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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(2)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution urging Congress, the Florida Legislature, and Federal and State Officials to ensure that the rating methodology used by the Portable People Meter Ratings System designed to measure radio stations listenership does not under-represent minority radio listeners

Resolution No. R-860-09

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Dennis C. Moss.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 30, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 11(A)(2)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

✓ **No committee review**

2

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(2)
6-30-09

RESOLUTION NO. R-860-09

RESOLUTION URGING CONGRESS, THE FLORIDA LEGISLATURE, AND FEDERAL AND STATE OFFICIALS TO ENSURE THAT THE RATINGS METHODOLOGY USED BY THE PORTABLE PEOPLE METER RATINGS SYSTEM DESIGNED TO MEASURE RADIO STATION LISTENERSHIP DOES NOT UNDER-REPRESENT MINORITY RADIO LISTENERS

WHEREAS, the Portable People Meter ("PPM") system is an electronic service used to measure radio station listenership developed by Arbitron; and

WHEREAS, the PPM system contains methodological flaws, including serious shortcomings in the accuracy and reliability of the system given its inadequate representation of Hispanic, African American, and other minority listeners; and

WHEREAS, the PPM system, by significantly undercounting the listening habits of minority consumers, does not present a valid and fair representation of the diversity of radio markets in different states, thereby causing an improper decline in ratings for minority stations leading to reductions in advertising revenue; and

WHEREAS, such reductions in advertising revenue put the viability of many minority radio broadcasters at risk, thereby harming overall broadcast diversity; and

WHEREAS, the Attorneys General in New York, New Jersey, and Maryland have all settled suits against Arbitron seeking to enforce state laws regarding discrimination and deceptive practices in an effort to ensure continuous improvement by Arbitron of its PPM system before it is further commercialized in additional markets; and

WHEREAS, Arbitron has already begun to commercialize its PPM system within the State of Florida, specifically radio markets located in Miami, Fort Lauderdale, and Hollywood,

and intends to further roll out its PPM system over the coming year in Orlando, West Palm Beach, and Boca Raton,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges Congress to enact legislation and the Federal Communications Commission to enact rules to ensure that the ratings methodology used by the PPM system does not under-represent minority radio listeners.

Section 2. Urges the Florida Legislature to enact legislation and the Florida Public Service Commission to enact rules to ensure that the ratings methodology used by the PPM system does not under-represent minority radio listeners, and to also make certain that PPM sampling procedures obtain Media Research Council accreditation in Florida to prevent them from negatively affecting minority broadcast stations.

Section 3. Urges Florida's Attorney General to investigate the use of the PPM system in Florida to determine whether it is being improved and corrected pursuant to the benchmarks established by settlement agreements reached by the Attorneys General in New York, New Jersey, and Maryland with Arbitron, and to ensure that the terms secured by those states that have settled with Arbitron also benefit radio markets in Florida.

Section 4. Directs the Clerk of the Board to transmit certified copies of the resolution to the Florida Congressional Delegation, the Chair and Commissioners of the Federal Communications Commission, Florida's Governor, the Florida Attorney General, President of the Florida Senate, Speaker of the Florida House, the Chair and Members of the Miami-Dade State Legislative Delegation, and the Chair and Commissioners of the Florida Public Service Commission.

Section 5. Directs the County's federal and state lobbyists to advocate for the actions set forth in Sections 1, 2 and 3 above and directs that the 2009 and 2010 Federal and 2010 State Legislative Packages be amended to include this item.

The Prime Sponsor of the foregoing resolution is Chairman Dennis C. Moss. It was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Barbara J. Jordan** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **aye**

Bruno A. Barreiro	**absent**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**absent**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**absent**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Rodolfo A. Ruiz

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

THE PEOPLE OF THE STATE OF NEW YORK,
by ANDREW M. CUOMO, Attorney General of the State of New York,

Petitioners,

- against-

ARBITRON INC.,

Respondent.

----------X

STIPULATED
ORDER ON CONSENT

Index No. 402516/08
IAS Part _____

Assigned to Justice Diamond

This Stipulated Order on Consent ("Order") is entered into by and between petitioners, THE PEOPLE OF THE STATE OF NEW YORK, by ANDREW M. CUOMO, ATTORNEY GENERAL OF THE STATE OF NEW YORK, and respondent ARBITRON INC., a corporation organized under the laws of the State of Delaware;

WHEREAS New York State Law Executive Law § 63(12) prohibits repeated or persistent fraudulent or illegal acts in the transaction of business; New York General Business Law §§ 349 and 350 prohibit deceptive and misleading business practices and false advertising; and New York Civil Rights Law § 40-c and New York Executive Law § 290 et seq. ("New York State Human Rights Law") prohibit any person or firm, corporation or institution from discriminating against any person because of race, creed, color, or national origin;

WHEREAS, pursuant to the provisions of Section 63(12) of the New York State Executive Law, the Office of the Attorney General ("Attorney General") conducted an investigation into the policies, procedures, and practices of Arbitron Inc. ("Arbitron"), regarding allegations of fraudulent and unlawful business practices;

WHEREAS Arbitron, which is headquartered in New York, is one of the largest media ratings companies in the United States, and the only major provider of listener measurement services to radio broadcasters in the State of New York;

WHEREAS Arbitron for decades based its radio ratings on surveys using a "diary" system which utilizes journals kept by listeners who record their daily radio listening habits;

WHEREAS Arbitron in New York replaced the diary system with the Portable People Meter ("PPM"), an electronic device that tracks the radio stations that listeners are exposed to, and has developed a methodology to recruit radio listeners to serve as panelists in their geographic area by carrying the PPM ("PPM methodology");

WHEREAS the reliability and accuracy of the media measurement of PPM depends on the reliability of the PPM methodology, because the ratings will only be reliable and accurate if the samples are representative of the communities measured, and the persons carrying the PPM are compliant with Arbitron's instructions on how to use the PPM;

WHEREAS the Media Rating Council, Inc. ("MRC"), a not-for-profit organization that for over forty years has been the primary accrediting agency for ratings services in the United States, denied accreditation in November 2007 to Arbitron's PPM methodology in New York;

WHEREAS the Attorney General received complaints that the PPM methodology as applied to New York is not reliable or fair in that it undercounts New York African-American and Hispanic radio listeners, potentially depriving New York minority broadcasters of advertising revenue and these New York listeners of their primary media resources;

WHEREAS, the Attorney General commenced, through the filing of a complaint, the above captioned lawsuit in the Supreme Court of the State of New York, New York County ("Lawsuit") seeking injunctive and monetary relief on grounds that the PPM methodology is not

reliable or accurate, Arbitron made representations regarding the accreditation, fairness, representativeness and reliability of the PPM Methodology in New York that are fraudulent and deceive or have the capacity or tendency to deceive consumers and violate New York's Civil Rights and Human Rights Laws;

WHEREAS, the parties herein desire to resolve this matter without further litigation or adjudication; and

WHEREAS, in consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, the Attorney General, on behalf of itself and the petitioners, and Arbitron, have agreed to the terms of this Order;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

PART ONE: DEFINITIONS

1.1 "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

1.2 "Arbitron" means Arbitron Inc. and all of its executives, officers, directors, managers, representatives, employees and all individuals who act on their behalf.

1.3 "Order" means this Stipulated Order on Consent.

1.4 "Diary system" means Arbitron's long-standing methodology of collecting journals written by panelists of their daily radio listening habits and utilizing them to create ratings based on an estimate of the number of listeners of radio broadcasts.

1.5 "Effective Date" means the date this Order is executed by the parties hereto.

1.6 "Including" means without limitation.

1.7 "Media Rating Council" and "MRC" mean Media Rating Council, Inc., a trade organization of broadcasters and advertisers that accredits media measurement services.

1.8 "New York Market" means all geographic areas within New York State where as of the effective date hereof PPM has been commercialized, including but not limited to Bronx, Hudson, Kings, New York, Putnam, Queens, Rockland, and Westchester counties, as well as Bergen, Essex, Fairfield, Passaic, and Monmouth counties.

1.9 "Portable People Meter" and "PPM" refer to the device Arbitron utilizes to identify and store information regarding radio broadcasts that panelists are exposed to and to transmit that information to Arbitron.

1.10 "PPM methodology" refers to the policies, procedures, and practices by which Arbitron recruits individuals to wear the PPM and obtains PPM data from a sample of persons in households within a geographic region.

1.11 "Recruitment efforts" means procedures used to select, contact and recruit potential PPM panelists.

1.12 The use of the singular form of any word includes the plural and vice versa.

PART TWO: COMPLIANCE WITH THE LAW

2.1 Arbitron agrees to comply fully with New York General Business Law §§ 349 and 350, New York Civil Rights Law § 40-c, and the New York State Human Rights Law.

PART THREE: INJUNCTIVE RELIEF

3.1 Arbitron shall commence recruitment of panelists in the New York Market for the PPM using a combination of telephone based and address based methodologies beginning in January 2009. The address based methodology must be utilized in at least 10% of all recruitment efforts by or before July 1, 2009 and in at least 15% of all recruitment efforts by or before July 1, 2010. Further, Arbitron shall ensure that recruitment of racial and ethnic minorities as surveyed is commensurate with the racial and ethnic composition of the geographic area being surveyed, as determined by the most recent, annually updated United States census data.

3.2 Arbitron shall increase cell phone only ("CPO") sampling, based on all recruitment efforts, in the New York Market from 7.5% to 10% by or before July 1, 2009, from 10% to 12.5% by or before December 1, 2009 and from 12.5% to 15% by or before July 1, 2010. Within fifteen (15) business days at the end of each quarter, Arbitron shall provide data on the composition of the CPO sample cross-tabulated by race, ethnicity and age to the Attorney General and to subscribing broadcasters of the New York PPM data.

3.3 Arbitron must take all reasonable measures, including necessary front-loaded treatments and refusal conversion strategies, to increase SPI and to ensure a minimum SPI of 15 by or before July 1, 2009; a minimum SPI of 16 by or before October 1, 2009; and a minimum SPI of 17 by or before June 1, 2010 with a target SPI of 20.

3.4 Arbitron must take all reasonable measures, including in-person coaching and compliance incentives, to ensure in-tab rates of at least 75% by or before April 1, 2009 in all demographics in New York as defined by race, ethnicity, age, and gender. The in-tab rates of all sub-categories of race, ethnicity, age and gender cannot fall below 90% of the

target rate, excluding sub-categories that are less than 10% of the New York Market on a six (6) month basis beginning April 1, 2009.

3.5 Further, beginning on January 21, 2009, Arbitron shall provide to subscribing New York broadcasters install and in-tab data by individual zip code for the New York Market and provide racial and ethnic demographic data for each zip code. Thereafter, Arbitron shall continue to provide the New York zip code data fifteen (15) business days after the monthly release of the monthly e-book for the New York Market. Arbitron reserves the right to discontinue delivery of a portion or all of the zip code data based on formal, written advice from the MRC, or in the event there is substantial evidence, as determined by the Attorney General, that a person or company is using the zip code data to identify or contact PPM panel members.

3.6 Arbitron shall create, fund and commence a valid non-response bias study by January 15, 2009, subject to approval by the Attorney General, to identify and determine measurable bias, if any, in the PPM methodology utilized in the New York Market. The study shall be completed by July 15, 2009. If the study finds measurable bias, Arbitron shall use all reasonable measures to address the bias within six (6) months. To the extent Arbitron believes in good faith that it cannot cure such bias within six (6) months, it shall notify and confer with the Attorney General.

3.7 Arbitron shall fund an advertising campaign of at least $25,000 in the New York Market promoting minority radio in major trade journals.

3.8 Effective immediately, Arbitron must include a prominent disclaimer in **14 font bold typeface** on all written promotional materials of the PPM on paper or internet advertising on direct links, including e-book, and any sub-links that contain promotional

materials, stating that the PPM ratings are based on audience estimates and are the opinion of Arbitron and should not be relied on for precise accuracy or precise representativeness of the demographic or radio market in New York.

3.9 Arbitron shall prepare and submit reports fifteen (15) days after each quarter in 2009 and 2010 to the Attorney General relating to all metrics outlined in paragraphs 3.1 through 3.5. Arbitron shall submit a sworn statement, certifying (1) the current PPM methodology design changes and metrics discussed in paragraphs 3.1 through 3.5, (2) whether Arbitron is in compliance with paragraphs 3.1 through 3.10 and paragraphs 4.1 and 4.4, and if not, (3) identify the paragraphs in which Arbitron is non-compliant, and (4) where Arbitron is non-compliant with paragraphs 3.3 and/or 3.4, identify all reasonable measures taken to achieve compliance.

3.10 Arbitron shall take all reasonable efforts in good faith to obtain and retain accreditation for the New York Market from the MRC. In addition to the rights reserved to the Attorney General set forth in paragraph 5.13, if Arbitron has not obtained accreditation from the MRC by October 15, 2009 and has failed to meet any of the minimum standards as set forth in paragraphs 3.1 through 3.9 of this Order, the Attorney General reserves the right to rescind the Order and reinstitute litigation against Arbitron for the above-referenced claims.

PART FOUR: MONETARY RELIEF

4.1 Arbitron agrees to pay a single lump sum in the amount of Two Hundred Thousand Dollars ($200,000) in settlement of alleged deceptive practices and civil rights claims, as determined by the Attorney General, of Arbitron's conduct.

4.2 Arbitron agrees to pay the sum of Sixty Thousand Dollars ($60,000) to cover a portion of the costs of the Attorney General's investigation and monitoring.

4.3 Arbitron agrees to pay a single lump sum of One Hundred Thousand Dollars ($100,000) to the National Association of Black Owned Broadcasters for a joint radio project between the National Association Black Owned Broadcasters and the Spanish Radio Association to support minority radio.

4.4 Payments to the Attorney General are due no later than four (4) weeks after the time of the signing of this Order, and must be in the form of a certified check, bank check, money order, or attorney's check made payable to "The State of New York" and forwarded to the New York State Attorney General's Office, Attention: Alphonso David, Deputy Bureau Chief, Civil Rights Bureau, 120 Broadway, 3rd Floor, New York, New York, 10271-0332. Payment to the National Association of Black Owned Broadcasters is due no later than four (4) weeks after the time of signing of this Order.

PART FIVE: JURISDICTION AND OTHER PROVISIONS

5.1 This Order, when fully executed and performed by Arbitron to a reasonable expectation of the Attorney General, will resolve all claims against Arbitron that were raised in the complaint filed by the Attorney General in this action. However, nothing in this Order is intended to, nor shall, limit the Attorney General's investigatory or compliance review powers otherwise provided by law.

5.2 Notwithstanding any provision of this Order to the contrary, the Attorney General may, in its sole discretion, grant written extensions of time for Arbitron to comply with any provision of this Order.

5.3 This Order shall become effective upon its execution by all parties and its entry by the Court.

5.4 The signatories to this Order warrant and represent that they have read and understand this Order, that they are duly authorized to execute this Order, and that they have the authority to take all appropriate action required to be taken pursuant to the Order to effectuate its terms.

5.5 This Order may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

5.6 This Order is final and binding on the parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Order. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.

5.7 All of the terms of this Order are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all parties hereto approved by the Court or with Court approval.

5.8 This above captioned lawsuit shall be dismissed without prejudice. However, the Court shall retain jurisdiction over the parties and the matter and retain the power to order all applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.

5.9 This Order supersedes and renders null and void any and all written or oral prior undertakings or agreements between the parties regarding the subject matter hereof.

5.10 The parties hereby waive and shall not have any right to appeal any of the terms of this Order or in any way challenge the validity of any of the terms of this Order in any forum. Further, Arbitron hereby agrees to withdraw with prejudice any and all pending legal claims filed in any trial or appellate court, whether state or federal, involving the Attorney General relating to the marketing or commercialization of the PPM or the PPM methodology, or the Attorney General's jurisdiction to investigate and litigate claims relating to the PPM.

5.11 If any provisions, terms, or clauses in this Order are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Order shall remain valid and binding on the parties.

5.12 The parties may seek to enforce this Order by motion before the Court to the full extent of the law; however, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.

5.13 Failure to comply with any provision of this Order shall be considered a violation of this Consent Order. Upon such a violation, the Attorney General may take any and all steps available to enforce this Consent Order, including seeking an order of contempt pursuant to CPLR § 5104. Upon application by the Attorney General showing Arbitron has failed to pay penalties and costs pursuant to paragraphs 4.1 through 4.3 herein, the Court shall also enter a money judgment in the amount of the unpaid balance, plus interest at the rate of nine (9) percent per annum from the date of violation or nonpayment, against Arbitron, and the Attorney General shall have execution thereof.

5.14 In any application by the Attorney General pursuant to paragraph 5.13 above, the Attorney General may request an allowance for costs under CPLR § 8303(a)(6).

5.15 Failure by any party to seek enforcement of this order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

5.16 All communications and notices regarding this Order shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

<u>Office of the Attorney General</u>

Alphonso B. David
Deputy Bureau Chief
Civil Rights Bureau
Office of the New York State
Attorney General
120 Broadway, 3rd Floor
New York, New York 10271-0332
Tel. (212) 416-8250
Fax (212) 416-8074

<u>Arbitron Inc.</u>

Chief Legal Officer
Arbitron Inc.
9705 Patuxent Woods Drive
Columbia, Maryland 21046-1572
Tel. (410) 312-8043
Fax (410) 312-8613

Alfred Fabricant
Dickstein Shapiro LLP
1177 Avenue of the Americas
New York, NY 10036-2714
Tel. (212) 277-6621
Fax (212) 277-6510

Attorneys for Arbitron

IN WITNESS THEREOF, the parties hereto, intending to be legally bound hereby, have executed this Order on Consent on the dates written below:

ANDREW M. CUOMO
Attorney General of the State of New York
120 Broadway
New York, New York 10271

By: _____
Alphonso B. David
Deputy Bureau Chief

_____
Spencer Freedman
Counsel for Civil Rights

Andrew J. Elmore
Assistant Attorney General

Dated: New York, New York
~~December~~ JANUARY 7, 2008 9

ARBITRON INC.
142 West 57th Street
New York, NY 10019-3300

By: _____
Timothy T. Smith
Executive Vice President
& Chief Legal Officer

Dated: New York, New York
December 19, 2008

SO ORDERED:

_____
HON. MARYLIN G. DIAMOND
NEW YORK SUPREME COURT JUSTICE

Dated: JAN 7 2009
New York, New York

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625-0112
Attorney for Plaintiffs

By: James R. Michael
Deputy Attorney General
Tel.: (609) 984-3105

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO.: MID-L-8428-08

ANNE MILGRAM, Attorney General of the State of New Jersey; DAVID SZUCHMAN, Director of the New Jersey Division of Consumer Affairs, and J. FRANK VESPA-PAPALEO, Director of the New Jersey Division on Civil Rights, Plaintiffs, v. ARBITRON, INC., Defendant.	Civil Action FINAL CONSENT JUDGMENT

1. Plaintiffs ANNE MILGRAM, Attorney General of the State of New Jersey ("Attorney General"), DAVID SZUCHMAN, Director of the New Jersey Division of Consumer Affairs, and J. FRANK VESPA-PAPALEO, Director of the New Jersey Division on Civil Rights, (collectively "Plaintiffs"), having filed a Complaint (hereinafter "the Complaint") and Defendant Arbitron Inc., a Delaware corporation ("Arbitron"), appearing through counsel, stipulate that this Final Consent Judgment ("Consent Judgment") may be signed and entered by a judge.

2. The Plaintiffs and Defendant (collectively, "Parties") having consented to the entry of this Consent Judgment for the purposes of settlement only without this Judgment constituting evidence against or any admission by any party and without trial of any issue of fact or law. This Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Defendant or any other party. Further, this Consent Judgment shall not be competent evidence in any judicial or other proceeding of any liability or wrongdoing by Defendant.

3. The entry of this Consent Judgment has been consented to by Defendant as its own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon them by this Consent Judgment, and it consents to its entry without further notice, and avers that no offer, agreement or inducements of any nature whatsoever have been made to them by the Plaintiffs or their attorneys of any employee of the Office of the Attorney General to procure this Consent Judgment.

4. In the event that the Court shall not enter this Consent Judgment, this proposed Consent Judgment shall be of no force and effect against the Attorney General of New Jersey and the Directors or the Defendant.

5. This Consent Judgment shall bind Defendant, its officers, directors, agents, representatives, parents, affiliates, subsidiaries and employees, and shall be binding on any and all successors and assigns, future purchasers, acquired parties, acquiring parties, successors-in-interest, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation or anyone acting directly or indirectly on their behalf.

6. Subject to paragraph 38 below, Defendant has, by its signature and the signatures of its respective counsel hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with entry of this Consent Judgment concerning past conduct

addressed in this Consent Judgment.

7. In exchange for the consideration set forth herein, upon execution of this Consent Judgment, the Plaintiffs agree to release Defendant, all of its parent entities, subsidiaries and affiliated entities, and the officers, directors, members, agents servants, employees of each of them, and shareholders from all civil claims, causes of action, suits and demands, of any kind or character for violation of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., or the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 et seq., arising prior to the date this Consent Judgment is filed and arising out of or based upon matters addressed in this Consent Judgment and the Plaintiffs' Complaint.

8. The Court having considered the pleadings and the proposed Consent Judgment executed by the Parties and their attorneys and filed herewith, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Consent Judgment may be entered in this matter as follows:

JURISDICTION AND VENUE

9. Pursuant the CFA and LAD, jurisdiction of this Court over the subject matter and over the Defendant for purposes of entering into and enforcing this Consent Judgment is admitted. Jurisdiction is retained by this Court for such further orders and directions as may be necessary or appropriate for the construction and modification of the injunctive provisions herein, or execution of this Consent Judgment, including punishment for any violation of this Consent Judgment. If the Plaintiffs are required to file a petition to enforce any provision of this Consent Judgment against Defendant, Defendant agrees to pay any courts costs and reasonable attorneys' fees associated with any successful petition to enforce any provision of this Consent Judgment. Pursuant to N.J.S.A. 56:8-8, venue is proper in this Court, and venue as to all matters between the parties relating hereto

or arising out of this Consent Judgment is solely in the Superior Court of New Jersey, Middlesex County.

PART ONE: DEFINITIONS

10. Unless otherwise specified, the following definitions shall apply:

a. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

b. "Arbitron" means Arbitron Inc. and all of its executives, officers, directors, managers, representatives, employees and all individuals who act on their behalf.

c. "Order" means this Final Consent Judgment.

d. "Diary system" means Arbitron's long-standing methodology of collecting journals written by panelists of their daily radio listening habits and utilizing them to create ratings based on an estimate of the number of listeners of radio broadcasts.

e. "Effective Date" means the date this Order is executed by the parties hereto.

f. "Including" means without limitation.

g. "Install" means a household or person who has agreed to participate as part of a sample panel, received PPM equipment to participate, installed PPM in the household and meets all of the reporting requirements.

h. "In Tab" rate means the number, expressed as a percentage, of households or persons supplying usable information for reports or tabulations.

I. "Media Rating Council" and "M.R.C." mean Media Rating Council, Inc., a trade organization of broadcasters and advertisers that accredits media measurement services.

j. "New York Market" means all geographic areas in and surrounding New York City designated by Arbitron as a market where as of the effective date hereof P.P.M. has been

commercialized, including but not limited to the "embedded" market of Middlesex, Somerset, and Union Counties in New Jersey ("Middlesex-Somerset-Union"), as well as the New Jersey counties of Essex, Bergen, Passaic, and Monmouth counties.

k. "Philadelphia Market" means all geographic areas in and surrounding the City of Philadelphia designated by Arbitron as a market where as of the effective date hereof P.P.M. has been commercialized, including but not limited to which includes the New Jersey counties of Burlington, Camden and Gloucester.

l. "Portable People Meter" and "P.P.M." refer to the device Arbitron utilizes to identify and store information regarding radio broadcasts that panelists are exposed to and to transmit that information to Arbitron.

m. "P.P.M. methodology" refers to the policies, procedures, and practices by which Arbitron recruits individuals to wear the P.P.M. and obtains P.P.M. data from a sample of persons in households within a geographic region.

n. "Recruitment efforts" means procedures used to select, contact and recruit potential P.P.M. panelists.

o. "SPI" is an abbreviation for Sample Performance Indicator and refers to a surrogate measure for response rate in panel based samples.

p. The use of the singular form of any word includes the plural and vice versa.

PART TWO: COMPLIANCE WITH THE LAW

11. Arbitron agrees to comply fully with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 et seq.

PART THREE: INJUNCTIVE RELIEF

12. Arbitron shall commence recruitment of panelists in the New York Market for the P.P.M. using a combination of telephone based and address based methodologies beginning in January 2009. The address based methodology must be utilized in at least 10% of all recruitment efforts by or before July 1, 2009 and in at least 15% of all recruitment efforts by or before July 1, 2010. Further, Arbitron shall ensure that recruitment of racial and ethnic minorities as surveyed is commensurate with the racial and ethnic composition of the geographic area being surveyed, as determined by the most recent, annually updated United States census data.

13. Arbitron shall commence recruitment of panelists in the Philadelphia Market for the P.P.M. using a combination of telephone based and address based methodologies beginning in January 2009. The address based methodology must be utilized in at least 10% of all recruitment efforts by or before July 1, 2009, and in at least 15% of all recruitment efforts by or before December 31, 2010. Further, Arbitron shall ensure that recruitment of racial and ethnic minorities as surveyed is commensurate with the racial and ethnic composition of the geographic area being surveyed, as determined by the most recent, annually updated United States census data.

14. Arbitron shall increase cell phone only ("CPO") sampling, based on all recruitment efforts, in the New York Market from 7.5% to 10% by or before July 1, 2009, from 10% to 12.5% by or before December 1, 2009 and from 12.5% to 15% by or before July 1, 2010. Within fifteen (15) business days at the end of each quarter, Arbitron shall provide data on the composition of the CPO sample cross-tabulated by race, ethnicity and age to the Attorney General and to subscribing broadcasters of the New York P.P.M. data.

15. Arbitron shall increase cell phone only ("CPO") sampling, based on all recruitment efforts, in the Philadelphia Market from 7.5% to 10% by or before July 1, 2009, from 10% to 12.5% by or before June 1, 2010 and from 12.5% to 15% by or before December 31, 2010. Within fifteen (15) business days at the end of each quarter, Arbitron shall provide data on the composition of the CPO sample cross-tabulated by race, ethnicity and age to the Attorney General and to subscribing broadcasters of the Philadelphia P.P.M. data.

16. Arbitron must take all reasonable measures, including necessary front-loaded treatments and refusal conversion strategies (incentives), to increase SPI in the New York Market and to ensure a minimum SPI of 15 by or before July 1, 2009; a minimum SPI of 16 by or before October 1, 2009; and a minimum SPI of 17 by or before June 1, 2010, with a target SPI of 20.

17. Arbitron must take all reasonable measures, including necessary front-loaded treatments and refusal conversion strategies (incentives), to increase SPI in the Philadelphia Market and to ensure a minimum SPI of 15 by or before October 1, 2009; a minimum SPI of 16 by or before April 1, 2010; and a minimum SPI of 17 by or before November 30, 2010, with a target SPI of 20.

18. Arbitron must take all reasonable measures, including in-person coaching and compliance incentives, to ensure in-tab rates of at least 75% by or before April 1, 2009 in all demographics in the New York Market as defined by race, ethnicity, age, and gender. The in-tab rates of all sub-categories of race, ethnicity, age and gender cannot fall below 90% of the target rate, excluding sub-categories that are less than 10% of the New York Market on a six (6) month basis beginning April 1, 2009.

19. Arbitron must take all reasonable measures, including in-person coaching and

compliance incentives, to ensure in-tab rates for the Philadelphia PPM Market of at least 75% for the overall population (age of 6 and over) by or before April 1, 2009. The in-tab rates of all sub-categories of race, ethnicity, age and gender cannot fall below 85% of the target rate, excluding sub-categories that are less than 10% of the Philadelphia Market on a six (6) month basis beginning April 1, 2009.

20. Further, beginning on January 21, 2009, Arbitron shall provide to subscribing broadcasters install and in-tab data by individual zip code for the New York Market and provide racial and ethnic demographic data for each zip code. For the Philadelphia Market Arbitron shall begin providing install and in-tab data by zip code on April 1, 2009. Thereafter, Arbitron shall continue to provide the zip code data fifteen (15) business days after the monthly release of the monthly e-book for the New York Market and the Philadelphia Market. Arbitron reserves the right to discontinue delivery of a portion or all of the zip code data based on formal, written advice from the MRC, or in the event there is substantial evidence, as determined by the Attorney General, that a person or company is using the zip code data to identify or contact PPM panel members.

21. Arbitron shall create, fund and commence a valid non-response bias study by January 15, 2009, to identify and determine measurable bias, if any, in the PPM methodology utilized in the New York Market. The study shall be completed by July 15, 2009. This study is intended to satisfy Arbitron's obligations in this regard both hereunder as well as under Arbitron's separate agreement to settle the case with the New York Attorney General. If the study finds measurable bias, Arbitron shall use all reasonable measures to address the bias within six (6) months. To the extent Arbitron believes in good faith that it cannot cure such bias within six (6) months, it shall notify and confer with the Attorney General.

22. Arbitron shall fund an advertising campaign of at least $25,000 promoting minority radio in major trade journals. This advertising campaign is intended to satisfy Arbitron's obligations in this regard both hereunder as well as under Arbitron's separate agreement to settle the case with the New York Attorney General.

23. Arbitron agrees to pay a single lump sum of One Hundred Thousand Dollars ($100,000) to the National Association of Black Owned Broadcasters for a joint radio project between the National Association Black Owned Broadcasters and the Spanish Radio Association to support minority radio. This single payment shall satisfy Arbitron's obligation in connection with the settlement of this action as well as the action in New York with the New York Attorney General.

24. Effective immediately, Arbitron must include a prominent disclaimer in **14 font bold typeface** on all written promotional materials of the PPM on paper or internet advertising on direct links, including e-book, and any sub-links that contain promotional materials, stating that the PPM ratings are based on audience estimates and are the opinion of Arbitron and should not be relied on for precise accuracy or precise representativeness of the demographic or radio market in New York and Philadelphia markets.

25. Arbitron shall prepare and submit reports fifteen (15) days after each quarter in 2009 and 2010 to the Attorney General relating to all metrics outlined in paragraphs 12 through 19. Arbitron shall submit a sworn statement, certifying (1) the current PPM methodology design changes and metrics discussed in paragraphs 12 through 19, (2) whether Arbitron is in compliance with paragraphs 12 through 19, and if not, (3) identify the paragraphs in which Arbitron is non-compliant,

and (4) where Arbitron is non-compliant with paragraphs 12 through 19, identify all reasonable measures taken to achieve compliance.

26. Arbitron shall take all reasonable efforts in good faith to obtain and retain accreditation for the New York Market and the Philadelphia Market from the M.R.C. In addition to the rights reserved to the Attorney General set forth herein, if Arbitron has not obtained accreditation from the MRC in either market by December 31, 2009 and has failed to meet any of the minimum standards as set forth in paragraphs 12 through 19 of this Order, the Attorney General reserves the right to rescind the Order and reinstitute litigation against Arbitron for the above-referenced claims.

PART FOUR: MONETARY RELIEF

27. Arbitron agrees to pay a single lump sum in the amount of One Hundred Thirty Thousand ($130,000.00) for investigative costs and expenses associated with the Attorney General's investigation.

28. Payments to the Attorney General are due no later than four (4) weeks after the time of the signing of this Order, and must be in the form of a certified check, bank check, money order, or attorney's check made payable to "The State of New Jersey" and forwarded to the New Jersey Attorney General's Office, Attention: James Michael, Deputy Attorney General, 25 Market Street, Trenton, New Jersey 08625-0112.

PART FIVE: JURISDICTION AND OTHER PROVISIONS

29. This Order, when fully executed and performed by Arbitron to a reasonable expectation of the Attorney General, will resolve all claims against Arbitron that were raised in the

Complaint filed by the Attorney General in this action. However, nothing in this Order is intended to, nor shall, limit the Attorney General's investigatory or compliance review powers otherwise provided by law.

30. Notwithstanding any provision of this Order to the contrary, the Attorney General may, in its sole discretion, grant written extensions of time for Arbitron to comply with any provision of this Order.

31. This Order shall become effective upon its execution by all parties and its entry by the Court.

32. The signatories to this Order warrant and represent that they have read and understand this Order, that they are duly authorized to execute this Order, and that they have the authority to take all appropriate action required to be taken pursuant to the Order to effectuate its terms.

33. This Order may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

34. This Order is final and binding on the parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Order. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.

35. All of the terms of this Order are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all parties hereto approved by the Court or with Court approval.

36. This above captioned lawsuit shall be dismissed without prejudice. However, the Court shall retain jurisdiction over the parties and the matter and retain the power to order all

applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.

37. This Order supersedes and renders null and void any and all written or oral prior undertakings or agreements between the parties regarding the subject matter hereof.

38. The parties hereby waive and shall not have any right to appeal any of the terms of this Order or in any way challenge the validity of any of the terms of this Order in any forum. Further, Arbitron hereby agrees to withdraw without prejudice any and all pending legal claims filed in any New Jersey trial court, whether state or federal, involving the Attorney General relating to the marketing or commercialization of the PPM or the PPM methodology, or the Attorney General's jurisdiction to investigate and litigate claims relating to the PPM.

39. If any provisions, terms, or clauses in this Order are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Order shall remain valid and binding on the parties.

40. The parties may seek to enforce this Order by motion before the Court to the full extent of the law; however, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.

41. Failure to comply with any provision of this Order shall be considered a violation of this Consent Order. Upon such a violation, the Attorney General may take any and all steps available to enforce this Consent Order, including seeking an order of contempt. Upon application by the Attorney General showing Arbitron has failed to pay penalties and costs pursuant to

paragraphs herein, the Court shall also enter a money judgment in the amount of the unpaid balance, plus interest at the rate of nine (9) percent per annum from the date of violation or nonpayment, against Arbitron, and the Attorney General shall have execution thereof.

42. In any application by the Attorney General pursuant to paragraph 41 above, the Attorney General may request an allowance for costs.

43. Failure by any party to seek enforcement of this order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

44. All communications and notices regarding this Order shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

<u>Office of the Attorney General</u>

James R. Michael
Deputy Attorney General
Division of Law
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112

Attorney for Plaintiffs

<u>Arbitron Inc.</u>

Chief Legal Officer
Arbitron Inc.
9705 Patuxent Woods Drive
Columbia, Maryland 21046-1572
Tel. (410) 312-8043
Fax (410) 312-8613

Alfred Fabricant
Dickstein Shapiro LLP
1177 Avenue of the Americas
New York, NY 10036-2714
Tel. (212) 277-6621
Fax (212) 277-6510

Attorneys for Arbitron

IT IS ON THIS DAY OF , 2009 SO ORDERED, ADJUDGED AND DECREED.

HON. EDWARD J. RYAN, J.S.C.

Jointly Approved and Submitted for Entry:

ANNE MILGRAM
Attorney General of the State of New Jersey
25 Market Street
Trenton, NJ 08625-0112

By: _____
James R. Michael
Deputy Attorney General

Dated: July 7, 2009

ARBITRON INC.
142 West 57th Street
New York, NY 10019-3300

By: _____
Timothy T. Smith
Executive Vice President
& Chief Legal Officer

Dated: January 7, 2009

AGREEMENT BETWEEN ARBITRON INC. AND THE ATTORNEY GENERAL OF MARYLAND REGARDING PPM METHODOLOGY IN THE WASHINGTON, DC AND BALTIMORE MARKETS

The following sets forth the agreement ("Agreement") by and between Arbitron Inc. ("Arbitron") and the Office of the Attorney General of Maryland ("Attorney General") regarding Arbitron's use of the Portable People Meter™ ("PPM™") in the Washington, DC and Baltimore, Maryland radio markets:

PART I: DEFINITIONS

Unless otherwise specified, the following definitions shall apply:

A. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

B. "Arbitron" means Arbitron Inc. and all of its executives, officers, directors, managers, representatives, employees and all individuals who act on their behalf.

C. "Baltimore Market" means all geographic areas in the State of Maryland, in and surrounding Baltimore City, where the PPM methodology is commercialized. As of the date of this Agreement, the Baltimore Market is expected to include: Anne Arundel County North, Anne Arundel County South, Baltimore City, Baltimore County, Carroll County, Harford County, Howard County, and Queen Anne's County.

D. "Comparable Terms" means terms relating to Arbitron's use and logistical implementation of the PPM methodology in the Baltimore Market based upon the agreements herein pertaining to the Washington, DC Market and the letter agreement between Arbitron and OAG dated December 24, 2008, but tailored to reflect (1) the different demographic characteristics of and metrics in the respective markets (e.g.,

relative market populations and the presence or absence of high-density minority populations) and (2) Arbitron's timetable for commercializing the PPM methodology in the Baltimore Market.

E. "Install" means a household or person who has agreed to participate as part of a sample panel, received PPM equipment to participate, and installed PPM in the household.

F. "In Tab rate" or "In Tab rates" means the number of households or persons supplying usable information for reports or tabulations expressed as a percentage of the installed sample.

G. "MRC" means Media Rating Council, Inc., an organization of broadcasters and advertisers that accredits media measurement services.

H. "Portable People Meter" and "PPM" refer to the device Arbitron utilizes to identify and store information regarding radio broadcasts that panelists are exposed to and to transmit that information to Arbitron.

I. "SPI" is an abbreviation for Sample Performance Indicator and refers to a longitudinal measure for response rate in panel-based samples. The SPI referred to herein is the SPI measure that Arbitron submits to the MRC in connection with its requests for accreditation for the Washington, DC and Baltimore markets.

J. "Washington, DC Market" means all geographic areas in the State of Maryland, surrounding Washington, DC, where the PPM methodology is commercialized, including as of the date of this Agreement: Calvert, Charles, Frederick, Montgomery, and Prince George's Counties.

K. "Race, ethnicity" and "racial and ethnic" as those phrases are used herein means Arbitron's standard categories as currently surveyed by Arbitron in its PPM ratings service.

PART II: USE AND LOGISTICAL IMPLEMENTATION OF PPM METHODOLOGY

A. Arbitron will recruit panelists in the Washington, DC Market for the PPM panel using a combination of telephone-based and address-based methodologies. The address-based methodology will be utilized in at least 10% of all recruitment efforts by or before October 1, 2009 (although Arbitron will take all reasonable measures to achieve this level by July 1, 2009) and in at least 15% of all recruitment efforts by or before December 31, 2010. Further, Arbitron will take all reasonable measures to ensure that recruitment of racial and ethnic minorities surveyed is commensurate with the racial and ethnic composition of the geographic area being surveyed, as determined by the most recent, annually updated United States census data. In the Baltimore Market, Arbitron will utilize and comply with Comparable Terms to be agreed by Arbitron and the Attorney General and, unless the Comparable Terms otherwise provide, will take all reasonable measures to use the address-based methodology in (1) at least 10% of all recruitment efforts by the first month that PPM becomes currency in the Baltimore Market and (2) at least 15% of all recruitment efforts by or before December 31, 2010.

B. Arbitron will increase cell phone only ("CPO") sampling, based on all recruitment efforts, in the Washington, DC Market to at least 10% by or before October 1, 2009 (although Arbitron will take all reasonable measures to achieve this level by July 1, 2009) and at least 15% by or before December 31, 2010. Within fifteen (15) business days of the end of each quarter, Arbitron will provide data to the Attorney General and

to subscribing broadcasters of the Washington, DC PPM data on the composition of the CPO sample for the total metro, cross-tabulated by race, ethnicity and age categories. In the Baltimore Market, Arbitron will utilize and comply with Comparable Terms to be agreed by Arbitron and the Attorney General and, unless the Comparable Terms otherwise provide, will take all reasonable measures to use a CPO sample of (1) at least 10% by the first month that PPM becomes currency in the Baltimore Market and (2) at least 15% by December 31, 2010.

C. In the Washington, DC Market, Arbitron will take all reasonable measures, including, if necessary, front-loaded treatments and refusal conversion strategies (incentives), to ensure after the date of this Agreement a minimum SPI of 15 and to obtain and maintain by June 1, 2010, in the Washington, DC Market, a minimum SPI of 17 with a target of 20 or higher. In the Baltimore Market, Arbitron will utilize and comply with Comparable Terms to be agreed by Arbitron and the Attorney General.

D. Arbitron will take all reasonable measures, including, if necessary, compliance incentives, to ensure In Tab rates for the Washington, DC Market of at least 75% by or before October 1, 2009 for the overall 6+ population. Arbitron's In Tab rates for all categories and sub-categories of race, ethnicity, age and gender will not fall below 85% of the target rate on a six (6) month rolling average basis beginning October 1, 2009, excluding categories and sub-categories that are less than 10% of the Washington, DC Market. In the Baltimore Market, Arbitron will utilize and comply with Comparable Terms to be agreed by Arbitron and the Attorney General.

E. Beginning on April 1, 2009, Arbitron will provide to Washington, DC Market subscribing broadcasters PPM Install and In Tab data by individual zip code for

the Washington, DC Market and provide racial and ethnic demographic population (Census based) data for each zip code. Thereafter, Arbitron will continue to provide the zip code data fifteen (15) business days after the monthly release of the monthly e-book for the Washington, DC Market. Arbitron reserves the right to discontinue delivery of a portion or all of the zip code data based on formal, written advice from the MRC, or in the event there is substantial evidence, as determined by the Attorney General, that a person or company is using the zip code data to identify or contact PPM panel members. In the Baltimore Market, Arbitron will utilize and comply with Comparable Terms to be agreed by Arbitron and the Attorney General.

F. Arbitron will include a prominent disclaimer on all written promotional materials of the PPM that are on paper or designed to be printed on paper, and internet advertising on direct links, including e-book, and any sub-links that contain promotional materials, stating that the PPM ratings are based on audience estimates and are the opinion of Arbitron and should not be relied on for precise accuracy or precise representativeness of the demographic or radio market in the Washington, DC or Baltimore Markets.

G. Arbitron will prepare and submit reports fifteen (15) days after each quarter to the Attorney General relating to all metrics outlined in paragraphs II.A through II.D of this Agreement. Arbitron will submit a sworn statement, certifying: (1) the current PPM metrics outlined in paragraphs II.A through II.D; (2) whether Arbitron is in compliance with paragraphs II.A through II.D; if not, (3) the paragraphs in which Arbitron is non-compliant; and (4) where Arbitron is non-compliant with one or more of paragraphs II.A through II.D, all reasonable measures taken to achieve compliance.

H. Arbitron agrees that, the in the event a study Arbitron undertakes of any non-response bias of the PPM methodology utilized in the New York City radio market finds a material and measurable bias, Arbitron will advise the Attorney General within 30 days of the nature and scope of the bias found and thereafter forthwith enter into discussions with the Attorney General to identify whether or not such bias found in the New York City Market is relevant to the Washington, D.C and Baltimore Markets. If relevant, Arbitron will develop a plan to resolve any such bias consistent with any plan developed for New York.

I. Arbitron will take all reasonable measures, in good faith, to obtain accreditation from the MRC for the PPM methodology in both the Washington, DC Market and the Baltimore Market. At such time as Arbitron receives accreditation from the MRC for either the Washington, DC Market or the Baltimore Market, Arbitron's obligations under this Agreement, including the requirements of paragraphs II.A through II.H, shall immediately terminate with respect to that market. At such time as Arbitron has received accreditation from the MRC for the Washington, DC Market and the Baltimore Market, this Agreement shall immediately terminate in its entirety; provided, however, that the compliance enforcement provisions of Part III of this Agreement shall survive such termination with respect to any material breach prior to the termination.

PART III: COMPLIANCE ENFORCEMENT AND OTHER PROVISIONS

A. Upon Arbitron's material breach of this Agreement, the Attorney General may take any and all steps available to it to enforce this Agreement, including seeking an order of specific performance to compel compliance, provided that the Attorney General first gives Arbitron reasonable notice and an opportunity to cure any such

breach. If a court finds that Arbitron has breached this Agreement, and further finds that Arbitron engaged in substantial continuing non-compliance with this Agreement, then Arbitron agrees that it will be responsible to pay the Attorney General's costs of investigation prior to the execution of this Agreement and the reasonable attorneys' fees and costs of the Attorney General in enforcing this Agreement.

B. Failure by the Attorney General to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

C. Notwithstanding any provision of this Agreement to the contrary, the Attorney General may grant written extensions of time for Arbitron to comply with any provision of this Agreement.

D. The parties hereto warrant and represent that they have read and understand this Agreement, that they are duly authorized to execute it, and that they have the authority to take all appropriate action required to be taken pursuant to it to effectuate its terms.

E. This Agreement may be executed in counterparts, each of which shall be deemed a duplicate original.

F. This Agreement is final and binding on the parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Agreement. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.

G. All of the terms of this Agreement are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all parties hereto.

H. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

I. If any provisions, terms, or clauses in this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding on the parties.

J. Arbitron has entered into this Agreement to avoid any ongoing disputes with the Attorney General, however Arbitron denies that its PPM methodology is flawed or defective in any way.

K. All communications and notices regarding this Order shall be sent by First Class mail and facsimile to:

Office of the Attorney General

Austin C. Schlick
Chief of Litigation
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202
Tel.: (410) 576-7291
Fax: (410) 576-6955

Arbitron Inc.

Timothy T. Smith
Executive Vice President & Chief Legal Officer
Arbitron Inc.
9705 Patuxent Woods Drive
Columbia, MD 21046-1572
Tel.: (410) 312-8043
Fax: (410) 312-8613

Alfred Fabricant
Dickstein Shapiro LLP
1177 Avenue of the Americas
New York, NY 10036-2714
Tel.: (212) 277-6621
Fax: (212) 277-6510

ACCEPTED AND AGREED:

Office of the Attorney General of Maryland

by:

Austin C. Schlick
Chief of Litigation

Dated: 2/5/09

Arbitron Inc.

by:

Timothy T. Smith
Executive Vice President & Chief Legal Officer

Dated: _____