it was proven by the fact that the station had a great following among Black males 26 to 45, and the advertiser who is interested in targeting that demographic group could then look at the exposure, look at the engagement relative to the desired demographic target, and then ideally not only make that advertising buy, but in our point of view also reward the station for a very focused, targeted reach to that particular demographic target.

So that is one example of——

Ms. WATERS. No, no, no. We understand all of that. What we are hearing is that we don't believe that your measurements are correct. We think that whether or not you are targeting a particular demographic or whether or not you are—I don't know about your target—but that is, and what we are hearing is that it is not trusted. And because there is a lack of trust, because you are driving down advertisement, these broadcasters aren't happy.

What can you do to make us believe that the way that you are doing it or your technology or your approach is right? Why should they believe you, if they are losing money?

Mr. SKARZYNSKI. The approach that we take in audience measurement is reviewed by and regulated by the Media Ratings Council.

Ms. WATERS. Who are they?

Mr. SKARZYNSKI. They are a group of 111 organizations, including broadcasters. For example, one of our customers is Inner City Broadcasting. And Inner City Broadcasting, who is represented in the hearing room today, is a member of the Media Ratings Council.

Ms. WATERS. So they have confidence in you. Inner City has confidence that what you are doing is——

Mr. SKARZYNSKI. I won't make that comment.

Ms. WATERS. I am glad you don't.

Mr. SKARZYNSKI. What I am saying is because I think Mr. Winston would say that, and maybe Mr. Warfield would say something to the contrary.

Ms. WATERS. I think so.

Mr. SKARZYNSKI. But the Media Ratings Council is a group that reviews our process. There is an audit of our process that is done by Ernst and Young, and it is this body of broadcasters, advertisers, advertising agencies that provides us accreditation.

If there are specific areas of concern in how we are providing this service—let us take the Los Angeles metro market, for example—the concerns can be raised by either our customers directly to us or through the Media Ratings Council that here is an area for improvement for you.

So this is the—the framework against which Arbitron and other audience services companies——

Ms. WATERS. But the accreditation recognized by the government——

Mr. COBLE. Mr. Chairman, the gentlelady's red light illuminated some time ago. I think others have questions as well.

Ms. WATERS. Unanimous consent for 30 more seconds, Mr. Chairman.

Mr. CONYERS. Granted.

Ms. WATERS. Thank you.

Mr. SKARZYNSKI. The Media—Congresswoman, the Media Ratings Council was set up at the behest of the Congress.

Ms. WATERS. So are they in law?

Mr. SKARZYNSKI. I am sorry?

Ms. WATERS. Are they recognized in Congressional law—in law?

Mr. SKARZYNSKI. I don't believe they are recognized with a particular piece of legislation. I do believe that going back to the 1960's, there was a Harris committee within the Congress that established the Media Ratings Council legal framework.

Ms. WATERS. Thank you, Mr. Chairman. I appreciate it, and I yield back.

Mr. CONYERS. Thank you.

We now turn to Howard Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us.

Mr. Winston, it appears that there is a little or no controversy over the payment of performance royalties to songwriters and composers, but the payment of such royalties to recording artists generate, for want of a better word, attention.

Do you think one group or the other has greater claims to such royalties, A? And if not, should not both parties be paid when their work is used for commercial purposes?

I didn't hear you.

Mr. WINSTON. I couldn't hear the first part of your question.

Mr. COBLE. I said there appears to be little or no controversy surrounding the payment of performance royalties to songwriters and composers, as opposed to artists. My question to you is, does one group share a preference over the other one to voice a greater claim to the royalties, or should they both be paid?

Mr. WINSTON. Well, sir, if I look at what Congress has done over the years, Congress has taken that position. And I am not here today to say that there is a different position that should be taken.

Mr. COBLE. You are not here to do what?

Mr. WINSTON. I am not here to say there is a different position that should be taken——

Mr. COBLE. Oh.

Mr. WINSTON [continuing]. Than the one Congress has taken over the years.

Mr. COBLE. Mr. Minter, it has been noted that the United States loses an estimated $70 million for $100 million abroad for U.S. performers by virtue of there being no performance royalty for artists here.

What guarantee, if any, is there that foreign countries will actually provide reciprocity if the law is amended, as you support, and that these dollars will be in fact directed to American artists?

Mr. MINTER. Thank you, sir. There are several treaties—WIPO, the Berne and Rome Conventions—that are already in effect, which royalties are already being repatriated amongst the members of these conventions and these treaties. They are not being repatriated back into the United States right now the because of lack of reciprocity.

Once the act is already in place, once it gets passed by the full House and the full Senate, then the United States would take its rightful place with most other developed nations, except for China, Iran and North Korea, and the part of the international flow of these royalties, of which $70 million to $100 million will flow back into the United States to compensate American composers and copyright owners for their property.

Mr. COBLE. I thank you, sir.

Mr. Skarzynski, what is Arbitron's relative share of the radio rating market?

Mr. SKARZYNSKI. Congressman Coble, when Arbitron engages in its ratings service, we provide to our customers, who are the broadcasters, a full account of how we arrived at the data, what sort of sample size we have, what particular demographic target figures we have, the procedures we use, so in this sense we are very transparent in sharing with the market, and also with advertisers and ad agencies, how we operate and how our methodology executes the audience measurement.

Mr. COBLE. I got you. Thank you, sir.

Mr. Schwartzman, let me try to beat that red light illuminating in my eye. What are the constitutional challenges, if any, to creating minority ownership mandates at the Federal Communications Commission?

Mr. SCHWARTZMAN. The Supreme Court has upheld the FCC's policies with respect to minority ownership in a decision about 15 years ago, so I think the question is settled that they are constitutional.

Mr. COBLE. Thank you, gentlemen.

Mr. Chairman, I yield back.

Mr. CONYERS. Thank you very much.

I now turn to the gentlelady from Houston, Texas, a senior Member of the Committee, Sheila Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, again I want to offer my appreciation for having the opportunity to use the legislative process and the, I think, intentions of the founding fathers that we come to this place to solve problems. And we are in fact representative of all of our country, both those who agree or disagree with us.

And we find ourselves sometimes having to make hard decisions of which maybe the majority of Americans or a large portion of

Americans may be challenged to agree with. And I cite, as I have done often in this Committee room, that there was not a groundswell support for the passage of the 1964 Civil Rights Act or the 1965 Voting Rights Act. Today we would ask how could we live without them?

So I want to find a way of coming together. And a good friend of mine, a congressman from Chicago, quoted another great philosopher. I heard him saying it as he was walking. Can we all get along? I think Rodney King offered that suggestion some time ago.

So I would like to raise the question to Mr. Schwartzman—excuse me, am I—and thank you for your presence here, as Arbitron is an institution.

First of all, do you believe that government regulation of Arbitron, which in essence has been itself, meaning the government, criticized for maintaining a near monopoly with Arbitron—can it be helpful in solving the problems of the concerns of our constituents, which are small broadcasters, minority broadcasters, so that we can go to the heart of the issue?

The heart of the issue is that Black radio, Latino Hispanic radio iin particular, and now in a growing market, Asian radio, speak to the hearts and minds of a particular community. Now, those hearts and minds may not—I don't know how they calculate, but when they hear, they run out and repeat and they run out and buy. Can we be fair to those entities in this present construct that we have?

Mr. SCHWARTZMAN. Congresswoman Jackson Lee, Mr. Skarzynski——

Ms. JACKSON LEE. And I want to ask Mr. Schwartzman, but also Mr. Skarzynski—excuse me—as well—two S's, but two different—go ahead.

Mr. SCHWARTZMAN. Mr. Skarzynski had a colloquy with Congresswoman Waters about the Media Ratings Council. What he didn't say is that Arbitron has opened up in a number of markets, despite rulings Of the Media Ratings Council, which say that you should not institute a new technology until it is accredited.

They have received accreditation in only two markets, one of which is using a different sampling method than is being used in all the other markets which have been opened up.

If the Media Ratings Council is—it proves to be an insufficient basis to restrain the questionable activities of Arbitron, then I think regulation would become appropriate.

Ms. JACKSON LEE. And so if you are restrained in this present structure, then we need to unrestrain you.

Mr. SCHWARTZMAN. That is right. We should give the Media Ratings Council a little more time, but if they are unwilling to restrain the activities of Arbitron and they are continuing to withhold accreditation, then that means that the self-regulation system hasn't worked. Regulation becomes appropriate.

Ms. JACKSON LEE. Distinguished CEO Skarzynski. I will get it right here—Skarzynski. Thank you.

Mr. SKARZYNSKI. Congresswoman Jackson Lee, thank you for the question. Let me first, if I may, respond to the comment that was made by Mr. Schwartzman, which was an incorrect comment. Under the rules of the Media Ratings Council, and a very large document is in the public domain that describes the Media Ratings

Council that was filed on June 30 with the FCC under a notice of inquiry, so I would be happy to make that available to the Committee, if that would be of interest——

Ms. JACKSON LEE. Mr. Skakrzynski, I have a short period of time, and I want to get to Mr. Minter very quickly, so could you——

Mr. SKARZYNSKI. Under the Media Ratings Council provisions, any audience measurement service can provide and can commercialize the service before it obtains accreditation, as long as it is continuing to work toward accreditation.

Ms. JACKSON LEE. Let me turn to Mr. Minter, but let me leave on the table, Mr. Skarzynski, a willingness to talk with you. I need to hear a bottom line of how we can get advertising dollars to small radio stations. So let me just stop there.

Mr. Minter, I think you are eloquent in your expression about what weaves in and out of this question, the bottom line, the economic bottom line of keeping radio doors open all over America, including Houston, including L.A., Chicago.

Why don't you just pose the rights of artists? And I can't help but know who has been being played these last 3 weeks, what family has been played these last 3 weeks, and this concept that I know you have in your heart of keeping the stations, who played the R&B and others.

And let me publicly thank you for helping lay to rest my dear friend, Brother Huey Long. If I could hear from you, distinguished gentleman, if I could yield to you on that. Balance the two interests, please.

Mr. MINTER. Thank you, Congresswoman. Our concern at the foundation on behalf of the artist community in general is to grab some of the pot that is out there that everybody is sharing in. We understand it is a dwindling economy. Everybody is affected.

We are very sympathetic with the concerns of radio, but we look at the fact that revenues and advertising dollars are flowing into radio predominantly, if it is not talk radio, because of the music that is being played. And on behalf of the artist community, we are looking to be able to have some of those revenues flow through to the artists, who are in need, who have earned the right to be compensated for the airplay of their work, the same as they are around the rest of the world.

This is no different. They have already been compensated for the same work, the same airplay on digital radio, cable, satellite and webcasting. However, the last 70 years, as we know, the broadcasters on AM and FM have been able to avoid this issue coming up.

And we are looking for fair compensation. At the same time, we want to have a balanced dialogue so that we can take the concerns and the issues that the broadcasters are putting in front of the Committee today.

Ms. JACKSON LEE. You would be willing to come back to the table and say, for example, look at a promotional value concept, if they came back to the table so that we could move forward in a unified manner.

Mr. MINTER. Absolutely. Every door is still open. We realize that the act has not been passed by the full House and the full Senate yet, and there is a lot of dialogue that needs to be conducted in the meantime, and we remain open to have that dialogue at anytime, anyplace.

Ms. JACKSON LEE. Chairman, if I just want to just pose this last question because of the economy.

How much money do we need to just reinforce? How much money is less on the table for American artists, who would then come and invest in the United States by doing more production, more studios? Millions? Billions maybe? Over the period of time, they are less on foreign shores because of our lack of responsiveness and the legislative construct, because we don't have a fix, if you will, to get those dollars back into the country.

Mr. MINTER. The estimate that we received at SoundExchange, which is one of the performing rights societies, is approximately $70 million to $100 million per year.

Ms. JACKSON LEE. Per year. And I could say if we did 20 years, we could calculate.

Mr. MINTER. Twenty? It would be billions.

Ms. JACKSON LEE. All right.

Thank you very much, Mr. Chairman. And I am delighted, but I would love to ask more, but I yield back. Thank you, Mr. Chairman.

Mr. CONYERS. The distinguished gentleman from Iowa, Steve King.

Mr. KING. Thank you, Mr. Chairman.

And I thank all the witnesses.

And I first start out by something—I looked at the memo that we would have this hearing, and I know that we had had a hearing on the same subject matter not that long ago. And I was a bit surprised that we would have a hearing for minority radio operators, because I think all small business people are a minority, and they face a lot of the same kind of problems. So it raises a question in me on why we do this.

And I wasn't able to hear all of your testimony, and I want to review part of it. So I am interested in exploring what kind of discrimination you might be facing that would justify this, but I listened to Mr. Schwartzman reference a Supreme Court decision from about 15 years ago, I think.

And could you speak to that, Mr. Schwartzman, that Supreme Court decision that addressed, set asides or preferences, so that we are aware of the foundation of the discussion here?

Mr. SCHWARTZMAN. Yes, Mr. Congressman. The decision is Metro Broadcasting vs. Federal Communications Commission. And in that decision the FCC had two policies: one which gave a plus to minority owner applicants for broadcast licenses, and the second was a minority distress sale policy.

When the FCC is taking away licenses, it permits a sale of license to a minority owned operator. And both of those policies were considered and upheld by the Supreme Court, I believe in 1993.

Mr. KING. Could you tell me why the FCC would not approve a sale to a minority license holder?

Mr. SCHWARTZMAN. It is not a question of whether it would not approve it. It is a question of a solid policy to promote minority ownership. As I said in my prepared testimony——

Mr. KING. But it permits them to sell to. And that verbiage tells me that there must be an implication that there is some prohibition.

Mr. SCHWARTZMAN. It is not that there is a prohibition. It is that the 1996 Telecommunications Act, as I explained in my testimony, by allowing larger companies to buy up properties, it bid up the prices and made it less available to new entrants, and most especially to minorities.

Mr. KING. And this case that you have referenced—Metro, the Metro case—have you evaluated in light of the two Michigan cases?

Mr. SCHWARTZMAN. Yes. It is my opinion that the Metro Broadcasting case continues to be good law.

Mr. KING. And you referenced a formula that would be used by that. My recollection on the two Michigan cases was that the formulas were prohibited, but in dealing with individuals they were allowed to use judgment exceptions.

Mr. SCHWARTZMAN. Broadcasting licenses are administered under the public interest criteria of the Federal Communications Commission, and promoting a diversity of voices in the mass media is a central component of the public interest standard. And that is why the FCC has considered and treated broadcasting as essentially different from other forms of ownership.

Mr. KING. That is not really the answer to the question, but I understand your position.

So I would like to understand, if I could start with Mr. Winston, and I just—I know in business being short of capital and having difficulty in marketing the advertising, which is a revenue strain that you have to rely on, that it becomes people-to-people relations and networking relations and the difficulty.

I spent my life trying to build enough capital that I could compete against the big guys. I mean I am very sympathetic to that. And we have to have entrepreneurs that are planting seeds out there to grow companies that are tenacious and their ability to challenge the establishment, whatever their particular ethnicity or race might be.

But could you fill me in a little bit on what you are faced with? Are there clear examples that you could help me understand what is going on? It would be outside of the communities I am familiar with.

Mr. WINSTON. Okay. I addressed two subjects in my testimony. The first is difficulty with lenders, and the second is a problem with Arbitron.

The first problem is that we are in a recession. There is a nationwide recession. We have been through recessions before. You go into your bank. You talk to them. You say, "Look, we are down. We need to restructure our loan, maybe extend it for another year or 2, adjust the interest and principal payments." You work it out.

In this recession we are finding no responsiveness from the lenders, and we are talking about the lenders who are the principal recipients of TARP funds. They have gotten billions from the government. They are making no concessions to broadcasters. They are saying, "Sell off your stations. Turn them over to us." You know, leaving many of my members looking at the possibility of filing Chapter 11 to try to preserve their companies.

You add onto that Arbitron's new rating service, the PPM service, which has substantially changed the results for audience measurement for radio stations, so that a radio station that was targeting the African-Americans in a market the day before PPM came in, they could be number one, two or three. After PPM came in, they were 15, 16, 17—no change in anything the station had done.

Mr. KING. All right. I thank you. And our clock has gone red, and I just want to just make a very brief comment on this that you are marketing to a minority audience, and it accentuates the problems that all small businesses have because of that.

Mr. WINSTON. Exactly.

Mr. KING. And that is the point that I wanted to understand. And I will make the point that however this might be resolved, there will also be a lot of non-minority people that will end up in a very difficult position that is very similar to the ones that you are addressing here. Would that be a fair analysis?

Mr. WINSTON. Yes, that is fair to say. I mean what we have said in the African American community for many years is when White America gets a cold, we get pneumonia. And that is pretty much where we——

Mr. KING. I let you have the last word, Mr. Winston. Thank you for your testimony.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Luis Guitierrez.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

First of all, Mr. Winston, I am going to take this opportunity to tell you that Congresswoman Maxine Waters and I and others, that happen to fortunately sit on the Financial Services Committee and enjoy the seniority that our years of service here afford us, to sit down and to talk specifically about the financial situation that broadcasters and the owners of radio stations, and I think that is very important as we start toward the markup. I think we should always try to find something useful to do after we listen to testimony.

Mr. WINSTON. Thank you, sir.

Mr. GUTIERREZ. I am going to tell you that we are going to do that. Maxine and I worked very closely in the past, and we will work on this one together.

We want to figure out, Mr. Minter, how we get that money to those recording—I mean I understand that if you wrote it, you get money, but if you performed it, you didn't. And I think we want to find a way to do that. At the same time find out within the economic situation that we find ourselves in as we have people withdrawing money—that is, fewer loans, especially to those in the minority community, and how is it that we get the money that is rightfully deserved to people so we understand that.

And we are going to work on that, and I am happy that you suggested that we have time and that you are willing to continue, because I believe I think that is what this hearing is all about, and that is bringing people. And I would have been hopeful that others that were invited would have come and would have participated, because I think that dialogue is always very, very fruitful.

Lastly, I wanted to say to—I am sorry. Could you say your name for me again?

Mr. SKARZYNSKI. Skarzynski.

Mr. GUTIERREZ. Skarzynski. Mr. Skarzynski, if you go back—when you go back to the office, you are going to find that you sent to me two of those little things that you wear in your belt about a year and a half ago in Chicago. And we tried it, because we wanted to be cooperative. We thought it was kind of our responsibility and duty to work with Arbitron.

But I am going to tell you something. To expect two professionals to wake up every morning and to put—and my wife's dresses sometimes could not accommodate the little gadget on her dress—and to expect me to put—I don't even put my cell phone on. I barely take my medicine when I am supposed to. I walk around blank, because I am always leaving my glasses.

You know, just think about normal people and what it is they have to do already, and to expect us—and we wanted to do it in spite of—I think you sent us like five bucks or something. I was going to send it back to you. [Laughter.]

No, that is what you sent. It was like five dollars—oh, thank you. We were going to do it for nothing. We would have, but it really is very burdensome, your technology. So I called. Maybe there is a record of the call.

I called Arbitron, and I said, "Listen, I got two boxes here from my cable company. Be happy to have you guys put an adapter to them. We own two cars. You can put one in each car. Any time we turn on that car, any time we turn on those TVs, you will know what we are listening to, and you will know what we are watching and where we are watching it."

And I think that if you go into minority neighborhoods and hook them up straight to the TV sets and straight to those cars, you are going to get a better reflection. But if what you want to do is spend five bucks and this burdensome system, this is what you are going to get even——

I am just trying to tell you I wanted to cooperate with you. You can imagine the challenge that I had. You know, I had to bring it over here to Washington, put it in at the end of the day, carry it all day with me. It is burdensome, especially as you want people.

So I can't see like an auto mechanic using this, you know, as he changes. Just think of people and pagers and electronics already if you are a nurse, if you are a doctor. Are you really going to walk around with this pager all day?

And I say that so that you can have a system that will better provide information, because as you suggested earlier, really at the core of democracy is information—from your testimony—and that radio and this information, these public airwaves really belong to all of us.

And I think if we do that, we can help these small broadcasters, these minority owned broadcasters, very, very much in getting the revenue that we want the artist to get, because I think there are really two issues here. There are artists that deserve the revenue, and then there are the broadcasters who own these radio stations that deserve the revenue, too.

So there would be more revenue if we had a better way of gauging just listening, so that when they go to corporate America and demand the money for our listeners, there will be more money to share and spread around. Thank you so much, all of you, for your testimony here this afternoon.

Mr. CONYERS. Well, let me ask my two dear colleagues, Johnson and Gonzales. Are both of you trying to get your comments and discussions in before we go to cast ballots? Is that critical to you?

Mr. JOHNSON. I would like to have this group released as soon as possible, and so therefore I won't take very long with my questions. And I kind of—of course, I would love for Mr. Gonzales to be afforded time, if he so requests at.

Mr. CONYERS. Well, he requests, and you usually take—never take a short amount of time. [Laughter.]

Mr. JOHNSON. Well, I will be brief this time, Mr. Chairman.

Mr. CONYERS. Look, I mean we all work during daylight savings time. I mean this is a critical hearing. Your contributions have been very valuable. I mean, I don't see the rush. We got a few more votes. The Committee has royally entertained its witnesses, and even its visitors, so I don't want to rush to judgment.

Mr. JOHNSON. Mr. Chairman?

Mr. CONYERS. Yes?

Mr. JOHNSON. I have got a few other things I need to do also, so I would—I mean if the hearing will continue or go to a second round, I have no problem with that.

Mr. CONYERS. What is Maxine Waters suggesting?

Ms. JACKSON LEE. I have another question, too, so we could come back or not.

Mr. CONYERS. Does anyone——

Ms. JACKSON LEE. We will have to come back, Mr. Chairman.

Mr. CONYERS. Yes. I have got a consensus here. It is so important that our Committee be run on an exemplary, democratic basis so that we will stand in recess till the votes, and then we will all have comments to make later. Thank you very much.

[Recess.]

Mr. CONYERS. The Committee will come to order, and the Chair recognizes the distinguished judge from Texas, Mr. Gonzalez.

Mr. GONZALES. Mr. Chairman, thank you very much.

And I want to thank the witnesses for their patience. But I think it is important to have you here, have your written statements for future reference, and your testimony today.

I am disappointed, as has been expressed by other Members, that we don't have all the stakeholders that are out there that have something to add to this debate.

The reason you are here is to educate us, to provide us with your point of view. You have to advocate in your own behalf. No one else is going to do it for you. So when you drop out of the debate, I can assure you the voices are not heard, and no one can complain at a later date that this Committee did not make every attempt to get everyone before them.

Two different areas of questioning, of course, is going to be, first, I know it is performance rights. We have already voted the bill out; and there are some differences of opinion, Members that have already expressed some of that.

My concern, and this is probably more directed to Mr. Minter than anybody else, and that is, just radio stations find themselves in a very strange situation. Technology has changed. The way people get their music, as you are well aware of, is totally different than it was years ago. Formats, platforms, everything is different, and radio stations have certain costs in the way they deliver music that other delivery systems, platforms and such, don't.

When it comes to the public airwaves, the big difference is that the listener gets it for free. When it comes to satellite, there is a subscription. So we start off with such an inherent basic difference in business model that advertising has to be the revenue source for those that use the public airwaves.

And so we fast-forward—bad economic times, change in technologies and such, and yet there is something that is so abundantly right about saying that someone should be compensated for their labor, their creation and their performance. And we get into the only thing—qualifier to that might be, again, promotional value.

My preference has always been to have someone that knows what they are doing evaluate what is going on out there, and be able to attribute some value to promotional, a value that we could then be part of this whole equation.

And we are going to have GAO. It is my understanding that the Chairman and the Subcommittee and the Ranking Member have made that request, and GAO will move forward on that. So I was hoping that passage out of the Committee would get the parties to the table, but that didn't work.

But when it is all said and done, Mr. Minter, my only question to you, and I want you to be really brief on this one, because I want to go on to Arbitron, and that is—and I guess we can also, Mr. Joyner and Mr. Minter, Mr. Winston—is the recording artist better served with a greater number of radio stations out there, public airwaves where people listen to it free, or fewer number out there? Because logic would tell me you got a lot more play if you got a lot more stations still in business.

Mr. MINTER. Thank you, Mr. Gonzalez. Technically, the answer is yes. The parties that are performing the music are better served by having a broader audience, and an audience that can access that music for free.

The difficulty that we have is the playlist on the stations that are broadcasting that music these days are inherently being limited and restricted, because they are doing consumer research that gives them the top 20, top 30 records that are active for that particular week, which means very little access to a lot of developing artists, and also gives very little access to the more established heritage artists that our foundation represents.

So if you are listening to the radio today, you are going to hear predominantly music that is the music of choice for younger adults, younger audiences. And ultimately what that does, is it then restricts the income earning capabilities of those artists who are not being played, and inherently then they call on our foundation for financial assistance, because——

[Audio gap.]

Mr. GONZALEZ [continuing]. Attempted to get all the stakeholders in one room, and we did. And the only thing that took place was a discussion, because there was no meeting of the minds.

The biggest question, and this is going to be, of course, to Mr. Skarzynski, and that is, we have minority radio station owners that truly believe the manner in which you have selected your sample, both as it is constituted and the quality of it, is not truly representative of the audience out there, and they are now suffering.

And, as I earlier indicated, these are tough times for them, and it is impacting their advertising revenues on what they believe are not accurate figures that those advertisers are now going to be depending.

Now, you have indicated that this thing was rolled out because the MRC allowed it to be rolled out, even though it hasn't been accredited. And I think that was the situation back then. It was my understanding that they allowed the rollout as long as it was complemented by at which you had already in place, which would be the old diary system and such.

Where are we today, a year later after that somewhat frustrating experience over in the Cannon office building?

Mr. SKARZYNSKI. Congressman, thank you for the question. I should note I have been with the company 6 months, so I was not participating in that session from 1 year ago. You have made a couple of different comments. May I address each in turn?

Mr. GONZALEZ. Yes.

Mr. SKARZYNSKI. Number one, Arbitron believes that we do have a representative sample. We work very, very hard to, for example, as we are looking at the San Antonio market, to get a representative sample that reflects the metro area of San Antonio.

Point two, on the MRC accreditation process, which I think you know very, very well, Congressman, as do Members of the Committee, the MRC accreditation process is not simply for radio, but it is also for television, for newspapers, for other services. The policies, the procedures of the Media Rating Council is to allow a audience measurement company to be in the market, commercializing the service before accreditation is obtained.

The provision you mentioned, Congressman, about keeping the previous service in place before you move into the new service is the recommendation of the MRC. And that is still in place. We have a diary service.

We serve over 300 markets in the United States, measure 300 markets in the United States. The new PPM service is focused on the top 50 markets. We are at 18 of the top 50 at this moment in time. And we still continue to maintain the diary service in markets 51 through 300.

But when we are making a conversion from a diary market to a PPM market, as we are planning to do in San Antonio next year, we keep the—at the moment in time that it becomes commercial, we keep the previous service, the diary, in place for 3 months as the conversion occurs.

Your final point, where is the company Arbitron now with respect to the improvements that you and the other Members of Congress asked for from 1 year ago? I can report to you that we have made very good progress in improving the sample size and improving the sample quality.

We have made a commitment to improve the sample size by 10 percent. On the matter of sample quality, we have introduced a higher level of cell phone only sampling. I believe 1 year ago, Congressman, that we were at about 7 percent as our goal, and we are now at 15 percent.

We have improved the way we—the so-called stratification of this sample. How do you go after the Hispanic demographic or the Black demographic? We have improved the way that we make this recruitment. And further, and the final point, we have made a significant number of improvements around maintaining the panel when it is in place, extra coaching, extra training. So those would be some comments, sir, to your questions.

Mr. GONZALEZ. Mr. Chairman, thank you for your indulgence.

Mr. CONYERS. Thank you very much.

I wanted the record to show that Reverend Jesse Jackson Sr.'s staff person has conveyed his personal regret that he could not be with us today. He is in travel, and it was impossible for him to make the adjustment.

Mr. Skarzinsky, maybe I didn't pay as close attention as I ought to have, but what was your response to Congressman Gutierrez's frustrating description of trying to use equipment that he had been sent to measure his use of media? You don't remember any of that?

Mr. SKARZYNSKI. Mr. Chairman, Congressman Gutierrez made these comments. He did not ask me to comment.

Mr. CONYERS. Oh.

Mr. SKARZYNSKI. So I did not.

Mr. CONYERS. Oh.

Mr. SKARZYNSKI. He did not invite me.

Mr. CONYERS. Okay, well, on his behalf, I invite you to respond. [Laughter.]

Mr. SKARZYNSKI. The congressman made several points. I think they are all very, very good points. Number one, that PPM device—I am holding one in my hand, Mr. Chairman—is a device that was developed, gosh, more than 10 years ago. This is the device. It looks similar to a pager. It has a little clip on the back. You could put it on your belt.

Congressman Gutierrez said, "Gee whiz, I don't like this. I don't even put my cell phone or PDA or Blackberry on my belt and don't care to do that, and my wife wouldn't put—doesn't have a belt when she wears any particular outfit, so this is not handy, easy to use." It is also—a second comment—it is not very interesting looking.

And other important comments he made were, "When I am in different places, when I am traveling from my home district to my office here, I am on the move. I have to remember to bring all of the equipment, all of the chargers, all of the car chargers."

At the time he had this experience, which I think Congressman Gutierrez said was about a year and a half ago, I don't think the company did a good enough job of giving extra travel chargers, giving extra docking stations so that if you are on the move or coming from one area to another, that you would be covered.

And all of these points are very good points. We have addressed, I think, the point on the accessories and travel chargers from a year and a half ago to today. I think we have addressed that quite nicely to solve that problem.

On the matter of "I don't want to wear it, because it is not something I have or a woman doesn't want to wear this pager-like device," we have from a year and a half or 2 years ago developed a brooch pin and other devices that might be more interesting for a woman to carry.

Congressman Gutierrez's final point was you ought to—I am using my words, sir—you ought to take this solution and put it into software so it fits into a cell phone or fits into a PDA. And I guess we should give the congressman some credit for new product planning.

That solution is exactly what we are doing for our next generation product, so that rather than have yet an extra device, it would be a software only solution that we would put into your PDA or your Blackberry or your cell phone, and it wouldn't be "Oh, gee whiz, I have to remember to take this darn thing with me when I am traveling from Place A to Place B." It is in your cell phone, or it is in some other device that you have with you at all times.

So those are my comments to Congressman Gutierrez's points.

Mr. CONYERS. Well, I think you have given me more of his questions than you have given me your responses to those questions.

Mr. SKARZYNSKI. I am sorry, sir. I don't follow you.

Mr. CONYERS. I see. Okay. I think you remembered more questions that he asked you than answers that you gave me.

Mr. SKARZYNSKI. I—I——

Mr. CONYERS. You don't understand that, do you?

Mr. SKARZYNSKI. Congressman Gutierrez made some comments, and I remember what those comments were. I was not asked to comment on them. You have asked me to comment on them, and I am doing so now. So I am sorry I am missing——

Mr. CONYERS. You are missing something.

Mr. SKARZYNSKI. I am missing the point you are trying to make.

Mr. CONYERS. Okay. This is my third attempt. You remembered more questions than you gave me answers to his questions. That is the fourth time.

Mr. SKARZYNSKI. Well, Mr. Chairman, I mentioned that Congressman Gutierrez made three or four points, and I attempted to respond to those three or four points.

Mr. CONYERS. Okay. Well, we have got a record, so we will be able to recall it. Let me ask you, is there any way we can have you demonstrate this box and how it is used and held by the people that are selected for the Arbitron test?

Mr. SKARZYNSKI. In terms of how the technology actually works?

Mr. CONYERS. Yes.

Mr. SKARZYNSKI. I don't have equipment with me to ship demonstrate it for you today.

Mr. CONYERS. Would you be willing to?

Mr. SKARZYNSKI. I would be happy to do that, sir.

Mr. CONYERS. Okay.

Mr. SKARZYNSKI. I would have to bring some equipment here.

Mr. CONYERS. Would it fit inside this room?

Mr. SKARZYNSKI. The equipment I would bring would be devices like the PPM device and other equipment that the panelists are using. And the way we do so is it would fit on top of the table very easily.

The other equipment that is involved would be the encoding devices that we put on at radio stations, which you would have to go to the radio station to see. And in terms of how the data are brought back to us, each evening the panelists put the PPM device into a docking station, and at 4 in the morning, all of the data that had been recorded are sent back to our servers and are collected and collated. So to see that data center operation would be similar to a data center operation that you might be familiar with.

But I could bring it to you and to other Members of the Committee the equipment to show you how it would actually work.

Mr. CONYERS. We would be very happy to have you do that.

Mr. SKARZYNSKI. I would be pleased to do that, Mr. Chairman.

Mr. CONYERS. Thank you very much.

Did you say that there is now a new device for wearing in one's lapel or something that facilitates it being worn by women?

Mr. SKARZYNSKI. Yes, Mr. Chairman. A brooch type device that a lady might put on her lapel or a blazer or onto a garment.

Mr. CONYERS. Would you bring that as well?

Mr. SKARZYNSKI. Yes, sir. Be happy to do that.

Mr. CONYERS. All right. Do you have any other equipment that I may not be familiar with that I could invite you to bring along as well?

Mr. SKARZYNSKI. I will bring along, Mr. Chairman, a whole set of things in terms of our travel accessories and our other travel chargers so that you could see how the unit might work in a different setting versus the office or, you know, in a car, in your home.

Mr. CONYERS. I am not doing this just for our own edification of the Committee.

Yes, Mr. Winston?

Mr. WINSTON. I am sorry. I thought you were going to leave this subject. I wanted to try to respond to something Mr. Skarzynski said. May I do that now?

He commented on the MRC accreditation process. And my concern was that he mentioned that the MRC guidelines say that if you have an accredited ratings service, that they are guidelines say maintain that process in existence until the new process is accredited.

Mr. SKARZYNSKI. It is commercialized.

Mr. WINSTON. And—and——

Mr. SKARZYNSKI. I used the term "commercialized," not accredited.

Mr. WINSTON. Okay. All right. Well, the fact of the matter is, of course, they did not maintain that service until it is accredited. And they have discontinued the diary in all these PPM markets, so they are offering only an unaccredited service.

I just thought that that should be pointed out here, that Mr. Skarzynski has said a lot of nice things about the MRC, but in practice they are ignoring the MRC and going forward with an unaccredited service and have no accredited service in these markets where the PPM has been rolled out.

Mr. SKARZYNSKI. May I respond, Mr. Chairman?

Mr. CONYERS. Absolutely.

Mr. SKARZYNSKI. Jim, I am sorry you misheard me. The word I used was that under MRC guidelines the former service, diary, is maintained for a 3-month time until the new service, PPM, is commercialized.

Mr. WINSTON. Sorry. You are saying that is Arbitron's practice or is that what the MRC says?

Mr. SKARZYNSKI. That is the MRC guidelines. So those are the words I used, and not the words that you used.

Mr. WINSTON. All right. Thank you, Mr. Chairman.

Mr. CONYERS. Okay.

Mr. Skarzynski, who was in your position before you became CEO?

Mr. SKARZYNSKI. Mr. Chairman, a gentleman named Steve Morris had been the CEO of the company. He retired at the beginning of this year, and he had been the CEO for, gosh, for many, many years.

Mr. CONYERS. I see. And you don't happen to know where he is at this point in time, do you?

Mr. SKARZYNSKI. He lives in New York. He is in New York. He has retired at the age of 66, and he has a home in New York.

Mr. CONYERS. Well, before I yield to my Subcommittee Chairman, I am going to ask everyone here how many African-American formatted stations are owned by African-Americans?

Mr. WINSTON. I can take a stab at that, Mr. Chairman. As NABOB, we keep track of the African-American owned stations. Of the 245 African-American owned radio stations in the country, approximately 90 percent of those are formatted for African-Americans. We are looking roughly slightly over 200 African-American owned stations that are formatted for African-Americans.

I advise that there are probably an additional number that are not African-American owned that target African-Americans, so I think that the number may be somewhere in the 400 range. That is where we don't keep the general market numbers. That is where there is an estimated guess on that number, unless somebody else has a more accurate estimate on the rest of the market.

Mr. SKARZYNSKI. Mr. Chairman, when you asked the question, African-American stations owned by African-Americans, do you mean that they would own 100 percent of it and they would not be using any capital from a third party?

Mr. CONYERS. Well, they would have controlling interest. They wouldn't have to own 100 percent of it.

Mr. SKARZYNSKI. Well, for example, Inner City Broadcasting is a well-known station, but in its capital structure I don't think that the controlling interest is any African-American. I believe it is GE Capital, for example.

Mr. CONYERS. Right.

Mr. WINSTON. No, I don't believe that is correct.

Mr. SKARZYNSKI. You don't?

Mr. WINSTON. I think Inner City is in control of Inner City. The African-American shareholders of Inner City Broadcasting are in control. And I think Mr. Skarzynski may be highlighting an issue that we are addressing in this hearing, which is that companies like GE Capital are attempting to assume control of many African-American stations, so that I think Mr. Skarzynski may have put his finger on our ongoing issue here, which is that we have problems with lenders that are trying to exercise unwarranted control over African-American owned companies.

Mr. CONYERS. What do you say, Mr. Schwartzman?

Mr. SCHWARTZMAN. My understanding is that Inner City Broadcasting is controlled by an African-American. Indeed, if GE Capital were controlling it, it would be an unlawful transfer of control, because that has never been approved by the Federal Communications Commission.

Mr. CONYERS. Well, I don't know which of you are correct.

Attorney Minter, what would you add?

Mr. MINTER. Mr. Chairman, I don't have the exact numbers, but I do know that into that calculation we need to talk about a number of large group owners—Granite, Cumulus, others that do programming for the African-American in urban communities, which I think is the bigger picture that you are looking to, as opposed to just 100 percent owned and controlled African-American stations, because we are talking about the programming influences lock.

Mr. CONYERS. Mr. Schwartzman?

Mr. SCHWARTZMAN. Yes, there is one other thing I would like to add. As I indicated in my testimony, one of the things that we don't have are good statistics. And the Federal Communications Commission under new management has created a new data collection forum, which is going to be operative this fall, and I hope that we will finally have good numbers within a year or so, and we could give you some meaningful answers to those questions.

Mr. CONYERS. We have been joined at the table by a gentleman that has stood up quite a long time to indicate that he wanted to respond, and we would be welcome to have him respond.

Mr. WARFIELD. Mr. Chairman, thank you. My name is Charles Warfield, and I am the president and CEO for ICBC Broadcast Holdings. And I wanted to just make clear on the record that Inner City Broadcasting is an owned and operated, 100 percent owned and operated, African-American broadcast company. I can only speak for our company, but we own 17 radio stations in four markets. We are African-American owned and operated.

Mr. CONYERS. Well, I am glad that you are here. What about the dash? Someone suggested GE Capital was involved.

Mr. WARFIELD. There are banks that have lent money to the company. That is correct. But they do not own our company. Our company is 100 percent owned and operated by Inner City.

Mr. CONYERS. Right. Okay. And then there was——

Mr. WARFIELD. We are trying to keep it that way, Mr. Chairman.

Mr. CONYERS. And you are trying—you want to keep it that way. Would that mean excluding compensating artists for their performances?

Mr. WARFIELD. We are trying to keep it that way, Mr. Chairman.

Mr. CONYERS. Well, I asked you would that include excluding compensating artists for their performances on your 17 stations?

Mr. WARFIELD. We work very well with the artists, and have been for the 30 years that I have been in this industry. We certainly do not make any payments to them. We are trying to keep our company solvent, trying to keep our company active and engaged. We can continue to help develop the careers and the futures of these artists.

Mr. CONYERS. Well, I will tell all of them that are starving that you are concerned with at least the ones that you play, except you don't compensate them. But look, we are in a modified capitalist system. I mean everybody can make it. I mean all artists don't make it, do they? All radios don't make it, do they? All Members of Congress don't make it, do they? [Laughter.]

All Presidents don't make it, do they? But then at the same time, if we abolished involuntary servitude, where does the notion of contributing your work and not getting compensated from what capitalist principle does that derive from?

Mr. WARFIELD. Mr. Chairman, I just wanted—you know, being here, why I was not prepared to make any testimony here today—I am here as an observer—that from my understanding, this was to address the concerns that are facing the viability—challenging the viability of minority broadcasters, of which we are one of those companies.

The performance tax issue is certainly one that challenges us, not directly today as much as PPM is, and as Mr. Winston has indicated from NABOB, you know, financial assistance in some form.

We are looking for ways that we can continue to serve the communities that we have been licensed to serve. Inner City Broadcast is a company that has been in business for over 35 years, and we would like to continue to have the opportunity to serve the communities in New York City and San Francisco and Columbia, South Carolina, in Jackson, Mississippi, which we have been dedicated to doing.

And without the issues that are being addressed here today, that might not be allowed to continue into the future.

Mr. CONYERS. Well, that is what we want to make sure doesn't happen. We want you to continue to operate into the future.

Would you be agreeable to sitting with those of us that are negotiating with the distinguished gentlelady from Los Angeles, Congresswoman Maxine Waters, and a veteran broadcast person, Clarence Avon from New York and other parties that enter into discussions about the subject? Oh, and Sheila Jackson Lee, of course, entering into discussions about the nature of the problem and how we can resolve the issue, because that figures into our continued support of the minority radio stations and our desire to see them increase in number and in strength?

Mr. WARFIELD. Mr. Chairman, I would not be interested in participating in that dialogue, to be honest with you. There are individuals that you have mentioned, though, that I have had dialogue about this issue with, not in an effort to resolve this issue, but in an effort to get them to understand the position of the radio broadcast industry, the the minority broadcast industry itself.

But in terms of sitting down and trying to find a solution to this, I don't believe the solution is one that should be found with the broadcasters themselves, but needs to be found other ways.

Mr. CONYERS. Well, that is great. Could you tell me what other ways you may have in mind that we don't know about?

Mr. WARFIELD. Well, I have participated in a hearing in this room before, and did not participate today, but I do believe that some discussion could be had with the relationship that exists between the record labels and these artists who have fallen upon hard times and what role they may have played in the state that they are in right now that might possibly present some other solutions to their plight.

Mr. CONYERS. Okay. Great. Well, I am so glad that you offered to come forward today, and we greatly appreciate it.

My last question is what should I tell all of the people—oh, and I left out Professor Charles Ogletree of Harvard University, who is sitting in this group—what should I tell them is the reason that you don't care to sit with them in terms of fashioning a response on how to make you more sustainable and stronger?

Mr. WARFIELD. If the issue is how to help our industry be more sustainable and stronger, I would certainly be willing to participate in that kind of a dialogue, but if that included some other resolution on the performance tax issue, I don't believe that is one that is going to be helpful to our future.

Mr. CONYERS. Well, if that is not helpful to your future, that would be more reason for you to participate in it and help us understand how it would be harmful. I mean you are a veteran businessman. How can we work with you and help you out? And you are saying you will not sit with us about one part of our discussion. That lets you out.

I mean what are we supposed to do? Guess what you would say if you were there? Or assume that you—I mean what is it we can do? We hold hearings. We have impartial groups negotiating. You come here as a guest. We invite you to participate in the hearing that is going on now, and your contribution has been very thoughtful. Why can't we enjoy the product of your deliberations in a more informal setting?

Mr. WARFIELD. I have provided that, Mr. Chairman, on numerous occasions in the past.

Mr. CONYERS. You have?

Mr. WARFIELD. Yes, sir.

Mr. CONYERS. To whom?

Mr. WARFIELD. I have had very recent conversations with Clarence Avon, for one, on this issue.

Mr. CONYERS. Good. Well, he is one of the conveners of the discussion. Oh, this is so puzzling. You talk to Clarence Avon, and yet I tell you Avon and Lee and Waters are all trying to work this thing out, and you say, "Well, I don't want to participate in that." But you say, "I talked to Avon. I had long, fruitful discussions with him." Is there something I am missing here at the beat?

Mr. WARFIELD. No, sir.

Mr. CONYERS. Oh. Okay. All right. Then on that note, I recognize Hank Johnson of Georgia.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Warfield, I have heard it said three times now that the performance royalty bill is a tax. And I am going to ask Mr. Minter to respond to that mischaracterization of the performance right tax.

Mr. MINTER. Thank you, Mr. Johnson. As you know, there has been a lot of information that has been disseminated to the public, and we in the artist community have consistently looked at some of the information that has been out. And the broadcast community, strategically and wisely for their position, has let the public know that this is a tax.

Now, in our town hall meetings and our various discussions we have had, we have consistently said that a tax is a assessment by a government entity for the well-being and the fulfillment of government programs for the community.

And this is actually a royalty. It is not a tax. It is a royalty that is already in effect in most of the other parts of the world, and it does not go back to any government entity. It goes to artists and sound recording copyright owners. So the misnomer that it is a tax unfortunately has just displaced description of what it really is.

Mr. JOHNSON. Seems to be something that they are using quite frequently to try to defeat things like health care and education, energy. Everybody talks about tax, but it is in no way a tax.

And, Mr. Warfield, I assume that you have not been duly educated about that.

But let me ask Mr. Winston.

Well, before I do that, Mr. Skarzinsky, are you a publicly held corporation?

Mr. SKARZYNSKI. Yes, Congressman. Arbitron is a public company traded on the New York Stock Exchange.

Mr. JOHNSON. And are there any broadcast entities that own any of your stock?

Mr. SKARZYNSKI. To my knowledge, Congressman, no broadcast entities would own any of our stock unless they owned it through a pension fund or an institutional investor. But as an investor, there aren't any investors that we would know about who owned shares in Arbitron directly.

Mr. JOHNSON. Yes, if you could find out directly or indirectly, and——

Mr. SKARZYNSKI. I would be happy to do that. My belief is, and I am 99.9 percent sure, that no broadcaster owns any stock directly Arbitron. And I would be happy to confirm that for you, sir.

Mr. JOHNSON. All right. Thank you.

On the issue of the PPM technology undercounting, as you have described, Mr. Winston, minority audience measurement, particularly with minorities, with African-American stations, can you put your finger upon the precise reason, other than methodology and the economic decline, can you put your finger right on the heart of why this technology undercounts African-Americans?

Mr. WINSTON. Okay. There are a number of peculiar problems with the PPM methodology that have been identified. First of all, that diary service that it is replaced, the diary had three times more participants in the survey than the PPM system does.

Second, the diary involved you responding to Arbitron for 1 week. You fill out that diary for 1 week. You mail it back to them. Arbitron requests a commitment of 2 years we enter into this sample. You heard Congressman Gutierrez do an excellent discussion of the problems of wearing that device for any extended period of time.

Mr. JOHNSON. So your contention is that going to the device has operated to skew the numbers as far as listeners of African-American owned radio stations.

Mr. WINSTON. Very greatly.

Mr. JOHNSON. Any other factors that you can point to?

Mr. WINSTON. The technique that they use to recruit people is a telephone only technique. They call you by phone. They do a computerized dialing process to identify phone numbers based on telephone exchanges in a given geographic area, so that if you don't have a landline phone, the computer doesn't generate a phone number for you, so——

Mr. JOHNSON. But I just urge you, Mr. Skarzinsky——

Excuse me, Mr. Winston—say that you are looking at going to the cell——

Mr. SKARZYNSKI. Cell phone only, yes, sir.

Mr. JOHNSON. Okay.

Mr. SKARZYNSKI. So what Mr. Winston said is actually incorrect, Jim.

Mr. JOHNSON. When will that happen, by the way?

Mr. SKARZYNSKI. Pardon me, sir?

Mr. JOHNSON. When will that happen?

Mr. SKARZYNSKI. It has already started. It began in 2008. So there is a portion. Mr. Winston is absolutely correct that a portion of our sample are landline individuals, and a portion of our sample are cell phone only households. The method by which we contact someone who is a landline only prospect is through the method that Mr. Winston described, through our call center.

But the FCC has set up a mandate. I believe it was in 2003, Congressman, which said you cannot use a call center technique to go reach out to contact a cell phone. So what we and other audience measurement companies have to do, given the FCC mandate, is to call an individual directly, hand dial the number to contact the cell phone only prospect.

Mr. JOHNSON. Tell me something, Mr. Skarzynsi. How does Arbitron make its money on its audience measurement goal, if you will? That is what you all do. How do you make your money?

Mr. SKARZYNSKI. Congressman, the way that Arbitron makes money is to offer these audience measurement systems services throughout the country. We——

Mr. JOHNSON. Are they on long-term——

Mr. SKARZYNSKI. We enter into a long-term contract——

Mr. JOHNSON. We are talking about what? Five years? 10 years?

Mr. SKARZYNSKI. Three to 5 years. We would prefer a longer contract than a shorter one, because we want to make sure that we have the customers in place to do this. So we would enter into a 3-to 5-year contract with the radio broadcasting companies. And for example, I had mentioned earlier——

Mr. JOHNSON. Would that include the minority broadcasters?

Mr. SKARZYNSKI. Yes, sir. Exactly right. All broadcasters. We have 400 customers.

Mr. JOHNSON. Okay. All right. Let me ask you this question. How many competitors do you have?

Mr. SKARZYNSKI. I am sorry, sir?

Mr. JOHNSON. How many competitors in the audience measurement business?

Mr. SKARZYNSKI. There are two major competitors, Nielsen and a smaller company, Eastland.

Mr. JOHNSON. So what percentage of the broadcast business does Arbitron enjoy?

Mr. SKARZYNSKI. Arbitron is not a monopoly, but we do have a majority share. It would vary, Congressman, by market. I mentioned earlier that there are—we organize the—and think about the U.S. market in 300 markets. And Nielsen is focused—Nielsen just entered the business last year, at the end of last year, and they are focused on about 25 percent of the business as their market potential.

And this company Eastland, which is based in Washington State, focuses on the smaller markets, so markets 200 through 300. They would be at the smaller end. That smaller—even though it might be 100 metro markets by number, would not equate to a third of the market. Their market potential is closer to perhaps 15 percent.

Mr. JOHNSON. Okay.

Mr. WINSTON. Excuse me, Congressman. He didn't answer your question. You asked what percentage of this market he has. He told you about competitors that may be moving into his market, but right now, in the major markets it is only Arbitron.

Mr. JOHNSON. In the major markets.

Mr. WINSTON. And Nielsen has, and you tell it—I think they are looking at markets number 150. So from market one, New York, down to the 150th largest radio market, there is only Arbitron right now. I believe that is the number that Nielsen's at, so—and Nielsen, as he said, just came into the business last year. So in all the markets that, you know, that make up the vast demographics of America, there is only Arbitron doing measurement.

Mr. JOHNSON. Do all audience measurements agreements with broadcasters cover the same period of time? Or are there various due to individual negotiations, which I assume? And if it is not, I want you to tell me it is not. But if it is like a collective negotiation, tell me do all of your contracts with your broadcasters expire generally around that same time?

Mr. SKARZYNSKI. No, Congressman. They would be, depending on the particular broadcaster, they would be termed out at a different point in time, meaning it would all end on December 31, 2009, rather depending on when we entered into an agreement, it would be from that point in time out. So it would be staggered throughout the calendar year.

Mr. JOHNSON. Is it any contention, Mr. Winston, that there is some racial animus that would drive the alleged undercounting of minority audience participation?

Mr. WINSTON. I certainly can't speak to anyone's motives. What I can talk about is effect. And the effect is——

But can I kind of just make one more comment? Because the whole question of cell phone only households that Arbitron is now beginning to address—there is a better way.

And the reason that Nielsen decided to get back into radio measurement is because they have a better way. And so that Arbitron uses the telephone generated information to find their panelists.

Nielsen uses an address based sample, so you don't have to worry about who has a landline home, who has a cell phone home. If you are living at 123 Main Street, Nielsen's going to identify you, and so you get a better sample.

And they also do much more in-person recruitment, so a lot of people, who might be disinclined to talk to someone on the telephone because they don't know who they are and why they are trying to get information about them, if someone comes up to the front door and knocks on the door and they see somebody who looks perhaps like them, maybe they would be more inclined to participate in the process so that part of the problem here, when you asked are there inherent problems, there are inherent problems, and there is a better way. It doesn't have to be this way.

Mr. SKARZYNSKI. Would you care for me, Congressman, to respond to that, or shall we leave it?

Mr. JOHNSON. Very short response.

Mr. SKARZYNSKI. Mr. Winston is confusing Nielsen's television audience measurement techniques, which cover about 12,000 panelists, versus Arbitron's radio audience management, which today covers about 50,000 panelists. So he is mixing up the two services, point one.

Point two, the way we actually go after cell phone only persons for our sample is identical to that of Nielsen's. And in fact, we are purchasing the cell phone only numbers from a Nielsen entity. So Mr. Winston has some of the comments he just made were incorrect.

Mr. JOHNSON. All right. We will go on, because we could do this endlessly. But let me ask Mr. Winston—and I am sorry to exclude everyone else thus far—but Mr. Winston, you are not one of those who would mistakenly referred to the performance royalty fairness issue as attacks on radio stations, are you?

Mr. WINSTON. I am a trained attorney, Sir. I have been practicing law for over 30 years. I believe in precise language. A royalty is a royalty, the tax a tax.

Mr. JOHNSON. And so therefore you understand that there is no taxation involved in H.R. 848.

Mr. WINSTON. I understand that perfectly, Sir.

Mr. JOHNSON. Yes. So it would be misleading, falsely misleading, in your opinion, to argue that it is a tax. Isn't that correct?

Mr. WINSTON. I would not say it is false or misleading. I would say it was imprecise.

Mr. JOHNSON. I guess that is a technical way of saying that it is wrong. But let me ask you this. Can you imagine any reason on earth that would prohibit the broadcasters, including your organization, from coming to Congress, where the laws of the country are made, and participate in a discussion and negotiations just like all other businesses have lobbyists?

Why is it that—I can't imagine why, if this means so much to the broadcast industry, that the broadcast industry doesn't want to come forward and negotiate. Why is that the case? I am not the smartest guy or the sharpest knife in the drawer or I know I look stupid, but, you know, and perhaps I am stupid, but I just can't see it. Can you clear this up for me?

Mr. WINSTON. I can speak with respect to the minority broadcast community that NABOB represents, the African-American community. We are struggling to survive. It is just that simple.

Mr. JOHNSON. Why can't you come and talk to us about 848? Why?

Mr. WINSTON. Because we are struggling to survive, sir.

Mr. JOHNSON. Well, that doesn't mean that survival doesn't have anything to do with 848.

Mr. WINSTON. Sir, it has everything to do with 848. You are asking us to pay more money when we can't pay the money we are— you know, if we can't pay our current bills, asking us to come talk about paying more is a nonstarter, sir.

Mr. JOHNSON. You are making something off of these artists and their versions of songs, but broadcast radio does not pay the artists. So are you saying that the artists should bear the brunt of your economic decisions to purchase—to leverage your companies with debt and the chicken came home to roost and the performers should bear the brunt of that?

Mr. WINSTON. Well, I think your question assumes some facts that are not, but——

Mr. JOHNSON [continuing]. There is truth in.

Mr. WINSTON. But let me say this. The broadcasters don't have to say that. Congress has said that for 40 years, so we don't have to say that. Congress has been saying 40 years this is the way, this is who has copyright rights, these are how these rights will be distributed.

Mr. JOHNSON [continuing]. Incentive for about 170 for their anti-trust exemption for you guys.

Mr. WINSTON. A hundred seventy years?

Mr. JOHNSON. No, no, no, no. Seventy of the 100 years.

Mr. WINSTON. Okay. I am sorry. The anti—what anti-trust exemption are we talking about, sir?

Mr. JOHNSON. What?

Mr. WINSTON. What anti-trust exemption are talking about?

Mr. JOHNSON. Well, we are talking about your exemption from the competitive laws of this country, anti-competition laws with respect to having to pay performance royalties to performers. You don't have to do that.

Mr. WINSTON. Okay. I think that is a copyright law, not an anti-trust law, sir.

Mr. JOHNSON. Okay. One for you, ten for me. [Laughter.]

Anything else you would like to add on that? I told you I am not that smart.

But I think that is probably about all I have, Mr. Chairman.

Mr. CONYERS. May I recognize the gentlelady from Houston, Sheila Jackson Lee?

Ms. JACKSON LEE. Mr. Chairman, you have been more than generous with your time. I hope that those who have had an extended visit with us today realize that we are serious about the multiple issues that are before us.

Mr. Skarzynski, if I don't look at your name, I am not going to get it correct, so let me get it correctly. Skarzynski, excuse me. Mr. Skarzynski, let me acknowledge Mr. Michael Frasier, who has been very committed to having the information about Arbitron explained to Members. And so I do appreciate the fact that you have made effort to provide an explanation. And he has provided an explanation on behalf of Media Access.

And so we have heard—without being unfair, we have heard issues that have given us a sense of balance: what you do, what the necessities of Media Access, what they do. And I will come back to my original premise. I think we have solutions here. I think the very fact that you are at the table together there are a reasoned response to what the concerns are.

The bottom line is Arbitron is a business, and you want to survive and be financially successful. But you have the key that speaks to the constituency that Mr. Winston represents, because if your numbers are low, you in essence can alter the destiny of Mr. Winston's constituents, because you will provide numbers to advertisers, or radio stations will take your numbers and use them to accelerate or to enhance the amount of money they get from advertising or the range of advertising that they get.

So let me tell you what we are facing. It is interesting. We actually are facing questions of systemic discrimination. I am sure people will run out of the room if I say "racism." But really, as most people today would say, "It is not my fault. I wasn't involved in it." But it is systemic.

It is a mindset that those who listen to previously called Black radio, but now minority radio, are not purchasers. They are not astute. They don't listen to news. And all of that now in the 21st century has been dispensed with. We know that the market that small radio stations and arty radio stations are engaged in is a huge market.

So let me raise this question to you, Mr. Winston. We are sort of talking about the Performance Rights Act, and thank you.

Mr. Chairman, I want to thank Mr. Winston, because he has acknowledged that it is a royalty, it is not a tax. And that is on the record. And we appreciate that.

One of the thoughts about this whole issue, and you are here in the representation manner and I hope that you will share the comments of the Chairman, which is the idea of coming to sit around the table, and if you would add my voice to it, can we engage in discussions with some of the principals that the Chairman had mentioned?

Well, one of the ideas is to add to the Performance Rights Act, as it goes to Ways and Means, a tax certificate, which I have been hearing the broadcasters speak about. Now, I know we are in different economic times, but that is in essence a idea of which one can adjust legislatively.

So the question is if you look at a tax certificate idea and then maybe an Arbitron fix that deals with the economic aspects of what Arbitron does in terms of real bottom-line, a very reasonable approach to begin looking at all these issues by discussing what can be done.

Mr. Winston?

Mr. WINSTON. I would love to have a conversation that puts all these issues on the table.

Ms. JACKSON LEE. And the idea of a tax certificate, the idea of an Arbitron fix, is that—and the idea of the Performance Rights

Act for its value, which is establishing a writer performance. You could be in a room with a number of principals and have that discussion.

Mr. WINSTON. I could have that discussion.

Ms. JACKSON LEE. And as a lawyer of 30 years, and a proficient one at that, you could see how there is a possibility of that being intertwined. Am I correctly assessing your bottom line as to what Arbitron does to the whole advertising dollar?

Mr. WINSTON. I can—yes, these things are very much related.

Ms. JACKSON LEE. Okay. And in your client, is the advertising dollar the bottom line of your income? Or do you also get in essence the fees that artists pay—play—pay to have to be paid? I mean to be played.

Do you also get—excuse me—I am talking to Mr. Winston. Is the advertising dollar the basic profit mode, or do you also count in the dollars that artists pay to get on the air?

Mr. WINSTON. There are very few artists I am aware of that pay to get played. I think the 99 percent of the revenue that broadcast stations earn is earned from advertising revenue.

Ms. JACKSON LEE. But if we were in a meeting and we had these issues on the table, such as fees that artists pay, we could reasonably be in a room to assess that. I know that in smaller markets, I am told, that there are fees that artists pay to be played. It may be a different terminology, but it does occur.

Mr. WINSTON. Yes, I think that could be part of any conversation.

Ms. JACKSON LEE. Mr. Minster, you have heard what I just said.

I am going to get to the two gentlemen in the middle here for just a moment, Mr. Chairman.

But you have heard what I have listed tax certificates. That has to do with getting credit or getting some relief for buying stations from tax relief.

The whole idea of an Arbitron fix—we don't know exactly what that might be, but you understand that it does impact their bottom line about if their numbers are low, advertisers don't want to address or advertise there. You understand that. So that is a reasonable issue.

Discussing the given issue of there is a performance right, recognizing that performance right is not a tax. And then the issue of putting all the money issues on the table, such as—I guess it is called a fee—that artists may have to pay to play.

Now, there is also another point that I didn't mention to Mr. Winston, which is the value of a promotional fee of sorts that an artist would get if they are being played. I mean that is a money thing that one could include or discuss in the performance rights.

My list was about five, but can you see the idea of looking at these issues as it relates to putting a final package together, even though as the bill has passed out of this Committee.

Mr. MINTER. Absolutely, Madam Congresswoman. And I would add a couple of other items that would be subject to discussion that I think would move the discussion along in a productive manner. One would be further looking at the manager's amendment to extend the delay of the implementation of the payment dates so that we can get out of this economic crisis that the country is in currently right now, which is on the minds of every business owner, which is very valid.

Also by staggering the rates—cable and satellite radio right now are paying approximately 5 to 6 percent of revenues. There is no reason to have the negotiation and discussion in good faith amongst all the parties, why it would have to begin at that rate. It could begin at a very low rate and then increase gradually as the years go by to give everyone an opportunity to rebound economically, but most importantly at that point recognizing the intellectual property right and valuing it versus not valuing it at all and saying there is no right and no rate.

Ms. JACKSON LEE. Thank you. I am going to finish with Mr. Skarzynski and Mr. Schartzman.

Mr. Skarzynski, things have been twirling around you, and we have a mixed, I would say, subset issues, but we have a general broad question of how you can do business, but how we can preserve a very valuable asset for our diverse community, and it is the minority stations.

But we recognize that you are in business. You are loosely regulated. Would you be willing to participate in a discussion for a construct that would allow you to do business, but to in essence cure Mr. Winston's problem? No numbers is no revenue, because it sends advertisers running for the hills.

Can you see the need for some fix that addresses, even beyond the technology that you are offering. I think Mr. Gutierrez has been mentioned several times. He was eloquent in terms of how different communities respond to some of the preciseness that you need. So that means you may lose.

My constituents get on buses at 4 and 6 in the morning, so they are hard pressed to carry things around or find things. A lot of them are working in jobs that don't uphold them to keep phones on their belts, or they go through security, and they have to leave everything at the front door. So there is a lot of different styles that we are addressing. Can you see trying to look at a more regulatory structure for what you are doing?

Mr. SKARZYNSKI. Madam Chair, I would be happy to work with you and Members of the Committee to work on such a construct.

Ms. JACKSON LEE. You—and you have gotten from sitting here, and there have been different things, but you understand the bottom line issue that when you produce your numbers, it does impact the bottom lines sometimes of minority radio stations.

Mr. SKARZYNSKI. That is clear.

Ms. JACKSON LEE. All right.

Mr. SKARZYNSKI. And I believe that my goals and my friend Jim Winston's goals are the same. They are identical. Arbitron wants minority broadcasters to be successful and prosperous.

Ms. JACKSON LEE. Thank you for that.

And let me—and you have been very generous.

Mr. Schwartzman, you have been very articulate on these issues. Help me out on what I have just constructed here. How can we move this ball forward?

Mr. SCHWARTZMAN. First, I would note that there is a process for Arbitron. It is a voluntary process. It is the ratings council. They have punted to the Ratings Council's accreditation system. They are continuing to roll out the services despite guidelines which, as I understand it——

Ms. JACKSON LEE. Could you yield just for a moment? The Ratings Council is how old? How long has it been in place?

Mr. SCHWARTZMAN. Since about 1960.

Ms. JACKSON LEE. And did members come from——

Mr. SCHWARTZMAN. They have come from all manner of industries, but their activities are secret, and it is a closed system. We note, however, that Arbitron has been denied—not just failed to obtain, but has been denied accreditation in the very largest markets, but they continue to operate the PPM system and have discontinued the diary system.

So they are flouting an existing system. So with regret, I have to say that Mr. Skarzinsky's assurances that he is willing to cooperate with the system has to be compared with the failure to work with the with the ratings council, the——

Ms. JACKSON LEE. But what is your solution? What is your solution? That is an advisory council. What is your solution? What do you suggest that we do?

Mr. SCHWARTZMAN. I think because—and again, although there was a little bit of a dance—I am not sure you were here for it—Arbitron functions as a monopoly in the very largest markets in this country and has effectively no competition. If the situation continues, I think legislation will be necessary.

Ms. JACKSON LEE. Okay. So there is an existing board that has been going on since 1960. That is 40 years plus, or almost 50 years, if you will, from 1960. That is a long time. It is more than 50 years or so. But in any event, and you are saying that Arbitron has managed in the 21st century to operate in essence independently and without subjecting itself to the advisory comments were accreditation of the board. Is that my understanding?

Mr. SCHWARTZMAN. That is correct. And indeed, as I have said, my understanding is they have been denied accreditation in a number of these markets. So they are continuing to operate, continuing to roll out the PPM technology, despite its evident shortcomings.

And there are things that could be done to improve it. Mr. Skarzynski talked about a lot of things that are on the drawing board as if they were—who present today, improvements in this cell phone acquisition and new brooches and so forth for technology.

My understanding is that these things are on the drawing boards, but are not yet in the field. The bottom line is they are trying to do this on the cheap. The sample sizes are far too small. It would cost a lot of money, which Arbitron evidently doesn't want to do, to increase the sample size, which would remediate a large number of these problems.

And having failed to satisfy their own industries self-regulatory mechanism, as I said, I fear legislation may be necessary in order to address this problem.

Ms. JACKSON LEE. That may conclude, Mr. Chairman. I see your——

Mr. SKARZYNSKI. Congresswoman, may I make a response to——

Ms. JACKSON LEE. If it will be brief. And I want to conclude. And I thank the Chairman.

Mr. SKARZYNSKI. The last three paragraphs that Mr. Schwartzman uttered contained many falsehoods, and I would like the opportunity—not now, since we don't have the time——

Ms. JACKSON LEE. If you have a brief answer to put on the record, just do you subject yourself to this advisory board that Mr. Schwartzman speaking of?

Mr. SKARZYNSKI. We do indeed. We have been following the Media Ratings Council for the entire existence of the company. Mr. Schwartzman doesn't know what he is talking about, so he uttered a number of falsehoods. I would be happy to take the time with you and other Members of the Committee to go through it point by point.

Ms. JACKSON LEE. I have delicate feelings, so I would like you to say that maybe Mr. Schwartzman has spoken his interpretation and interpreted it incorrectly. I know that you view him as——

Mr. SKARZYNSKI. That is a better way to say it.

Ms. JACKSON LEE. I know he knows what he is generally speaking about, so thank you for my delicate sensitivity. But let me end on this note. I would happy to have that information.

Mr. Chairman, I do believe that we have a mixture of a fix or collaboration. I respect all these gentlemen that are here, and I think they have offered the four corners of moving forward, because we have an economic theme here. Everybody wants to survive and make money. And I think there are some elements that would answer the concerns of Mr. Winston's constituents.

Arbitron has a valuable purpose, and a system like this has existed for a period of time. And I would like to hear more about what Mr. Skarzinsky could do to fix this. And legislation has its strengths, but I see that this is an opportunity for a meeting as well.

So my class question will be, Mr. Winston, you will come to meeting to be part of a solution on behalf of your constituents?

Mr. WINSTON. I would be happy to come to meeting, ma'am.

Ms. JACKSON LEE. Mr. Skarzynski?

Mr. SKARZYNSKI. No. Yes. Yes, Congresswoman Jackson Lee, I would be happy to participate.

Ms. JACKSON LEE. Mr. Schwartzman?

Mr. SCHWARTZMAN. Congresswoman, I really don't have a constituency to represent in this——

Ms. JACKSON LEE. But we welcome you anyhow.

Mr. SCHWARTZMAN. And as I have been studiously silent, I have no position and no expertise whatsoever with respect to one piece of this, which is the performance rights——

Ms. JACKSON LEE. Absolutely.

Mr. SCHWARTZMAN. I more than willing to talk about things, but I have nothing to contribute on the performance right issue.

Ms. JACKSON LEE. But you have something to contribute on the overall Arbitron issue.

Mr. SCHWARTZMAN. Yes, indeed.

Ms. JACKSON LEE. This meeting is multitask. So you would be willing to come?

Mr. SCHWARTZMAN. Yes.

Ms. JACKSON LEE. Thank you.

Mr. Minter?

Mr. MINTER. Absolutely, Congresswoman.

Ms. JACKSON LEE. I know, Mr. Chairman, we have had meetings before, but this may be a little light at the end of the tunnel. And I do believe that the gentleman who was here previously could be encouraged, as could the others. And I just frankly hope we have the opportunity to do so.

Mr. Chairman, I yield back, and I thank you.

Mr. CONYERS. Closing up, how many African-American format stations are owned by African-Americans?

Mr. WINSTON. Mr. Chairman, of the 245 radio stations owned by African-Americans, approximately 90 percent of them are African-American formatted, so roughly 200, I would say.

Mr. CONYERS. And do you have—can you volunteer a number?

Mr. SKARZYNSKI. Mr. Chairman, I don't know the numbers. The FCC does not track the numbers. Jim gave an estimate, which sounds like a reasonable estimate, but the FCC doesn't track those numbers, and my company does not track them.

Mr. CONYERS. Mr. Schwartzman—Attorney Schwartzman?

Mr. SCHWARTZMAN. Well, as I have indicated, the FCC is starting to collect useful data, so we may get some real numbers in a year or so, but in the meantime I think Mr. Winston's numbers are the best we have got.

Mr. CONYERS. Attorney Minter?

Mr. MINTER. Mr. Chairman, I don't have the exact numbers, but I would defer to Mr. Winston as the representative of NABOB, which does represent collectively the majority of African-American owned stations.

Mr. CONYERS. Well, let me ask this question. How many stations are owned by Clear Channel?

Mr. WINSTON. Clear Channel at one time owned 1,200 radio stations. It is my understanding now that they have sold off some of their stations there now—somewhere in the neighborhood of 800 radio stations, I believe, so roughly four times. Clear Channel, one company, owns more—four times more stations than all the African-Americans in America.

Ms. JACKSON LEE. Is that an African-American owned station?

Mr. WINSTON. Clear Channel is not an African-American owned company. It is owned by a couple of, I believe, investment companies and/or hedge funds.

Mr. CONYERS. How many small radio stations could anyone help us out on—that are not African-American owned? Are there around?

Mr. WINSTON. Okay. The question is how many small radio stations are there that are not African American owned? The total number of radio stations in America, I think, is about 13,000. Does that sound right, Andrew? So if you take 13,000, you subtracted 245 that we own, so you are roughly, you know, 13,000—I mean 12,500 of them are not African American owned.

And how you define "small" could be a question to be determined, but I would assume at least half of those would be characterized as half as small radio stations. There has got to be at least 6,000, I think, would be small radio stations.

Mr. CONYERS. This has been very helpful, and I am pleased with your contributions, as well as your stamina. Did anyone of the four of you want to make any closing comment or observation before we bring the hearing to a close?

Mr. WINSTON. Only to thank you for holding the hearing, Congressman Conyers. I am very pleased that Clarence Avon told me to bring a delegation in to meet with you, and in doing so, you offered to hold this hearing, and we are delighted you gave us the opportunity to be heard.

Mr. SCHWARTZMAN. I would like to thank you, Mr. Chairman, and your Committee. And I am hopeful that sooner rather than later, all the parties that have a vested interest in this will have some meaningful dialogue to move the process along on all these issues that we discussed today.

Ms. WATERS. I would like to thank you for your holding the meeting, Mr. Chairman.

Mr. CONYERS. Thank you. I hear the dulcet tones of the gentlelady from Texas.

Ms. JACKSON LEE. I think you are being at peace today, but I just wanted to add another point on the table here, because it is about new artists. I know that I am mixing apples and oranges, but it is Mr. Winston and Mr. Minter's point on this.

When we have this roundtable, I think it is important to get all of the different deficits, the loss of revenue issues that are very important to our minority radio stations, because I want their doors open, but then also to try and have the financial structure that we need to understand.

There is something called promotional money—I have to have the right term—upwards of $2 million that would be paid to radio stations so that artists can be heard. So I think it is important that people have the whole financial scheme.

It may not impact Mr. Minter's station—excuse me, Mr. Winston's station, but you understand what I am saying, Mr. Winston. There are all kinds of schematic costs that if we were to talk about fixing the overall structure, we need to have all that information.

I understand it is called independent record promoters that have to pay these fees. So want to make sure that we have all those schematic numbers on the table.

Mr. WINSTON. Okay. The independent record promoters are not addressed in H.R. 848, so I assume you are saying this is another issue to be added into the mix.

Ms. JACKSON LEE. Yes, because it is a revenue stream. And I think you are making the point that 848 deals with the revenue stream, if I am not correct.

Mr. WINSTON. Correct.

Ms. JACKSON LEE. Okay.

Mr. Chairman, I yield back.

Mr. CONYERS. Well, thank you all very, very much and I declare this hearing to be concluded.

[Whereupon, at 4:35 p.m., the Committee was adjourned.]

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