TESTIMONY OF PATRICK J. MULLEN
PRESIDENT
TRIBUNE BROADCASTING COMPANY
BEFORE THE
SENATE COMMERCE COMMITTEE
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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 multi-channel 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, emails 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 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

* Correspondence submitted with this testimony documents this frustrating process.

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 three out of every four 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 five 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 one in four 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 five or more are generally two to three 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.