S. HRG. 109–1127

S. 1372, THE FAIR RATINGS ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JULY 27, 2005

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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S. 1372, THE FAIR RATINGS ACT

WEDNESDAY, JULY 27, 2005

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room SR–253, Russell Senate Office Building, Hon. Conrad Burns, presiding.

OPENING STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. We'll bring the Committee to order.

Around here, when you get to the last week before the August break, it gets a little compressed. We have to do many things in one day in order to finish our work before we go home on the August break. And so, there will be Members in and Members out. I was advised by the Ranking Member to start the hearing this morning, and—or this afternoon, and we can do that.

First of all, I want to thank all the witnesses for coming. This is a busy time of the year. I look forward to a stimulating exchange of views this afternoon. Some of us were gathered here a year ago at a hearing that I convened to hear about the problems encountered by phasing in of Nielsen's Local People Meters in several cities around the country. The questions then were whether the deployment caused minority and other groups to be undercounted, and whether Nielsen had listed enough of its customers before rolling out the technology. The answers appeared to be yes and no, respectively. At the end of the hearing, Senator Boxer and I told the witnesses that it would be best if they could all work out the problems among themselves.

Well, it seems like that process is a work-in-progress. In this technical area, that usually does not get a lot of attention, we have had continued controversy around this. And so, we have a bill. I introduced a bill because I wanted a solution to the problem and I didn't see that voluntary industry efforts were making any headway at all. I still think a voluntary solution would have been best for all concerned.

And I understand the Media Rating Council has come forth with a voluntary code of conduct, but the Nielsen organization will not sign on without major changes. I look forward to hearing more about that today. But I wonder what happens to voluntary cooperation once things get tough, or once Congress is not paying attention, as we are today.

This bill is not about Local People Meters. This Nielsen technology may or may not be the state-of-the-art, but, if it is, it's better than the diary system. And if Nielsen customers want it, then so be it.

And I also do not believe it's in the public interest to worry about whether the given company's ratings go up or down. That's something for the market to decide. And I think we can all agree about that.

This bill is about accountability. It's about making sure that the system is fair and accurate for all Americans. It would compel Nielsen to come to the table with the auditors at the Media Rating Council and accept their changes if minimum accuracy standards are not met. That is what I care about. That is why I got involved in this debate. And I believe I have constructed legislation that will make sure this is the case today and in the future.

Nielsen needs some kind of an effective oversight, because it is the only game in town. Companies who need TV ratings data do not have anywhere else to go today, even if there are serious concerns about the numbers that they're seeing as a result of Nielsen's samplings. MRC oversight, with meaningful enforcement power, would remedy this situation in the best possible way, because the MRC is made up of Nielsen's customers. The bill would not involve any government agency. The MRC would retain its independence and responsiveness to the members as a private-sector expert group.

The industry's self-regulating model has been approved by Congress many times and in many different sectors of the economy. I think the MRC model has been working well for the last 40 years. Maybe it is time for a change. We will find out only through hearings and gaining more information.

Recent events have showed us that the MRC's lack of power to enforce its findings, though, is somewhat of a problem. They need some teeth. And I would hope that maybe we would find we could give them some.

The bill would also set the stage for a strong MRC role in guaranteeing the accuracy of the technologies. We have several systems that may soon be deployed by Nielsen and others that would capture time-shifting viewing, out-of-home viewing, and other methods that may not be developed yet.

Of special interest to me, though, is the decision that the MRC took in March to take another look at the diary system. This method, unchanged since the 1950s, is still in use in over 150 local television stations around the country, including all of them, of course, in Montana and many others around the country. With this decision, as I understand it, the MRC has asked Nielsen to cooperate in review of the accuracy of the diary system. I would hate to think that people in rural areas, in small towns all over the country, are less important than the people in the big cities where Nielsen is spending the resources on the people meters. Rural viewers are very important to me. When I ran a network in television and radio stations, I had to depend totally on Nielsen data for my business. So, I hope Nielsen will cooperate with the MRC on this.

If it does not, in my mind, that is another important reason that the bill should pass.

Nielsen ratings determine the value of literally billions of dollars in advertising. Because our TV industry is supported largely by advertising dollars, Nielsen ratings, in the end, determine which television shows get aired and which get canceled; and so, ultimately, determine what kind of content is distributed on our public airways.

So, television rating systems have extraordinary cultural, social, and economic implications. Even in the era of the Internet, television remains our national town hall. It is a medium that brings Americans together, and it is shared space that shapes our national experience. And in a very real sense, the ratings generated by Nielsen determine content that is available in that shared space. So, the American public has a clear and compelling interest in ensuring that these ratings systems are as fair and accurate as possible.

All viewers must be counted. I hope we can agree on that. And I believe that the FAIR Ratings bill is an important step in that direction.

I have no one to hand the football off to, so we will start taking testimony this morning. We want to—or this afternoon—we want to thank everyone in attendance. I know there's a great deal of interest in this issue. And I look forward to hearing the testimony and the dialogue that we may have before it's all over.

First of all, I'd like to welcome our first panel of testimony, Mr. George Ivie, Executive Director and CEO of the Media Rating Council.

Thank you, Mr. Ivie, for coming this morning, and—or this afternoon, and—I can't get caught up——

[Laughter.]

Senator BURNS.—this afternoon, and we look forward to your testimony.

STATEMENT OF GEORGE IVIE, EXECUTIVE DIRECTOR/CEO, THE MEDIA RATING COUNCIL, INC.

Mr. IVIE. Senator Burns and distinguished members of the Committee, my name is George Ivie, and I serve as Executive Director and CEO of the Media Rating Council. I thank you for the opportunity, Senator Burns, to testify this morning on television ratings accuracy and the FAIR Ratings Act.

My written testimony outlines the history and mission of the MRC and includes descriptions of our administrative and accreditation procedures, and we believe we have sound operations and stated policies for the following: voting on and accrediting research based on standards compliance, limiting the influence of any one industry sector or member within our organization, maintaining independence from measurement services, and, most importantly, ensuring rigorous industry-driven audit procedures. For example, about independence, our membership does not include measurement organizations.

We appreciate the Committee's interest in the accuracy of television ratings and Congress' reaffirmation of the MRC's role in the form of this FAIR Ratings Act; however, we have important suggestions for your consideration in both of these areas.

As you are all aware, a significant MRC concern has been Nielsen's commercialization of the San Francisco, Washington, D.C., and Philadelphia LPM markets prior to an MRC audit. As you know, Nielsen controls the timing of these audits and the roll-out dates. We also have concern about Nielsen's failure to disclose adequate test data for some of the LPM implementations. These situations prevent our illumination of the quality and performance of the new services prior to commercialization.

We have sought, and received in June, a commitment from Nielsen to the auditing and impact data closures we requested, and we hope that Nielsen remains committed to the audits of the LPMs and their other significant products after the direct focus of Congress lessens.

Related to the FAIR Ratings Act, our focus is to assure audits and committee review and impact data disclosures prior to commercialization of new products. This focus is driven by the need to illuminate the quality of the rating products to users so they can make informed usage judgments. We believe it's important to avoid a situation where non-accredited products are prohibited from being commercialized through a blanket rule, but we just as strongly believe that these products should be audited.

The MRC is not a political organization, and we have not sought Congressional actions in the form of a ratings bill. The legislation appears to raise complex issues of antitrust and liability for the MRC, beyond my particular training and expertise, but in which we obviously have a great interest. We remain on course, seeking completion of the initiatives recommended in our January 27, 2005, letter to the FTC and to you, Senator Burns, signed by a strong majority of our board. These items include agreement by Nielsen to the government to remain in the MRC audit process for the future for its key products. It is in Nielsen's power today, in this public government forum, to reaffirm their commitment to the MRC process for all their significant products, not just LPM and not just future products.

This seemingly small item is important to assure that Nielsen continues to respond and dialogue with the industry about quality and transparency, which, in turn, should instill greater public confidence.

Most importantly, we intend to gain consensus on, and adopt, a voluntary code of conduct that was supplied to rating services for comment several weeks ago. The code is important because it adds detail and formal structure to how rating services are expected to act on audit findings and interact with the MRC. Our members, Arbitron, Media Mark Research, and other rating services, have expressed support of this approach. This week, Nielsen communicated their conceptual agreement, and more dialogue is needed.

We hope you will agree that such a voluntary code of conduct will do much to promote the vigorous self-regulation that Congress envisioned in 1964, which is still very much needed over 40 years later. The final January initiative entailed establishing a communication linkage between the MRC and appropriate Congressional and Executive Branch representatives to call upon when needed. We believe the voluntary code of conduct is our key solution to the issues we face, and, when adopted by Nielsen and other rating services, this code will provide further assurance that measurement services are meeting the MRC's mandate of accuracy and transparency.

In closing, the MRC has strived for four decades to be faithful to the mission Congress defined for us. As always, we stand ready to work with the Congress in any way that would be helpful. I very much appreciate the care and thoughtfulness of you, Senator Burns, and other Members of the Committee, in considering the issues that significantly impact the media ratings marketplace.

Whether legislation is required is fundamentally an issue and a decision for Congress, though we will follow this debate carefully to ascertain whether such an initiative could affect our current work. In any event, we believe our key business priorities are to seek Nielsen's firm and long-term commitment to the accreditation process and seek adoption of our voluntary code of conduct by Nielsen and other measurement services.

I would be happy to answer any questions you have.

[The prepared statement of Mr. Ivie follows:]

PREPARED STATEMENT OF GEORGE IVIE, EXECUTIVE DIRECTOR/CEO, THE MEDIA RATING COUNCIL, INC.

I. Introduction to the MRC

I am George Ivie, Executive Director and CEO of the Media Rating Council (MRC), and I am grateful for the opportunity to present our views on Nielsen's implementation of the local people meter (LPM) measurement methodology in general-market media research. I would like to begin by thanking Senator Burns and Ranking Member Inouye for your leadership in focusing congressional attention on this technical and important subject.

The MRC is a non-profit organization that reviews and accredits audience-rating services through the use of rigorous audits. An MRC audit includes an independent, detailed, and objective examination of each aspect of the operations of a rating service (including methodological protocols) through data provided to it by participating rating services. The central mission of the MRC is to secure for the media industry, audience measurement services that are valid, reliable, and effective through an independent evaluation process, without regard to outcome. The MRC is independent of, and external to, any rating service and guards its independence zealously.

1. History and Mission of the MRC

During 1963 and 1964, regulation of the TV and Radio industries including the purpose and accuracy of audience research were the subjects of extensive public hearings. This process culminated with a progress report issued to the 89th Congress of the United States (House Report No. 1212)[1] in January 1966. These hearings were held by a Special Subcommittee on Investigations of the House of Representatives Committee on Interstate and Foreign Commerce and are commonly referred to as the "Harris Committee Hearings on Broadcast Ratings."

After an extensive investigation and 3 days of testimony, the Committee determined that Industry self-regulation, including independent audits of rating services (such as Nielsen Media Research, Arbitron or MRI) was preferable to government intervention. In its report, the Committee concluded as follows: "The enactment, at this time, of legislation providing for government regulation of broadcast audience measurement activities is not advisable. The administration of a statute providing for such regulation would place an unnecessary burden on the Federal Government, and it is doubtful that more would be accomplished than can be accomplished by effective industry regulation."[2]

The Harris Committee hearings resulted in the formation of an Industry-funded organization to review and accredit audience-rating services called the Broadcast Rating Council (now referred to as the MRC). At that time, the Broadcast Rating

[1] House Rpt. No. 1212, 89th Congress (1966).
[2] *Id.* at p. 21.

Council's proposed Industry self-regulation procedures were reviewed by the U.S. Justice Department and were found not to be in violation of the antitrust laws.[3]

Aligned with the actions deemed necessary by the Committee, the activities of the MRC include, but are not limited to the following:

- The establishment and administration of Minimum Standards for rating operations;
- The Accreditation of rating services on the basis of information submitted by such services; and
- Auditing, through independent CPA firms, of the activities of the rating services.

The MRC's mission as stated in its By-laws is: "to secure for the media industry and related users audience measurement services that are valid, reliable and effective; to evolve and determine minimum disclosure and ethical criteria for media audience measurement services; and to provide and administer an audit system designed to inform users as to whether such audience measurements are conducted in conformance with the criteria and procedures developed."[4] This mission was established with the support and guidance of the House Committee.

2. Standards

Consistent with the By-laws of the BRC and its mission, it developed minimum standards by which media research is to be measured, which became effective on March 31, 1964 and have been maintained and updated by the MRC Board of Directors.[5] The Standards relate to: (a) ethics and operations, and (b) disclosures. Ethical and Operational Standards govern the quality and integrity of the entire process by which ratings are produced. Disclosure Standards specify the detailed information about a rating service's methodology and each specific survey, which must be made available to users, the MRC and its CPA firm, as well as the form in which the information should be made available.

3. MRC Accreditation Process

The MRC Accreditation process is completely *voluntary* and there is no legal or compulsory requirement that a rating service submit to an MRC audit. MRC is often compared to similar private industry self-regulatory organizations such as the Joint Commission on Accreditation of Healthcare Organizations (JACHO), which is an organization that audits and accredits participating hospitals for institutional fitness and high quality patient services. Similarly, the MRC lends its "seal of approval" to rating services that demonstrate compliance with MRC's standards of media rating research and that make complete methodological and survey-performance disclosures to their customers after completing an extensive audit. *Over thirty-five rating service products were submitted to the MRC Accreditation process last year.* Of these thirty-five products, many represented media-types other than television.

Accreditation is granted by the MRC Board of Directors if a rating service complies with the MRC's Minimum Standards for Media Rating Research and makes materially complete methodological and survey-performance disclosures to their customers.

The MRC has used several nationally known CPA firms throughout the years to perform these audits. At present, the audits are conducted by Ernst & Young, under contract to the MRC. Each rating service agrees to pay MRC assessments to cover their audit cost; the MRC collects no funds from rating services other than the direct cost of the Ernst & Young audits. *To be clear, the MRC derives no benefit, financially or otherwise, from the rating service. MRC's revenue is solely derived from the dues paid to it by its members.* In addition, unlike most CPA firms, Ernst & Young maintains a specialized group of personnel who have responsibility for auditing rating service operations and assessing compliance with the MRC's unique Standards. This Ernst & Young team only works on media rating service audits.

The central element in the monitoring activity of the MRC is its system of annual external audits of rating service operations. MRC audits serve these important functions:

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[3] Letter from William Orrick, Jr. Assistant Attorney General, Antitrust Division, U.S. Department of Justice to Douglas A. Anello, General Counsel, National Association of Broadcasters (July 16, 1964)

[4] MRC By-Laws.—Board of Directors, Media Rating Council, Effective March 1964, Updated.

[5] See Minimum Standards for Media Rating Research, Media Rating Council, Inc. (last updated = 10/97).

- They determine whether a rating service merits Accreditation (or continued Accreditation); the audit report and related insight provided by the CPA firm is the primary input into the Accreditation decision,
- They provide the MRC with the results of detailed examinations by CPA auditors which become the basis for quality improvements in the service, either by voluntary action or mandated by MRC as a condition for Accreditation, and
- They provide a highly beneficial psychological effect on rating service performance. Knowledge that CPA auditors may review their work is a powerful spur for quality work by all field and home-office personnel of the rating service.

The specific methodological approach of the rating service and the MRC Minimum Standards for Media Rating Research are the primary drivers of the audit scope for each participating rating service to be executed by the CPA firm, on behalf of the MRC. Audits are required to be conducted at least annually. The MRC establishes an audit committee made up of member organizations that use research of that media-type to evaluate audit results and recommend a position on "Accreditation" to the Executive Director of the MRC, who then submits such recommendation to the MRC Board of Directors. Provision is also made for the suspension or withdrawal of Accreditation and a documented, formal hearing procedure applies in such instances.

The MRC's audit includes an *independent, detailed and objective* examination of each significant aspect of the operations of a rating service. In the event that a rating service uses outside professional vendors (for example, for sampling procedures or for editing and tabulation of data) these sources are also audited and reported upon.

Resulting audit reports are very detailed (typically 150–300 pages); containing many methodological and proprietary details of the rating service and illumination of the primary strengths and weaknesses of its operations. The reports are confidential among the MRC members, who all sign non-disclosure agreements, Ernst & Young and the rating service. Audit reports include detailed testing and findings for:

- Sample design, selection, and recruitment
- Sample composition by demographic group
- Data collection and fieldwork
- Metering, diary or interviewing accuracy
- Editing and tabulation procedures
- Data processing
- Ratings calculations
- Assessment of rating service disclosures of methodology and survey performance

Pursuant to the last bullet above, the MRC mandates that rating services disclose many methodology and performance measures, which would be otherwise unknown, for example:

- Source of sample frame
- Selection method
- Respondents by demographic group versus population
- Response rates
- Existence of special survey treatments for difficult to recruit respondent groups such as young or ethnic persons
- Editing procedures
- Minimum reporting requirements for media
- Ascription and data adjustment procedures employed
- Errors noted in published reports
- Data reissue standards and reissue instances

As a result of the disclosures that a rating service must make in complying with the MRC Accreditation process, specific audit findings are *not* disseminated to the public or the press unless waived by the service, the MRC, and the CPA firm that conducts the audit. Public disclosure of proprietary techniques can be detrimental to a rating service's core business, for example endangering patented information, and the MRC takes very seriously its obligation to keep proprietary information confidential as well as the audit reports. Recently a controversy erupted between the MRC and Nielsen Media Research regarding the apparent leak of information related to the audit of Nielsen's Los Angeles LPM service to the *Los Angeles Times.*

MRC in no way endorsed or condones that behavior as it goes directly against its code of confidentiality. As a result of this incident, the MRC, in conjunction with its members, have implemented new rules for the viewing and discussion of draft and final audit reports among its membership.

What should be made clear, however, is that the MRC can only publicly comment on its decision to grant, deny, suspend or withdraw Accreditation without the consent of the rating service and the independent CPA auditing firm.

Rating services that are awarded MRC Accreditation are given permission to display the MRC's logo on the audited research product indicating compliance with our Standards. MRC Standards are publicly available; more importantly, the extensive methodological and survey performance disclosures mandated by the MRC are required to be available to all rating service customers.

II. MRC Membership, Membership Participation and "Due Process"

1. Membership

Membership in the MRC is completely voluntary and members pay annual dues of $10,500 (for reference, MRC dues were $7,500 per year in 1964). The dues are universal in the sense that each member pays the same amount regardless of the overall size of its organization and are set at a level that allows participation by organizations of all sizes. The Board of Directors of the MRC is comprised of one appointed representative, generally a top media research executive, for each member organization. Currently there are approximately 95 Board members in total representing television and radio broadcasting, cable, print, Internet and advertising agency organizations as well as advertisers and other trade associations.[6] As indicated by our membership list, MRC represents a very broad and diverse amalgamation of the media industry as well as the largest clients of rating services. Additionally, we have a provision for formal liaison relationships with the American Association of Advertising Agencies, the Advertising Research Foundation and the Association of National Advertisers. Membership is open to any media organization that relies on, or uses media research and presently includes both general-market media (*e.g.,* the ABC, CBS, FOX, NBC networks) and ethnic media organizations (*e.g.,* Black Entertainment and Television and Univision). Conversely, organizations such as Nielsen or Arbitron that produce media ratings data are not allowed to be members of the MRC.

2. Membership Participation

MRC members play a critical role in the Accreditation process and provide valuable insight. MRC's "Television Audit Committee" comprised of individual representatives from various member organizations that have an interest in the accuracy and quality of the rating service's research. The individuals that sit on this committee are often the top media researchers of their organizations and generally do not include television executives or representatives of an organizations' marketing division. *It is in this committee, along with the oversight of the MRC Staff, that true industry oversight of the quality and accuracy of television audience measurement services is performed.*

As discussed earlier, it is through the MRC Accreditation process and the use of rigorous and independent audits, that a rating service gains MRC Accreditation. However, before Accreditation can be achieved, the Audit Committee has the task of reviewing a draft of the rating service audit and discussing the results in detail with the auditor (Ernst & Young) and the staff of the MRC. Additionally, the rating service has the opportunity to provide its comments, verbatim, in the audit report or in a separate letter supplied to the audit committee. This is a confidential process and strict guidelines and procedures are followed during this review because of the transparency requirement that a rating service must meet in order to gain MRC Accreditation.

Once a full review of the audit has been completed, the MRC presents a "staff recommendation" to the full committee on whether in its opinion taking all the available data in front of it; the rating service should be accredited. This recommendation is prepared to help guide the committee as it weighs its decision on Accreditation. The audit committee will then vote on Accreditation, which in turn serves as a recommendation for the MRC Executive Director to take to the full MRC Board of Directors for final approval. At this point the Executive Director will present the recommendation of the audit committee to the full Board of Directors along with his assessment. The full Board then has the responsibility and *ultimate authority to vote to grant or deny Accreditation.*

[6] Full membership list is attached.

3. "Due Process"

One very important aspect of the voting and approval process is the controls and safe guards that are in place to assure that a vote of the audit committee is fair and impartial. The MRC has a formal policy for membership voting on MRC Accreditation issues that provides stringent controls and eliminates the potential for outside influence, during and subsequent to the voting procedure. The policy is not intended to stifle in any way the thoughtful discussion that takes place in preparation of the proposals. The policy is designed to insure a more proper accounting of ballots and to further maintain the confidentiality of meeting proceedings. Specifically, it:

- Verifies that all votes are accounted for
- Reduces the likelihood of miscounting votes
- Limits the influence of any one member organization, or collective segments of the Industry
- Minimizes the information that can potentially be divulged to Non-Members, in violation of the signed confidentiality agreement
- Maintains a physical record of the vote
- Provides a means for verification

Voting within the MRC can occur at various levels and follows a pre-established hierarchy. Below is an outline of the levels at which voting may take place including a summary of the MRC members that are entitled to participate, and the responsibility of each group.

- *Sub-committee(s)—*

Subcommittees are comprised of a sub-set of individuals from the MRC Committee(s) responsible for oversight of the measurement service. Any committee member claiming to have a business or professional interest in the matter at hand can elect to participate in a subcommittee. The MRC Staff will work to ensure that the various segments of the industry are represented in the Sub-committee. The Sub-committee is responsible for undertaking a detailed review of the issue. Multiple sub-committee meetings may be held depending on the complexity of the issue. The Sub-committee vote is designed to make a recommendation to the Committee(s). A tie vote will necessitate a detailed review by a larger Sub-committee group or the Committee.

- *Committees—*

MRC Committees are comprised of MRC members who have a business or professional interest in the medium for which the Committee has oversight. These committees may be asked to undertake a detailed review based on the complexity of the issue. The Committee votes whether to accept the recommendation of the Sub-committee and the Committee vote is structured to make a recommendation and provide guidance to the Executive Director. A quorum is required on all voting matters and a tie vote will necessitate a detailed review by the Board of Directors.

- *Board of Directors*

The Board of Directors represents all active members of the MRC and vote on the recommendation submitted by the Executive Director. In addition, the Board is responsible for the final vote on all Accreditation issues and a quorum is required on all voting matters.

- *Executive Director*

The Executive Director is responsible for making a recommendation to the Board of Directors and considers the recommendation of the Committee(s), though he is not required to recommend the Committee(s) position to the Board. However, the Executive Director must convene a board meeting to discuss in detail any recommendation whereby the Executive Director's position differs from that submitted by the Committee. The Executive Director may take any issue directly to the Board of Directors for a vote.

- *Voting Guidelines*

All active Board Members are entitled to a vote in the Accreditation process. A member company designates the representative(s) to attend meetings and vote. The MRC recommends the voting representative be a senior ranking individual with knowledge of the subject matter. When a detailed review of the subject matter is called for, the voting representative must be in attendance for the majority of the review meeting. Anyone not in attendance for the full meeting will be allowed to vote at the discretion of the MRC Executive Director. A member company representative may participate in-person, via phone or video-conference and is allowed to represent a maximum of two votes, for multi-vote organizations. In addition, this representative is required to submit vote(s) in writing with the exception of those participating via phone or conference call. Individuals participating via electronic means (*e.g.,* phone, etc.) have the option to cast votes via personal call to MRC Staff, fax, or e-mail. Verbal votes require follow-up written (*e.g.,* fax, e-mail, etc) confirmation.

- *Special Circumstances*

Special circumstances occur when an MRC member whose company has a vested interest in the matter being considered. When this occurs, that member may participate in the review meeting but will not be allowed to vote. Situations of this nature will be disclosed prior to the start of the meeting. Any un-anticipated voting conflicts are to be resolved by the MRC Executive Director.

- *Voting Results*

When a vote takes place the rating service will be advised of the final outcome as soon as possible and summary-voting results may be divulged to the Rating Service when deemed appropriate by the Executive Director. Individual member votes will not be divulged by the MRC and members are free to state their voting intention prior to the official vote. However, members may divulge their individual vote outside of the meeting subject to the policy of the signed Non-Disclosure Agreement on record at the MRC.

III. Status of LPM Audits—Boston, New York, Los Angeles, Chicago, San Francisco, Philadelphia, and Washington, D.C.

Nielsen's primary products cover national programs, local programs, syndication, cable, satellite, as well as dedicated research for Hispanics and by implication the advertisements for all of these vehicles. Nielsen also provides several electronic tools and applications used to deliver ratings to their customers. The MRC accredits several, but not all, of Nielsen's products.[7] Nielsen's National Service based on a people-meter methodology has been MRC-Accredited since the late 1980s; Nielsen's meter-diary based Local Service was originally Accredited in the 1960s; Nielsen's National Hispanic Service (NHTI) has been Accredited since 2000. We believe these services materially comply with our Standards, although the MRC does maintain a separate ongoing dialogue with Nielsen regarding quality issues noted in the audit process in an effort to improve the quality of research. Other Services such as Nielsen's Hispanic Station Index (NHSI), and certain other Black and Hispanic Audience Reports are not currently Accredited or audited.

1. Boston

Nielsen Media Research first "rolled out" its local people meter (LPM) in Boston in 2001. This was Nielsen's first experience with the LPM in a general-media local market environment. It is our understanding that Boston was chosen as the first market by Nielsen because of several factors, including its more homogenous population and smaller size. While one can argue about this characterization of the Boston media market, it became clear that Nielsen's assumptions about easily measuring the market proved to be inaccurate. During calendar years 2001 and 2002, the MRC audited Nielsen's LPM rollout in Boston. The audit of the service was extensive and subsequently the MRC denied its Accreditation to the Boston LPM based on strong concerns with Nielsen's implementation of the service. However, despite the concerns raised by the MRC audit and denial of Accreditation, Nielsen continued a commercial implementation of the Boston LPM. At the same time, most local broadcasters in Boston did not utilize Nielsen's LPM services. However, during the ensuing year, Nielsen took extensive actions to cure the issues raised by MRC's audit. Upon Nielsen making the recommended changes, MRC gave its Accreditation to the Boston LPM in the Fall of 2002 approximately 9 months after its initial audit.

After its Boston experience, the MRC Television Committee took the unusual step of recommending to Nielsen that future LPM implementations only be commercialized after Accreditation is achieved and that new LPM sample households not be integrated into Nielsen's National panel prior to achieving Accreditation.

[7] Complete List of MRC Accredited Services.

2. New York

The MRC began its audit process of the New York LPM (NYLPM) during the early part of 2004. The New York market is arguably the most difficult market to measure particularly in obtaining the cooperation of households. The market is highly diverse and represents unique challenges in compiling accurate and reliable data. Fieldwork began in this market in April of 2004 and the MRC utilized its full audit scope and procedures for assessing the service. Ernst & Young conducted the audit using its standard Nielsen auditing team, which included bi-lingual personnel. There were many problems identified in the audit, including race and origin classification errors, excessive and excessively disproportionate faulting and metering issues. The market's performance was further complicated by an on-going media campaign in the New York market, which could have potentially influenced household participation. Concurrent with the introduction of the LPM, the MRC closely monitored the existing meter/diary service in New York and found that this service had degraded.

Subsequently on May 27, the MRC audit committee met to discuss the audit and the MRC staff recommendation. The audit committee voted to withhold Accreditation of the NYLPM at that time based on a number of problems identified in the Ernst and Young audit as well as issues identified by the MRC staff and the audit committee members. The MRC sent a letter to Nielsen that communicated detailed areas of concern and deficiencies with the NYLPM as identified by the audit process and suggested actions that Nielsen should take to improve the quality of the service and gain Accreditation. Nielsen commercialized the NYLPM on June 3, 2004.

On August 26, 2004, the MRC convened a meeting of the audit committee to assess the results of a re-audit performed by Ernst & Young to assess performance of certain prior audit issues. Nielsen was given opportunity to address the Committee during part of the meeting to share their perspective on the improvement initiatives and the performance status of the NYLPM. After private deliberations the committee chose to continue to withhold Accreditation of the NYLPM service. On August 31, 2004, a letter was sent to Nielsen informing them of the Committee's decision and outlining the steps necessary to elevate the Accreditation status of the NYLPM, namely a plan for updating race information and fault rate stabilization which would be observed through regular monitoring by the committee.

On October 29, 2004 after review of a credible plan submitted by Nielsen to address the race classification issues, and observed improvement in fault rate levels the television committee voted to grant Conditional Accreditation status to the NYLPM allowing Nielsen to apply the MRC's Accreditation logo to the New York LPM rating reports.

Since Conditional Accreditation was granted in October 2004, the television committee has continually monitored the performance of the NYLPM, including update meetings with Nielsen management and periodic reviews to reassess the Accreditation status of the NYLPM. As of this date, the NYLPM service remains Conditionally Accredited.

3. Los Angeles

On July 1, 2004, an MRC audit committee met to review an Ernst & Young audit of the Los Angeles LPM service (LALPM); at that time Nielsen had not provided their response to the audit findings, a key component of the MRC review process. The MRC decided that it was important to at least conduct a preliminary review of the audit findings (*i.e.,* absent Nielsen's response) so that it could provide some illumination of the performance of the LALPM in advance of its planned commercialization on July 8. To maintain the integrity of the MRC process, the committee elected not to vote on Accreditation at the conclusion of this preliminary review until Nielsen submitted their response for review. The Los Angeles market is a difficult market to measure due to its ethnic diversity which presents unique challenges in compiling accurate and reliable data.

Despite the open Accreditation status of the LALPM Service, Nielsen went "live" with the service on July 8, 2004. It was clear through our experiences in Boston and New York that Nielsen was not yet implementing LPM services in a manner that is fully compliant with the MRC's standards.

The audit committee met on July 30, 2004, to conclude the review of the audit results, including Nielsen's response which was presented in-person by Nielsen management. After careful consideration the Committee chose to recommend Conditional Accreditation of the LALPM service pending Nielsen's submission of an adequate, accepted action-plan to address: (1) two matters of non-compliance with the MRC's Minimum Standards for Media Rating Research cited in the audit, and (2) two performance areas of the Los Angeles LPM Service considered needing improvement. In addition, an on-going monitoring process was required by the Television

Committee to assure that Nielsen completes the improvement initiatives specified in its response to the Los Angeles audit, including the pending action-plan.

On August 19, 2004, upon receipt and acceptance of Nielsen's action-plan the Conditional Accreditation period began and Nielsen was authorized to apply the MRC's Accreditation logo to the Los Angeles LPM rating reports.

Since Conditional Accreditation was granted in August 2004, the television committee has continually monitored the performance of the LALPM, including update meetings with Nielsen management and periodic reviews to reassess the Accreditation status of the LALPM. As of this date, the LALPM service remains Conditionally Accredited.

4. Chicago

The Chicago LPM (CHLPM) Service was commercialized by Nielsen on August 5, 2004, prior to an MRC audit. Timing for MRC audits is controlled by Nielsen and fieldwork was not scheduled to begin until July 2004, leaving insufficient time for completion of the MRC process prior to the LPM service going "live". The Chicago market contains a high concentration of minority population groups posing a particular challenge to measuring accurate and reliable viewing behavior.

An audit committee of the MRC met on September 22, 2004, to review the findings of the Ernst & Young examination of the CHLPM and based on the results the audit committee voted to follow the precedence set in Los Angeles and move to grant Conditional Accreditation to the CHLPM. The Conditional Accreditation status was scheduled to begin following receipt and acceptance of an action-plan structured to address specific audit issues and would also require ongoing monitoring of key performance metrics for this service. On October 1, 2004, after receipt of an accepted action-plan, Conditional Accreditation of the CHLPM began and Nielsen was permitted to apply the MRC Accreditation logo to the service reports.

Since Conditional Accreditation was granted in October 2004, the television committee has continually monitored the performance of the CHLPM service, including update meetings with Nielsen management and periodic reviews to reassess the Accreditation status of the CHLPM. As of this date, the CHLPM service remains Conditionally Accredited.

5. San Francisco

The San Francisco LPM (SFLPM) was commercialized on September 30, 2004, prior to an MRC audit and before providing comparative data to the existing Meter-diary service that would allow the marketplace to understand the impact of this significant methodological change. MRC Standards require that measurement services disclose in advance the estimated impact of a methodological change. The San Francisco market is racially diverse, containing a high concentration of Asians, and this diversity presents specific challenges to accurately measure television viewing behavior.

Fieldwork for the MRC audit began in November 2004, 3 months after Nielsen commercialized the service. Because of the voluntary nature of the MRC process, the timing of the audit is controlled by Nielsen.

On March 8, 2005, five months after the SFLPM service was commercialized by Nielsen, an audit committee of the MRC met to review the Ernst & Young examination report of the SFLPM and recommended that the service be granted Conditional Accreditation allowing Nielsen to apply the MRC Accreditation logo to the SFLPM reports. Nielsen was informed of specific actions including ongoing monitoring and performance improvements that would be required for the committee to consider removal of the conditional aspect of the Accreditation.

On May 6, 2005, the television committee met with Nielsen management to review the status of the LPM improvement initiatives and performance metrics and in a private discussion voted to elevate the status of the SFLPM to full Accreditation.

6. Philadelphia

Nielsen commercialized the Philadelphia LPM on June 30, 2005, prior to an MRC audit, consequently this service is not Accredited. An MRC audit is in process for this market with an expected committee review in October 2005. Because of the voluntary nature of the MRC process, the timing of the audit is controlled by Nielsen.

7. Washington

Nielsen commercialized the Washington LPM on June 30, 2005, prior to an MRC audit, consequently this service is not Accredited. An MRC audit is in process for this market with an expected committee review in October 2005. Because of the voluntary nature of the MRC process, the timing of the audit is controlled by Nielsen.

IV. Status of Nielsen Hispanic Measurement Services—National Hispanic Station Index—Los Angeles and National Hispanic Television Index

1. Nielsen Hispanic Station Index—Los Angeles (NHSI–LA)

The NHSI–LA Service was audited by MRC during 2000–2001 and, despite ongoing commercial use of the service, Nielsen chose to not address the audit issues and terminated the Accreditation process after two unsuccessful attempts. Nielsen never submitted other NHSI markets to the Accreditation process.

2. Nielsen Hispanic Television Index (NHTI)

Nielsen's NHTI Service has maintained MRC Accreditation since 2000.

The broadcast television industry members of the MRC, as well as cable operators and the advertising industry have all voiced their support for the MRC process in this matter. Central among the organizations expressing this support are the National Association of Broadcasters, the Cabletelevision Advertising Bureau, Radio Advertising Bureau, and the American Association of Advertising Agencies.[8]

V. Conclusion

Once again, the MRC would like to thank the Committee for holding this important hearing on TV Ratings accuracy and the FAIR Ratings Bill and for allowing the MRC to provide testimony. I continue to believe that Congress was right in finding that industry self-regulation is preferable to direct governmental intervention—provided that the independence and integrity of such an auditing process can be preserved.

I believe that all of the stakeholders involved in this issue would agree that the accuracy of Television Ratings is of critical importance and that the MRC should play a central role in assessing the accuracy and quality of the new service.*

Senator BURNS. Thank you very much.

Those of you making statements, if we could hold them to around 5 minutes, that would be great.

He has to be a master. This is his testimony he has handed in to the Committee, and he got it all in 5 minutes, and I think that's pretty good. That's probably the standard here. Thank you very much.

Now we'll hear from Susan Whiting, President and CEO of Nielsen Media Research.

Thank you for coming today. We appreciate that very much.

STATEMENT OF SUSAN D. WHITING, PRESIDENT/CEO, NIELSEN MEDIA RESEARCH

Ms. WHITING. Thank you.

Good afternoon. My name is Susan Whiting, and I'm the President and CEO of Nielsen Media Research.

About a year ago, I first testified before this Committee. Since then, Nielsen has worked hard to follow your advice and to make a superior measurement system even better.

Nielsen Media Research is in the truth business, the truth of what people are actually watching on television and how they are watching it. Today, for example, the average TV household has more than——

The CHAIRMAN. Could you pull that mike up a little closer?

Ms. WHITING. Is that better?

Today, for example, the average TV household has more than 100 channels. Nielsen has made more advancements and invested more money in TV audience measurement services than at any other time in our history. These new investments and initiatives

[8] Press releases and Organizational statements on the LPM.

*All the information referred to in the footnotes of this prepared statement have been retained in Committee files.

have resulted in improvements, innovations, and change. In most cases, changes result in different ratings, but they also provide a better reflection of viewers' actual behavior.

As you may have experienced with your voters, it is very hard to make everyone in your constituency happy. Nielsen is committed to working with all of our constituents, our thousands of clients, which include broadcasters, cable operators, advertising agencies, and advertisers, all with competing and often conflicting demands on a rating service.

Nielsen must remain independent of conflicting interests among its diverse client base. For example, on the legislation we are discussing today two powerful players, Tribune and Comcast, have taken opposite positions on this bill. Often, when one party does not agree with our position, they say we are not listening, that we are arrogant. In fact, we are listening, not just to one, but to many voices. Given the progress we have made and the inherent conflicts within the industry we serve, we do not believe legislation is either necessary nor advisable. I believe this bill, or any similar legislation, is both unnecessary and harmful to the long-term interests of the entire television community.

I think these points were clearly recognize by the FTC in its March 30, 2005, response to your request that it consider oversight of TV ratings, where the FTC said that, in Nielsen's case, "well-constructed industry self-regulatory efforts can be more prompt, flexible, and effective than government regulation."

The Media Rating Council and Nielsen have established a strong working relationship that has enabled us to introduce increasingly more accurate ratings systems. Recently, the MRC has put forward guidelines for all MRC members and measurement services, a voluntary code of conduct. We agree, in principle, with the proposed code of conduct, and we are working with the MRC on it. For example, we have already agreed that no future commercial rating service will be launched before it is audited.

That is why this bill is unnecessary. Here is why it is harmful. The mandatory accreditation required under this bill would slow ratings innovation to a crawl. New digital media are emerging with breathtaking speed. Advertisers and broadcasters need to know what impact this will have on how audiences watch TV. If ratings companies have to operate new services without generating revenue, it is unlikely they will develop or implement expensive new audience measurement innovations. This is also a significant barrier to entry into this market by any competitor.

I think, Senator Burns, that you said it best when you remarked that the Internet was able to blossom because Congress didn't know how to regulate it. According to the same principle, Congress should not regulate television ratings business. We do not believe it is good policy to transform the MRC into a vehicle that limits competition from new program sources, especially from smaller, independent, and minority-owned stations and networks looking to compete against media giants. This is why a number of minority-oriented channels have issued voiced opposition to legislation, including both TV One and BET.

I should also note that many other clients representing the advertisers, including the American Association of Advertising Agencies, the Association of National Advertisers, and the AAF, whose money this is all about, community groups, and public-interest organizations have voiced their opposition to mandatory accreditation and the legislation.

I do want to mention one initiative that came about from our work with both our task force and the MRC, the creation of a Special Council for Research Excellence. We created this council in order to involve the industry in setting the direction of basic research and development. Nielsen has committed an additional $2.5 million annually for special research, as recommended by the council. It is composed of 40 clients representing the entire television industry and chaired by Mark Kaline, Global Media Manager for Ford Motor Company, one of the largest buyers of television advertising time in the United States.

In conclusion, instead of legislation, we need to support the MRC by agreeing to a new voluntary audit and accreditation standard that will enable measurement services to respond more quickly to dynamic changes. Self-regulation dictated through government mandate has many of the same disadvantages as direct government oversight, without the protection of formal rulemaking processes or public accountability.

On behalf of thousands of Nielsen employees in the United States, across 49 states, I would like to reiterate Nielsen's commitment to producing the most accurate TV ratings possible, that we continue to serve a broad and sometimes contentious client base, and that we are committed to working with the MRC, our clients, and community leaders to assure transparency and accuracy in the ratings.

Thank you.

[The prepared statement of Ms. Whiting follows:]

PREPARED STATEMENT OF SUSAN D. WHITING, PRESIDENT/CEO, NIELSEN MEDIA RESEARCH

Good morning. My name is Susan Whiting and I am President and Chief Executive Officer of Nielsen Media Research.

It was about a year ago that I first testified before this committee. Since then my team and I at Nielsen have worked very hard to follow your advice and to make a superior measurement system even better. I have met with many Members of the Committee to hear their concerns and share Nielsen's story, including our vision for the future of audience measurement technology, and our commitment to working with all of our clients.

Nielsen Media Research is in the truth business: the truth of what people are actually watching on television, and how they are watching it. We all watch television differently today than we did 5 years ago. Today, for example, the average TV household has more than 100 channels from which to choose. Consumers are also choosing digital technologies such as TiVo, Video on Demand and video gaming.

With this diversity of entertainment choices, Nielsen is committed to providing the entire marketplace with the most accurate TV ratings possible.

To anyone who has been involved in this industry for the past 5 years, it is clearly apparent that Nielsen has made more advancements and invested more money in TV audience measurement services that at any other time in our history.

During the last year, we made significant investments in all aspects of TV audience measurement—sampling, data collection, data processing, and data delivery—which we believe will further improve the accuracy of our ratings. We continue to invest in the leading edge of measurement technologies and look forward to new systems that will measure a broad spectrum of digital technologies.

These new investments and initiatives produce change, and different clients react differently to these changes.

As you may have experienced with your voters, it is very hard to make everyone in your constituency happy. Nielsen is committed to working with all of our constituents, our clients, which include broadcasters, cable operators, advertising agencies and advertisers—all with competing and often conflicting demands on a ratings service. A truly independent ratings service, offering the highest quality and most accurate ratings, is vital for the marketplace to operate effectively.

Nielsen must remain independent of these conflicting interests. For example, on the legislation we are discussing today, two powerful players, the National Association of Broadcasters and Comcast have taken opposite positions on this legislation.

Unwarranted and Unwise Legislation

Given the progress we have made and the inherent conflicts within the industry we serve we do not believe legislation is either necessary or advisable, in fact we feel it is unwarranted and harmful.

I think these points were ably recognized by the Federal Trade Commission in its March 30, 2005 response to your request that it consider oversight of TV ratings. As you recall from its response, the FTC said, that, in Nielsen's case, "well constructed industry self-regulatory efforts can be more prompt, flexible and effective than government regulation."

I believe S. 1372 is both unnecessary and harmful to the long-term interests of the entire television community.

First, it is unnecessary. The Media Rating Council and Nielsen have, over the past 40 years, established a strong working relationship that has enabled us to introduce increasingly more accurate ratings systems. Over the past few weeks, for example, the MRC has put forward guidelines for all MRC members and measurement services—called A Voluntary Code of Conduct—that would both clarify and strengthen the MRC's relationship with all measurement services as well as with its own membership. The MRC recently provided to its members and all measurement services—television, radio, newspaper and Internet—a proposed voluntary code of conduct to deal with the rollout of new measurement technologies in the marketplace. Among the first things we have already agreed to, for example, is that no future commercial ratings service will be launched without the transparency of a full audit having taken place.

Other elements of the Code are under discussion at this time, and we are confident that, after appropriate give and take, that the industry will reach agreement with all ratings services on the Code and we can submit it to the Justice Department and the FTC for a business review. We believe in principle that the proposed Voluntary Code of Conduct represents a valid approach to enhancing the MRC process, and that if it is approved by MRC members and all measurement services, we intend to adopt it.

In other words, since the free-market, private enterprise system is working, we do not need a legislative solution to a problem that does not exist.

That is why S. 1372 is unnecessary. Here is why it is harmful.

The mandatory accreditation required under S. 1372 would slow ratings innovation to a crawl. Vital new systems for measuring all forms of digital television could remain idle while MRC members debated. In an environment that is becoming increasingly governed by political and economic self-interest, that process could literally take years. Technology, however, won't wait. Nor will clients. The transition from analogue to digital television technologies would be frustrated at the lack of timely measurement.

As you know when you watch television, and from your experience on the Committee, new digital media are emerging with breathtaking speed, and audiences are increasingly willing to use devices like DVRs and Video on Demand to take control of their viewing experiences. The sale of DVRs is expected to nearly double within 2 years, and advertisers and broadcasters need to know, as soon as possible, what impact this will have on how audiences watch TV.

If ratings companies are required to operate new services without generating revenue for a significant period of time, it is unlikely they will develop or implement expensive new audience measurement innovations. Such a prospect also is a significant barrier to entry into this market by any competitor. Indeed, if technology and telecommunication firms faced these restrictions, computers, cell phones and the Internet would still be on the drawing boards.

We do not believe it is good public policy to transform the MRC into a vehicle that limits competition from new program sources, especially from smaller, independent, and minority-owned stations and networks looking to compete against media giants. More precise ratings technology enhances the voice of minorities by making possible niche programming on new cable networks and television stations aimed at the African American, Hispanic, Asian, and Arab-American communities.

These advancements could grind to a halt with mandatory ratings accreditation. This is why a number of minority competitors had issued statements in opposition to legislation, including both TV One and BET.

Working With the Task Force

As you know, Nielsen continues to work closely with the Independent Task Force on Television Measurement. This Task Force was created last year at the suggestion of Congressman Charles Rangel, for the very purpose of offsetting the need for Congressional involvement. The Task Force worked for more than 8 months—and continues to work—and released a major report to Nielsen, which we shared with the industry, that included recommendations in the areas of sampling, field operations, fault rates, diversity and communications.

With your permission, Senator, I would like to submit for the record a copy of the Task Force's report, Nielsen's response, and the follow-up report released just last month. Considering the importance of this Task Force Report and the enormous commitment in time and effort from people representing a diverse spectrum of Americans, especially former Representative Mrs. Cardiss Collins who chaired the Task Force. I should also note that the Task Force has issued a statement in opposition to S. 1372, and I would also like to submit those comments for the record.

The Task Force has, indeed, been the focus for many of the very constructive initiatives that we have been sharing for some time now with our clients, others in the industry and with Congress. Yet the full breadth of audience measurement—including sample design, sample recruiting and maintenance, data collection systems, metering, data processing and data reporting (all involving hundreds of millions of dollars in spending by Nielsen)—have improved over the years because of the painstaking work we have done with our clients through the Media Rating Council's accreditation process.

I do want to mention just one initiative, and this came about from our work through the Task Force as well as with the MRC, and that is the creation of a special Council for Research Excellence, created earlier this year. We created this Council in order to involve the industry in setting the direction of basis R&D in the area of methodological research.

In addition to the tens of millions of dollars we spend each year on methodological and statistical research, Nielsen has committed an additional $2.5 million for special research as recommended by the Council. The Council is composed of 40 clients, including the MRC, representing the entire television industry. The Council is chaired by Mark Kaline, global media manager for Ford Motor Company, one of the largest buyers of television advertising time in the United States.

Responding to a Changing Market

Why would anyone agree to create a Council or serve on a Council when the MRC, under the bill, would be the final authority over everything pertaining to the ratings services?

Instead of a new bill we, as an industry, need to support the MRC by agreeing to a new, voluntary audit and accreditation standards that will enable measurement services to respond more quickly to dynamic changes in the television landscape so that digital technologies including Digital Video Recorders, DVD Recorders, Video on Demand, and Time Shifting can be included in the measurement of audiences.

Congress has mandated the shift in broadcast television from analogue to digital. Over the past 12 years, we have supported that mandate by completely revamping our metering and reporting technology with investments of over a hundred million dollars. I can only assume that the underlying assumption behind this mandate is that there would be no government-imposed barrier to measuring audiences to digital television. But S. 1372 imposes formidable barriers by mandating that no ratings service could measure anything without the approval of the MRC.

Since the last time we were here, we have significantly enhanced our ability to more accurately measure all television audiences. For example:

- On March 3, 2005, after more than 12 years of R&D, and hundreds of millions of dollars in spending, Nielsen introduced a new digital metering system, called the Active/Passive Meter System, or A/P Meter for short. The A/P Meter is fundamentally a set meter, but it is also a platform for in-home measurement of many new digital television devices. In July 2005, Nielsen began rolling out the new A/P Meter system into the national and local People Meter samples. Without this system, we would not be able to measure digital signals and there would be no viable business model for digital television.
- In May we began to implement a program of personal coaching, performance-based incentives and reminder mailings designed to reduce overall and differen-

tial faulting in Local People Meter markets. This represents another ongoing multimillion investment.

- In June we delivered a plan for enabling measurement of Video on Demand programming in our syndicated ratings panels.
- DVR measurement has been successfully implemented in our set-meter and diary markets. We remain on-schedule for installation of DVR households in the national and local People Meter samples beginning in January 2006. So far, we have installed more than 200 DVR households across 47 local markets.
- In June 2005, Nielsen completed the translation of all of its recruitment materials for sample households into Spanish, developed key recruitment materials in Mandarin, Japanese, Korean, Vietnamese, and Tagalog. We are also tailoring our "introductory video" that is provided to new sample households for Asian audiences. We also recently added several training procedures on cultural sensitivity to our 10-week Field Training program.

Conclusion

To conclude my remarks today, self-regulation dictated through government mandate has many of the same disadvantages as direct government oversight, without the protection of formal rulemaking processes or public accountability.

What is more, it lacks the agility, flexibility and resourcefulness that come from free market forces. Those qualities have served the Media Rating Council and its members well for more than four decades, and they are worth preserving.

I would like to reiterate Nielsen's commitment to producing the most accurate TV ratings possible; that we serve a broad and sometimes contentious client base; and that we are committed to working with the MRC, our clients, and community leaders to assure transparency and accuracy in the ratings.

Finally we believe in the voluntary MRC accreditation process, and legislatively mandating this process would be harmful not just to Nielsen but to everyone.

Thank you.

Senator BURNS. Thank you.

Now we'll hear from Ceril Shagrin.

STATEMENT OF CERIL SHAGRIN, EXECUTIVE VICE PRESIDENT FOR RESEARCH, UNIVISION

Ms. SHAGRIN. Good morning, Mr. Chairman and members of the Committee. Actually, I'm as bad as you are, it is afternoon, isn't it?

[Laughter.]

Senator BURNS. It is afternoon.

Ms. SHAGRIN. My name is Ceril Shagrin. I spent 27 years at Nielsen Media Research, during which time I interacted with the Media Ratings Council——

Senator BURNS. Pull your microphone—you've got a nice little soft voice, and we'd like to hear it.

Ms. SHAGRIN. OK. Is that better?

Senator BURNS. You bet.

Ms. SHAGRIN. I was Nielsen's first quality-assurance director and the primary contact for the review of the MRC audit scope and the audit report. While at Nielsen Media, I was the primary participant in the development and rollout of the National People Meter Service. I was responsible for the development and management of Nielsen Hispanic Services, and involved in the development, testing, and rollout of all new services.

For the past 6 years, I've been employed by Univision Communications, where I oversee research needs for all Univision divisions. Currently, I am the Chairman of the MRC Television Committee and I am proud to be this year's recipient of the Malcolm

Beville Award for my commitment to the highest standards in broadcast measurement research.

For the past 33 years, I've had a close relationship with the MRC, both as a representative of the provider of television ratings and as a user of those ratings for programming decisions and for setting value and audience delivery. I have worked with 6 different MRC Executive Directors. For the past 33 years, I've been driven by the need for quality research and reliable audience estimates. I believe the MRC has been a major contributor to achieving that goal.

The television landscape has changed dramatically from a three-network environment to one of multiple broadcast and cable choices. At the same time, the United States population has grown and changed to a multicultural population. In order to meet the quality standards of television audience measurement, the samples used to develop audience estimates must accurately represent the current and changing populations of Whites, Blacks, Hispanics, and Asians, not just in total number, but demographically within each of these populations.

While the data-collection instrument must be designed to accurately collect viewing, no data-collection device can eliminate the bias of reporting sample that does not accurately represent the universe being measured. Television rating services must make decisions on the data-collection tool and the methodology which best captures viewing within the cost parameters the individual markets can support.

Installing and maintaining a representative sample is difficult. It takes properly trained personnel, adherence to procedures, and continuous testing to search for improvements. It requires a commitment to standards. The minimum standards of 1975 no longer meet the challenges of audience measurement in 2005. Quality measurement requires constant third-party monitoring to ensure proper procedures are identified and followed. The MRC provides that function through continuing audit and review.

The MRC Television Committee is made up of users of the audience estimates—broadcast networks, cable networks, stations, agencies, and advertisers. For the past 6 years, I think I've attended every one of the MRC meetings related to television audience measurement. I strongly believe the MRC audit process has contributed to the continuous improvement of the quality of TV audience measurement.

Attendees of these meetings invest a significant amount of time reading and analyzing audit reports. Meetings are long and detailed. They are well attended. No one is allowed to vote without the investment of time in the understanding of the audit issues.

Nielsen received a copy of the audit report prior to distribution to the Committee, and their comments are included in the report sent to the Committee and in the discussion and review of the audit.

New technologies must be audited before being put into production. New editing rules, processing rules, sample design and maintenance procedures should be evaluated, and their impact on audience estimates dimensioned, prior to implementation to ensure continuation of quality standards.

While my written testimony states that prior to 2004 I can remember no instance when Nielsen implemented any material changes in methodology, processing rules, or data-collection device without prior review and acceptance by the MRC, there was one exception. That was the Boston LPM market.

Nielsen has said, in recent public statements, that mandatory accreditation would result in termination of the Nielsen Hispanic Station Index, the local Hispanic measurement service. While different sampling procedures are used in some NHSI markets, there's reason to believe they could not, either as currently designed or with modifications, meet MRC standards or that increasing the Hispanic samples in the NSI service could not provide reliable Hispanic audience estimates. I have confidence that Nielsen can do that.

For approximately 40 years, Nielsen's local and national television measurement services have been audited and accredited. Nielsen has met the MRC quality standards and continuously strive for improvement. It has made them a better company, and it has allowed the television industry to grow.

Univision has taken a neutral position on the FAIR Ratings bill. We take a very strong position on the need for quality samples and procedures for eliminating bias. We take a positive position on the need for MRC audits.

I'd like to thank the Committee for the opportunity to appear here today, and I look forward to answering any questions.

[The prepared statement of Ms. Shagrin follows:]

PREPARED STATEMENT OF CERIL SHAGRIN, EXECUTIVE VICE PRESIDENT FOR RESEARCH, UNIVISION

Good morning, Mr. Chairman and members of the Committee.

My name is Ceril Shagrin. I spent 27 years at Nielsen Media Research during which time I interacted with the Media Rating Council (MRC) and the Ernst & Young auditors. I was Nielsen's first Quality Assurance Director and the primary contact for the review of the audit scope and the audit report. While at Nielsen Media I was a primary participant in the development and roll out of the National People Meter Service, responsible for the development and management of Nielsen Hispanic Services and involved in the development, testing and rollout of all new services.

For the past 6 years I have been employed by Univision Communications where I oversee the research needs for all the Univision divisions.

Currently I am the Chairman of the MRC Television Committee. I am proud to be this year's recipient of the Malcolm Beville Award for my commitment to the highest standards in broadcast measurement research.

For the past 33 years I have had a close relationship with the MRC both as a representative of the provider of television ratings and as a user of those ratings for programming decisions and for setting value on audience delivery. I have worked with 6 different MRC Executive Directors. For the past 33 years I have been driven by the need for quality research and reliable audience estimates. I believe the MRC has been a major contributor to achieving that goal.

The television landscape has changed dramatically from a three network environment to one of multiple broadcast and cable choices. At the same time the United States population has grown and changed to a multicultural population. In order to meet the quality standards of television audience measurement, the samples used to develop audience estimates must accurately represent the current and changing populations of Whites, Blacks, Hispanics and Asians not just in total number but demographically within each of those populations.

While the data collection instrument must be designed to accurately collect viewing, no data collection device can eliminate the bias of a reporting sample that does not accurately represent the universe being measured. Television ratings services must make decisions on the data collection tool and methodology which best captures viewing within the cost parameters the individual market can support.

Installing and maintaining a representative sample is difficult. It takes properly trained personnel, adherence to procedures and continuous testing to search for improvements. It requires a commitment to standards. The minimum standards of l975 no longer meet the challenges of audience measurement in 2005. Quality measurement requires constant third party monitoring to ensure proper procedures are identified and followed. The MRC provides that function through continuing audit and review.

The MRC Television Committee is made up of users of the audience estimates: broadcast networks, cable networks, stations, agencies and advertisers. For the past 6 years I have attended all MRC meetings related to television audience measurement. I strongly believe the MRC audit process has contributed to the continuous improvement of the quality of TV audience measurement. Attendees of these meetings invest a significant amount of time reading and analyzing audit reports. Meetings are long and detailed. They are well attended. No one is allowed to vote without the investment of time in the understanding of the audit issues. Nielsen receives a copy of the audit report prior to distribution to the committee and their comments are included in the report sent to the committee and in the discussion and review of the audit.

New technologies must be audited before being put into production. New editing rules, processing rules, sample design and maintenance procedures should be evaluated and their impact on audience estimates dimensioned prior to implementation to ensure continuation of quality standards. Prior to 2004, I can remember no instance when Nielsen implemented any material changes in methodology, processing rules or data collection device without prior review and acceptance by the MRC.

Nielsen has said in recent public statements that mandatory accreditation would result in termination of the Nielsen Hispanic Station Index (NHSI), the local Hispanic measurement service. While different sampling procedures are used in some NHSI markets, there is no reason to believe they could not either as currently designed or with modifications meet MRC standards or that increasing the Hispanic samples in the NSI service could not provide reliable Hispanic audience estimates.

For approximately 40 years Nielsen's local and national television measurement services have been audited and accredited. Nielsen has met the MRC quality standards and continuously strived for improvement. It has made them a better company and allowed the television industry to grow.

Univision has taken a neutral position on the FAIR Ratings Bill. We take a very strong position on the need for quality samples and procedures for eliminating bias. We take a positive position on the need for MRC audits.

I would like to thank the Committee for the opportunity to appear here today, and I look forward to answering any questions.

Senator BURNS. Thank you very much.

Now we'll hear from Ms. Kathy Crawford, President, Local Broadcast, MindShare Worldwide.

And thank you for coming, Ms. Crawford.

STATEMENT OF KATHY CRAWFORD, PRESIDENT, LOCAL BROADCAST, MINDSHARE

Ms. CRAWFORD. Good afternoon, Senator Burns.

My name is Kathy Crawford, and I am President of Local Broadcast at MindShare. In this position, I help our clients decide what television station to advertise on in 210 local TV markets.

In the last few years, we have spent billions of dollars in local TV. Advertising makes local television possible. Almost all local television revenues come from major companies employing millions of people trying to reach customers. But the bill we are discussing today was not written with them in mind. In fact, I am very concerned that this bill will make it harder for clients to buy advertising with any confidence that they are spending their money wisely. As I see it, the bill has negative implications, not only for the Local People Meter markets, but also for all local markets. I believe it will make my clients far less willing to advertise with local television stations, because we won't have the information we need to negotiate fair rates with the stations.

Over the past 40 years, the MRC has been a crucial partner in improving the quality of television ratings, but I am concerned that, given the MRC member—giving the MRC members the power to block new technologies and new services will turn back the clock.

Clearly, the business of television advertising is changing. When the MRC was created, broadcast was synonymous with television. But today there are scores of cable networks, like Oxygen, Spike, Black Entertainment Television, Galavision, as well as local cable channels appealing to many more ethnically-diverse portions of the community. We clearly need new ratings technology to keep up with these changes, but, as we've seen with LPMs, there's always some resistance to change, as different methodologies yield different rankings and change pricing.

The same thing happened when the national broadcast networks and national advertisers went through the same process in the 1980s. Back then, no one tried to roll back this process through legislation.

With the Local People Meter, we've heard a great deal about fault rates. I believe this has been a red herring, an excuse to delay accreditation. Indeed, many of the MRC members who now complain about fault rates in LPMs regularly voted to accredit meter diary systems in which, quote/unquote, "fault rates were even higher." If MRC members are so concerned about fault rates, how did those meter diary markets get accredited? Did the fact that broadcasters' ratings are higher under the diary than under LPMs have anything to do with this?

We need an accreditation process that is fast, fair, and efficient. We need the MRC to serve its traditional role as a forum for the industry to improve the overall performance of the measurement services.

To that end, I believe the MRC's voting procedures need to be seriously overhauled. Currently, a handful of the broadcast companies can control the MRC, because they have four to five votes each, through their ownership of cable networks, local television stations, syndication networks, and national networks. I don't think that is right. But if you do try to change the MRC from a voluntary industry group into a government-mandated regulatory body, I don't think anyone with a direct stake in the outcome of the vote should be in the MRC at all, given their incentive to vote their own self-interest. And if the MRC has different membership structure, who would choose the members, and who would they report to?

Finally, what would an overhaul like this cost, and who would pay for it? As we've seen in the past, the television industry has not wanted to pay for more than one service. That's too bad, because I, for one, would like to see more competition in the ratings business. I think it would be good for all of us, including Nielsen, because it would drive innovation faster and further. But legislation won't achieve that goal. To the contrary, this will effectively ensure that Nielsen never again faces any competition. No company would invest the vast amount of time, resources, and dollars needed to start a measurement service if they knew it could remain idle for a year or more, generating no revenue, as MRC members debated its fate. What potential Nielsen competitor could afford that?

This legislation stems from disagreement among private companies on the accuracy of ratings in certain markets and among certain audience segments. What we have here is a complicated technological research dispute over some aspects of Nielsen's methodology that has been blown out of proportion into a would-be public-policy issue.

In this regard, are current television ratings adequate? No. Is there room for improvement? Always. But innovation cannot be mandated by the government. In fact, we've seen many times in the past when the government tries to interfere in the private sector, no matter what its good intentions, it usually makes the situation worse.

The MRC has played an important role, over the past 40 years, in making television the best-measured medium. Like any other institution, it can operate better. But I believe the members of the MRC, as private businesses operating in the free-enterprise system, can certainly work out for themselves how to make the organization more effective.

Thank you.

[The prepared statement of Ms. Crawford follows:]

PREPARED STATEMENT OF KATHY CRAWFORD, PRESIDENT, LOCAL BROADCAST, MINDSHARE

Good afternoon. My name is Kathy Crawford and I am President of Local Broadcast at MindShare.

A Global Leader in Advertising

MindShare advises some of the world's largest advertisers on what advertising programs to pursue. We manage all aspects of media investment, from strategy—including targeting and spending—through negotiation and placement of advertising.

We advise our clients on the best mix of media to enable them to reach their target audiences, whether via television, print, digital or on-line, out-of-home, radio, locally and nationally. Moreover, we negotiate rates and schedules for our clients, such as the most effective programming on specific stations or networks; the right magazines; or the most appropriate websites; so that they reach their targets at the best price.

In addition, we need to know that our clients are getting what they pay for. It's not enough to simply place an ad. We also have to be assured that it has run and that the right audience is being reached.

As President of Local Broadcast at MindShare, I help decide what television stations our clients advertise on in the 210 local markets. In the last few years we have spent billions in local broadcasting. Nothing is more important to them than making sure their money is well-spent on reaching the right targets.

Advertising makes local television possible. Almost all local television revenues come from advertisers—the biggest companies in the world—trying to reach viewers, but the bill we are discussing today was not written with them in mind.

In fact, I am very concerned that this bill will make it harder for clients to buy advertising with any confidence that they are spending their money wisely. As I see it, the bill has negative implications not only for the Local People Meter markets, but also for all local markets. I believe it will make my clients far less willing to advertise with local television stations because we won't have the information we need to negotiate fair rates with the stations. Let me explain why.

Nielsen and Television Ratings

Today, Nielsen is the only research service in the U.S. that measures television audiences, both nationally and locally. There used to be two systems but the industry decided it only wanted to pay for one. With just one ratings service now, all of us in the industry are well aware of Nielsen's shortcomings and its strengths. That is why we work closely with Nielsen, and with our suppliers, to ensure that the methodology is sound. We also must be certain that its systems deliver the most accurate information as quickly as possible, so we can appropriately recommend to our clients how best to spend their ad dollars and can negotiate with the stations based upon those ratings.

Because our industry is pro-active in seeking and demanding improvements in ratings systems, we are constantly working on how to better understand the changing media landscape.

The Local People Meter is a product of this industry-wide effort. Nielsen did not decide to offer LPMs in a vacuum. This was a collective decision reached by the entire television industry because advertisers were no longer willing to spend billions of dollars on advertising based on ratings from outmoded systems.

When measurement systems change, there always is some resistance as different methodologies yield different rankings and possibly change pricing structures. The national broadcast networks and national advertisers went through the same process in the 1980s when Nielsen introduced its National People Meter in response to industry pressures and the threat of competition from AGB. The difference then was that no one tried to roll back this progress through legislation.

A Changing Television Landscape

Clearly, the business of television advertising has changed considerably since the Media Rating Council was established in 1964.

Back then, the only networks on TV were known by their initials—ABC, CBS and NBC—and local channels were all identified by call letters. Cable was still a young medium, heavily regulated to keep it out of the top 100 markets. And the first communication satellite—Telstar—had just been launched 2 years before.

Moreover, no one in the industry at that time could even have imagined the concept of time-shifting, when people can watch a particular show when they want to, not when the networks program it for them.

In short, when the MRC was created, broadcast was synonymous with television.

Obviously, that's no longer the case. Today, there are scores of cable networks with more expressive names like Oxygen, Spike, Black Entertainment Television, Galavision, as well as local cable channels appealing to many more ethnically diverse portions of the community. Each caters to very different audiences, and myriad advertisers and their agencies work very hard to reach them.

The skies are filled with satellites beaming programming around the world. And everyone in the industry is familiar with Video on Demand and Digital Video Recorders such as TiVo.

With the proliferation of cable and satellite, television viewers have more choices than ever before, and this certainly has affected ratings. Viewing has not declined but it is now spread among more program sources, resulting in lower ratings for some broadcaster networks, and many more cable networks getting some ratings were none had previously existed. Advances in technology also have given people many more options beyond television, including the Internet, mobile phones and video gaming.

The Role of the Media Rating Council

As the television universe expands, my clients—the major advertisers—demand the most accurate and reliable ratings system possible.

American television today is the best measured advertising medium in the world. It is the only U.S. medium that uses electronic meters, which are far more accurate than the diaries that measure radio or the surveys that measure newspapers and magazines.

But I am concerned, Senator Burns, that your bill, by giving the MRC membership the power to block new technologies and new services, will turn back the clock on the progress we have made in developing an effective television ratings system.

The MRC staff is composed of business professionals whose job include making sure that the ratings that are used in the industry meet the highest standards for accuracy. They do this by insisting on transparency to all the participants in the market, reviewing independent audits and working with measurement services to adopt better technologies and more rigorous procedures.

However, there is no question that when MRC *members* vote on whether to approve new technologies, they always, to some degree, consider the impact on their own bottom line. Ironically, this resistance to change makes local broadcasting a less attractive option for my clients.

As it's currently constituted, the MRC is still dominated by broadcasters. In some cases, large broadcasting companies—through their co-ownership of broadcast networks, cable networks, broadcast stations, studios and syndicators—have as many as four or five votes each, while cable operators, advertising agencies and advertisers each have just one.

This means that just five or six major media companies could work as a bloc to delay ratings systems that would hurt their bottom line.

This is not speculation. If your bill were in effect today, Nielsen would have been prevented from introducing Local People Meters in the country's largest media markets even though the information they are producing there is much more accurate than the meter/diary systems they replaced.

There is no question that LPMs are a superior ratings service. They have larger samples, including more African American and Hispanic households; they better represent the communities they measure; and they provide the immediate demographic data that my clients need to make advertising decisions. Yet in New York, for example, the MRC still has not accredited the LPM service, even though it was ready to be introduced almost 15 months ago. How can this be?

Fault Rates Are a Red Herring

Over the past year, we've heard a great deal about LPM fault rates. I believe this has been a red herring—an excuse to delay accreditation.

First, fault rates are only one measure of sample quality—and not the most important one. The composition of the sample and the acceptance rate are all equally if not more important. However, all pale in comparison to the sample size and the superior data collection technology that LPMs use.

But the real reason I believe fault rates are a red herring is that many of the MRC members who now complain about fault rates in LPMs regularly voted to accredit meter diary systems in which "fault" rates were even higher—not only for the overall market, but for people of color too.

Indeed, on a comparative set-to-set basis, fault rates have consistently been higher in metered/diary markets than Local People Meter markets. What's more, while there are no exact comparisons for diaries, as many as 14 percent of diaries returned to Nielsen cannot be used—the equivalent of faulting in diaries. And then of course there are those diaries that are never returned at all.

If MRC members are so concerned about fault rates, how did those meter/diary markets get accredited? Did the fact that broadcasters' ratings are higher under the diary than under LPMs have anything to do with this?

Like the broadcasters, I too am concerned about fault rates in Chicago and New York, but I am also concerned about fault rates in Glendive, Terra Haute, and Tallahassee. If the MRC sets impossibly high standards for LPM markets, how can they justifying setting lower standards for non-LPM markets?

An Unworkable Bill

In short, I believe the bill is unworkable.

As I noted earlier, the MRC was created to deal with a television industry that, essentially, no longer exists. TV audiences today are becoming more diverse, subdividing into ever-smaller segments. In response, newer networks and channels are emerging to better serve these niche markets. Instead of 4–6 channels, the average U.S. household now receives in excess of 130 channels.

At the same time, the viewer is becoming the boss. Growing numbers of people are using digital technologies to choose what, when and how they watch.

In other words, we need an accreditation process that is fast, fair and efficient. None of which is attainable under the pending legislation, because the MRC was not created to be an objective standard-setting organization.

The MRC should however serve its traditional role as a forum for the industry to improve the overall performance of the measurement services. To that end I believe the MRC's voting procedures need to be seriously overhauled. Senator, I know you support the concept of one-person/one vote and I assume you do not believe it is fair for one company to have five votes and another to have only one.

If you try to change the MRC from an industry group working to improve the services offered, and try to make it a more regulatory body, we would have to consider whether anyone with a stake in the outcome of the votes should be in the MRC at all, given their incentive to vote their own self-interest. And if the MRC has a different membership structure, who would choose the members and who would they report to?

Finally, what would an overhaul like this cost and who would pay for it?

In a free market, broadcasters, cable operators, advertisers and their agencies, among others, should be willing to foot the bill if they believe such changes are feasible and beneficial. Just as they should be willing to pay for more than one rating service if they think that's a practical solution.

Still, as we've seen in the past, the broadcast industry has been unwilling to help finance more than one service. That's too bad, because I, for one, would like to see more competition in the ratings business. I think it would be good for all of us, including Nielsen, because it would drive innovation faster and further.

But legislation won't achieve that goal. To the contrary, this will effectively ensure that Nielsen never again ever faces any competition.

No company would invest the vast amount of time, resources and dollars needed to start a measurement service if they knew it could remain idle for a year or more—generating no revenue—as MRC members debated its fate. What potential Nielsen competitor could afford that?

Trying to Legislate a Business-to-Business Issue

I believe this legislation stems from a disagreement on the accuracy of ratings reporting in certain markets and among certain audience segments. It proposes external, mandatory regulation of a system that is in many ways self-regulating, where participants themselves—buyers, sellers, stations—engage in ongoing dialogue about the system.

Underlying our dialogue is the agency's responsibility to its clients, and ultimately the clients' responsibility to its customers (the same customers the television station is trying to reach with its programming). Also important is the broadcasters' responsibility toward dual constituencies: the viewers as well as the advertisers. Consequently, it is in everyone's best interest that the public is served.

What we have then is an industry research dispute over whether Nielsen's methodology accurately reports the size of the audience and how these procedures might be improved to more accurately report viewer behavior.

It is not a question of whether a broadcaster is serving the public interest. Rather, it is a matter of whether the yardstick by which audiences are measured does so accurately. Not acknowledging the relationship among advertisers, audiences, and broadcasters would dampen the dialogue that seeks to improve the system.

The Free Market as the Solution

The founders of the Media Rating Council couldn't have predicted what television would be like in the 21st century. But they did have the foresight to explicitly reject government oversight because they recognized the negative impact on innovation and competition.

That, at least, has not changed in over 40 years.

Attempts to roll back the clock by eliminating systems like Local People Meters, or by slowing down the development of new technologies that measure time-shifting and on-demand services, will not stop change.

Is this regard, are current television ratings fully adequate? No. Is there room for improvement? Always. But innovation cannot be mandated by the government. In fact we've seen many times in the past that when the government tries to interfere in the private sector—no matter what its good intentions—it usually makes the situation worse.

The MRC has played an important role over the past 40 years in making television the best measured medium. Like any other institution, it can operate better. But I believe the members of the MRC—as private businesses operating in the free enterprise system—can certainly work out for themselves how to make the organization more effective.

Thank you.

Senator BURNS. Thank you.

And we'll hear now from Gale Metzger, former CEO, SMART Media.

And thank you for coming today. Oops, did I miss somebody? I did.

Let's call on Mr. Pat Mullen, who is President, Tribune Broadcasting.

Pull your microphone up, if you would, Mr. Mullen, please.

Mr. MULLEN. Certainly.

STATEMENT OF PATRICK J. MULLEN, PRESIDENT, TRIBUNE BROADCASTING COMPANY

Mr. MULLEN. Mr. Chairman, thank you for the opportunity to appear before you to testify in support of S. 1372, which will go a long way toward assuring that there is a strong, independent body to ensure the reliability of television-audience measurement.

My name is Pat Mullen. Our company, Tribune Broadcasting, operates 26 major-market television stations located in 15 states from coast to coast, including stations in 8 of the 10 largest markets. Our station's success has depended, in every case, on accurate count of our audiences. Our stations get a report card every morning from Nielsen. These ratings determine which programs remain on the air. We're eager to compete with our fellow broadcasters and with cable and satellite, but to do this we must have an honest report card.

Mr. Chairman, I regret to say that the measurement system that we have today in the largest television markets is not worthy of the public trust. Congress has repeatedly acknowledged the importance of a free and robust broadcast service, which is particularly important in times of crisis. It deserves a guaranteed minimum standard of accuracy because of the importance of television news, public affairs, sports, and entertainment programming to this country's culture and to our democracy.

We are not here today in an attempt to secure a competitive advantage over our competitors. Our company welcomes competition. The problem, Mr. Chairman, is that the keys to our success, our ratings, are held by a monopoly. When Nielsen had a competitor, its service and its response to client concerns were substantially better than they are today. In absence of competition, we are left to plead for fair treatment and reliable results. Time and again, Nielsen has turned us away.

We have no choice but to do business with Nielsen. And despite recent ratings challenges, our company has always had a good relationship with Nielsen. So, we are here today reluctantly, but with a sense of urgency.

In 1964, the Media Ratings Council was established, at the urging of Congress. The MRC's mission is to maintain confidence in audience research and to secure measurement services that are valid, reliable and effective. Historically, participation in the MRC process has been voluntary. The MRC cannot force anyone to comply with its procedures. The Local People Meter Service that Nielsen has implemented in New York and Chicago and other markets has yet to be accredited by the MRC. And without quoting a myriad of numbers, it is worth nothing that in New York, on the average day for the week ending July 10, the viewing choices of nearly one-third of Black and Hispanic men ages 18–34 in the LPM sample were not reflected in the ratings. Despite this, Nielsen has just launched the LPM service in Washington, D.C., and Philadelphia, without MRC accreditation. It is clear to me that Nielsen submits to the MRC processes only when it suits its aggressive business strategies.

In numerous meetings, e-mails, and letters over the past year, Tribune has pointed out defects in the Nielsen's LPM sample. Nielsen has acknowledged the difficulties and has promised to fix these problems. But, despite Nielsen's effort, it has failed to fix these problems.

For these reasons, in a letter dated May 25, 2005, Tribune and 17 other broadcast companies urged Nielsen to postpone the scheduled deployment of the LPM service in Philadelphia and Washington, D.C., Nielsen refused. In response, the MRC, under the guidance of Executive Director and CEO George Ivie, recommended a meeting between Nielsen and either the MRC's Television Committee or the full board, or that Nielsen participate in the MRC mediation process. Broadcasters accepted, with a preference for mediation. Nielsen refused both.

Finally, on June 28, the MRC Board of Directors approved a resolution recommending that Nielsen offer LPM service in additional markets only after completing an MRC audit. Nielsen—or, excuse me, Tribune then asked Nielsen to accept the MRC Board's resolution and delay the scheduled launch in Philadelphia and Washington, D.C. Nielsen's response again was an immediate no.

Had Nielsen been more responsive to these concerns of broadcasters and of the MRC, I doubt that we would be here today.

A promising new measurement service, Arbitron's Portable People Meters System, is being tested in the Houston market. This new passive technology measures both television and radio audiences. Arbitron has licensed this technology in Singapore, Norway, and Canada. Unfortunately, Nielsen has the contractual option to form a joint venture with Arbitron to market the PPM television service in the United States. Because PPMs are an alternative to Nielsen's proprietary LPM service, it appears highly unlikely Nielsen will allow the PPM technology to compete with its LPM service.

Throughout Tribune's long history, we very rarely have petitioned for Federal intervention in the marketplace; however, in this case, despite our efforts, we simply do not have the ability to persuade Nielsen to submit to voluntary MRC processes. And because Nielsen is a monopoly, we have nowhere else to turn to get accurate and reliable ratings.

S. 1372, the FAIR Ratings Act, would correct this market failure. The bill would not impose any undue burden on parties to the process and would enable the MRC to fulfill its mission.

In my written testimony, I provided examples and written communications [17] showing that we are not dealing with a trivial dispute or sour grapes because our ratings are down. And after more than a year's experience in New York and Chicago, the LPM system continues to be embarrassingly defective.

Clearly, the free market cannot solve this problem, which is a serious one. Free over-the-air broadcasters, unlike our cable and satellite competitors, depend on a single revenue stream, which is derived from advertising. We do not charge a subscriber fee, and we make our service available free to all. Accurate and reliable ratings are keys to the health of our business.

Mr. Chairman, we appreciate your allowing us to take the time today to express our views and urge the Committee to favorably report S. 1372.

[17] Information referred to has been retained in Committee files.

Thank you.
[The prepared statement of Mr. Mullen follows:]

PREPARED STATEMENT OF PATRICK J. MULLEN, PRESIDENT, TRIBUNE BROADCASTING COMPANY

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to testify in support of S. 1372, which will go a long way toward assuring that there is a strong independent body to oversee the reliability of television audience measurement.

My name is Pat Mullen. Our company, Tribune Broadcasting, operates 26 major market television stations located in 15 states from coast to coast, including stations in 8 of the 10 largest markets.

All of these TV stations are what used to be called "independent" stations—local stations that did not have the legacy of a network identification to hold loyal viewers year after year. Through innovative local, sports and syndicated programming, Tribune's stations have provided viewers with an alternative to the "traditional" networks, attracting viewers to programs they could not find elsewhere. Their success has depended in every case on an accurate count of our audience. New stations, small stations, UHF stations, as well as broadcast pioneer stations like WGN–TV in Chicago, KTLA in Los Angeles and WPIX in New York, have found they can compete and succeed if they provide new and better programming options for viewers.

Our stations get a report card every morning from Nielsen. Those ratings determine the viability of our business.

- They determine the value of our advertising.
- This in turn determines how much money can be invested in new and better programming, and in new digital technology.
- And ratings also determine which programs remain on the air, and which ones will be taken off for apparent lack of viewer interest.

Today, all but one of Tribune's television stations have affiliated with the newer networks, The WB and Fox. We are eager to compete with our fellow broadcasters, and with the ever-increasing number of networks vying for viewers' attention over cable and satellite. But to do this we must have an honest report card. A trustworthy measurement of the size and composition of each competitor's audience.

Mr. Chairman, I regret to say that the measurement system we have today in the largest television markets is not worthy of public trust. It does not have the trust of our company or that of more than a dozen other responsible broadcasters.

Congress has repeatedly acknowledged the importance of a free and robust broadcast service, which is particularly important in times of crisis. We believe the system of over-the-air television in America demands statistically valid and reliable measurement of its audience. It deserves a guaranteed minimum standard of accuracy because of the importance of television news, public affairs, sports and entertainment programming to this country's culture and to our democracy.

In times of crisis, from hurricanes in Florida to fires in California, when the cable is out and satellite service is interrupted, broadcasters serve as the first responder on the scene, transmitting potentially life saving information to our fellow citizens. We are proud of that record of service. It may prove even more vital if, as in London and Madrid, terrorist attacks continue to spread beyond the war zone in the Middle East.

But we are not here today in an attempt to secure an advantage over our multichannel competitors or to slow the erosion of our audiences caused by the growing choices available to viewers. Our company welcomes competition.

The problem, Mr. Chairman, is that the keys to our success—our ratings— are held by a monopoly. When Nielsen had a competitor, its service and its response to client concerns were substantially better than they are today. In the absence of competition, we are left to plead for fair treatment and reliable results. Time and time again, Nielsen has turned us away.

We have no choice but to do business with Nielsen. Ratings are the currency on which the advertising business operates. And despite recent challenges, our company has always had a good relationship with Nielsen. So we are here today reluctantly, but with a sense of urgency.

In 1964, the Media Rating Council was established at the urging of Congress. It is a nonprofit organization whose membership includes representatives of broadcast TV and radio, cable television, print, advertisers, ad agencies, and now Internet constituencies. The MRC's mission is to maintain confidence in audience research and secure measurement services that are valid, reliable and effective. MRC does this through audits to test the methodology and credibility of research services, and accreditation to certify services that meet the MRC's minimum standards. Research services must disclose their data to the MRC to enable it to validate their measurements.

The Media Rating Council is a classic example of industry self-regulation. It consumes no tax dollars nor requires government oversight. It does its job quietly, professionally and efficiently, with participation by all segments of the industry. In our experience the MRC has never been used for private gain by one member over another, or to delay or stop innovation. The very existence of the MRC's auditing and accreditation processes, and its diverse make-up, tend to keep participants honest.

Historically, participation in the MRC's processes has been voluntary. The MRC cannot force anyone to comply with its procedures, and it cannot require a ratings service to submit to an audit or to offer only accredited measurement services. Unfortunately, Nielsen has chosen to ignore the MRC's guidance in deploying Local People Meter (LPM) service.

The LPM service that Nielsen has implemented in New York and Chicago has yet to be accredited by the MRC. It is worth noting here that in New York, on the average day for the week ending July 10, the viewing choices for nearly one-third of the Black and Hispanic men ages 18–34 in the Nielsen LPM sample were not reflected in the ratings. (Additional detail is available in the attachments to this testimony.)**

Despite these kinds of obvious flaws, Nielsen has just launched its LPM service in Washington, D.C. and Philadelphia—also without MRC accreditation. It is clear to me that Nielsen submits to MRC processes only when it suits its aggressive business strategies.

Tribune has tried to work constructively with Nielsen and to suggest ways to improve audience measurement. In numerous meetings, e-mails and letters over the past year, Tribune has pointed out defects in Nielsen's LPM sample and faulting rates. The problems being presented have led to significant under-reporting of important audience segments. Nielsen has acknowledged difficulties and has promised to fix the problems. But despite Nielsen's efforts, it has failed to fix these problems.

For these reasons, in a letter dated May 25, 2005, Tribune and 17 other broadcast companies embraced the new technology but urged Nielsen to postpone the scheduled deployment of LPM service in Philadelphia and Washington until the MRC deemed the system reliable in markets where it was already being used.

Nielsen responded the following day. It said "the broadcast group request for some sort of mandatory, prior MRC accreditation raises considerable antitrust concerns." Nielsen rejected the industry's proposal and the legitimate concerns detailed in our letter.

In response, the MRC, under the guidance of Executive Director/CEO George Ivie, recommended a meeting between Nielsen and either the MRC's Television Committee or the full MRC Board, or that Nielsen participate in the MRC mediation process. Broadcasters said we would accept either approach, with a preference for mediation. Nielsen refused both, saying mediation would be "unnecessarily cumbersome and time consuming."

Finally, on June 28, the MRC's Board of Directors approved a resolution recommending that Nielsen offer LPM service in additional markets only after completing an MRC audit. Tribune then asked Nielsen to accept the MRC Board's resolution, delaying the scheduled LPM launch in Philadelphia and Washington. Nielsen's response was an immediate, "No."

So the company continues to ignore the legitimate concerns of its customers and the MRC.* Its actions are those of the classic unregulated monopoly, accountable to no one. Had Nielsen been more responsive to broadcasters' or the MRC's concerns, I doubt we would be here today.

A promising new measurement service, Arbitron's portable people meter (PPM), is being tested in the Houston market. This new technology measures both television and radio signals, and I believe Arbitron plans to use this system for radio ratings starting in 2006. Arbitron has licensed this technology in Singapore, Norway and Canada. Although Arbitron is managing this test, Nielsen has the contractual option to form a joint venture with Arbitron to market PPM television service commercially in the United States. Thus, it is our understanding that Nielsen could effectively control how and when PPM technology will be deployed for television measurement. Because PPMs are an alternative to Nielsen's proprietary LPM service, it

** Attachments retained in Committee files.

* Correspondence submitted with this testimony documents this frustrating process. The submitted material has been retained in Committee files.

appears highly unlikely Nielsen will allow the PPM technology to compete with its LPM service.

We hope this testimony makes clear the need for government intervention in this critical segment of the U.S. economy. Throughout Tribune's long history in both print and broadcast journalism, we very rarely have petitioned for Federal intervention in the marketplace. Like many of my fellow broadcasters, I personally have spent many days trying to reach a private solution to this problem with Nielsen. We simply do not have the ability to persuade Nielsen to submit to MRC processes and roll out its new measurement systems only after they have proved reliable to an independent and expert body, the Media Rating Council.

And because Nielsen is a monopoly, we have nowhere else to turn to get accurate and reliable ratings.

S. 1372, the FAIR Ratings Act, would correct this market failure by requiring MRC accreditation before the commercial introduction of any commercial ratings measurement system. The dispute resolution system established by the bill would provide ready means to test the reliability of new measurement systems, and would encourage companies that design them to vet them thoroughly, ensuring their credibility and integrity before they are launched commercially. The bill would not impose any undue burden on parties to the process, and would enable the Media Ratings Council to fulfill its mission of encouraging the development of reliable and improved ratings measurement systems, which we fully support.

The examples included in this report demonstrate that we are not dealing with a trivial dispute or sour grapes because our ratings are down. After more than a year's experience in New York and Chicago, the LPM system continues to be embarrassingly defective.

Sampling issues abound, including problems with response rates, in-tab representation and fault rates. For example:

- New York's LPM response rate averaged 25.3 percent for the week ending July 3, 2005. This means that 3 out of every 4 households initially designated as sample households refused installation of a people meter in their home or accepted a meter but did not contribute any viewing data.
- Young men ages 18–34 have been persistently under-represented in Boston, Chicago, Los Angeles, New York, Philadelphia and San Francisco. Fault rates for men 18–34 generally are twice as high as those for men ages 55+ in LPM samples.
- Fault rates remain unacceptably high for important audience segments such as African Americans and Hispanics despite new coaching initiatives. On the average day in New York for the week ending July 10, the viewing choices of nearly one-third of the Black and Hispanic men ages 18–34 in the LPM sample were not reflected in the ratings.
- Chicago sample data for the week ending July 10th show that *almost one-third* of the 443 African Americans installed in the sample were not in tab—meaning their television viewing was not counted in the ratings.
- Households of 5 persons or more have been persistently under-represented in the total samples in New York, Los Angeles, Chicago and Boston. In New York, for the week ending July 10, the viewing choices of more than 1 in 4 of the Black and Hispanic households of 5 or more persons in the LPM sample were not reflected in the ratings.
- Fault rates for households of 5 or more are generally 2 to 3 times as high as in one-person households.

Clearly, the free market cannot solve this problem, which is a serious one. Free over-the-air broadcasters, unlike our cable and satellite competitors, depend on a single revenue stream, which is derived from advertising. We do not charge a subscriber fee, and we make our service available free to all. Accurate and reliable ratings are key to the health of our business. Mr. Chairman, we appreciate your allowing us the time to make our views known, and urge the Committee to favorably report S. 1372.

Thank you.

Senator BURNS. Thank you very much.

Now we'll have Mr. Gale Metzger, Former President, Statistical Research Inc.

Thank you for coming today.

STATEMENT OF GALE METZGER, FORMER PRESIDENT, STATISTICAL RESEARCH INC.

Mr. METZGER. Thank you, Senator Burns. And thank you for the invitation.

I am Gale Metzger. My entire career has been spent in the audience-measurement arena. I began at the A.C. Nielsen Company, and then for 32 years I was President of Statistical Research, Inc., a company that I founded with Dr. Gerald Glasser, of New York University. In 1963, I participated in the Congressional hearings as a Nielsen employee. SRI, our firm, conducted methodological research for the industry for over 30 years. In the 1990s, we created and operated a ratings laboratory under the name of SMART. Currently, I am a senior consultant with Knowledge Networks, Inc.

I appear today representing myself, my own views and interpretations. There are no lawyers, no public-relations people or anyone else behind me telling me what to say. I speak from a lifetime's experience and a deep commitment to the understanding that research quality makes a difference. Good information helps markets work better. Bad information undercuts business performance.

I will briefly address three points:

First, the Media Rating Council. I was present when the Broadcast Rating Council, now the Media Rating Council, was formed. I participated in the debates around the operating protocols. I was the Nielsen person who was responsible for structuring the first audit of its services. SRI's Syndicated Audience Measurement Service to the radio industry, RADAR, was audited by the MRC for over 30 years.

The MRC serves a vital role in our industry. An important byproduct of its work is to encourage innovations and improvements in methods. Whether I was working at, or owned, a service that was being audited, the MRC helped me do a better job. If audit reports were open and available to all clients, they would be even more valuable.

Media ratings systems are frail, sometimes more so than we practitioners like to admit. To use information from these systems intelligently and effectively, users need to know what is going on, and they need to know before the data hit the marketplace, not after. Hence, I agree with the intent of the proposed legislation, which is that all services providing marketplace currency be accredited by the MRC.

I understand that Nielsen has expressed objections to the proposals and stated they would lead to less innovation and less competition. The opposite would be true. It would be difficult to have less competition or less innovation than we have now. And I must insert that I have a totally different view than was expressed by Ms. Whiting and Ms. Crawford on the effects on competition and innovation.

It is in Nielsen's and the industry's best interests to embrace the intent of this legislation. I, further, believe that complete coverage of all services is what the industry committed to achieve in testimony before the Congress in 1963.

Changes in the industry structure have made the MRC even more important today. The networks once dominated national television. They were permitted to work together on issues related to methodology. Then, there was a balance of power between Nielsen and the networks. With a fragmented medium, no single client or group of clients wield that much influence. In effect, if Nielsen does not answer to the MRC, it answers to no one. I believe this explains, in part, Nielsen's new, more aggressive posture with the MRC.

Nielsen and others may have particular points about the legislation that warrant discussion. I'm confident details can be worked out if we have sufficient desire on the part of all concerned parties to do so. That has apparently not been the case for the past year, so I think I understand the reasons why you, Senator Burns, introduced this bill.

Second, why are we here? I submit that we are here because Nielsen clients feel they are hostages to a company that controls their basic well-being. Further, Nielsen operations are deficient, and those deficiencies jeopardize those clients' businesses. This is not a manufactured controversy. There is a real problem. When emotions run as high as they currently do among a large share of clients, something is not right.

Evidence of the industry's effort to bring improvement include the network support of SRI's methodological research, the support of CBS and others for the AGB initiative, and, more recently, the support of 30 networks, advertisers, and agencies of our SMART Ratings Laboratory.

Nielsen deficiencies are several and significant. Perhaps the broadest complaint is that Nielsen is not responsive on data-quality issues and to client concerns unless the threat of competition is raised.

The people meter was introduced by Nielsen in 1987 only after a British company, AGB, tried to enter the U.S. market with a similar meter. Nielsen's new AP meter was announced in 1995, only after the SMART Laboratory was underway with a new meter in development. When SMART went away, the introduction of the AP meter was delayed. Ten years after the fact, the AP meters have just begun to roll out.

In sum, clients will tell you that when the threat of competition is present, Nielsen is a different company than when, as now, there is no threat.

A more specific deficiency is Nielsen's metering technology. It has not kept pace with modern media. We are moving rapidly into the 21st century with an aged 20th-century meter platform. The high fault rates in the Nielsen sample is evidence of their out-of-date technology. Fault rates are high because the meters are not state-of-the-art. The fault is with the meters and how they operate. The fault is not with the homes or the people in them.

Are Nielsen's new systems better than the old? Are the audience estimates more accurate? The truth is, no one knows. And that is disconcerting. We do not know the effect of skipped homes or faulting homes. What is known is that Nielsen is producing more data and generating more revenue than ever before.

Data access is a core deficiency of Nielsen. Clients cannot get to information they need for decisions. Data access is an important component of quality.

Nielsen weighting procedures are still another point of contention.

The real problem with each of these and other deficiencies is that they all affect audience levels. Some reported audience ratings are higher, and some lower, than is the reality. Some organizations' bottom lines are improved, and some are made worse. This observation leads to the last deficiency that I cite today: Nielsen is almost cavalier about making changes in procedures. If measurement techniques change, some audiences will be greater, and some lesser, than before. The real audience has not changed, but the reported audience change. Some win, some lose. The only way to prepare for such events is to communicate planned changes with evidence to the benefits to the industry and to supply an abundance of data. To force-feed a change invites disaster. That is what Nielsen effectively did, and they reaped what they sowed.

Nielsen publicly proclaimed their shock, their dismay and surprise at the industry's reaction to the LPM. Such reactions, to me, speak of posturing or a lack of understanding of their clients' legitimate concerns.

Third, and last, the need for action. At the 1963 hearings on ratings, Chairman Harris, of the House Committee on Interstate and Foreign Commerce, referred to the ratings industry as being in an intolerable situation. Today, many also feel that situation is intolerable.

I see confusion in the marketplace about the nature of the problem. More data does not equal better data. Also, it is unfortunate that a large part of the discussion about the LPM has focused mainly on minority measurement issues. I do not believe the problem is associated only with minorities, and not only with the LPM. The LPM controversy is the tip of the iceberg.

I know about minority measurements. For over 25 years, SRI served the National Black Network and Sheridan Broadcasting as part of our RADAR service. Measurements for minorities should be judged by the same quality standards, and subject to the same audit review, as are all other media audience measurements.

Audience measurements should be inspected for all important population subgroups, but I do not believe race or ethnicity is the primary issue with the LPM. I believe the issue is how a monopolist relates to its clients. The issue is whether these Nielsen ratings data, when used as currency, are really "funny money." We just do not know enough about Nielsen research quality.

Susan looks at Nielsen Media Research and sees a glass full. I see a gallon jug with a few drops of water in the bottom, sloshing around.

Whether this proposed legislation goes too far, or not far enough, I shall leave for others to judge. The MRC is essential, but it may not be sufficient. Many feel the need for a joint industry effort to set specifications and award an industry contract, as occurs in other parts of the world. In that direction, the Advertising Research Foundation has structured an audience measurement initiative which is currently being discussed.

Like most others here, I favor free market solutions for free markets. Where there are multiple buyers and sellers, there is seldom cause for the government to become involved. However, here we have a monopoly. Legislation may be the only way to get Nielsen to the table, and I think this bill is the right way to go. And further action may be needed to deal with the possible industry initiative to further improve the situation.

Thank you very much.

[The prepared statement of Mr. Metzger follows:]

PREPARED STATEMENT OF GALE METZGER, FORMER PRESIDENT, STATISTICAL RESEARCH INC.

I am Gale Metzger. My first professional job was with the A. C. Nielsen Company. For 32 years, I was President of Statistical Research, Inc. a media and marketing research company that I founded with Dr. Gerald Glasser of New York University. I have been active in the industry and served as Chairman of the Board of the Advertising Research Foundation and President of the Radio and Television Research Council and the Market Research Council.

In 2001, SRI was sold in two parts. Our network radio measurement service went to ARBITRON and the other operations were sold to Knowledge Networks, Inc.—a firm I continue to work with as a senior consultant.

For 48 years, I have been engaged in media research. Over 40 years ago, I participated in the 1963 Congressional Hearings as a Nielsen behind-the-scenes overnight supplier of answers to questions posed by congressional staffers. Fifteen years ago, at the request of key industry stakeholders, our firm (SRI) conducted an in-depth review of Nielsen's newly introduced people meter system which resulted in a seven volume 600-page report. Nielsen called that work "an outstanding effort" and the industry characterized it as a blueprint for progress.

SRI conducted methodological research for the industry for over 30 years. In the 1990s we created and operated a ratings laboratory under the name of SMART. SMART was an acronym for Systems for Measuring And Reporting Television. All of that work was dedicated to understanding and improving measurement methods. The SMART laboratory was successful in developing new, user-friendly TV meters and in providing audience data to client desktops along with analytic software to enable use of ratings information for business decisions on a timely basis. In 1999, SMART was proposed as a competitive system to Nielsen. The necessary capital to launch the service, however, was not forthcoming.

In January of this year, I was asked by the Advertising Research Foundation to provide a historic overview of TV audience measurement in the United States at a special meeting it convened on the topic of Accountability of Audience Measurement. I am submitting the paper provided there as an addendum to my testimony today.

I appear today representing my own views and interpretations of current events in the television audience measurement business. I have no lawyers, no public relations people or anyone else behind me telling me what to say. I speak from a lifetime's experience and a deep commitment to the understanding that research quality makes a difference. Good information helps markets work better; bad information undercuts business performance.

I will briefly address three general points.

- First, the role and value of the MRC to the audience research business.
- Second, why we are here? Why is legislation being considered?
- Third, the need for action to enable the television ratings process to facilitate rather than frustrate the marketplace.

Media Rating Council

I was present when the Broadcast Rating Council, now the Media Rating Council was formed. I participated in the debates around the operating rules and helped with drafting the disclosure standards that are part of the MRC protocol today. I was the person at Nielsen who was responsible for structuring the first audit of Nielsen. In later years, SRI provided a syndicated audience measurement service to the radio industry, RADAR, which service was audited by the MRC for 30 years. I have deliberated and consulted with MRC executive directors for over 40 years.

The MRC serves a vital role in our industry. By assuring disclosure of research company methods and by auditing the accuracy and completeness of disclosure, the MRC enables an informed market. An important byproduct of is work is to encourage innovations and improvements in methods. MRC reporting and tracking of key quality indicators, appropriately and constructively pressures research companies to rectify weaknesses.

When I was working at or owned a service that was being audited, the MRC helped me do a better job. Totally independent, it gave research company management an objective quality control report. When I was at Nielsen or in my own business, I was paying an audit firm and I wanted maximum value from that expenditure, just as any other expense. Hence, there were occasional discussions between the researcher and the auditor around the audit plans and the most effective use of audit resources. There was a healthy dialogue, and as a result audit operations were improved.

I have always believed that audit reports should be open and available to all clients whether or not the clients were members of the MRC. I was happy to show my audit reports to my clients. All media rating systems are frail, sometime more so than we practitioners like to admit. We manufacture numbers (statistical estimates) that have broad business and social implications. We use methods that are subjective and often less than ideal. To use information from these systems intelligently and effectively, users need to know all. And they need to know before the data hit the marketplace, not after.

Hence, I agree with the intent of the proposed legislation which is that all services providing marketplace currency be accredited by the MRC. I understand that Nielsen has expressed objections to the proposals and stated that the proposed plan would lead to less innovation and less competition. First, it would be difficult to have less competition or less innovation than we have now. Second, it is my impression that Nielsen has become a reluctant participant and not permitted select components of their services—new and old—to be examined by the MRC process.

During the Congressional Hearings in 1963, Nielsen clients were incensed because they were unaware of some Nielsen procedures disclosed at the hearings. There is a principle that characterizes all successful service businesses—keep your clients involved and informed. Never surprise a client. I believe it is in Nielsen's and the industry's best interest to embrace the intent of this legislation. I further believe that complete coverage of all services was what the industry committed to achieve in testimony before the Congress in 1963.

An important change in the industry structure over the past 20 years has made the MRC industry role even more important today. When the networks effectively dominated the national television arena and were permitted to work together on issues related to research methodology, there was a balance of power between Nielsen and the networks. With a fragmented medium, no single client or group of clients wields that much influence. In effect, if Nielsen does not answer to the MRC, it answers to no one. I believe this explains, in part, their new, more aggressive posture with the MRC.

Nielsen and others may have particular points about the legislation that warrant discussion. I am confident that details can be worked out to the benefit of all, if we have sufficient desire on the part of all concerned parties to do so. That has apparently not been the case for the past year, so I think I understand the reasons why Senator Burns introduced his bill.

Why We Are Here

I submit that we are here because Nielsen clients feel they are hostages to a company that controls their basic well-being; further, that Nielsen operations are deficient in important regards and those deficiencies jeopardize the clients' businesses. This is not a manufactured controversy; there is a real problem. We are not here because of normal, expected competitive posturing. I do not defend the actions of some media companies, but I recognize their actions as a response to dealing with a monopolist who is unresponsive to the fundamental issues. When emotions run as high as they currently do among a large share of the client community, you know something here is not right.

The industry's natural response should be to work quietly with Nielsen to improve. Nielsen is the industry's nest and a bird does not foul its own nest! Agencies do not want to say to advertisers that I am spending your hundreds of millions of dollars on meaningless numbers; nor do the media want to say to advertisers that I am taking your hundreds of millions of dollars on meaningless numbers. So while the industry has often striven for a constructive response, Nielsen simply does not react. I believe that Nielsen has been its own worst enemy in thwarting a constructive dialogue.

Evidence of the industry's efforts to bring improvement include the networks support of SRI's methodological research, the support of CBS and others of the AGB initiative and more recently, the support of thirty networks, advertisers and agencies for the SMART ratings laboratory.

Nielsen deficiencies are several and significant. Perhaps the broadest complaint is that Nielsen is not responsive on data quality issues and to client concerns—unless the threat of competition is raised. The people meter was introduced by Nielsen in 1987 only after a British company AGB tried to enter the U.S. market with a similar meter. Nielsen's new A/P meter was announced in 1995 when the SMART laboratory was in process. It was noticed by all that when SMART went away, the introduction of the A/P meter was delayed. Ten years after the fact, the A/P meters have just begun to roll-out.

The A/P meter involves changes in Nielsen operations. Research should have been conducted to know how best to proceed. When SMART was in operation, Nielsen published a copyrighted research plan that was well framed. After SMART went away, the plan was forgotten and the industry is now faced with core operating procedures that are effectively untested and unproven.

In sum, clients will tell you that when competition or the threat of competition is present, Nielsen is a different company than when, as now, there is no competition.

A more specific deficiency is Nielsen's metering technology. It has not kept pace with modern media. That means Nielsen has been unable to measure many new forms of TV receivers. As a result, homes that are selected to be in their samples are passed over and other homes with only old technology replace them. For example, in the Nielsen People Meter system today, you are not counted if you have a TiVo—or any other Digital Video Recorder (DVR). Your neighbor who does not have a TiVo takes your place in representing America's viewing. TiVos have been around for 6 years. Nielsen says they will meter and report usage in DVR homes tomorrow. Tomorrow remains elusive. We are moving rapidly into the 21st century with aging 20th century technology.

The high fault rates in the Nielsen sample is further evidence of their out-of-date technology. A fault is what the name implies. It means that some homes that do have meters are not processed, are not counted, because something is wrong with the data from that home. Faults have been around forever. Current fault rates in Nielsen Local People meter samples are high because the meters are not state-of-the-art. The fault is with the meters and how they operate; the fault is not with the home or the people in it. Our goal in the SMART laboratory was to reduce fault rates to 5 percent or less. Though the target level was not achieved before the lab was dismantled, we were gaining on it. In fact, we were under 10 percent—and my engineers assured me that we would get there.

Are Nielsen's new systems better than the old? Are the audience estimates with the samples omitting bypassed and faulted households more accurate? The truth is that no one knows and that is disconcerting. What is known is that Nielsen is producing more data and generating more revenue than ever before. Perversely, Nielsen reports they are beginning to measure TiVo households under the old local meter/diary measurements.

Data access is another core deficiency of Nielsen. Data access is an important component of quality. The best information is of no value if you cannot get to it. Clients cannot access the information they need to make business decisions on a timely basis. Nielsen analysis has always been slow and expensive. They place a tourniquet on information flow by their ineptness and cost. SMART showed the way as to how to do it better. Nielsen has not seen fit to open up the process to allow effective use of their information.

Nielsen weighting procedures are another point of contention. With an unweighted sample, all people count the same. Weighting a sample means that some people count more than others in the statistical process. There are several good reasons for considering weighting. The issue here is that Nielsen has changed its attitude toward weighting which they had touted for 50 years. The old position was that the sample should not be weighted for demographic characteristics because a pure probability sampling approach was superior. The new position is a 180 degree shift. Nielsen virtually recommends weighting on every variable. The problem is that when a statistician advocates weighting, there is an implication that the resulting data quality are improved. Nielsen's arguments for weighting are novel, unproven by independent research and to my knowledge not supported by theory.

My conviction is that they should have introduced some kind of weighting years ago. Statisticians agree with judicious weighting while being concerned about the abuse of weighting. It is like putting a new coat of paint over old wood. The resulting weighted sample may look better but the non-responding households are still missing.

The real problem with each of these and other deficiencies is that they all affect audience levels. That means that some audiences' ratings are higher, and some lower, than is the reality. Some organization's bottom lines are improved and some made worse.

That observation leads to the last deficiency that I cite today. Nielsen is almost cavalier about making changes in procedures. I know from experience that two actions can turn a marketplace on its ear. If a pricing formula is changed such that some pay more and others pay less than previously, turmoil will be assured. Similarly, if measurement techniques are changed, some audiences will be greater and some lesser than before. The real audience will not have changed but the reported audience changes. Some win; some lose.

The only way to prepare for such events is to communicate planned changes with evidence on the benefits to the industry and to supply an abundance of data (including parallel measurements, if necessary). This would enable the industry to prepare for an orderly transition from one operating frame to another. To force feed a change invites disaster. That is what Nielsen effectively did, and they reaped what they sowed. Nielsen publicly proclaimed their shock, their dismay and surprise at the industry reaction to the way in which the LPM was introduced. Such reactions to me speak of posturing or a lack of understanding of their clients' legitimate concerns.

Need for Action

In connection with the 1963 hearings on ratings, Chairman Harris of the House Committee on Interstate and Foreign Commerce referred to the ratings industry as being in an "intolerable situation." Many today also feel that the situation is intolerable. Something must be done to bring balance to the relationship between Nielsen and the industry it is supposed to serve. As with economic trends, I do not believe this can go on forever. If an economy is constantly in deficit, that economy eventually collapses. Some believe that because it is so difficult to bring improvements into this system that it too will eventually collapse. The wheels will come off the bus.

I see confusion in the marketplace about the nature of the problem. More data does not equal better data. Also, it is unfortunate that a large part of the discussion about the LPM has focused mainly on minority-measurement issues. I do not believe the problem is associated only with minorities. The key independent variable with respect to meter performance is the number of TV sets in the home. More sets equals more problems and more faults. That is due to an out-of-date meter platform.

In the late 1960s and early 1970s, SRI did several comparisons of Nielsen and ARBITRON data. Clients complained that one service favored their competitor or visa versa. Often, the differences were random and a function of small sample sizes. Yet people thought they saw patterns. I believe there is more speculation and political positioning going on than solid data analyses.

I know about minority measurements. For over 25 years, we served the National Black Network and Sheridan Broadcasting as part of our RADAR service. In the early 1970s, we produced special measurements of Spanish audiences in the New York area which P&G (uncharacteristically) urged their agencies to use in buying NY Spanish television. Measurements for minorities should be judged by the same quality guidelines and subject to the same audit review as are all other media audience measurements. While I believe audience measurements should be inspected for all important population subgroups, I do not believe race or ethnicity is the primary issue with the LPM.

I believe the issue is how a monopolist relates to its clients. The issue is whether these Nielsen ratings data, when used as the currency, is really funny money. We just do not know enough today about the Nielsen research quality.

Nielsen has a difficult task. But syndicated services exist here and around the world without the acrimony and anger that characterizes the U.S. television marketplace. I believe Nielsen has the ability—and needs to find the will—to serve its market proactively. At the end of the People Meter review in 1988 we recommended that Nielsen concentrate on three initiatives:

- Defined procedures and quality control
- Methodological research
- Client Involvement

Nielsen seemed to endorse those proposals and I hope they may reinspect their position today and truly strive to work with the industry openly and forthrightly.

Whether this proposed legislation goes too far or not far enough I shall leave for others to judge. Like most others here, I believe a voluntary industry solution is the best one. But failing that, legislation may be the only way to get Nielsen to the table, and I think this bill is the right way to go. I am absolutely convinced that something must be done.

A disclaimer: some of the points articulated herein (e.g., the discussion of weighting) are simplified for purpose of clarity. The author trusts that the thrust of the discussion is clear.

ATTACHMENT—HISTORY OF TV AUDIENCE MEASUREMENT IN THE USA
(BY GALE D. METZGER)

Introduction

Simon Schama's, *Dead Certainties,* is a good read. Professor Schama affirms that the dead, really are dead; everything else—why they died, how they died—is a matter of interpretation. History is in the eye of the beholder. For some, his book marked the death of any certainty about history.

I have few absolutes to offer in my 30-minute history of television audience research in the USA. You will hear my interpretation of events and my view of how today contrasts with the past.

For a more complete history of radio and TV measurement prior to the mid-1980s, you should read Mal Beville's excellent book: *Audience Ratings,* published in 1988. Another document that I commend to your reading is *Thirty Years of CONTAM,* published in 1995.

I speak from my own personal knowledge of 47 years in the business. I shall recall the Congressional hearings of 1963 and the associated fear of government regulation. What was done by Nielsen and the industry to deal with this threat?

Then I will look at the 1980s and 1990s and how the industry and Nielsen acted in response to many of the same problems we face today—albeit on a lesser scale. Last, a review of today's situation and the lack of resources dedicated to improving ratings quality.

A. C. Nielsen

Sadly, I assure you with dead certainty that the central figure in the history of TV audience measurement, Arthur Charles Nielsen, is deceased. Born in 1897, he died in 1980. He left a substantial legacy.

A. C. Nielsen was the son of a Danish immigrant. His father worked for 40 years in Quaker Oats accounting division. His son inherited his bean-counter mentality. Witness the label "audit pioneer" in the ARF's 1977 tribute to "*The Founding Fathers of Advertising Research.*" Mr. Nielsen—as he was addressed by most—was a trained engineer and a scientist. He graduated from the University of Wisconsin's engineering school with an extraordinary academic record. In 1923, he started the A. C. Nielsen Company with money borrowed from friends. He was an excellent businessman, a man of strong character and conviction. I knew him as a kind and intellectually generous person. For me, he was the proverbial man with a steel fist in a velvet glove.

The Nielsen Company was a research company that produced good services and reasonable profits. It reflected Art the scientist/auditor. He chose a micrometer as a company symbol and a favorite authority he loved to quote was the scientist, Lord Kelvin, who said:

> *"If you can measure that of which you speak, and can express it by a number, you know something of your subject."*

That A. C. Nielsen Company was one I was proud to work for from 1958 to 1969.

The Nielsen business progressed from performance surveys of industrial machinery in 1923 to retail sales measures in 1933 and to radio audience measurement in 1942. In 1950, television audiences were added to the package. He invested 17 years and $15,000,000 before achieving a break-even financial position in the media business. That is focusing on the long term. That is a person who did not have to answer to Wall Street.

His primary objective was to provide accurate and thorough research to support marketing efficiencies. He knew that good information lubricated economic gears. He wanted to provide the tools to assess advertising and promotion options in the marketing process. He wanted to "further the science of marketing research." So that, while his name is primarily associated with television research, his personal goals were broader.

Congressional Hearings of 1963

I shall skip the stories of the early competition in audience research, well told in Mal's book. I begin in 1963. Hearings were held before the Committee on Interstate and Foreign Commerce of the House of Representatives. The subject was "The Methodology, Accuracy and use of Ratings in Broadcasting." There are several thoughts on how the hearings came to be. The role of ratings as highlighted in the quiz show scandals of the late 1950s was one stimulant.

The hearings were to consider the production and use of ratings in the broadcasters' fulfillment of their statutory obligation to serve the public interest. If ratings were unreliable, then they were worthless as a means to that end. Chairman Harris felt there was an "intolerable situation." The question was: is the service of the public and is television commerce being conducted on funny money?

A year earlier, the prospect of hearings loomed. Congressional investigators appeared on Nielsen's doorstep and that of many other companies. The actual hearings commenced on February 9, 1963 and ended 19 months later. The proceedings are memorialized in a 1,932-page transcript.

The hearings changed audience measurement forever. While Nielsen as the largest audience research entity had some difficult days during the hearings, in the end Nielsen was a great benefactor from the process. Evidence of that is in their market position in the ensuing 40 years. The Nielsen Company responded well by working with the industry.

Congress tried to determine whether the rating companies were doing what they said they did. They investigated how rating reports were used and the effects on both programming and on the sale and purchase of broadcast time. In brief, they discovered some research companies were apparently making up the numbers from imaginary surveys. Nielsen and others were accused of misleading clients as to their procedures and of not accurately describing the samples on which ratings were based. Congress was exploring Federal regulation and considering legislation. The Bureau of Census was asked if it could undertake to provide certain broadcast data.

The Federal Trade Commission became involved. Several ratings companies, including Nielsen, Pulse and the parent company of Arbitron, were ordered "to cease and desist from misrepresenting the accuracy and reliability of their measurements, data and reports." The FTC issued guidelines to the media for use of ratings and stated that audience claims must be "truthful and not deceptive" and that the media must avoid activities intended to "distort or inflate" audience data solely during survey periods.

Those activities led to a hyperactive industry response led primarily by the NAB and featured broad participation. One NAB committee included 24 corporate representatives, including delegates from the AAAA's and the ANA. The three networks formed a Committee on Nationwide Television Audience Measurement, which became known by the acronym, CONTAM. The purpose was to improve the quality and understanding of audience ratings. That purpose would be fulfilled by three actions:

- Require rating services to describe what they do;
- Audit rating services to determine if they do what they say; and
- Conduct continuing and effective research to improve rating methodology.

Work began immediately.

The hearings changed the way the industry operated. They were a force that improved the audience ratings systems. Arthur Nielsen, Jr. pledged to the Congressional Committee the Nielsen Company's full cooperation in achieving the "broad and worthy" objectives that were targeted. Some clients publicly defended Nielsen throughout this period. In private, all clients were adamant in their conviction that they would not be blind-sided—not be surprised again by a ratings service. Full disclosure and auditing of procedures would proceed forthwith.

Not everyone liked the congressional hearings process. The investigators were zealous—and at times over the top. During the hearings, it had been asked of Nielsen if the use of a permanent panel of sample respondents meant that members might be ferreted out and influenced to distort the ratings. After the hearings concluded, there was an incident that raised eyebrows. One of the investigators used information obtained during the hearings to aid a well-known entertainer. Some Nielsen homes were contacted to encourage their viewing of an upcoming special featuring the entertainer. The efforts were discovered by Nielsen and the culprits were called to account. The episode was kept under wraps but those who needed to know were informed and the whole event served to take some of the pressure off of Nielsen with the client community.

Media Rating Council

As a result of the governmental threat, in less than 1 year, an entity to audit research procedures was created. It was originally called the Broadcast Rating Council, which is today's Media Rating Council. It was to assure ratings companies said what they did and did what they said. Was any of this anti-competitive in restricting innovations or options? The Justice Department okayed the actions. The audits were firmly grounded. The industry had spoken.

To assure consistency in the mechanics, the industry cooperated in creating standard definitions, standards for reports and disclosures and standards for presenting sampling error estimates.

The research companies had differing reactions. Nielsen worked with Ernst and Ernst's Operations Research group to create an effective and efficient working model. The E&E staff was highly professional and the early workings were relatively smooth. Over the years the attitude toward the Audit functions ranged from those who saw it as an asset—an effective, independent quality control check—to those who sought to avoid such crosschecks or to treat it as an unnecessary nuisance to be challenged.

The audit operations have benefited from top quality leadership of Executive Directors Ken Baker, Mal Beville, John Dimling, Mel Goldberg, Dick Weinstein and today, George Ivie—who you will hear from later this afternoon. All of these individuals with their respective Boards of Directors worked effectively to sort the wheat from chaff and generally served to be an influence for full and accurate disclosure and for improvement.

The MRC today is an important and vital resource. I believe the MRC would be even more valuable if its reports were open to the industry. The audits are closed to all but MRC directors. The industry only knows pass or fail. That is insufficient. I believe that open information is a force for understanding and improvement.

Research companies should have no pretenses. The founder of Arbitron, Jim Seiler, had a favorite saying. "The three things you do not want to see made are sausage, legislation and ratings." There is also the analogy between growing mushrooms and clients. Both should be kept in the dark and covered with manure. The humor is too close to reality to be funny. Knowledge is power. Knowing strengths and weaknesses is key to using data intelligently.

CONTAM

Back to the story—by 1964 the industry was working with standards and definitions, disclosure and audits. What about the third commitment, to improve the state-of-the-art? A good share of the early work was dedicated to defining where we were. How good or bad were the ratings? What could be said on that subject?

On January 15, 1964, three network executives testified before the Congressional Committee on the newly formed CONTAM and its early work. Through extended studies CONTAM demonstrated that sampling theory does apply to measurement of television viewing behavior. As they said it, "relatively small samples give good estimates of TV audience size." They also committed to tackling other problem areas. CONTAM was joined in this work by a parallel local committee, COLTAM.

That was the beginning of 35 years of methodological review and research on the quality of the Nielsen ratings. Until 1999, a continuous expenditure of funds by a limited number of industry leaders provided data independent of Nielsen or other syndicated services to cross-check, evaluate and highlight strengths and weaknesses of the audience estimates used in the marketplace.

In 1969, a Professor of Business Statistics from New York University, Gerald Glasser, and I started a research company, Statistical Research, better known as SRI. Gerry had been a consultant to the networks and the media industry during the prior tumultuous years.

Among our first projects was a series of telephone coincidental studies to measure national audiences. The results were presented at the 1970 ARF Annual Conference and subsequently published in two booklets titled "How Good Are Television Ratings (continued)." The work examined the effects of methods on results. The best method yielded results remarkably similar to Nielsen on TV set usage. In this and subsequent research we found consistent differences on persons ratings, where we found more young viewers and fewer older viewers than Nielsen.

In the 1970s and 1980s, many independent studies were completed. There was a continuous flow of work. Research on the effects of weighting and editing rules and of data gathered along with audience estimates was done. When a new measurement technique was introduced in Chicago, the resulting disputes were addressed through an independent study. In 1981, industry sponsored estimates of evolving technologies were begun. It was a top quality effort to track TV sets and related hardware in the home. Later that work was extended to cover computer and telephone devices.

The efficacy of product ratings was explored in 1972. Arbitron had begun to measure the purchase of packaged goods in their TV diaries. They produced ratings within product user categories. A widely sponsored industry study that was reviewed by an ARF Technical Committee demonstrated that program buying decisions based on the product data produced inferior results to those based solely on standard demographic ratings. It was a classic study. It demonstrated that, in this case, more was less. The added data were not reliable and were harmful to media buying decisions. Arbitron ceased gathering and producing the data.

In the 1990s, projects around how people use media were added. They were designed to look at the media through the eyes of the consumer. Over a dozen such studies were conducted following an agenda directed by an industry committee.

There are two ways to assess any data stream. One is independent research such as the work I just described. The second method is to track the internal consistency of Nielsen information. For over two decades, SRI compiled and tracked Nielsen national audiences and sample statistics for CONTAM. Television usage over 3 dayparts was analyzed on five bases. The purpose was to detect unexpected variations in HUT levels based on statistical principles. The data were deseasonalized and compared to a long-term trend. If something jumped out of line, it was clear to all. Rather than relying on anecdotal evidence, we had the full story. Discussions about unexplained variations were cast in a broad light.

Sample statistics were tracked in the same way. Statistics on implementation of the Nielsen sample and on tabulation were inspected on 12 different parameters. For example, "normal levels" were defined for unidentified tuning, meter overflow, and set disconnects. The abnormal was held up for possible action and resolution.

Over the years, this standard quality control warning system identified extreme changes in usage levels. After investigating, sometimes a cause was identified and corrective action taken. On other occasions, the tracking was used to correct a laxity in operations that contributed to extra variation.

Another major industry effort, the people meter review, began in 1987. The proposed introduction of people meters by AGB and Nielsen was a landmark change in the measurement of TV audiences. There were many questions. Both AGB and Nielsen agreed to participate in a detailed analysis. However, before the actual work began, AGB withdrew its proposed service from the U.S. market.

The purpose of the review was to understand and describe the issues and to identify possible improvements in the system. The product was seven reports including a data review, exit interviews with former panelists, sampling and field implementation, household contacts, processing and editing, an engineering review of the hardware and a final report.

It asked that Nielsen act on three recommendations:

- Defined procedures and quality control,
- Ongoing methodological research; and
- Client involvement.

Reactions to the effort were enthusiastic. It was called exhaustive, a new standard of excellence and a blueprint for change. Nielsen called the work "an outstanding effort." It was a unique chance for all of the industry to be on the same page.

In 1990, CONTAM published its *Principles of Nationwide Television Audience Measurement,* which was in part a derivative of the earlier People Meter Review.

To this point CONTAM and the industry had focused on checking and assessing methods and alternatives. It was a reactive role and the industry was frustrated that promised actions from the people meter review had not been implemented. Therefore, beginning in the early 1990s, the posture became proactive with S-M-A-R-T. S-M-A-R-T was an acronym for Systems for Measuring and Reporting Television.

The S-M-A-R-T story is long and involved. By mid-1999, when the operation ceased, S-M-A-R-T had created a complete laboratory for future measurement in the digital age. New measurement hardware was designed and built. The Philadelphia market was the test bed. Clients were delivered 9 months of Philadelphia audience data to their desktops on a weekly basis. Software enabled instant analyses at no marginal cost. In the end there were 30 telecaster, advertiser and agency sponsors.

Since 1999, independent initiatives to understand and improve the Nielsen systems have effectively disappeared. The measurement challenges are greater than ever, but client managements are unwilling to fund such work. The willingness to attend to the problems, reactively or proactively, has disappeared. That brings me to accountability.

Accountability

The 1963 Hearings and the associated fear of regulation was a powerful attention getting event. The industry and Nielsen became riveted on taking responsibility for what they did and what they sold. Consider the industry:

Industry. In the 1950s and 1960s television was dominated by three players. Each recognized a public responsibility for use of the public airwaves. Stations were licensed and obligated to ascertain and serve public interests. The networks studied the medium and its relation to society.

Two examples. First, Frank Stanton—another of those Founding Fathers in the ARF compendium—as CEO of CBS, gave money to Paul Lazerfeld and the Bureau of Applied Research at Columbia to study television audiences. In 1955, Stanton said "we owe it to our audience as well as to ourselves to establish some systematic method of inviting the public to participate in shaping what we do." From that 1955 comment came successive studies published in 1963 under the title of, *The People Look at Television,* by Gary Steiner and a later update by Robert Bower published in 1973.

Second, NBC funded a huge longitudinal study over several years on the effects of violence on television for children. The resulting book, *Television and Aggression* by Stipp, Rubens, Milovsky and Kessler was published in 1982.

In the 1960s, the three network television research departments numbered about 100 people each. Then, the research departments had a budget to do research on the ratings. From the 1960s through the 1990s, some media entities spent heavily to understand and improve ratings quality. The S-M-A-R-T initiative was supported largely by selected networks to the tune of $45,000,000.

The CEO's who approved the S-M-A-R-T expenditures knew that they were in for the long haul. Payout would be years away. It was okay if S-M-A-R-T diluted current earnings. But CEO's change and CEO's also change their minds. The year 1999 was financially crazed and some of the then-current CEO's saw a greater bottom line by cutting costs and learning to live with ratings as they were.

Today, with a fragmented industry and each network run as a profit center, the corporate research department is likely to be ten people with no independent budget. There is little focus on the long term. In the 1990s, some of the most successful players sat on the financial sidelines and reaped the benefits of independent research without paying the price. Today, all seem to have adopted the sidelines posture. Evidence of action to test or fulfill a public responsibility is thin; the Wall Street accountability is clear. Research on research does not add to today's sales; it dilutes earnings. That is the pox on our times.

Nielsen. In the 1960s, 1970s and 1980s, Nielsen supported the industry initiatives to improve the research product. They rightly saw this work as buttressing the industry's stock of knowledge and therefore helping their cause. A network research director used early CONTAM work to tell the ANA that Nielsen data were accurate and reliable and should be used with confidence in the television marketplace. Nielsen cooperated with independent studies by supplying corresponding data for comparisons and participated in analyses. When disputes arose about methods or measurement changes, those disputes were sometimes settled by a jointly sponsored study where Nielsen paid half or by a summit meeting where data were presented and a resolution planned.

Because of the scope and nature of the People Meter Review, Statistical Research sought and received legal protection from Nielsen against any claim arising from the conduct or reporting of the study. After that review was completed, Nielsen refused to extend that protection for proposed future work. That refusal and Nielsen's resistance to the industries more in-depth involvement was one reason S-M-A-R-T was initiated.

Another episode of inexplicable changes in television usage in 1990 and Nielsen's resistance to investigating and correcting the cause was also a motivation behind S-M-A-R-T's launch.

The network people will tell you that while S-M-A-R-T was there, Nielsen was its most responsive self. When S-M-A-R-T happened, a whiff of competition stirred a reaction. Innovations were talked about and some things actually changed. Response rates on the national panel improved. Questions were answered promptly. And corporate contracts across media entities that Nielsen had refused to consider suddenly came to be. Nielsen reacted.

Today's Wall Street-thinking also influences Nielsen. Anything Nielsen does over and above producing rating reports reduces their earnings. That fact is a powerful deterrent to investing in improvements.

Current Status

To conclude, I offer my perspective on where we are today. I grant that the Nielsen task of measuring television audiences is incredibly difficult. It is far tougher than what was done with S-M-A-R-T. S-M-A-R-T had the advantage of working in a laboratory, of a fresh start and of "off-line" innovation. Nielsen needs to innovate and introduce new systems into a service that is valuing the assets of others 365 days per year.

The scary realities are these. Everything Nielsen does affects the ratings. Every change in procedures, every change in operations affects the ratings. The perceived changes as seen through Nielsen data are additive to any real change in behavior that may occur.

For example, when Nielsen passes over a high tech home, ratings are changed. When Nielsen alters weighting, or persons prompting sequences, or the meter itself, or methodology in any way, the ratings are changed. Some clients are helped and some are hurt.

The methods changes may be planned or unplanned. When meter fault levels increase, the ratings are changed. When Nielsen decides to install LPM markets and changes field assignments so that home maintenance calls are delayed, the ratings are changed. Does anyone doubt that the male teen and young adult audiences that were lost and reappeared a year later were due, not to real change in real viewing, but to changes in Nielsen operations? When methods are changing and when there are layers of changes, can the media guarantee audience delivery to their clients? On what set of numbers should the guarantees be based?

The first and most important recommendation from the 1987 People Meter Review was that Nielsen institute a more careful approach to its methodology. It called for defined procedures and quality control. That recommendation was framed because changing methods change results and create aberrant data patterns.

Nielsen appears to have been almost cavalier about making changes. There has been too little attention and too few analyses to support changes that have occurred. That fact explains, in part, the extended controversies. Another contributor to the controversies is that Nielsen has never picked up the quality control monitoring of its own data—or if Nielsen has, it has not been shared with clients. With today's technology, Nielsen should have quality control charts available simultaneous with the release of rating reports. They should cover the levels and trends by daypart and age groups. They should cover all aspects of the sample. Without that type of data tracking, sellers or buyers cannot know how to interpret today's ratings. They act on faith and hope that the emperor is clothed.

The state of Nielsen metering technology is troubling. One problem is that there is a potpourri of meters and meter installations. It is a collage or patchwork quilt of methods. Nielsen bragged some years ago that it had several hundred different ways of metering a home. That says there are too many moving parts for the system to work effectively. What the industry needs is one simple and effective metering method; one meter that supports reporting of what is tuned to the 10-second level rather than the average minute. An average minute rating masks channel changes. The AP meter was around the corner in 1995; it has taken 10 years to get here. It seems the distance between TV technology today and meter design is ever growing. The hole gets deeper.

We know that many predesignated sample homes have been omitted because the meters do not work in complex homes. Reports of high fault rates means others are also omitted from the tabulated sample. Faults occur because the meters are not sufficiently robust to deal with the real world environment. Those homes that fault are a biased subset. Faulting homes are not randomly selected.

I am omitting discussion of Nielsen reporting systems. A key value element with data is accessibility in a friendly and affordable manner. Nielsen clients complain bitterly that they do not have such access. The ratings cannot be analyzed in a timely and effective way.

So with the methods changes, with the meter frailties and with the reporting ineptitude, how much confidence should clients or society place in today's ratings? That question is left hanging. We don't know.

Another recommendation from the People Meter review was that there should be continuous methodological research. Independent crosschecks are needed. Nielsen has supplied independent checks in the past. For 40 years, Nielsen had two separate systems. The sum of NSI local ratings were compared to independently derived NTI national ratings. There was a distinct and consistent pattern to the differences. That reassured clients of both services. With the merging of local measurement into the national, that crosscheck disappears.

In the early 1960s, Nielsen did a noncooperation bias study to check independently the effects of nonresponse on NSI measurements.

The fact of Nielsen taking responsibility to check its own systems needs to be reestablished. Some basis for assessing the degree of confidence associated with Nielsen ratings must exist.

Conclusion

Life is filled with uncertainties. We learn to live with uncertainty—we can curse the darkness—or we can become proactive. The 1963 hearings gave a jolt to the media audience measurement world, and the industry was energized for decades. That energy has been dissipated.

Television audience measurements today are shaky. There seems little point to ranting or raving at Nielsen or engaging in public warfare. Such actions only seem to become a distraction. The first step to solving any problem is to face reality. My view is that the Nielsen ship has lost its anchor and is adrift, no land in sight.

The industry posture is distressing. The work done pre 2000 was not for charity. It was work done to protect the media business base. It was work to provide meaning and context to the audiences being sold. Can you imagine a network executive going to the ANA today and telling them to use the Nielsen data with confidence? Those who funded studies before, now say the industry should do it. What industry? There is no media industry organization that brings together broadcast and cable to do this fundamental work. The ARF is a possibility, but finding the right commitment will be harder than finding the right organization.

Regaining confidence is beyond the client or Nielsen research community. We have the talent to do better. Art Nielsen's 17 years and $15,000,000 investment reflects thinking from a different planet. We lack management leadership. We lack management commitment to invest, to build and to maintain a modern state-of-the-art system. The clients and Nielsen both must be willing to dilute current earnings to assure future earnings.

The last recommendation from the people meter review was for Nielsen to commit to client involvement. That meant involving clients in setting priorities. Not everything can be done at once. Clients need information to permit realistic assessments of the existing data. Legal clearance is not needed to involve clients in a proactive process. We simply need a competent and confident Nielsen management that is willing to engage clients meaningfully and to be candid, warts and all.

The advertisers, the government, someone needs to bring Nielsen and the clients to a new awakening. Keep in mind the goals of the hearings and of the People Meter Review. Let's all get on the same page. We work better when we work together.

There is one thing I feel I can say today with dead certainty. The current direction of audience measurement cannot go on forever. The TV currency will become weaker and weaker. It will be funny money. At some point the wheels come off the bus.

Senator BURNS. Thank you, Mr. Metzger.

And I've noticed the attendance today of Representative Maxine Waters, from California.

And we welcome you. And if you have a statement, why, I'd be happy to welcome you to the dais. I know you called earlier, and you're sure welcome here today as we go on with the questioning.

From the testimony we gathered at the table—there was a series of questions that came up as we put this hearing together. There has been controversy with the MRC. What role does it play? How does it play that role? And do you give it more power, or teeth, or do you take away some of its powers? To us, who have to look at problems in the industry, we have to have someplace to go in which to base decisions, policy decisions. MRC is the only one we have on this particular issue. So, I would ask the question that everyone, I guess, would ask today, If we have nowhere to go for our information but to the MRC, then where do we go for accurate information and the information that we need in order to bring some accountability to the industry that depends on advertising dollars to survive?

Mr. Mullen, would you like to start with that? And then I'll ask Ms. Whiting if she'd like to respond to that.

Mr. MULLEN. Well, I think the question hits the issue dead on. The MRC is an organization, historically, that we've been able to rely upon for independent verification of the processes that Nielsen uses to gather ratings data. The MRC's charge is to make sure that the measurement services are valid, reliable, and effective. If Nielsen had, in fact, followed these processes voluntarily, we wouldn't be here today with the problem that we have. The testimony—written testimony that I have submitted shows a pattern and practice of activities on Nielsen's part, largely ignoring the concerns and requests of clients and the actions of the MRC, and rolling out new technology without accreditation, despite the concerns that we have clearly pointed out and they have yet to provide any answers to.

Senator BURNS. Ms. Whiting, would you like to respond?

Ms. WHITING. Yes, Senator Burns, I would.

[Laughter.]

Senator BURNS. I thought you might.

Ms. WHITING. I'm sure you're not surprised.

First of all, we are committed—let's just go back to something that we were asked publicly to commit to—we are committed to the MRC process. I've made that statement hundreds of times. We are also committed to adopting the voluntary code of conduct, as long as other research companies, as well, have reviewed the issues. So, start there.

Second, we've taken every major service we have and voluntarily applied for accreditation. The issue here, I think, is about the timing of the accreditation process. And we have, in fact, applied for accreditation in each of the people meter markets. You know that some of them are accredited, that the rest is an ongoing process. But since it is a voluntary process, and since the process that we participate in does require an audit, which we are doing, and have done, in each market, I feel we have, in fact, been cooperating with that process.

And as to the point of plowing ahead without time, I just would remind you, we have many clients. We have thousands of clients. In any given market, we have buyers and sellers. This all started because advertisers asked us to take the same technology that we had looked at nationally, in the National People Meter Service, and bring daily reporting of audience demographics to the top markets. And that process then began a conversation with many clients.

This didn't happen overnight. It wasn't pushed down anyone's throat. There are, as you've seen from a number of the letters that you've received, supporters on other sides of this issue. And I think, ultimately, what we were trying to do is balance buyers' and sellers' requests for improved information, and the timing sometimes isn't to everyone's liking. But, in fact, we delayed every major rollout of every people meter market based on conversations with clients.

Senator BURNS. Mr. Ivie, would you like to respond to that, please?

Mr. IVIE. Yes, sir, I would. Yes, Senator Burns.

I want to try to——

Senator BURNS. Pull up the microphone.

Mr. IVIE. Sorry.

Senator BURNS. Thank you.

Mr. IVIE. I want to try to give you maybe a little bit more background. And I know this hearing isn't about LPM, specifically, but that has been a topic of why we're here, kind of, what led us here. So, there are a couple of truths on both sides of this equation that I think you need to know about.

The first truth is that the LPM system, we believe, and also across a broad spectrum of the industry it's believed, that the LPM system is, indeed, more accurate than the system it is replacing. And it has been audited and verified pretty strongly that it works pretty well. So, when we audited these LPM systems, at first, we saw that there was a mix of performance in these new markets. We saw that Nielsen did certain things very well, and they did certain things not so well when they implemented this market. But yet our Television Committee, made up of some 65 organizations from across the industry, decided that we needed to really do something special here. We needed to recognize to the marketplace that this was a superior type of measurement, but we also needed to tell the marketplace that there were problems with the LPM system that still needed to be addressed. So, we have this status, and several of the markets continue in this status, called "conditional accreditation," where we said, "Nielsen, you can roll this product out, we believe it's responsible for you to roll this product out, but we want to recognize that this product isn't done yet, that there needed to be some very intense efforts to correct certain things," and, for instance, Mr. Mullen's testimony referenced the faulting, which is one area that we've been concentrating on with Nielsen. But there are others.

Now, the other truth on the side of this LPM is that Nielsen has, in fact, rolled these markets out before audits have taken place. That is a problem. That's a problem that, sitting in my seat, I would never like to see happen again. I don't write bills, I don't do legislation. I wouldn't want to substitute my experience for your experience in that regard, but what I can tell you is, we've said that several things need to be addressed. One is that we don't want it to happen again that the marketplace is uninformed about the quality of a product when it's rolled out. Nielsen should commit to that, and we want that commitment to hold in the future.

We also think that our voluntary code of conduct will help more clearly define how we interact, make sure Nielsen and other rating services—because this isn't just about Nielsen—react to audit findings promptly. And I think the communication linkage that we're requesting will make sure that if there are issues like this in the future, if this process has a problem 2 years from now, when your attention is elsewhere, for example, we can come back to the Executive Branch or Congress and say, "Hey, we have a problem. We have a rating service that's not listening to what we're saying."

So, that's why these two truths need to be considered, that not everyone here—they're all telling you the truth, probably, but the idea is that there are multi-sides to this equation.

Senator BURNS. Would you like to respond to that, Ms. Whiting? This is the way I learn things—you put all the stakeholders at the table, and then we start this dialogue. And this is very good for me, to be real honest with you. OK?

Ms. WHITING. Thank you, Senator Burns.

I think I said earlier prior to—in fact, I believe it's true that prior to the introduction of people meters in individual markets, the process for audits and accreditation had been that a service would be up and operating—for instance, we have many metered markets. We have meters and diaries. The service would be launched, an audit would then be performed on a live market. That was our procedure for those kind of markets. When we went to the people meter market, as Mr. Ivie has described, I think there was a much heightened sense of review by our clients, in spite of the fact that we had operated a people meter service for many, many years, about that service. And we did have people ask us to do audits before the service, and we replied that the process would have to be an audit upon a live service. In spite of that, what I've just indicated earlier, the voluntary code of conduct would propose that we would do audits before a service was offered. And we've already committed to doing that to the MRC regardless of whether the voluntary code of conduct proceeds. So, I think this issue should be one that we can say we agree upon.

And the other point really is important, which is, we have many clients. I keep saying this, but the other side of the house, the advertisers, who want information more quickly, have been talking about this for years. And their urgency is not reflected in some of these comments.

Senator BURNS. Ms. Crawford?

Ms. CRAWFORD. Thank you, Senator.

I would like to say that, as an advertiser, or an agency representing advertisers, we almost screamed our way to getting LPMs in a—faster and faster and faster, because the service had been available nationally, since 1987, I believe. I believe that's the date.

All that being said, I think that it bears reminding of everybody that the LPM, from a fault-rate standpoint—and if you can use the term "fault rate" as it relates to the meter diary, which is not quite the right terminology, but it's close—the fault rates in the LPM are better, if there is such a way to say that, than they are in the meter diary. And yet, we never came in front of your Committee when the meter/diary markets were out there. And I would have to ask if that's because the ratings are higher in the meter diary; and so, they were acceptable. Now we're here, and the ratings are lower, and we're now really talking about the diversity of viewership in all of these 130 channels that the American public is viewing every single day that is now measurable by an LPM technology that was not measurable in the meter diary technology, never mind the diary-only, both of which, by the way, are accredited by the MRC.

Senator BURNS. Tell me about fault rates. Define "fault rates" for those of us who do not understand the term.

Ms. CRAWFORD. Fault rates, in the world of the LPM—I don't know why I'm the one who's doing that, but——

[Laughter.]

Ms. CRAWFORD. George can do that. I actually—I do know what they mean, but I'd be a lot happier if George did that.

Senator BURNS. OK. Mr. Ivie?

Mr. IVIE. Yes, I'll try to—I want to do two things, if it's OK. I want to——

Senator BURNS. OK.

Mr. IVIE. I'll talk about "fault rates," and define those, but I also—Ms. Crawford raised the question about the consistency of our treatment between diary markets and LPM, so I wanted to spend a minute on that. But let's talk about fault rates first.

Fault rate is really the situation where the household that's participating in Nielsen's panel is not interacting properly, or as designed, with the Nielsen meter somehow. So, it could be a hardware thing. The household could have unplugged the meter or moved the meter or it's an electric problem in the household, or they could—in the case of a people-meter household, they could be not interacting properly with the mechanism by which they record their presence in the room when the television is on. So, if the television is on, and nobody has entered themselves as a viewer, and they've changed a channel on the set or something like that, that meter is smart enough to recognize, "Hey, there's got to be somebody there. No one has told me that they're there." So, that data is of suspect quality.

And Nielsen has controls that say, "If we have enough of these conditions, where there's suspect quality, we should remove that house from the ratings for the day." And for most of these faults, it's just removed for a day. It has the ability to be in the sample the next day, and that condition would have to reoccur the next day for the household to be removed. So, when Mr. Mullen said—and I don't have those statistics in my head, but he said in his testimony that a third of the African American—or almost a third of the African American and Hispanic households were not reporting on the average day, that means that they faulted or didn't interact properly. Actually, our more recent experience is less than that, because these fault rates have been getting better as initiatives have been taking place. But that faulting is a difficult problem, because you have to coach the households on how to interact with the meter and not unplug it. But that's what "faulting" is, when they're not interacting properly.

One thing that I want to say, to talk about equality of treatment, is, when people fault, they're almost certainly interacting with the television set. It could be that they're just moving the set, but a lot of times, most times, it's that they're watching television and they're doing something to the television that creates the fault. So, we know that people that fault a lot tend to be watching during that time period. So the—and you can tell. If you look at households that fault a lot, they use television more than households that don't fault a lot. And I don't think anybody would dispute that. We've seen that hundreds, thousands of times.

That's why there's a difference in treatment from the MRC. We know that in an LPM household, and in these people meter households, faulting is directly correlated with when people are using the television. In the diary service, which I'm not going to sit in front of you and say is perfect—we have initiatives to try to work with Nielsen to correct that—we know that that is not directly linked to viewing, necessarily. It's linked to other things. "I'm too busy to complete a diary. Maybe I can't read or write." It's linked to a lot of other things—literacy, maybe I'm used to working on the Internet, I'm not used to writing a diary, et cetera.

So, there are a lot of things that come into play, but not necessarily as direct of a tie to television viewing, as we see in this LPM. And this stuff needs to be studied. But there is a difference in treatment, because there is a difference in the problem. Every problem needs a custom solution, and that's why we're focusing in two different ways on these services.

Senator BURNS. I'm going to go to—I'm going to go to Mr. Metzger, then Mr. Mullen, and——

Mr. METZGER. Let me describe "faults" for you in a simpler way. It's going to—some households, it's not processed, something's wrong. That's a fault. Nielsen designates a sample, that should be measured, to count everyone. Some of those homes cannot be installed because the meters will not accommodate modern digital delivery systems and recording systems. So, you miss those homes. Then you have homes that fault, so you miss those homes. Now, both of those homes are not randomly selected, they're particular kinds of homes. In the case of the faults, we know those occur much more where there are more sets or more people. Interestingly, in White households, 11 percent of White households have 5 or more people. Twenty percent of Black households have 5 or more people. And almost 30 percent of Hispanic households have 5 or more people. So, that's the reason minorities should be very concerned about these systems, whether it's the meter diary or the A/P meter. They both have the same problem. And part of the reason those faults are so high and why we're skipping homes is that the metering technology is still based in the past, it is not up to snuff with modern technology. You can't expect people—up to a certain limit—you can put a certain task on people—you have to make it easy for them. And the task for them now is too difficult. That's the problem.

Senator BURNS. Let me offer an opinion here, because I don't want to get too far astray on people meters and this type thing. That's a technology that we can take up in the MRC, and to say why we can't make accreditation here, or recommend accreditation, or whatever, I think that's for the industry and the MRC to work out. And if they find some problems with it, then I think it's incumbent, or should be incumbent, on the sampling company, such as Nielsen, to try to work on those fault rates and to make them whole. That's the real purpose of this hearing, to be right honest with you. I can't judge, here, which is best. That's not what this is about. This is about getting a fairness with the—and doing business with the only game in town, and how we get these people together.

Mr. Mullen, you want to respond?

Mr. MULLEN. Yes, thank you, Mr. Chairman.

The point of fault rates, in bringing that up, is not—we could debate that all day long. As I say, you can do anything with numbers, and that's not our purpose. In fact, that's why the MRC exists, so that we can all share and analyze that data to determine if Nielsen is, in fact, delivering the product that they have sold to us in the marketplace.

The point that Mr. Metzger makes is absolutely right. It's the key audiences of homes with five or more people which tend to over-index—and in African-American homes and in Hispanic homes—that are also our key audiences, skew into the younger demographics, and young homes, that tend to fault on a more regular basis. When I referenced one-third of African-American men and

Hispanic men in New York in a given week, that is a year after they've rolled out the service. They've shown no ability, on a consistent basis, to improve that. That's what the MRC is looking at. That's why the MRC has not given full accreditation to the service in New York. And that's our only concern, is, don't commercialize this product in additional markets like Washington, D.C., and Philadelphia, until you've demonstrated to us that you have the ability to measure these audiences properly in the Nation's largest markets.

Senator BURNS. Ms. Whiting?

Ms. WHITING. Yes, please.

I think, because we are talking about broad quality here, one of the measures of quality is fault rates. But it's not the only one. It's the sample size. It's the population that you're measuring. It's the characteristics and the quality. It's the—it is the technology, which allows you to look at the breadth of channels, 24 hours a day, 365 days a year. It's the cooperation rate. And we are lucky, actually, with people meters, to be able to have the technology that allows us to know when someone's not doing what we would like them to be doing, or when a TV set is moved or unplugged. And that has to be looked at in a relative way. On every broad measure, our people meter service is better than the service it has replaced. And there are always going to be issues with individual days and individual segments. And that's true of polls, and that's true of any measure and any statistical sample you take.

But I think, to Ms. Crawford's point, we do need to look at the fact that we have diary services in some markets, meter diary service in others, and then people meter service. And this is an improvement over the current system, and one of many things we have to continue to improve, and we do that in every one of our services. They have to have a commitment to improvement. So, I think it's one of many measures, and it's really somewhat disingenuous to point out one aspect of what is a greatly improved system that allows us to report many, many channels every day with more people of color, with higher cooperation rates, and with better technology.

And I'd like to add that we do not, anymore, with our A/P meter, and with the recent addition of our ability to measure digital video recorders, bypass homes for technology reasons, which is something Mr. Metzger said.

Senator BURNS. Well, I want to—I'm going to throw out another question here. When you go out and you have to locate your, whatever it is, a diary or the people meter, you knock on the door, and you said, "Would you like to be, or could we ask you to be, a person that would do this sampling for us?" how many times are you turned down? I mean, do you have a turn-down factor that people—I mean, I'd like to know, when you knock on the door, who says yes and who says no and—because I know it has to be a voluntary program, and there has to be consent. I'd like to know, have you got any kind of a rate on that?

Ms. WHITING. Of course we do. One of the things we have to report in our different reports, whether they be a diary report or a meter diary or the people meter, are cooperation rates. And that's what I think you're asking.

Senator BURNS. Yes, I think that's what I'm getting at.

Ms. WHITING. And they're different for different markets, and they're different for different services, and they're reported, if it's a daily service, every day, if it's weekly, every week. In that local people meter service, the average cooperation rate is about 40 percent, which means 60 percent of the people turn you down. But if you think about polling and marketing research, that's actually very high.

Ms. SHAGRIN. And one of the problems is that the people that it's hardest to get to say, "Yes, I'll be in your sample," are the same people that it's hardest to keep giving you reliable data. So, the point is, 40 percent is good. Ninety percent giving you usable data is good. But if you're totally excluding, or almost excluding, certain types of households, then the resulting audience information is flawed. And I think the focus on the MRC—at the MRC has been, is the audience—are the audience estimates biased? Is there a flaw there? And is it fixable? And I think the pressure has been to say, we think it's fixable. We think it impacts the quality of the data and the reliability of the data and causes some differences from day to day. Because if 20 young men in New York are providing usable data on Monday, and 20 fewer on Tuesday, your ratings for adults 18 to 24, or males 18 to 34, change those 2 days, it has nothing to do with real change. So, we've been focusing, at the MRC level, on, what are the things that we see in these new markets that may be causing a bias? What are we pointing out to Nielsen? And this is why I believe the MRC drives consistent improvement. What needs to be fixed? And then constantly reviewing that to say, "OK, now it is a level that we are very comfortable with." And, as George said earlier, the conditional accreditation was a very new thing for the MRC, but the MRC membership agreed to it, because they wanted to send a clear message that there were a lot of things that were better, but there were also a lot of things that weren't better and needed to be addressed.

Senator BURNS. OK. Mr. Mullen, you've shown some interest in this statement? Do you want to respond to that?

Mr. MULLEN. No, I certainly agree that the process of accreditation has been slowed for the LPM, but I think it's largely because MRC is not yet comfortable that Nielsen is delivering on the product that it has designed.

Senator BURNS. Mr. Ivie?

Mr. IVIE. Yes, I just want to add two points of clarification. Ms. Whiting quoted a response-rate average of 40 percent. That varies widely sometimes between markets. It could be higher than 40 percent, or it could be lower. For example, one of the markets in play that tends to be lower is New York. That rate is in, sort of, the mid-1920s, is my recollection, in terms of response rate. So, those response rates vary a lot. If you go to smaller markets or more rural markets, for example, those response rates tend to be higher. More urban markets, where it might be harder to get mail delivered, et cetera, those response rates can be much more difficult and lower.

I just want to spend a second on—the focus of the MRC is not—is—when we conduct audits, we look at literally hundreds of performance areas and standards areas when we look at a product.

Faulting has been discussed here today, but we look at response rates, sample distribution, you know, the procedures in the field to install households. And, a lot of times, when we don't comment on things, it's because they're working good. And we saw, when we audited these LPMs, that there was a lot working good. And faulting is one thorn that remains. And faulting has improved somewhat in some of the markets, but it's—I mean, those markets remain conditional, because we still don't believe that faulting performance area meets our expectations.

Senator BURNS. OK. I've got a new question. Let's talk about the legislation just for a second. Some have said that this bill would raise barriers to entry. And I know it can cost a lot of money, $100 million or more in development costs, and several years to roll out new measurement services. But MRC audits can cost $100,000 and take a few months. That's 1 or 2 percent, in money terms, and not much more in the terms of time. I don't see that as a barrier. Tell me if I'm wrong.

Ms. WHITING. Senator Burns, may——

Senator BURNS. Yes.

Ms. WHITING.—I reply?

I think the cost is not so much the issue; it's the time. And it's that there is no clear knowledge, the way the bill is drafted, of the amount of time that it would take to accredit a service. And so, as I understand the bill to be written, if you have to have every change to an accredit service accredited—and I think that is the way it's written today—before you can actually offer it, then I do believe, if you are creating a rating service or putting together innovation or testing a new technology you want to deploy, you do not know when that service will be accredited. You have clients who are asking for it, you have contracts, you have a process, but you could easily spend a year. And we have had cases where the accreditation process has taken a year, or more. And if that's the case, this would not allow any business that I know of to put that process in place, and I think it would also give pause to anyone entering the business, if you did not know when you could actually commercialize your service.

Senator BURNS. Mr. Ivie?

Mr. IVIE. I just——

Senator BURNS. Everybody should have opinion on this one.

Mr. IVIE. Yes, I——

Senator BURNS. But I might——

Mr. IVIE. Just one point of clarification. The audit process, itself, never—I mean, in my history with the MRC, the audit process has never taken a year. What takes a year is if you conduct an audit and you find some issues within the audit, and ultimately those have to be corrected by the measurement service. They have to install new initiatives, make changes, change their sampling, whatever it may be. Those procedures can take a long time. Then you have to verify that they've been done. And then, ultimately, you get the decision that it completely meets the standards, and it becomes accredited. So, it is valid that we've done audits that have extended long periods of time, but it's not because of the MRC executing an audit for a year. Audits don't take a year. Audits take a month, or they might take something like that. But correcting issues that are found in audits—and this is the real critical component—MRC's about process improvement. Improving those processes can take a long period of time. We have a rating service that we audit that has been in the audit process, without full accreditation, for almost a decade, because they're trying—and this isn't Nielsen; I should clarify that—because they have certain aspects of their product that do not meet our standards, and they're figuring out, as they go along, you know, how to correct that product. And that has taken a decade, because these things aren't easy. The cooperation rates and things, trying to get people to cooperate with data-intensive research—you're trying to gather all sorts of information about what soap they use or it could be anything. This stuff is hard to gather, and these process improvements are very difficult to make. But that is how the industry is benefited. That product doesn't have accreditation. And what happens is, they don't bear our logo, the users know that there are issues. And that——

Senator BURNS. Ms. Shagrin?

Ms. SHAGRIN. If the MRC and the audit process finds a significant problem, and they go back to the ratings company, whichever ratings company it is, and says, "We cannot take a vote, we cannot give you accreditation because we found this problem," that's how it's protecting the industry. That's how it's constantly improving the ratings, themselves—and I'm not limiting it just to television—and getting the best-possible estimates for this industry to continue to make good decisions and to grow.

Senator BURNS. Now let's hear from Mr. Mullen first, and then, Ms. Whiting, we'll have all of this accumulated, and you can take your shot. Yes? And then I'll go to Mr. Metzger.

Mr. MULLEN. Yes, Mr. Chairman.

We, first, as a company—and I cannot speak for the entire broadcast industry, though I think many would feel exactly the same way—accept accreditation. If a market is accredited, we accept the ratings, without question, and we compete with those ratings. The New York market, as an example, has been audited. There have been problems that have been shown there, significant problems pointed out to Nielsen by the MRC. Nielsen has—I give them credit—tried to fix those existing problems. But, month after month, they have not shown significant improvement, and, with that, the MRC board, upon evaluating what they've been doing, has not accredited the market. They've shown the same problem in other markets. Our largest objection was, with that type of a track history, they are still rolling out additional markets without audit and without accreditation. We have no confidence in the quality of the service and the ratings that they're providing us. And that does influence the type of programming that we run and the type of programming that we will run in the future.

Senator BURNS. Ms. Whiting?

Ms. WHITING. Well, I think this discussion actually is a very good example of the different points of view on why accreditation should be mandatory or voluntary, and when it should occur, because we have many clients—and I keep going back to this—who would say that they're disadvantaged unless they have the better system that a people meter offers, or a meter/diary system, or something else. And their point of view would be that they want this in the commercial world faster. And that's one reason I believe that we have to look at the voluntary code of conduct, we have to look at the ability to have a faster way to market for big changes, and we have to use the MRC process and not make it mandatory, because if accreditation—not an audit—can take a year or two, or who knows how long, what happens to all of the clients who are disadvantaged in that system?

Senator BURNS. Well, let me say, I agree with you in some parts of your statement, but if voluntary doesn't work——

Ms. WHITING. Well, I think we may disagree over whether it doesn't work.

Senator BURNS. Well, but I'm saying—in some areas, I think it does, and that's my—I come out of the industry. I like the idea of—that we put up some sort of a situation where we can solve our own problems between the broadcaster and the samplers. But if the voluntary system breaks down, then where do we go when there's only one company out there? I guess that's what we look at. We really weren't elected by a constituency to oversee a monopoly, an unregulated monopoly. That's what, kind of, causes us concern, because that red flag goes up, and sometimes we do things that have unintended consequences, and we don't want to do that in this case, because I love this industry. And so, once there's a breakdown or somebody gets up on the wrong side of the breakfast table one morning and decides not to cooperate——

I want to hear from Mr. Metzger, please. And then I'll come back to you. You'll get your say. I'll not leave you out.

Mr. METZGER. I said in my testimony that I thought the MRC aided innovation and competition. The reason I say that is from my own experience. First, in the context of our RADAR service, for example, I mean, the MRC helps all of us track where the fault lines are—not just faults, but any issues we have—and, because of that industry inspection, it brings a pressure to do things better. And with our RADAR service—I think it was in 1999, we were looking—our response rates were dropping, also, but other services—we had experimented on how to get a better response, and we structured an experiment and went to the MRC to discuss that experiment before we did it, and got their—to buy into the process and the sample sizes and so forth. Matter of fact, at that time, there was a minority network that was not a part of the MRC, and I insisted they be invited to those meetings to discuss that. We did the experiment, got it fully accepted and implemented in a very fast time—in part, because we had the industry exposure through the MRC to help the communications process.

And with regard to competition, Michael Porter, of Harvard, is famous for saying, "The way to get a good product is to create value and signal value." With our SMART Laboratory, we created, I think, a better product, clearly. Now, how do you signal that? Had we got funding, I would have been breaking the door down of the MRC to get in there and have them work with us, just like we did with that experiment on improving response rates, as we rolled out the service. Rolling out the service was going to take 1 to 2 years. And then, parallel with that, you can bring the MRC in—I mean, how can I compete with—Nielsen has 200 salespeople, I've got three or four people out there. I can go to that one place that the industry is looking at, work with them in a positive way, and it would help me break into the market faster, rather than impede me.

Ms. CRAWFORD. So——

Senator BURNS. Ms. Crawford?

Ms. CRAWFORD.—what we have here is the fact that the industry, itself, made the decision not to support a second rating service. It was the industry that did this. It was not Nielsen or anybody else that made that decision. It was the broadcasters, the advertisers, the agencies, and so forth. So, the bottom line is, is that it's the industry that made that decision. That's number one.

Number two, I would like to remind everybody that we have the advertiser, who is paying the ultimate price here. It is paying for Nielsen's service, or anybody else's, no matter what the medium is, in the cost-per-spot, as you very well know. As a result, these advertisers have been waiting 15 years in the local marketplaces to have a service that told them the next day how well their spot that ran performed the night before. This has been a long time in coming. The fault rates are better in the LPM than they are in the meter/diary markets. And yet, we're sitting at this table over the LPM. And I'm very concerned that we are talking about this when we have accreditation on the meter/diary side and we don't have accreditation on the LPM side.

Senator BURNS. Mr. Mullen?

Mr. MULLEN. Mr. Chairman, I would say that when you talk about paying the ultimate price, ultimately, I think that is the weight borne by the stations. Not only do we pay the vast majority of the fees for Nielsen's local services—and Susan could tell, maybe, better than I, what that percent is, but certainly a vast majority of it—how our ratings are reported, based upon that ratings system, ultimately determines our rates. And if it's not an accurate system, we pay the ultimate price.

And to the point of accreditation, I know right now that Arbitron is working with the MRC for accreditation. They are submitting to the audits and seeking accreditation for a new service in the Houston market. So, I do not believe that the ability to go through MRC for accreditation would be a hindrance for entry into this business at all.

Senator BURNS. Ms. Whiting?

Ms. WHITING. Yes, Senator Burns.

Senator BURNS. Then I'll turn to Mr. Ivie.

Ms. WHITING. I think stepping back a bit—you asked, what do we do when we're here at this place, and what could you expect us to do? And over the last year and a half, starting with every piece of recommendation that our independent task force made in a wonderful group of people who worked 9 months voluntarily, to put together a review of our procedures, made a set of recommendations that we actually have implemented, are in the process of doing. In the written testimony I submitted, there are pages of quality improvements that we've made in the Local People Meter service voluntarily. And they range—everything from staffing additions, like 50 people in significant markets, to incentives, to different coaching procedures. There have been many, many focused voluntary improvements in the last year and a half. And you might say, well, that's because there has been so much attention on this issue. Of course that's part of it. But it's not all of it. And I think if you look back at the last 5 years, particularly, of investment, we have independently, voluntarily invested a lot of money to improve our service. And I think that speaks to why we believe that a voluntary code of conduct would allow us the flexibility to move improvements in the service forward as long as the rating services—and we are—commit to that fact, that there have to be audits before the service is commercial.

And I agree with Mr. Mullen that Arbitron is, in fact, working with the MRC. So are we on many of the things we do before we do them. But that does not guarantee accreditation. You can have a review of the process, and if the accreditation is mandatory, it's a different issue.

Senator BURNS. Mr. Ivie?

Mr. IVIE. I just want to address two things. Ms. Whiting mentioned our voluntary code of conduct again. Something I didn't communicate to you is, we are working on that with some urgency. We expect to have sign-off on that voluntary code by October 15. That's a goal that we've set for ourselves to work with rating services and our members to have that code completed and prepared for adoption by the rating services.

The other thing I would say is, all this testimony sounds nice. I come back to one fact. There were at least three LPM markets implemented, commercialized, without having an audit. And Ms. Whiting has agreed to that in front of you, that that won't happen again. The voluntary code of conduct requires—you know, states a clear preference, as a voluntary code does, that that shouldn't happen. Nielsen has a number of products that are not audited that we believe should be audited, and there needs to be dialogue about that. But that is really where our focus is, because that's where we provide value and provide our service to the marketplace—doing these audits, making sure Nielsen, with all of the marketplace power that has been discussed here today, complies with the MRC audit process. That's where my focus is.

Senator BURNS. Mr. Ivie, I've got a question, and I think this is key to what this hearing is about today, too, also. There's little or no competition in the field with Nielsen. I want to start an organization, a research organization. I come to you, and I present to you a methodology on how we're going to do it, my technology that I'm using. You look at it, you'd say, "I'd like to see a pilot program." I facilitate that. Can I get accreditation from the MRC with a vote after they've all looked at it, and can I compete in a market with the Nielsen folks?

Mr. IVIE. Well, you just described a very interactive scenario. You come to the MRC when you are, sort of, "baking" the product. You're designing your product, you come to us, and you bounce it off of us.

Senator BURNS. No, I've got——

Mr. IVIE. We do that.

Senator BURNS. Yes.

Mr. IVIE. You then develop a prototype of your meter, you bring it to us, we can test that in a laboratory. We can go very far in an audit to conduct that audit and get a lot of assurance for our members prior to implementation of the first respondent. But, ultimately, it is a fact that we don't accredit any research—this is one hallmark of the MRC—until we see that in operation. So——

Senator BURNS. Well, I say I will pay the bill, I'll give you—you tell me what kind of a pilot program you want me to run——

Mr. IVIE. Right.

Senator BURNS.—and I do that, and I submit it to you.

Mr. IVIE. We have no barriers that would stop you from coming to us to accredit. We audit all comers. We've never turned down an audit. If somebody came to us—I mean, one of the things—I have a stack of legal opinions about two things. One is, the MRC never discusses anything financial in any of our meetings; otherwise, we're colluding against the rating service, financially. That's strictly prohibited. The other thing I have a stack of legal opinions about historically is, we cannot turn down audits. We're an equal-access organization. We don't turn down an audit. You could come to us, we would execute that audit. And, guess what? The audit timing has nothing to do with the membership. So, no member can delay an audit. That's done by the staff, the independent staff of the MRC, who doesn't work for any broadcaster, cable-caster, or advertising agency. We work with the rating service. We establish the audit schedule and timing and when the audit will be conducted. So, that—the audit process really—there is no issue of whether that could be delayed, because the audit process, itself, is controlled by the staff. Now, ultimately, when that audit is done, we do convene our members to review that audit, read the audit, go through the pain of meeting with the independent CPAs that conduct the audit in getting all the findings. That's when the accreditation decision comes into play. It either makes it or it doesn't. And if it doesn't, there's a reason, and that has to be improved. But that's how the process works. We don't turn any organizations——

Senator BURNS. Mr. Metzger?

Mr. METZGER. I think it should be understood that the accreditation process is not any kind of mystery. Again, I was audited for 30 years and accredited for 30 years. And if you do things up to snuff, there's no ambiguity about this, it's accredited.

Ms. SHAGRIN. Could I add that the—your scenario, if you had the pilot audited, your data-collection system and tool could be accredited, your methodology could be accredited. But until you rolled it out into a real sample, your sample could not be accredited, and, therefore, the service would not be accredited. But going into rollout, you would know that, assuming you've got a representative sample, that you would be accredited, because pieces of it would have already passed the test. But without the sample, without being able to audit and accredit the sample, the service could not be accredited.

Senator BURNS. OK. Mr. Mullen?

Mr. MULLEN. Senator, in Ms. Whiting's written testimony and in her statements today, she talked about Nielsen's willingness to talk further about the voluntary code of conduct, but in her written testimony she stated it was applicable to future commercial ratings, said nothing about existing, and also said that that would be done with some give-and-take, which we read to say there are things

Nielsen needs to see changed in the MRC's proposed voluntary code of conduct. That certainly concerns me.

And then, to take it a step further, again, this is not a discussion about lower ratings. We have tried for years to work with Nielsen behind the scenes, professionally, in meetings face-to-face. Susan and I have been meeting face to face on the LPM issue now for probably more than 3 years. But we are dealing with a monopoly that, in my opinion, is acting as one. Either we allow Nielsen that monopoly to determine the specifications for their own service, or we depend upon the MRC for those specifications and oversight. And I think the bill that you have introduced, S. 1372, helps us accomplish that.

Senator BURNS. Well, I'm just going to make a comment now. I'm going to have to get some more information from the MRC. We're going to have to sit down and visit about it. Because if I go out of here and I invest in the technology, and then—and give them a pilot program any place in the country they want to take it and test it before I go into the field, before I make the big investment—because I'd hate to go out here and say, "OK, now I'm going to sample one area, one ADI," and all at once—and not get accreditation on it. That's a big chance that I've taken. In other words, there has to be some way that I know that I'm on solid ground, that I've crossed all the "t's" and dotted all the "i's" and done everything in methodology and technology that would merit your accreditation.

Mr. IVIE. One thing that I just should mention. There is something called a "pre-audit." A pre-audit is—first of all, it's kind of a misnomer, it's not an audit, but what it is, is a brief review of a rating service, where we engage—we and a measurement service that approaches us engages the CPA firm to go out and walk through the methodology. They don't conduct an audit, but how does the sampling work, how does the equipment work, how does the reporting work, all the different aspects that we generally study. This is very, very cost effective. It takes about 2 weeks to actually execute a pre-audit. But that is a service that we offer. And the end product of that service is a letter that the CPAs produce. Now, these are the same CPAs that conduct the audit, eventually, in the future.

Senator BURNS. OK.

Mr. IVIE. That letter is sent to me, the Director of the MRC, and the rating service. And that letter says something like, "We didn't conduct an audit. All we did was do a walk-through, but had we been auditing you, these are the things that we noticed in your process, in your technology, that are accreditation problems." And they communicate that in advance to the rating service. So, if—you've not spent a penny on a regular audit yet, you've just had this walk-through, and you have a list, and I have a list, of the significant deficiencies that you have. This process is designed just for the exact thing you were asking a question about. That pre-audit exists, and it's there.

Senator BURNS. OK. Yes, ma'am?

Ms. WHITING. I'd just like to reply to Mr. Mullen. We have committed publicly to an audit before commercialization of the next three people-meter markets, and that is outside of the voluntary code of conduct, for Dallas, Detroit, and Atlanta. And so, I do think

I understand that it's important, and we have committed to doing that. But, back to the point we were just discussing, this conversation is why I am concerned about a mandatory accreditation versus a very strong voluntary code of conduct, because I think you—here, you could do all the right steps, and I hope everybody would, in a new service being offered ahead of time, but you actually, until the final service or a real sample is up and operating, cannot get full accreditation. And I think that is an issue for people starting new services or improving services.

Senator BURNS. Mr. Metzger, please. I'll come back to Mr. Mullen.

Mr. METZGER. Let me first comment, I think it's clear to me today that your introduction of this legislation has aided the process of the voluntary code of conduct a great deal.

[Laughter.]

Mr. METZGER. I doubt we'd be this far along at this point. But, to your specific question about investing and creating a new meter and taking the jeopardy of doing that, again, the MRC is not some arbitrary thing sitting out on some other planet.

Senator BURNS. Yes.

Mr. METZGER. It is an industry organization. The industry wants competition. And, in 1997—late 1997, early 1998—we had our meter up and operating, and Nielsen announced the A/P meter. And, at that time, the ARF put forth an initiative to do a parallel audit of those two meters, hiring an independent engineering laboratory such as—our firm had done that by auditing Arbitron and Nielsen meters, and hired the Illinois Institute of Technology to go through those meters and see how robust they were, where the fault lines were, and so forth.

So, where there's a real option for competition that has credibility, the industry will respond. I mean, if you handle this thing right, I think you can get through—I don't think the issue of mandatory—or voluntary MRC accreditation has any influence on—frankly, I think—and I said I think it expedites it, because it brings the power together in one place. You can go and get a reading and keep people informed.

Senator BURNS. Mr. Mullen?

Mr. MULLEN. Yes, I agree with Mr. Metzger, in that this whole process has helped the voluntary code of conduct move along, but I would want to point out that that voluntary code of conduct was out and proposed by the MRC well in advance of Nielsen's decision to roll out both Philadelphia and Washington, D.C. And the response from Nielsen to audit all future markets was announced, I believe, the day after they commercialized the service in those two markets.

Senator BURNS. Well, this has been very helpful today.

Mr. Ivie?

Mr. IVIE. I just wanted—can I——

Senator BURNS. Yes, sir.

Mr. IVIE.—just address one point? It's different, though.

Senator BURNS. I've got to shift gears and go talk about BSE here in——

Mr. IVIE. All right.

Senator BURNS.—a little bit.

Mr. IVIE. Can I just——

Senator BURNS. This is a bad venue to bring that up.

Mr. IVIE. All right. I just wanted to make one quick point. The idea of the membership of the MRC—who is a member and is that a forum dominated by broadcasters—has been discussed here, and I didn't get an opportunity to really respond to that. And I wanted to just put something in the record on that.

The MRC has 95 members today. In 1964, when we were formed, we had 15. This was at the full knowledge of the Congress when we were formed. At that time, there were 11 broadcast members, out of 15. There were two—these are television broadcast members—there were two radio broadcasters, and there were two seats held by the American Association of Advertising Agencies. Today, we have 95 members, there are 27 broadcast seats. So, that's—if you look at that in terms of diluting the influence of broadcasters within the MRC, the MRC is a much more diverse organization today than we ever were in 1964, and that's reflective of, just as people have said here, the diversity of the business.

Interestingly enough, we had five seats to one organization in 1964. That was the NAB. They held 5 of those 11 broadcaster votes. We've maintained that rule. In other words, no organization in the MRC can hold more than 5 seats, and they can only have a seat for a different media identity. So, if you think about Viacom, they have a radio seat for Infinity, they have a broadcasting seat, they also have cable——

Senator BURNS. Sounds like Rotary.

Mr. IVIE. So, we have a very diverse organization. No one sector controls it. But it is true that we have issues that come up that certain sectors are very, very interested in. So, you'll see sometimes very contentious, hotly-debated issues among, you know, certain of the things we review. People do this with passion. So——

Senator BURNS. Well, it's like I said, I've got another commitment here, but I want to thank this panel, the information and how you've been candid with me and this Committee—and this will be reviewed by other Senators; we're just scattered all over the Hill today—and the way you presented your information. And I appreciate that very much, being very honest with the Committee. And we'll have to make some decisions as we go along. Maybe this legislation might have to be like my idea of going into the sampling business, maybe.

[Laughter.]

Senator BURNS. We might have to change—but we're amenable to change. I think Congress can sometimes get into areas where there are unintended consequences, and I don't want to do that. And the only way we have, bringing this out—I appreciate Mr. Metzger today a lot because of his experience and what he has said here today. There's a lot of wisdom there. And I appreciate it. And I know all of us have different interests. And I appreciate that.

So, I look forward to working with all of you to solve this problem. This is an industry that—the broadcast industry—that I love. I came out of it. I sort of backed into it in the first place. But it is dear to my heart. And I don't want to do anything that would damage it, because I think we have a great responsibility to the American people, to our advertisers, and to each other to make sure that the industry continues to grow, and grow in all segments of our society.

I appreciate that. And if you want to extend some—and you'll get some questions from other Senators. I would ask you to respond to those Senators and to the Committee. Your full statement today will be made part of the record. And if you have more that you would like to add, we would more than welcome those comments.

Thank you for coming today. This Committee is closed.

[Whereupon, at 4:20 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Today, the Committee returns to the subject of television ratings. Previously, in the 108th Congress, we heard from parties concerned about the decision of Nielsen Media Research to roll out new television ratings technology in local markets. This technology—often referred to as "Local People Meters"—is designed to replace the old, and admittedly flawed system, which relied on viewers to write down their viewing choices in paper diaries.

The need to ensure appropriate levels of accuracy and transparency have long been of interest to members of this committee and date back to inquires pursued in the early 1960s. Given that the market for television ratings data currently supports only one television ratings service—Nielsen—that interest is particularly acute. Moreover, our interest in this issue is shared by a number of parties who rely on ratings information. Buyers of television advertising have a clear interest in knowing the audience make up of the particular shows to bid on. Similarly, programming distributors—and particularly, free, over-the-air broadcasters that rely solely on ad-supported revenues—have an interest in ensuring that ratings data accurately reflects the number of people watching their programs.

Given these interests, our review of current practices is entirely appropriate. If there are problems with the current system, we are well within our right to explore possible improvements. Some of these improvements may be pursued in the marketplace; others may require government action. I look forward to reviewing these issues, but hope that as we go forward, we will be wary of solutions that would give parties with an economic interest in the outcome, the right to prevent the roll out of new ratings technologies. In the end, our interests should focus on promoting accuracy, and should not get sidetracked with the mediation of commercial disputes.

Accordingly, Mr. Chairman, thank you again for calling for today's hearing and I look forward to hearing from the witnesses assembled hear today.

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Mr. Chairman:

Thank you for calling this hearing to give us an opportunity to learn more about this issue.

Over the last few decades, television has grown from a couple of broadcast network affiliate stations in each market to cable systems with hundreds of channels from which to choose. *Keeping track of who is watching what is obviously extremely complicated.*

The Nielsen Corporation has been tracking viewership for decades.

Although it is a private company, its work has enormous implications for the American people—because viewer-ship not only determines *advertising rates,* it ultimately decides what program choices are available to the American people.

So there is a *clear public interest* in ensuring that the ratings of television shows are *accurate*.

We know that Nielsen has begun using a new system to measure ratings. It acknowledges that the system isn't *perfect,* but claims that the technology is superior and that problems are being corrected.

Some broadcasters have said that the new system isn't getting a true measure of some viewers—especially *minorities.* This is a serious concern to me, and I am disappointed that a year after a Senate hearing on this same issue, we are learning that the problem has not been fixed.

Mr. Chairman, as I see it, there are two questions we must explore today:

First, is Nielsen taking immediate steps to correct any problems with their system?

And second, is the FAIR Act, which is before us today, the appropriate Federal legislation to deal with the issue? I believe we should think long and hard before mandating that a group made up of Nielsen's *clients* should have power to decide what *technologies* Nielsen can and cannot utilize.

I look forward to hearing from our witnesses. I'm sure they'll do a good job of explaining both sides of this issue.

MINDSHARE
New York, NY, September 29, 2005

Hon. TED STEVENS,
Chairman,
Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Senator Stevens:

I would like to thank the Senate Committee on Commerce, Science, and Transportation, particularly Senator Conrad Burns, for inviting me to testify at the hearing on the FAIR Ratings Act. I appreciated Senator Burns' courtesy during the hearing, as well as the chance to express the views held by many of my colleagues in the advertising community. As you know, advertisers, advertising agencies and advertising buying companies have all demonstrated concern about any legislation affecting television ratings and I believe it was important that their voice be heard.

I would like to take this opportunity to comment for the record on some of the remarks made by other witnesses.

George Ivie

My observations below are not meant to criticize the Media Rating Council for what it is today—a voluntary industry organization operating within the private sector. Instead, I am concerned that the MRC as currently constituted cannot take on the responsibility for regulating television audience measurement on the government's behalf. If the MRC is to be given the authority envisaged by the Fair Rating Bill, I believe the organization must be completely overhauled so that research decisions are not determined by special interest voting.

In its new governing role, the MRC must be independent of the business surrounding the data being regulated. We, in the industry, can accept a certain level of potential bias today under the MRC's current advisory role.

Statement: Mr. Ivie said that one of the MRC's stated policies is to "limit the influence of any one Industry sector within our organization."

Response: If this is an MRC policy, it is a policy that has not been implemented. The broadcast industry continues to dominate the MRC today, as it has from the time of its formation. By Mr. Ivie's own count, 27 of the 65 votes—or almost half of the votes—on the Television Committee are controlled by broadcasters.

But this does not tell the full story. Large media organizations can have up to five votes for each of their business segments, so NBC Universal, for example, has five separate votes: for the NBC Network, the NBC TV station group, MSNBC, Telemundo and Universal Television. I also note that Infinity Broadcasting, Viacom's radio network, is one of five Viacom votes on the Television Committee despite not even being a consumer of Nielsen ratings.

By contrast, my company, Mindshare, has only one vote. This gives a handful of companies disproportionate power within the organization—power that they have used to block accreditation of LPMs in many markets over the opposition of voters from the advertising and cable industries. If the broadcast, advertiser and cable companies all had one vote each, it is possible that the outcome of the accreditation votes would have been much different.

Statement: Mr. Ivie said that "Accreditation is granted by the MRC Board of Directors if a rating service complies with the MRC's Minimum Standards for Media Rating Research and makes materially complete methodological and survey-performance disclosures to their customers."

Response: The accreditation process is not as simple as this sentence implies. This process has become a lengthy and cumbersome struggle. The MRC's "Minimum Standards" are vague and open to wide interpretation. Fault rates remain a case in point, demonstrating that these Minimum Standards are a moving target. A fault rate that was historically acceptable in a Meter/Diary sample has suddenly become unacceptable in an LPM sample.

Because of this, delay in accreditation has occurred even though the collection technique is far superior to the diary, and the sample is larger and more representative of the market. If the FAIR Ratings Act were in effect, advertisers and programmers would have been denied the use of this more accurate information for more than a year.

Statement: Mr. Ivie says, "Special circumstances occur when an MRC member whose company has a vested interest in the matter being considered. When this occurs, that member may participate in the review meeting but will not be allowed to vote."

Response: I believe that all MRC members have a vested interest in the issues before the MRC. Every member stands to profit or lose through the implementation of new ratings systems. Again, if the FAIR Ratings bill becomes law, I strongly believe that the MRC membership would have to be changed so that members would not be in a position to vote their self-interest and use their power to deny more accurate ratings systems.

Pat Mullen

Statement: Mr. Mullen says that Nielsen "does not have the trust of our company or that of more than a dozen responsible broadcasters."

Response: Mr. Mullen provides no names to back up this statement; and although everyone has had their issues with Nielsen over the years, it is unlikely that he could provide a list of a dozen companies who would support that statement. Indeed, only a handful of companies have voiced their public support for the FAIR Ratings bill, compared to dozens who are opposed, including the Association of National Advertisers, the American Association of Advertising Agencies, Asian American Advertising Federation, BET, Azteca American Affiliate Group, the Latin Business Association, the Urban League and the Rainbow/PUSH Coalition.

Statement: Mr. Mullen complains several times that Nielsen is a monopoly, including his statement that "the keys to our success—our ratings—are held by a monopoly."

Response: Nielsen is the only company offering ratings data because the TV industry itself, led primarily by the broadcasters, decided it didn't want to pay for more than one service. Indeed, when Gale Metzger tried to launch SMART as a competitor to Nielsen in the late 1990s the major broadcast networks made a conscious decision not to fund it. Nielsen may currently be the only company offering television ratings, but that does not mean there cannot or will not be competitors in the future, especially with recent innovations in set top boxes and other television technology. Moreover, it is worth noting that the Federal Trade Commission recently wrote that Nielsen has not engaged in "exclusionary monopoly practices, collusion [or] anticompetitive mergers."

Additionally, the FAIR Ratings Act will preclude potential competitors to Nielsen. What company could afford, what venture capitalist would fund, and who in the industry would support, a service that could take years to complete the MRC accreditation process with a high potential for failure due to previously stated conflict of interest issues?

Statement: In an apparent reference to fault rates, Mr. Mullen says, "It is worth noting that in New York, on the average day for the week ending July 10, the viewing choices for nearly one-third of the black and Hispanic men ages 18–34 in the Nielsen LPM sample were not reflected in the ratings."

Response: Obviously it is always possible to find one demographic in one week in one market that appears to show high fault rates, but looking at the broader picture, it is very clear that fault rates are lower for all groups in the LPM samples than in the Meter Diary sample. Mr. Mullen's credibility on this issue would be stronger if he had also objected to fault rates in Meter/Diary markets.

More to the point, though, it is not true that faulting causes undercounting. All demographic groups are weighted to make sure they are represented in ratings to the same extent they are represented in the overall population.

Statement: Mr. Mullen said that broadcasters "pay the vast majority of the fees for Nielsen's local services," seeming to imply that broadcasters should have a greater say in ratings decisions.

Response: I strongly object to Mr. Mullen's assertion that local broadcasters pay most of the freight for local TV ratings. The money to support free over-the-air programming at the local level comes almost exclusively from advertising, so all of a station's operating expenses—including ratings fees—are ultimately borne by the advertiser. I might also add that television stations, which operate under a license granted by the Federal Government, are some of the most profitable businesses in our economy. Since those high profit margins are also borne by the advertiser, I think the advertising community has a right to know that the rates it pays local stations accurately reflect the number of people watching their programming.

Again, Senator Stevens, it was a great privilege for me to testify before the Commerce Committee on this important issue, and I truly appreciate the equitable manner in which Senator Burns' handled proceedings. I hope Committee Members will keep in mind that the American Association of Advertising Agencies (AAAA), the American Advertising Federation (AAF), the Association of National Advertisers (ANA), the Asian American Advertising Federation (3AF) and the Association of Hispanic Advertising Agencies (AHAA), in addition to more than a dozen leading advertising agencies and buying companies, have all registered their objection to the FAIR Ratings bill. In light of these concerns, I hope that Senator Burns and the co-sponsors of the bill will reconsider their support for this legislation.

Sincerely,

KATHY CRAWFORD.

Fault Rate Trends—Chicago

Set Meter vs. LPM Set

Week-ending	Fault Rate (Set Meter)	Week-ending	Fault Rate (LPM Set)
Total Fault Rate Trend			
3/28/2004	13.8	3/27/2005	8.8
4/4/2004	12.6	4/3/2005	9.4
4/11/2004	12.7	4/10/2005	9.9
4/18/2004	11.8	4/17/2005	8.0
4/25/2004	12.9	4/24/2005	6.8
5/2/2004	11.5	5/1/2005	7.2
5/9/2004	11.5	5/8/2005	6.4
5/16/2004	11.9	5/15/2005	8.2
5/23/2004	11.8	5/22/2005	8.5
5/30/2004	11.5	5/29/2005	7.9
6/6/2004	11.5	6/5/2005	9.5
6/13/2004	12.7	6/12/2005	10.5
6/20/2004	12.7	6/19/2005	11.0
6/27/2004	11.7	6/26/2005	9.9
7/4/2004	10.6	7/3/2005	10.3
7/11/2004	11.3	7/10/2005	11.9
7/18/2004	11.1	7/17/2005	10.9
African-American Fault Rate Trend			
3/28/2004	19.8	3/27/2005	13.0
4/4/2004	18.3	4/3/2005	15.0
4/11/2004	15.1	4/10/2005	15.2
4/18/2004	14.9	4/17/2005	12.3
4/25/2004	18.9	4/24/2005	7.7
5/2/2004	15.2	5/1/2005	12.2
5/9/2004	12.1	5/8/2005	10.3
5/16/2004	14.1	5/15/2005	12.6
5/23/2004	17.6	5/22/2005	15.7
5/30/2004	18.9	5/29/2005	15.7
6/6/2004	20.2	6/5/2005	14.6
6/13/2004	23.3	6/12/2005	15.7
6/20/2004	20.9	6/19/2005	17.0
6/27/2004	19.1	6/26/2005	17.3
7/4/2004	19.3	7/3/2005	17.1
7/11/2004	20.5	7/10/2005	17.8
7/18/2004	18.2	7/17/2005	16.0
Hispanic Fault Rate Trend			
3/28/2004	21.2	3/27/2005	12.1
4/4/2004	15.6	4/3/2005	12.7
4/11/2004	23.1	4/10/2005	14.2
4/18/2004	18.8	4/17/2005	10.6
4/25/2004	15.9	4/24/2005	11.6
5/2/2004	17.2	5/1/2005	9.1
5/9/2004	15.2	5/8/2005	9.2

Fault Rate Trends—Chicago—Continued

Set Meter vs. LPM Set

Week-ending	Fault Rate (Set Meter)	Week-ending	Fault Rate (LPM Set)
5/16/2004	15.4	5/15/2005	11.8
5/23/2004	15.4	5/22/2005	9.9
5/30/2004	16.9	5/29/2005	8.8
6/6/2004	16.7	6/5/2005	11.7
6/13/2004	18.2	6/12/2005	12.7
6/20/2004	18.5	6/19/2005	15.5
6/27/2004	17.2	6/26/2005	10.9
7/4/2004	18.5	7/3/2005	9.8
7/11/2004	18.8	7/10/2005	13.4
7/18/2004	20.6	7/17/2005	13.9

Fault Rate Trends—New York

Set Meter vs. LPM Set

Week-ending	Fault Rate (Set Meter)	Week-ending	Fault Rate (LPM Set)
Total Fault Rate Trend			
3/28/2004	11.3	3/27/2005	9.7
4/4/2004	9.8	4/3/2005	10.3
4/11/2004	10.5	4/10/2005	9.9
4/18/2004	11.1	4/17/2005	9.7
4/25/2004	10.9	4/24/2005	9.5
5/2/2004	12.1	5/1/2005	10.9
5/9/2004	12.7	5/8/2005	9.4
5/16/2004	13.2	5/15/2005	7.9
5/23/2004	12.7	5/22/2005	7.9
5/30/2004	14.2	5/29/2005	7.5
6/6/2004	13.4	6/5/2005	9.5
6/13/2004	11.3	6/12/2005	9.8
6/20/2004	11.2	6/19/2005	9.4
6/27/2004	11.2	6/26/2005	8.4
7/4/2004	9.7	7/3/2005	8.9
7/11/2004	8.7	7/10/2005	9.8
7/18/2004	8.3	7/17/2005	9.0
African-American Fault Rate Trend			
3/28/2004	20.2	3/27/2005	15.3
4/4/2004	19.8	4/3/2005	17.2
4/11/2004	18.0	4/10/2005	15.0
4/18/2004	17.2	4/17/2005	14.5
4/25/2004	21.2	4/24/2005	14.1
5/2/2004	23.2	5/1/2005	17.4
5/9/2004	21.6	5/8/2005	14.8
5/16/2004	22.1	5/15/2005	11.6
5/23/2004	23.7	5/22/2005	10.8
5/30/2004	22.8	5/29/2005	8.2
6/6/2004	21.1	6/5/2005	11.5
6/13/2004	19.1	6/12/2005	14.7
6/20/2004	18.2	6/19/2005	13.4
6/27/2004	18.2	6/26/2005	12.3
7/4/2004	16.9	7/3/2005	11.5
7/11/2004	16.9	7/10/2005	13.8
7/18/2004	16.1	7/17/2005	10.6
Hispanic Fault Rate Trend			
3/28/2004	17.4	3/27/2005	12.3
4/4/2004	12.2	4/3/2005	14.2

Fault Rate Trends—New York—Continued

Set Meter vs. LPM Set

Week-ending	Fault Rate (Set Meter)	Week-ending	Fault Rate (LPM Set)
4/11/2004	14.6	4/10/2005	11.6
4/18/2004	18.3	4/17/2005	14.2
4/25/2004	17.1	4/24/2005	12.9
5/2/2004	19.3	5/1/2005	16.4
5/9/2004	19.8	5/8/2005	13.2
5/16/2004	18.8	5/15/2005	10.1
5/23/2004	17.9	5/22/2005	10.8
5/30/2004	27.5	5/29/2005	11.0
6/6/2004	26.6	6/5/2005	13.1
6/13/2004	22.1	6/12/2005	10.6
6/20/2004	20.8	6/19/2005	9.3
6/27/2004	20.8	6/26/2005	11.8
7/4/2004	10.3	7/3/2005	13.7
7/11/2004	12.8	7/10/2005	14.9
7/18/2004	14.3	7/17/2005	14.4

Supplementary Information Submitted by Gale Metzger

I appreciated the opportunity to testify before the Senate Committee on Commerce, Science, and Transportation regarding the FAIR Ratings Act on July 27. Thank you for allowing me to do so and for inviting these additional remarks.

As I said at the time, the introduction of legislation has itself had an apparently positive effect. It seemed to have expedited the acceptance of the proposed voluntary code of conduct. However, that prospect does not diminish the need for a mandatory process to assure that audience measurement services are always committed to the vetting of their services through the Media Rating Council (MRC).

As explained in my testimony, I comment as one who (A) has no stake in the outcome, (B) is concerned about core weaknesses in Nielsen services and (C) believes that the quality of Nielsen research is important to society and to the industry it serves. We now read that Nielsen has spent "more than $4,000,000" for lobbyists and PR people to shape the debate on this bill. [1] They have cast the issues as government regulation and minority representation. Both characterizations are misleading.

First, what is proposed is not government regulation but a government requirement. The requirement mandates a monopoly to work with the industry and to play by long-standing and long-accepted rules.

To call this bill "government regulation" is a smokescreen, created purposefully to raise a frightening hydra and to conjure a burden that stifles innovation. Working with the MRC is not working with the FTC—or any governmental bureaucracy. The MRC is a creation of the industry itself. Accreditation is held up *only* if problems arise—if a ratings service is not doing things right. The MRC system has worked well for decades and is respected and accepted by all, buyers and sellers, who have to use audience research numbers. This confidence is a necessary prerequisite for a media industry that exchanges billions of dollars on information. That information must be reliable.

In 1963, the industry and Nielsen agreed to work collaboratively to build and ensure confidence in ratings. The MRC was set-up to avoid government regulation and now, this legislative proposal only requires that they live up to that earlier commitment—which in recent times seems to be deemed as optional by Nielsen. The legislation is appropriate and will benefit everyone.

Second, this bill does not stifle innovation; monopolies stifle innovation. As I explained at the hearing, the MRC would expedite gaining acceptance of new and better approaches to measurement. Had the SMART initiative been funded, I would have asked the MRC to audit the rollout in order to signal efficiently the value and accuracy of our approach.

Nielsen has little or no incentive to do better. During the discussion section of the hearing, I noted that Nielsen skipped homes with new digital recording devices,

[1] Nielsen, Long a Gauge of Popularity, Fights to Preserve Its Own, *New York Times,* August 8, 2005, Lorne Manly and Raymond Hernandez, p. C1

such as TiVo. Ms. Whiting stated that Nielsen could now meter such homes. Only recently have they announced that capability, *many* years after the digital recording devices entered the marketplace. This lag time between measurement of time-shifting viewers and actual use exemplifies the ill effect of a monopolized industry. Further, the industry will have to wait an additional year, or years, for Nielsen to bring their total national sample up-to-date and to have the proper share of new high-tech homes in their sample for complete measurement.

Third, Nielsen says that it is "in the truth business" and casts the dispute as a battle between the buyers and the sellers of the data. In effect, Nielsen maintains they are above the fray and *they can't satisfy everyone.* If Nielsen were to focus on research quality, they and the television marketplace would be the richer for it.

Instead, the appearance is that they are focused on short-term profits at the expense of long-term investing to produce a better and more accurate measurement. The appearance is of doing only what they have to do to get by. Their history of anomalous and inconsistent numbers are caused, I believe, by business decisions animated most by the bottom line. The lack of adequate support staff and the failure to institute effective quality control procedures over their operations are illustrations.

The roll-out of an improved meter provides an example of their slowness to invest for improvement. I noted in my testimony that Nielsen responds only when a competitor challenges them. In 1998, when the A/P meter [2] was being developed and SMART was a real possible alternative to their services, Nielsen published a well-designed research plan to create a scientifically-based approach to new A/P operating rules. Seven years later and much delayed, Nielsen is ready to roll out this "A/P meter" and integrate the technology into the measurement system. In addition to the inexplicable wait, only on the eve of the installations of the new meter did Nielsen propose efforts to fill in the operating-rules gap. The planned research of 1998 had never been completed and still hasn't. Effectively, Nielsen's new A/P rules will be set arbitrarily and be modified as experience dictates.

A champion of truth would have introduced the new meters years ago and completed the original research plan. Nielsen's slowness to innovate and to improve damages themselves and the industry.

Fourth, Nielsen's posture as the protector of minority interests camouflages the true problem. Minority groups are right to be concerned about the accuracy of Nielsen ratings. As I testified, black and Hispanic homes have more people in them. That means it is more difficult to obtain good data from those homes. This is true for every measurement technique, be it the LPM [3] or the meter-diary approach. The MRC is the best assurance minorities have of a measurement service in which all population segments are appropriately counted.

Media Rating Council

In my July 27 testimony, I advocated that the MRC audit be an open process. That is, the audit reports, which are the basis for the accreditation process, should be available to the entire community. Transparency would benefit the marketplace by putting all users on an equal footing. It would bring pressure to improve operations more quickly when problems are identified.

Effectively, the Statistical Research, Inc. People Meter Review of 1987–88 was a full and complete open audit. The Advertising Research Foundation has performed audits of media rating services and, as a matter of policy, their audit results are open to everyone. Open-audit precedents exist and have served the industry well.

In addition, distribution of the full audit findings takes the onus off of the current process of accrediting or not accrediting. A pass or fail grade is too rudimentary for the sophisticated evaluation required. The market needs to know and understand the accreditation process. Further, concern articulated about the politicization of accreditation voting (to the extent it is real) would be ameliorated by open audits. Everybody could monitor the process and providers would be accountable from beginning to end.

Conclusion

It would be truly regrettable if this bill did not pass because some lawmakers don't like government regulation and others fear the disenfranchisement of minorities—when neither issue is the real problem. Decoys and diversions created by Nielsen should not triumph.

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[2] A/P Meter stands for Active/Passive Meter and was designed to enable identification of programs tuned on metered sets without relying on station calibration.

[3] LPM stands for Local People Meter.

The real story is that the proposed legislation would reinforce industry self-regulation and provide better protection that all people, including minorities, are counted more accurately.

I remain hopeful that Congress will intervene to ensure that the 1963 standards for audience measurement review will persevere and transcend the political aisles.