

United States Senate

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April 6, 2005

Ms. Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Chairman Majoras:

Thank you very much for your letter of March 25, which responded to my concerns about the manner in which Nielsen Media Research has been introducing Local People Meters (LPMs) in various local television viewing markets around the country. Thank you also for consulting thoroughly with relevant industry players, including Nielsen, in formulating your response.

You correctly point out that Nielsen is currently opening its LPM ratings measurement processes to audits by the Media Ratings Council (MRC), which is the only extant industry oversight body that has the authority to certify ratings accuracy. Nielsen is contractually obliged to work with the MRC on the accuracy of its ratings, and has been so obliged for 40 years. Furthermore, I knew this at the time I wrote my letter: both Nielsen and the MRC were witnesses at the hearing I held on this issue in July, 2004, and spoke to that well-understood arrangement at that time.

However, my concerns, as expressed quite clearly in my letter, were somewhat different. Let me outline them for you again. First, Nielsen is currently operating LPM systems in four major television markets (New York, Chicago, Los Angeles, and San Francisco) with only "conditional" MRC accreditation. This means the accuracy of the ratings in these markets -- specifically the differential fault rates by subdemographic group, which skew the ratings that indicate minority households' viewing preferences downwards -- do not currently meet the MRC's minimum standards. In the case of the New York market, the LPM system has failed to meet these standards on a continuous basis for almost a full year. Furthermore, even with full awareness of these problems, Nielsen is currently planning to roll out LPMs in several more local markets this spring, beginning with Washington and Philadelphia in a few weeks.

It is this pattern of behavior that has alarmed me, many other members of Congress, and a significant number of experienced media and advertising industry players: the rapid rollout of a system with well-known flaws to new markets before the problems are fixed where they exist. This pattern, as I pointed out in my letter, suggests a tendency to place Nielsen's private interest above the public interest, which is the accuracy of TV ratings for all viewers, regardless of race, and a disregard for the critical role of the MRC in certifying new measurement technologies.

Furthermore, Nielsen's better cooperation with the MRC, improved public statements, and even the results of the Independent Task Force on Television Measurement led by former Rep. Cardiss Collins, are quite different from the rhetoric that we often heard when the controversy

over differential fault rates first arose last summer. This change is due in no small part, in my view, to the greater public attention to this issue, both in Congress and in the industry, to the efforts of advocacy groups such as Don't Count Us Out, to the work of the Independent Task Force, and to your own consultations with Nielsen, the MRC, and industry players.

With all that in mind, the terms of the public debate on accuracy in television ratings clearly have changed in the nearly six months that elapsed between my initial letter to you, dated October 7, 2004, and your response, dated March 25, 2005, again due mainly to the efforts noted above. In fact, during the course of those six months, I have been in occasional contact with Nielsen, and have been encouraged by its public commitment to a more fair and accurate implementation of its LPM technology. I continue to hope, and expect, that Nielsen will make good on its public commitments to remove the differential fault rates. And I certainly agree with your analysis that the MRC is critical to this goal, and I will continue to support it strongly in the future.

This brings me again to my main concern, which is Nielsen's pattern of behavior that does not take the public interest into account as clearly and consistently as it should. Television ratings are vital public information, because they ultimately determine what programming will be available to the American public. And Nielsen, as the market is currently constituted, can quite obviously be viewed as an unregulated, or at best partially-regulated, private monopoly provider of this information. Should the current implementation of LPMs not be found in compliance with the MRC on differential fault-rates and other accuracy issues, stronger regulation of Nielsen as a monopoly provider of an essential public service would clearly be justified.

With this in mind, your focus on a rather narrow "deceptive and unfair practice" standard regarding the FTC's role was somewhat disappointing. As noted above, my concerns, and those of many of my colleagues in Congress and in the television and advertising industries, are increasingly centered on Nielsen's status as a monopoly, as evidenced in part by its apparent intent last summer to rapidly introduce a new technology over the objections of a broad group of major industry players and the sole industry auditor. I believe the FTC can and does oversee monopolies in other sectors where the public interest requires it. In addition, there are a number of other concerns associated with Nielsen's monopoly position, including pricing and control of the sole-source data it possesses.

I will continue to monitor this issue closely, and hope to have another hearing about television ratings later this year. I will not hesitate to introduce new legislation should the evidence indicate that it would be in the public interest to do so. I also hope to be able to continue a dialogue with you and your staff in the future about this issue, which I believe is of crucial importance to the future of television. And I thank you again very much for your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Conrad R. Burns", with a long horizontal flourish extending to the right.

Conrad R. Burns

cc: Commissioner Orson Swindle
cc: Commissioner Thomas Leary
cc: Commissioner Pamela Harbour
cc: Commissioner Jon Leibowitz