

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION

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ADVISORY COMMITTEE ON DIVERSITY FOR  
COMMUNICATIONS IN THE DIGITAL AGE

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THURSDAY

APRIL 25, 2013

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The Committee met in the FCC  
Meeting Room at 445 12th Street, S.W.,  
Washington, D.C., at 2:00 p.m., Henry Rivera,  
Chairman, presiding.

MEMBERS PRESENT:

HENRY RIVERA, Chairman

MARCELLUS ALEXANDER (for Erin Dozier)

DAISY AUGER-DOMINGUEZ

KARLA BALLARD

WILLIAM BRANHAM\*

MARIA BRENNAN

RUDY BRIOCHE

ERIC BROYLES

BRIGITTE DANIEL

JESSICA GONZALEZ

JO ANN HALLER (for Anton Guitano)

CHARLES HARRELL

DAVID HONIG

RON JOHNSON

SHERMAN KIZART

JASON LAGRIA

JEFFERI LEE

NICOL TURNER-LEE

SONIA MORGAN (for Jose Marquez)

CELIA NOGALES

TONY PEREZ

MEMBERS PRESENT (Continued):

STEVE ROBERTS  
ANDREW JAY SCHWARTZMAN  
DIANE SUTTER\*  
SYLVIA STROBEL  
VIRGIL SMITH  
JOSEPH TORRES  
JIM WINSTON

STAFF PRESENT:

BARBARA KREISMAN, Designated Federal Officer  
CAROLYN FLEMING WILLIAMS, Deputy Federal  
Officer

THOMAS REED, Chief, Office of Communications  
Business Opportunities

ALSO PRESENT:

MIGNON CLYBURN, FCC Commissioner  
RUTHANNE M. DEUTSCH, Senior Counsel, Akin Gump  
PHYLIS EAGLE-OLDSON, President & CEO, The  
Emma Bowen Foundation for Minority  
Interests in Media  
JARRED HILL, Reporter, WMDT 47 News,  
Salisbury, Maryland

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\*Participating via teleconference

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P-R-O-C-E-E-D-I-N-G-S

(2:06 p.m.)

OPENING

MS. KREISMAN: Welcome, everybody.

It's really nice to see everyone. It's been a while. It's fun to get together. Thank you. Thanks for coming this morning or this afternoon, I guess, for our spring meeting. I know you all have very, very busy schedules. So, again, we always appreciate your work and attendance.

Welcome to the formal spring meeting of the Advisory Committee for Diversity in the Digital Age. I think we might as well just get right to the agenda. And I turn it over to the Chairman.

CHAIRMAN RIVERA: Thank you.

INTRODUCTION & AGENDA REVIEW

CHAIRMAN RIVERA: Let me add my welcome also. We're awfully glad you're here. We continue to work. The Chairman has seen fit to recharter the Committee and reappoint

1 many of you. Most of you have served on prior  
2 iterations of this Committee. So thank you  
3 for agreeing to serve once again.

4 The task forces have not been  
5 idle. I think some of you have heard from  
6 your task force chairs already. And we'll  
7 hear the status of all the task force work in  
8 the task force reports this afternoon.

9 So, as you can see, Commissioner  
10 Clyburn has agreed to grace us with her  
11 presence again. We really appreciate you  
12 coming, Commissioner. And I'd like her to  
13 address the group because she may have to run  
14 off before we're finished.

15 COMMISSIONER CLYBURN: Thank you,  
16 Chairman Rivera.

17 COMMISSIONER REMARKS

18 COMMISSIONER CLYBURN: And good  
19 afternoon, everyone. I appreciate you for  
20 allowing me to share some brief thoughts to  
21 the reconstituted but ever committed Diversity  
22 Advisory Committee.

1           To those familiar faces around the  
2 table, it's great seeing you again. And thank  
3 you for remaining committed to fueling  
4 opportunities, whether through innovative  
5 non-regulatory measures or, when necessary,  
6 regulation. So thank you very much.

7           To those new members, some good  
8 friends in the audience also, but thank you so  
9 very much. And welcome. Service on our  
10 advisory committees requires considerable time  
11 and effort, but please don't let that scare  
12 you. We benefit so tremendously from your  
13 advocacy and counsel. And we thank you very  
14 much for what you will do.

15           The Commission has made some very  
16 real progress from this Committee's  
17 recommendations, in part, when we formed a  
18 Native Nations FCC Broadband Task Force. We  
19 have benefitted so much so that we actually  
20 created an Office of Native American Policy  
21 that is headed by Jeff Blackwell. The  
22 dedicated ONAP staff has engaged in robust

1 government-to-government consultation and  
2 currently assists the Commission in developing  
3 and implementing policies for bringing modern  
4 communications infrastructure and services to  
5 all tribal nations and native communities.

6 The FCC has also been working  
7 diligently on this Committee's recommendation  
8 to implement an outreach program that will  
9 proactively seek to increase awareness of the  
10 benefits of lending to and investing in  
11 minority and women-owned industries,  
12 particularly when we talk about broadcast  
13 properties.

14 Further, we have been working to  
15 implement your recommendations, including what  
16 OCBO is doing, as it relates to its website or  
17 our website, providing up-to-date and  
18 easy-to-access information that can assist new  
19 entrants and mature entrants with mature  
20 properties in broadcast media. Those are but  
21 a couple of examples of the contributions this  
22 Committee has made to the Commission's work.

1                   But your dedicated strength and  
2 helping to push the boulder up the mountain on  
3 performing inmate calling services, which this  
4 office, my office, cares so much about, which  
5 is impacting millions and millions of  
6 undercapitalized families, is to be commended.  
7 And I thank you for your support on this  
8 particular effort, for it is for your and  
9 because of your wise advice and counsel that  
10 it is truly helping me. And it is augmenting  
11 what I know, what we all know is that, that  
12 when we are in this regulatory space and when  
13 you are dealing day to day in your businesses,  
14 that it is important for all of us not to ever  
15 rush to judgment while considering reforms of,  
16 say, our media ownership rules.

17                   And as we look forward and towards  
18 the nation's first ever spectrum incentive  
19 auction scheduled for next year, your advocacy  
20 in assisting small businesses who could  
21 benefit from the auction will be welcome and  
22 is very necessary.

1 I have read -- you might not have  
2 heard this, Mr. Chairman -- that in the coming  
3 weeks, the FCC may be going through a  
4 transition period of sorts.

5 (Laughter.)

6 COMMISSIONER CLYBURN: Have you  
7 guys heard anything about that? Well, anyway,  
8 seriously, Section 257 of the Communications  
9 Act. It still directs this agency to identify  
10 and eliminate market entry barriers for small  
11 businesses and to promote policies favoring a  
12 diversity of media voices, vigorous economic  
13 competition and technological advancement.

14 And until or unless they strike  
15 that language from the Communications Act --  
16 and I suspect they will not -- I expect this  
17 agency, aided by this Committee, I suspect and  
18 expect that we will do our level best to  
19 actualize all of the objectives, as laid out  
20 in the Communications Act.

21 So, again, thank you so very much.  
22 And I look forward to this engagement today.

1 (Applause.)

2 CHAIRMAN RIVERA: Thank you,  
3 Commissioner, so much for those encouraging  
4 words. We appreciate it very much.

5 Barbara, did you want to take roll  
6 of those on the phone?

7 MS. KREISMAN: Yes. everyone on  
8 the phone, hello. Why don't you identify  
9 yourselves?

10 That's a scary start. Anita  
11 Graham, are you there?

12 (No response.)

13 MS. KREISMAN: Is the phone on? I  
14 did check before the meeting. I see flurry in  
15 the control room.

16 I have the table. It's just those  
17 on the phone I was talking of. Why don't we  
18 just go around the table --

19 CHAIRMAN RIVERA: Yes.

20 MS. KREISMAN: -- and everyone  
21 identify themselves. And let's get  
22 reacquainted while we're waiting. Do you want

1 to start?

2 CHAIRMAN RIVERA: All right. We  
3 can do that.

4 MS. KREISMAN: Do you want to  
5 start?

6 CHAIRMAN RIVERA: Yes, Jim? Why  
7 not?

8 MS. KREISMAN: Jim, go ahead. Go  
9 for it.

10 MEMBER WINSTON: I'll simply begin  
11 by introducing myself. I'm Jim Winston. I'm  
12 the Executive Director and General Counsel of  
13 the National Association of Black-Owned  
14 Broadcasters. We're a trade association  
15 representing 200 or so black-owned radio and  
16 television stations around the country. And  
17 I have been pleased to be a member of the  
18 Diversity Committee since its inception.

19 MEMBER BROYLES: Eric Broyles,  
20 Board member of Megree and CEO of investment  
21 research firm Expert Connect.

22 MEMBER NOGALES: Hi. I'm Celia

1       Nogales, and I'm with AT&T. And I'm in the  
2       federal regulatory office here in Washington,  
3       D.C.

4                   MEMBER HARRELL: Hello. My name  
5       is Charles Harrell, II. I'm the President of  
6       the IT Architect Corporation. And I'm honored  
7       to continue to serve on this Board since  
8       September of 2011.

9                   MEMBER ALEXANDER: Hello.  
10       Marcellus Alexander. I'm Executive Vice  
11       President of Television for the NAB, National  
12       Association of Broadcasters. I also have the  
13       privilege of wearing a second hat as President  
14       of the NAB Education Foundation. And I'm  
15       sitting in today for my colleague Erin Dozier,  
16       who is out.

17                   MEMBER PEREZ: Hi. I'm Tony  
18       Perez, and I'm with the National Association  
19       of Telecommunications Officers and Advisers.  
20       It's a national group that represents the  
21       local and community interests in  
22       communications and more and more so in

1 broadband, happy to be here. I'm looking  
2 forward to a meaningful engagement.

3 MEMBER LEE: Hi. My name is Jeff,  
4 Jefferi Lee. I am the General Manager of WHUT  
5 Television. And I am representing not only  
6 WHUT but public media.

7 MEMBER DANIEL: Good afternoon.  
8 My name is Brigitte Daniel. I'm an Executive  
9 Vice President of Wilco Electronic Systems.  
10 Wilco is a private cable company located in  
11 Philadelphia, minority-owned. And we have  
12 been serving the community for about 30-plus  
13 years, very honored to be reappointed to the  
14 Board and glad to resume the conversations.  
15 Thank you.

16 MEMBER KIZART: Thank you. Good  
17 afternoon, everyone. My name is Sherman  
18 Kizart. I'm the Managing Director of Kizart  
19 Media Partners, which is a media consulting  
20 and marketing firm based in Chicago. And I'm  
21 certainly happy to be here today and honored  
22 to have the privilege to continue to serve on

1 this very important Committee.

2 MEMBER BRIOCHE: Rudy Brioche with  
3 Comcast-NBC Universal. Good to see a lot of  
4 familiar faces here. I'm just here to be part  
5 of the discussion. Thanks.

6 MEMBER ROBERTS: Steve Roberts,  
7 Roberts Broadcasting. I'm one of the few  
8 beings here that hopefully won't be extinct  
9 shortly. I'm one of the few minority-owned  
10 broadcasting groups left in this country.

11 We have a station, as the  
12 Commissioner knows, in Columbia. We have four  
13 stations throughout the United States. We  
14 have a total -- according to Jim Winston's  
15 recent report, there are six minority-owned  
16 broadcasters in the United States. And it's  
17 really very sad for our country because, you  
18 know, when we started in this business 20  
19 years ago, it was 20 minority and women owners  
20 throughout this country. And today there are  
21 three. So there's a problem. I mean, there's  
22 a real problem for all of us around this

1 table.

2 But I'm here. Thank you for  
3 honoring me with the opportunity to serve for  
4 two more years with you. I won't be as quiet  
5 as I was, Commissioner, the first two because  
6 I understand what we're trying to do here.  
7 But we have a big task ahead of us to preserve  
8 the opportunities for all of the citizens of  
9 this country.

10 So Steve Roberts from Roberts  
11 Broadcasting. And, as Tom Reed knows, I'm  
12 always available to answer any questions and  
13 give you insights.

14 But I still think it's a wonderful  
15 business. We just need to have some tools to  
16 encourage both minority and women-owned  
17 businesses in this area. So thank you.

18 MEMBER TURNER-LEE: Good  
19 afternoon, everyone. My name is Nicol  
20 Turner-Lee. I'm the President and CEO of the  
21 National Association for Multi-Ethnicity in  
22 Communications, NAMIC for short; glad to be

1 reappointed back to this Committee. I'm also  
2 the Chairperson for the Unlicensed Devices  
3 Subcommittee, which several of you are on.

4 Just to give you the background on  
5 NAMIC, we are actually interested in advancing  
6 diversity and inclusion among people of color  
7 in the media communications field, both on and  
8 behind the scenes. We also are in the  
9 business of creating champions of diversity,  
10 regardless of race or ethnicity, to ensure  
11 that this is a strategic business imperative  
12 for the industry in which we serve; so glad to  
13 be here representing thousands of members  
14 across the country, who are pretty much  
15 aligned with our mission and goals.

16 MEMBER JOHNSON: Good afternoon.  
17 I am Ronald Johnson and would like to say I am  
18 excited to be here again and to have the great  
19 honor of serving as Chairperson of the  
20 Supplier Diversity Committee. Thank you, Mr.  
21 Chairman, for that. And we are looking  
22 forward to the challenge this year.

1 I am the President/owner of two  
2 companies. Ronson Network Services is engaged  
3 primarily in building out infrastructure for  
4 wireless and wire line companies; and  
5 Solutions4Change, which primarily is engaged  
6 in trying to find ways to get large and small  
7 businesses to work more collaboratively  
8 together. And you'll hear more about that  
9 shortly.

10 MEMBER HONIG: Hello. I'm David  
11 Honig. I'm the President of the Minority  
12 Media and Telecommunications Council, MMTTC.  
13 Our mission since 1986 has encompassed equal  
14 employment opportunity in media and telecom,  
15 minority/women business ownership, and closing  
16 the digital divide. We also operate the only  
17 minority-owned and only nonprofit media and  
18 telecom brokerage. We have a radio station  
19 group. And we train fellows and attorneys in  
20 the practice of telecommunications law before  
21 the FCC.

22 MEMBER BALLARD: Hi. My name is

1 Karla Ballard. I'm Managing Director of the  
2 Broadband Opportunity Coalition. We just  
3 completed three years of working on addressing  
4 the issue of broadband adoption, really  
5 excited about leveraging those assets so we  
6 can further that mission. I am also Senior  
7 Vice President at Ogilvy and Mather.

8 MEMBER AUGER-DOMINGUEZ: Thank  
9 you. Good afternoon. My name is Daisy  
10 Auger-Dominguez. And I'm Vice President of  
11 Recruitment, an organization in workforce  
12 diversity for the Disney-ABC TV Group. I am  
13 representing the Walt Disney Company today.  
14 And I am honored to be a new member and to be  
15 part of this important work.

16 MEMBER TORRES: My name is Joseph  
17 Torres. I work for the public interest group  
18 Free Press. I'm taking the place of Coriell  
19 Wright, who moved on. Besides Free Press, I  
20 am also on the board of the National  
21 Association of Latino Independent Producers,  
22 a film-makers' and artists' group. And I'm

1 also a board member of the Center for Media  
2 Justice.

3 MEMBER SCHWARTZMAN: I'm Andy  
4 Schwartzman. And, notwithstanding what it  
5 says in front of me -- this is not the  
6 Commission's fault; it's mine -- Media Access  
7 Project, which it says I'm at, was shut down  
8 about a year ago. I was President of Media  
9 Access Project for about 34 years. I am now  
10 a senior adviser to Free Press. And that's  
11 the capacity in which I sit on this Committee.  
12 I have been involved in issues pertaining to  
13 minority ownership, diversity in programming,  
14 and similar matters for some 40 years. And in  
15 that capacity, I hope I can help the work of  
16 this Committee.

17 MR. REED: Welcome, everybody. My  
18 name is Thomas Reed. I am Director of the  
19 Office of Communications Business Ops, OCBO,  
20 here at the FCC.

21 MS. DEUTSCH: Hi. Good afternoon.  
22 My name is Ruthanne Deutsch. And I'm a senior

1 counsel at Akin Gump. We worked with MMTC and  
2 a group of former FCC commissioners in  
3 preparing an amicus brief in support of the  
4 University of Texas in the Fisher case that I  
5 will be talking about later. And thank you  
6 very much, Chairman, for inviting me to share.

7 MS. EAGLE-OLDSON: Good afternoon,  
8 everyone. My name is Phylis Eagle-Oldson.  
9 I'm President and CEO of the Emma Bowen  
10 Foundation, a pipeline diversity initiative  
11 supported by the media industry. And I'll be  
12 telling a little bit more about our program a  
13 little bit later on the agenda.

14 MR. HILL: Good afternoon,  
15 everyone. My name is Jarred Hill. I am a  
16 reporter with WMDT, the ABC affiliate on the  
17 Delmarva Peninsula. I am also a graduate of  
18 the Emma Bowen Foundation and will be talking  
19 to you all about our program.

20 MEMBER MORGAN: Hello. My name is  
21 Sonia Morgan. I am here to represent Jose  
22 Marquez, Executive Vice President for LISTA,

1 Latino Information Science and Technology  
2 Association.

3 MEMBER SMITH: Good afternoon,  
4 everyone. My name is Virgil Smith, Vice  
5 President, Channel Acquisition and Diversity  
6 for the Gannett Company. For those who don't  
7 know Gannett, it's a news and information  
8 company with 100 properties across the  
9 country.

10 MS. WILLIAMS: Good afternoon. My  
11 name is Carolyn Fleming Williams. I am Senior  
12 Deputy with OCBO. And I am also the deputy  
13 designated federal official for this  
14 Committee. Welcome to both new and returning  
15 Committee members.

16 MEMBER LAGRIA: Good afternoon.  
17 My name is Jason Lagria. I'm a senior staff  
18 attorney at the Asian American Justice Center,  
19 which is a national civil rights organization.

20 MEMBER GONZALEZ: Hi. Hello?

21 (Laughter.)

22 MEMBER GONZALEZ: Jessica Gonzalez

1 with the National Hispanic Media Coalition,  
2 nonprofit organization dedicated to improving  
3 the image of Latinos as portrayed by the  
4 media, increasing employee opportunities and  
5 ownership opportunities.

6 MEMBER STROBEL: Hi. I'm Sylvia  
7 Strobel, the Alliance for Women in Media,  
8 which promotes the advancement of women in all  
9 media forms. I served on AWM's National Board  
10 of Directors for over a decade. And I have  
11 been told I have a lifetime appointment to its  
12 Public Policy Committee. So I am here today  
13 for that.

14 (Laughter.)

15 MEMBER BRENNAN: Hi. I'm Maria  
16 Brennan, President and CEO of Women in Cable  
17 Telecommunications. I, too, have been on the  
18 Committee since its inception. And I look  
19 forward to working with all of you. WCT works  
20 to create a pipeline of women who are ready to  
21 lead. And we do this by commissioning  
22 original research and by creating educational

1 opportunities. So thanks.

2 MS. KREISMAN: I'm going to try  
3 the phone one more time. Anyone there yet?  
4 They're still working on it. Hi. Welcome,  
5 phone.

6 MEMBER BRANHAM: Yes. Bill  
7 Branham's here.

8 MEMBER SUTTER: Diane Sutter.

9 MS. KREISMAN: Hi, Diane.

10 MEMBER SUTTER: Hi. We've got  
11 feedback on this call. It's like there's  
12 another call going on simultaneously.

13 MS. KREISMAN: We'll just proceed  
14 as we get it straightened out. Sorry.

15 CHAIRMAN RIVERA: We're trying to  
16 get it straightened out, Diane.

17 MS. KREISMAN: This is the FCC.

18 (Laughter.)

19 MEMBER SUTTER: Thank you.

20 CHAIRMAN RIVERA: Okay.

21 MEMBER HALLER: Jo Ann Haller.

22 I'm here for Anton Guitano, CBS Radio.

1                   CHAIRMAN RIVERA: Great. Anybody  
2 else on the phone?

3                   MEMBER BRANHAM: Yes. Bill  
4 Branham is here, 21st Century  
5 Telecommunications.

6                   CHAIRMAN RIVERA: All right.

7                   MS. KREISMAN: Thank you.

8                   CHAIRMAN RIVERA: Anybody else?

9                   (No response.)

10                  CHAIRMAN RIVERA: All right.

11 Well, as you can see, you are a very  
12 impressive group with a tremendous amount of  
13 talent and resources that we hope to make use  
14 of as we move forward. So, again, welcome to  
15 all of you and thanks to all of you for your  
16 willingness to share your time and your  
17 expertise with us and with the Commission.

18                  With that, I am going to turn the  
19 floor over to Tom Reed, who is the Chief of  
20 the Office of Communications Business  
21 Opportunity. He's going to give us an update.  
22 Tom?

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MR. REED: Thank you, Henry.

OFFICE OF COMMUNICATIONS BUSINESS  
OPPORTUNITIES

MR. REED: I guess you all noticed that these mikes are on I think a five-second delay. So, you know, just in case anybody wants to say anything inappropriate, they'll get blocked.

(Laughter.)

MR. REED: Anyway, good afternoon. Thank you for the opportunity to address the Committee. And, more important, thank you, Henry, for your continued commitment to this Advisory Committee and the important work it does for the FCC.

I would also like to thank all of our returning Committee members as well as the few new faces we have in this group. Again, welcome. And welcome back.

The Advisory Committee's task is to work creatively with the FCC to see how the private sector, public interest groups,

1 government, and other stakeholders can  
2 identify, maybe even create opportunities in  
3 the marketplace for women and minority  
4 entrepreneurs, how we can improve access to  
5 internet and communications technology so that  
6 all Americans are engaged civically and have  
7 their educational, professional, and personal  
8 needs met by the prevailing communications  
9 technologies, a simple task. We are  
10 essentially asking you all to help us figure  
11 out how to make the world a better place. So  
12 we are going to be busy.

13 In fact, this Committee has been  
14 doing just that type of work for many years up  
15 to now and its efforts and expertise  
16 continually influence FCC policy. And its  
17 work has been the genesis of many of the  
18 agency's current diversity initiatives.

19 Thank you for your patience while  
20 we work through the rechartering and  
21 reappointment process. We are very excited  
22 that this Committee can now continue the work

1 it began in 2011 and 2012.

2 A couple of developments at OCBO  
3 since we last gathered. We have received a  
4 final research design for the study of the  
5 critical information needs of the American  
6 public and how the media ecosystem serves  
7 these needs. We anticipate that we will be  
8 releasing the research design very soon for  
9 public review and comment. So stay tuned for  
10 that.

11 Also, in July, on July 11, of this  
12 year, we will be holding our next Access to  
13 Capital conference here at the FCC. This  
14 time, though, we will be focusing on Angel  
15 Investment.

16 So, before I finish up -- and,  
17 again, I am going to be very brief -- I would  
18 like to recognize Barbara Kreisman of the  
19 Media Bureau; Carolyn Fleming Williams, OCBO,  
20 Senior Deputy; and Nicole McGinnis, who is not  
21 here. She is not feeling well, I think.  
22 She's caught that bug that is going around.

1                   They are all going to be  
2 continuing their work with each of you as you  
3 serve the Committee and each of your  
4 subcommittees. Like you, they commit this  
5 time over and above their already significant  
6 workloads. So my heartfelt thanks go to them  
7 as well.

8                   I would like to recognize our  
9 subcommittee chairs: Diane Sutter, who I  
10 think is on the phone; -- I think her group is  
11 looking at the history of the tax certificate  
12 and the impact and effectiveness of other  
13 diversity initiatives -- David Honig is with  
14 us, EEO Best Practices; Nicol Turner-Lee,  
15 Unlicensed Devices; Ron Johnson, Supplier  
16 Diversity. We'll be hearing I think from each  
17 of them as they discuss the status of their  
18 work and their ongoing mission.

19                   Susan Patrick also chairs the  
20 subcommittee on channels 5 and 6. That issue  
21 was specifically whether that space could be  
22 viable, a viable home for AM station owners.

1 Just as an FYI, we have asked Susan and her  
2 team to hold while the Commission continues to  
3 examine spectrum allocation and incentive  
4 auction issues.

5 So one final plug. If you haven't  
6 yet joined a subcommittee or if there is a  
7 particular issue you would like to work on,  
8 please do contact Henry or one of our  
9 designated federal officers and let us know  
10 your preference. Our aim is to determine  
11 where this committee's broad and significant  
12 expertise can be best utilized, particularly  
13 on issues that are under consideration by the  
14 FCC, where real world knowledge and experience  
15 can benefit policy determinations.

16 I'll be working with Henry and the  
17 designated federal officers as well as other  
18 subject matter experts within the FCC to  
19 identify additional questions that are  
20 appropriate for this Committee's  
21 consideration.

22 So thank you again. I'm looking

1 forward to the next two years, the duration of  
2 the current charter of this Committee. And I  
3 know it will be productive.

4 CHAIRMAN RIVERA: Thank you, Tom.  
5 Does anyone have any questions for Tom?

6 MR. REED: Five-second delay.

7 (Laughter.)

8 CHAIRMAN RIVERA: I don't know if  
9 Tom is going to have any answers, but --

10 MR. REED: Right.

11 (No response.)

12 CHAIRMAN RIVERA: All right.  
13 Seeing none, we'll move to the Committee  
14 reports. And we're going to start with Ron  
15 Johnson. You're up first, Ron.

16 WORKING GROUP REPORTS/RECOMMENDATIONS

17 SUPPLIER DIVERSITY

18 MEMBER JOHNSON: Okay. Thank you,  
19 Mr. Chairman, Commissioner Clyburn, FCC staff,  
20 fellow Committee members, and ladies and  
21 gentlemen in the audience and who are calling  
22 in.

1                   As all of you all know, the  
2                   Commission in rechartering the Diversity  
3                   Committee has given it four primary tasks to  
4                   do this year. We think that among these  
5                   tasks, the third task, the one that has been  
6                   given to us, is extremely important to not  
7                   only the work of the FCC but to the work of  
8                   all of you all that are in this room today.

9                   That third task is to have our  
10                  committee to continue to work on how exemplary  
11                  supplier diversity practices by industry  
12                  participants can contribute to the FCC's goal  
13                  of ownership diversity, which is important to  
14                  all of us.

15                  Embedded in this broad charge is  
16                  the work of our task force. Chairman Rivera  
17                  has charged us to, and appropriately so, focus  
18                  in on this particular subject because of its  
19                  interest not only to him but to all of us.  
20                  And, specifically, he has asked us to look at  
21                  industry procurement best practices as a way  
22                  of getting to the heart of this issue.

1           It is our expectation that our  
2 task force will be able to identify  
3 procurement practices from many businesses  
4 that have led to removing barriers to entry  
5 for small minority and women-owned firms  
6 around the country in various sectors of our  
7 industry. That is our hope, and that is our  
8 challenge.

9           Now, on the surface, this might  
10 seem to be a less than daunting task for our  
11 group to undertake. However, the gathering of  
12 procurement data from competitive industries  
13 is not undaunting. It is a very difficult  
14 process.

15           So the challenge for our task  
16 force is to find the right balance of data  
17 gathering, data analysis, and data synthesis  
18 and dissemination, and out of that, fashion,  
19 hopefully, some policy perspectives so that  
20 the FCC can reach many of its objectives in  
21 the diversity area.

22           It is not surprising that

1 companies, like yours and like mine and  
2 certainly larger businesses, go to great  
3 lengths to guard their procurement practices,  
4 particularly if they are good practices that  
5 lead to increasing in the bottom line. After  
6 all, they are very competitive, as we all are.  
7 And so, therefore, they would want to protect  
8 all of their best practice information.

9           So it is going to be very  
10 difficult, we think, for us to get the  
11 information that we need from these companies.  
12 But certainly, with Tom's help and the help of  
13 other organizations around this table and  
14 certainly our committee members, we should be  
15 able to do this.

16           Now, Tom has -- I have asked him  
17 to help us with this. And he has agreed to do  
18 so. As you all know, Tom has great insight  
19 and passion for these things. And we look  
20 forward, Tom, to working with you again this  
21 year.

22           I think that one of the things

1 that I want to mention to you is that last  
2 year, we did work with Tom's organization, his  
3 group with the conference we had here. If you  
4 would like to go back to last year's FCC  
5 website, perhaps you will be able to see the  
6 event that Tom put on. I think it's very  
7 informative, particularly if you are in this  
8 business. Large or small, it really doesn't  
9 matter.

10 We had a wonderful time talking to  
11 large and small businesses about some of the  
12 problems that they're having on the large  
13 business side in attracting smaller businesses  
14 and from the small business side how to engage  
15 in doing business with these large companies.  
16 And we want to continue that strategy in the  
17 next year.

18 And so I think from most  
19 perspectives, Tom, this was a success. And we  
20 look forward to working with you again in  
21 this.

22 Now, Tom has also been helping me

1 get ready to kick off our task force this  
2 year. We have been successful or at least we  
3 are trying to get more engaged in trying to  
4 provide or look at subtask strategies and some  
5 measurable objectives for our task force. And  
6 so we are continually looking at ways to  
7 engage all of our members to make the best use  
8 we can of their time and their resources. And  
9 so that is the most important thing for us  
10 right now is to try to find ways to do that.

11 The members that Chairman Rivera  
12 has appointed to work with me and Tom, I  
13 think, represent some of the most accomplished  
14 folks in the industry, with great insight and  
15 great experience. And you might not know all  
16 of them. So I would like to just introduce  
17 them to you right now very quickly: from the  
18 National Urban League, Chanelle Hardy; -- I  
19 don't think she's in the room today -- Charles  
20 Harrell from the IT Architect; -- he is with  
21 us -- Faye Kuo, who is the Communications  
22 Services for the Deaf; Celia Nogales from

1 AT&T; -- she is with us -- Javier Palomarez  
2 from the United States Hispanic Chamber of  
3 Commerce; Dr. Cindy Shao, the Asian American  
4 Chamber of Commerce; and Mark Wallace from  
5 Cipher Communications. Please join with me in  
6 welcoming our new members, our continuing  
7 members, to the task force.

8 (Applause.)

9 MEMBER JOHNSON: Now, Mr.  
10 Chairman, I and the members of our committee  
11 believe that diversity is a great pillar of  
12 American society. It is the cornerstone which  
13 fuels and sustains the economic growth of the  
14 telecommunications industry.

15 And, with that said, we look  
16 forward to working with all of you all this  
17 year and to come back at our next meeting with  
18 a very sustained report about what we have  
19 accomplished and what we look forward to  
20 undertaking in the future.

21 Thank you, Mr. Chairman.

22 CHAIRMAN RIVERA: Thank you, Ron.

1 MEMBER JOHNSON: Okay.

2 CHAIRMAN RIVERA: Does anyone have  
3 any questions of Ron?

4 I just want to underscore  
5 something that Tom said earlier. If you are  
6 not on one of the subcommittees, pick one and  
7 get on it. And if you are already on one and  
8 you want to get on another one, that's fine,  
9 too. So we encourage you to get involved and  
10 not to wait for the invitation. So just send  
11 me an email or send Barbara an email and just  
12 let us know what your preferences are in that  
13 regard.

14 So no questions for Ron?

15 (No response.)

16 CHAIRMAN RIVERA: All right.  
17 We'll move on to Diane Sutter, who is on the  
18 phone.

19 MEMBER SUTTER: Thank you, Mr.  
20 Chairman.

21 MARKET ENTRY BARRIERS

22 MEMBER SUTTER: My apologies to

1 the group for not being able to be there in  
2 person this time. I am actually in the middle  
3 of a three-day seminar. And I am sneaking out  
4 of the meeting to be on this call.

5 The Subcommittee on Barriers to  
6 Entry has been tasked with reviewing the tax  
7 certificate, the history of the tax  
8 certificate, and trying to provide insight and  
9 guidance for the full Committee as we move  
10 forward in determining what options might  
11 exist and what was the environment when we  
12 first had the tax certificate, and where are  
13 we now.

14 The committee met last year and  
15 again just recently to determine how the best  
16 efforts could be put towards this. And we  
17 have divided the Subcommittee into two task  
18 forces. The first is the Anecdotal Task  
19 Force. And they would be working to identify  
20 the individuals and companies that were  
21 involved in using the tax certificate from the  
22 period of time when it existed previously,

1 which was 1978 to 1995.

2 We hope by identifying these  
3 individuals and companies, that we can put a  
4 face, if you will, on the tax certificate so  
5 that we can provide information to both the  
6 Commission and hopefully to Congress on how  
7 this was used successfully, both by companies  
8 and individuals to further minority ownership  
9 and activity in the business.

10 As you know, at the time that the  
11 tax certificate was in full force, it was  
12 related to minorities. And, of course, we  
13 would be looking to recommend the expansion of  
14 this to include women and minorities as we  
15 move forward. And we have begun to identify  
16 individuals who use the tax certificate and  
17 are working to expand that list.

18 The second task force is the  
19 historical task force. And their goal is to  
20 gather the factual information on the use of  
21 the certificate itself, identify the number of  
22 certificates that were issued and what has

1 transpired with them and since them. And the  
2 task force felt it was important to also  
3 provide context, to look at the industry, what  
4 it looked like before the tax certificate,  
5 which was implemented in 1978, and then what  
6 were the outcomes under the program, and what  
7 has been the result for women and minority  
8 ownership since the tax certificate was  
9 eliminated, so looking at prior to the  
10 implementation of the tax certificate, during  
11 that time and after that.

12 So we also want to make sure that  
13 as a committee, we look at all forms of  
14 communication beyond broadcasting and cable,  
15 which is, of course, where it began, but  
16 recognizing that the communications  
17 environment has changed, broadened, and grown.  
18 So that we want to make sure that we include  
19 all of the things that might be used under  
20 this tax certificate.

21 We have begun to identify also  
22 various communications, articles, white papers

1 that have been written on the subject of the  
2 tax certificate, again to gather historical  
3 and anecdotal information. In your committee  
4 report, we have listed some of those people.  
5 This is the beginning, hopefully not the end,  
6 of the list of individuals and companies and  
7 resources that we might be able to identify.

8 I would like to ask every member  
9 of the full Committee if you would take a look  
10 at that list. I am sure each of you has  
11 knowledge of other people, companies, or  
12 articles that have been written. We have  
13 provided you with the articles that we have  
14 and are looking to grow that list. So if  
15 there are individuals that you know of that  
16 you could recommend to the committee, I would  
17 certainly appreciate your doing that. If  
18 there is information or stories that you have  
19 that you could relate, we would look forward  
20 to hearing from you.

21 The members of the task force will  
22 be working on each of these particular areas

1 as we move forward and trying to develop the  
2 most comprehensive look we can. Tom, we will  
3 probably be needing to work with the  
4 Commission and, Barbara, you might also be  
5 able to guide us, to try and get actual  
6 numbers of the certificates that were issued.  
7 So we'll be looking to work with you on this,  
8 too.

9 That, Mr. Chairman, is the  
10 activities that we have had up until this  
11 time. The members of the task force, many of  
12 whom are in the room -- and I would ask as I  
13 mention their name if they are there, to  
14 please raise their hand so that everyone can  
15 see who you might be able to talk to. Maria  
16 Brennan with Women in Cable  
17 Telecommunications, Anton Guitano with CBS,  
18 Walter Ulloa for Entravision, Tony Perez with  
19 the National Association of Telecommunications  
20 Officers and Advisers, Joe Torres with Free  
21 Press, Brigitte Daniel with Wilco Electronics,  
22 Sherman Kizart, Kizart Media Partners, Eric

1       Broyles, Megree, and Jacqueline Cleary is also  
2       our rapporteur, and Anita Stephens-Graham with  
3       Opportunity Capital.

4               So thank you, Mr. Chairman. Those  
5       are the activities of our committee to date.

6               CHAIRMAN RIVERA: Thank you,  
7       Diane. You mentioned a list that the  
8       Committee might have in front of them. And I  
9       just wanted to give you a head's up. We do  
10      not have that list. So if you are able to  
11      send that to Barbara, then she can pass that  
12      out.

13              MEMBER SUTTER: I would be happy  
14      to do that and also the articles that we have  
15      gathered up to this time. So I will be happy  
16      to do that.

17              CHAIRMAN RIVERA: Great. Thanks.  
18              Any questions for Diane? Yes,  
19      Jim?

20              MEMBER WINSTON: I'd like to  
21      volunteer to be on the committee.

22              CHAIRMAN RIVERA: Done.

1 MEMBER SUTTER: Is that Jim  
2 Winston?

3 CHAIRMAN RIVERA: Yes.

4 MEMBER SUTTER: Wonderful. We  
5 welcome your joining us. And you have already  
6 been very helpful already in supplying some  
7 information for us, Jim. So thank you.

8 CHAIRMAN RIVERA: Indeed, you  
9 have.

10 Yes, Brigitte?

11 MEMBER DANIEL: Not a question but  
12 a statement. I just wanted to say that this  
13 committee is very important. So thank you,  
14 Jim, for joining. Diane, this is Brigitte.  
15 But I wanted to just mention that we had the  
16 chance to, Wilco, bring Commissioner Clyburn  
17 recently to Philadelphia on Monday to talk  
18 about this issue in Philadelphia.

19 In Philadelphia right now, there  
20 is a cable company, such as Wilco. There is  
21 a black radio station and also a black  
22 publication. So we have the opportunity to

1 have Commissioner Clyburn here to just talk  
2 about the issues.

3 So I just wanted to let you know  
4 that you can bring this issue to your  
5 committee. And it's important to spread the  
6 message of the FCC because a lot of people  
7 really don't know that message. So I just  
8 wanted to say thank you for the opportunity.

9 CHAIRMAN RIVERA: Thank you.

10 Anyone else?

11 (No response.)

12 CHAIRMAN RIVERA: All right.

13 Thanks for that report, Diane. You can go  
14 back to your seminar.

15 MEMBER SUTTER: Oh, no. I'll  
16 still be here, Mr. Chairman.

17 CHAIRMAN RIVERA: Attagirl. All  
18 right.

19 We move on to Nicol's  
20 presentation.

21 MEMBER TURNER-LEE: Thank you, Mr.  
22 Chairman, for that, Tom Reed, Barbara, fellow

1 Committee members, ladies and gentlemen as  
2 well.

3 UNLICENSED DEVICES

4 MEMBER TURNER-LEE: I am going to  
5 actually do this as both a commercial and a  
6 campaign to get more members to our committee.  
7 So when I do my updates, I expect people to  
8 also raise their hand because we are on an  
9 area that is probably not as sexy to our  
10 industry but very necessary when it comes to  
11 unlicensed devices. So I will speak a little  
12 bit about where we were and where we are going  
13 with this particular Subcommittee just very  
14 briefly.

15 Last year when we started this  
16 conversation around unlicensed devices, there  
17 was a lot of concern about how do you actually  
18 mix that with the discussion on the license  
19 spectrum. And I think between last year and  
20 this year, we have come a long way with how  
21 that whole spectrum conversation is advancing  
22 and possibly something that we will revisit in

1 some way as we look at the devices.

2 Last year we also know that it was  
3 very difficult to identify minority  
4 entrepreneurs as well as innovators that were  
5 taking advantage of unlicensed devices. And  
6 as we look around this room at the iPads and  
7 we know about the burgeoning markets of  
8 Kindles and other devices, those areas we  
9 found when we polled a small survey of  
10 minority entrepreneurs are not being taken  
11 advantage of, whether on the economic  
12 production side or the development side or the  
13 benefit side of communities of color.

14 So our committee last year spent a  
15 lot of time doing a couple of things: one,  
16 educating ourselves on this whole  
17 conversation, talking with the FCC engineering  
18 staff, sharing it with our fellow members here  
19 as to where we were going, and polling  
20 minority entrepreneurs just to see if we were  
21 correct about our assumptions with regards to  
22 this ecosystem. And we were.

1 More work needs to be done. And  
2 there is an opportunity I think to advance and  
3 include more people on this side of the debate  
4 provided we at this committee level are able  
5 to figure out deliberately how we get more  
6 people of color engaged and involved.

7 The committee as it stands -- and,  
8 like I said, at the end of my commercial,  
9 we're looking for volunteers. There are only  
10 a few of us. And predominantly most of those  
11 people are very techie. So we will take the  
12 non-tech people as well. Donna Epps, Jose  
13 Marquez, Brigitte Daniel, who actually at one  
14 point came on our committee; -- she was in  
15 India as an Eisenhower Fellow and then found  
16 this to be very interesting, so joined several  
17 of our calls after looking at some  
18 international models -- and Eric Broyles.

19 So for those committee members  
20 that are here, thank you for your continued  
21 service, but we obviously would like to add  
22 more folks who are not as intimidated by this

1       topic this year.

2                   This committee came with no easy  
3 task. There is no data. There is again very  
4 little awareness about the use of these  
5 devices, much of which we know is around the  
6 consumption side and not on the production  
7 side. So there's not much that we were  
8 working with.

9                   And what we did last year was to  
10 come with a charge to say from Tom, "How can  
11 we take advantage of this? How can people of  
12 color benefit? How can they make money from  
13 this? And in some cases, can communities  
14 actually benefit? Whether it's through  
15 innovative educational projects or health care  
16 projects, what does it look like?"

17                   After that discussion, I think we  
18 came to, Mr. Chairman, just two  
19 recommendations that we hope to pursue this  
20 year. One is a workshop. Now, I know all of  
21 us cringe at the sound of a workshop, but we  
22 need it because we have very little evidence

1 and data to actually substantiate the use of  
2 these devices outside of a consumption,  
3 regular pattern of consumption.

4 So our hope is this year to put  
5 the pedal to the metal and to actually work  
6 with Tom Reed to assure that we get a workshop  
7 that engages both the public and private  
8 sectors, minority and non-minority  
9 entrepreneurs to have this discussion around  
10 the use of unlicensed devices and to make the  
11 case for some of the missed opportunities that  
12 are potentially out there that we're not  
13 capitalizing on in communities of color and  
14 among entrepreneurs of color. So that was one  
15 area that I think we want to pursue and make  
16 sure that we put a date to that particular  
17 workshop because at the time when we made that  
18 recommendation, I think we were all being  
19 rechartered for the Committee. So our hope is  
20 to move forward with that.

21 The other thing that came out of  
22 our committee that was just really interesting

1 -- and it is sort of the work that I am in now  
2 -- is this understanding -- I think Brigitte  
3 brought this up, this mentoring between the  
4 public and private sectors who has managed to  
5 capitalize on this market and doing more  
6 matching among entrepreneurs that are trying  
7 to break into this market, trying to  
8 understand barriers to capital, barriers to  
9 engineering, insight, and expertise with those  
10 that have made a really great killing in terms  
11 of their engagement, the Amazons and others  
12 that are really doing well in this marketplace  
13 to see if there is some possibility of  
14 formalizing something else that will take  
15 people to the next level. And I think that is  
16 an important piece that we'll probably  
17 continue dialogue. We have tried to engage as  
18 many stakeholders as possible but this year  
19 figure out how we get the private sector to  
20 maybe engage in that conversation as we think  
21 creatively.

22 And I just want to close by saying

1 outside of those two suggestions and the work  
2 that we're actually going to do with regards  
3 to that workshop, last year again -- I just  
4 want to stress this -- it wasn't an area that  
5 I think many of us understood. And I just  
6 recently read something that was part of a  
7 testimony I think of a Comcast executive who  
8 mentioned the use of unlicensed spectrum and  
9 devices in the Boston Marathon, the tragedy  
10 around there, and how it was so important for  
11 us to look at this space because of the fact  
12 that the other communications protocol of the  
13 real-time engagement wasn't there.

14 And, you know, I work in the cable  
15 industry, represent the cable industry. To  
16 see many of our players actually come together  
17 around this issue I think is something that is  
18 very promising this year more so than anything  
19 else because it doesn't segregate this issue  
20 to just one part of the industry but makes it  
21 more whole and inclusive.

22 So we are just excited about

1 looking at all of those moving landscapes and  
2 to determine what can we actually do in our  
3 subcommittee that makes real tangible results.  
4 And I think it was good to hear Tom say, "Get  
5 to work, folks," because at the end of the  
6 day, this is going to be a marketplace that  
7 will either bypass entrepreneurs of colors or  
8 they will be actively engaged and included.

9           And so I look forward to the work  
10 of the committee. I will smile a little  
11 wider. We need volunteers for our committee  
12 who are willing to kind of jump in, even if  
13 you do not know this space, to get educated.  
14 We are very fortunate to have the FCC chief  
15 engineer have a call with us to talk us  
16 through the technology and the compliance  
17 certifications, et cetera, but would love to  
18 see one or two raises of hands to actually  
19 join our committee this year.

20                   CHAIRMAN RIVERA: Thank you,  
21 Nicol.

22                   MEMBER TURNER-LEE: Good.

1                   CHAIRMAN RIVERA: Steve?

2                   MEMBER ROBERTS: Nicol, since you  
3 have been kicking me under the table this  
4 whole time, I will certainly volunteer.

5                   (Laughter.)

6                   MEMBER TURNER-LEE: And I think,  
7 Andy, I saw a hand raised. Andy?

8                   CHAIRMAN RIVERA: Rudy?

9                   MEMBER BRIOCHE: And I wasn't  
10 going to actually volunteer, but she forced my  
11 hand.

12                   CHAIRMAN RIVERA: Okay.

13                   MEMBER TURNER-LEE: My leg is not  
14 that long.

15                   (Laughter.)

16                   MEMBER BRIOCHE: But, in all  
17 seriousness, though, I think the reference to  
18 Tom in Nicol's testimony is actually the  
19 reason I would volunteer. I mean, it's pretty  
20 clear to us, at least at Comcast, that this is  
21 a space that is actually very underdeveloped.  
22 But, yet, there is a role that the private

1 sector can play in deploying these types of  
2 resources.

3 While we use it primarily for it  
4 to enhance the current broadband offering that  
5 we currently provide, during times of national  
6 emergencies, we think it is very important to  
7 at least, you know provide that additional  
8 bandwidth. Boston is one of the examples, and  
9 there have been others as well. But this is  
10 an area where there is a good place for us to  
11 work together on that.

12 Thanks.

13 CHAIRMAN RIVERA: Excellent.

14 Excellent.

15 Any questions of Nicol?

16 (No response.)

17 CHAIRMAN RIVERA: No? All right.

18 MEMBER TURNER-LEE: Thank you.

19 CHAIRMAN RIVERA: We're going to  
20 go a little bit out of order because our  
21 guest, one of our guest speakers, Ruthanne  
22 Deutsch, has got to be off soon. So we're

1 going to postpone David's report. He's going  
2 to be part of this report on Fisher.

3 I wanted you all to be aware of  
4 this case. It's a significant case in the  
5 civil rights area. It is a case about  
6 education, as opposed to telecommunications.  
7 David's part in this presentation is going to  
8 be to bring this home to the communications  
9 industry. So I thought you all should know  
10 about this case.

11 And, Ruthanne, who is a senior  
12 counsel at Akin Gump and worked with MMTC to  
13 write the brief, write one of the briefs  
14 involved in this case, has agreed to brief you  
15 all about it.

16 So we're very pleased you are here  
17 joining us, Ruthanne. And the floor is yours.  
18 Thanks so much.

19 MS. DEUTSCH: Thank you very much  
20 for inviting me. It is a real privilege and  
21 an honor to talk with you.

22 PRESENTATIONS

## 1 FISHER V. UNIVERSITY OF TEXAS

2 MS. DEUTSCH: And, as you said,  
3 Chairman, I was the counsel of record on the  
4 brief that we prepared with MMTC. There was  
5 a bipartisan group of former commissioners who  
6 signed the brief and one former general  
7 counsel.

8 This case is really about the  
9 constitutional rules of the game in  
10 affirmative action programs. It is  
11 specifically about education that could have  
12 broader reach. And it asks, you know, what  
13 are the legitimate means to satisfy the  
14 compelling government interests in diversity  
15 of viewpoints and remedying past  
16 discrimination versus impermissible or  
17 unconstitutional racial balancing.

18 And it asks this question at a  
19 time where the Supreme Court is as hostile as  
20 it's ever been to affirmative action programs.  
21 With the changing composition of the court,  
22 things have gotten not better.

1           It's the only case from October --  
2           it was argued in October. It's the only case  
3           from October that hasn't been decided yet by  
4           the court. So it suggests that they are  
5           struggling with it. Justice Kagan is actually  
6           recused from the case. So the Supreme Court  
7           has nine members. There are only eight  
8           justices that will be deciding this case.

9           If they were going to be split, we  
10          would have known that. That would have  
11          happened early. So there is going to be a  
12          majority opinion and a dissent for sure based  
13          on argument.

14          So what I'd like to do is first  
15          give a little background on Supreme Court  
16          precedent in the area of affirmative action  
17          and education and also broadcast in government  
18          preferences so we can sort of situate Fisher  
19          within the doctrine; then talk about the case  
20          itself, the facts of the case itself, and how  
21          it presented itself to the court within this  
22          trajectory of evolving doctrine; then talk

1 about the issues that came up in the briefing  
2 and during argument especially; and sort of  
3 some of the predictions on outcome; and,  
4 finally, you know, segue a little into what  
5 David is going to talk much more in-depth  
6 about, the implications for the section 257  
7 and the work of this Committee, the work of  
8 the Commission.

9           So in terms of the background, the  
10 Supreme Court case is on diversity in higher  
11 education. And there is one recent case that  
12 dealt with K through 12. The touchstone, what  
13 has been called the touchstone, a  
14 constitutional analysis of race-conscious  
15 admission policies, was actually a 1978  
16 opinion called Regents of University of  
17 California versus Bakke. In that case, they  
18 struck down a program at the medical school of  
19 UC Davis which had a numerical set-aside of 16  
20 of the 100 seats in the medical school at the  
21 university for members of minority groups. So  
22 that's the first of the themes that you are

1 going to see in these opinions. They don't  
2 like numbers. Mechanical quotas, no, no.

3 But that opinion was authored, the  
4 majority was authored, by Justice Powell. And  
5 he also authored a plurality concurrence that  
6 was enjoined by four other members but sort of  
7 set the dialogue and actually was what  
8 colleges and universities worked with going  
9 forward, where he said there was a compelling  
10 interest in having a diverse student body in  
11 higher education to break down racial  
12 barriers, to have a diversity of viewpoints,  
13 to build an effective leadership, and that  
14 although you couldn't have a quota, it was a  
15 legitimate interest that if it had been  
16 pursued in a non-mechanical means would have  
17 been okay.

18 So colleges, institutions of  
19 higher ed., graduate schools, laws schools  
20 worked on that premise. And about 25 years  
21 later, yeah, 25 years later, 2 cases came to  
22 the court from the University of Michigan

1 where they flushed out what Justice Powell had  
2 really -- or what at that time they believe  
3 Justice Powell allowed and did not allow in  
4 his concurrence.

5 So the two cases, one is Grutter  
6 v. Bollinger. That came from the law school.  
7 And the second is Gratz v. Bollinger. And  
8 that came from the undergraduate. And one was  
9 okay, and one wasn't. And, again, it was  
10 about mechanical use of numbers versus  
11 individualized holistic assessments.

12 In Grutter, which was the law  
13 school case, they affirmed the law school's  
14 admissions policies, where race -- it was a  
15 race-conscious policy, where race was  
16 considered as one of many factors on an  
17 individualized assessment of the various  
18 applicants to the law school.

19 Now, I am telling you this opinion  
20 was authored by who? Justice O'Connor. Guess  
21 what. She's not on the court anymore. And  
22 guess what. This was a 5:4 decision.

1                   So guess who replaced Justice  
2 O'Connor. Justice Alito, not someone that you  
3 would expect to take the same side. So this  
4 doesn't bode well going forward.

5                   One of the things that Justice  
6 O'Connor -- and Justice O'Connor when she was  
7 on the court played the role that Justice  
8 Kennedy plays today a little bit. She was  
9 often in the middle and often trying to weigh  
10 competing inferences and give a little here,  
11 take a little there.

12                   So one of the things that she said  
13 that the more liberal members of the court did  
14 not agree with and so she wrote not for  
15 everyone in the majority when she said this  
16 was that, you know, in 25 years, we shouldn't  
17 need programs like this. And she kind of  
18 pulled a number out of the sky, frankly. I  
19 don't think there was anything necessarily in  
20 the briefing supporting that, but I think it  
21 was her own internal sense of justice. And  
22 that's the kind of judge that she was. She

1 really was trying to get at the right result  
2 in her view in a very give or take.

3 So Justice Ginsburg and Justice  
4 Breyer, who were the only liberal justices  
5 then on the court that are still now on the  
6 court -- Justice Souter and Justice Stephens  
7 also joined that opinion. They're gone. They  
8 have been replaced by Justices Sotomayor and  
9 Kagan. But they stepped back from this idea  
10 that, you know, 25 years would be enough to  
11 handle things.

12 And the dissent, there were  
13 various dissents. Justice Kennedy wrote a  
14 pretty strong dissent. And in his view, he  
15 agreed that there was a compelling interest in  
16 diversity, which is important, but he said  
17 that it didn't pass the constitutional test,  
18 which is strict scrutiny. And a compelling  
19 interest for strict scrutiny, the affirmative  
20 action or race-conscious measure has to be  
21 necessary to further the compelling interest  
22 and it has to be narrowly tailored. It has to

1 -- you really have to show that nothing else  
2 would work. And in showing that, you have to  
3 consider race-neutral alternatives. So race  
4 -- in Justice Kennedy's words in his dissent,  
5 it really has to be a last resort.

6 So that's the backdrop in higher  
7 education. There was then a case decided with  
8 almost the court we have now. Roberts was  
9 there. Alito was there. Kagan and Sotomayor  
10 had not yet joined. But the political  
11 composition of the court was the same as we  
12 have now. And that was in 2007. That was a  
13 case called Parents Involved in Community  
14 Schools v. Seattle School District No. 1.

15 So that case struck down a program  
16 where race was considered by two local school  
17 boards as a way of trying to achieve more  
18 diversity and integration in local school  
19 districts. And it was interesting because  
20 they disavowed any goal in remediating past  
21 discrimination. And that might have changed  
22 the analysis in that case. It was only about

1 viewpoint diversity in K through 12.

2 And, again, this was a case.

3 Justice Kennedy was the swing vote, struck  
4 down 5:4. And they said it was not narrowly  
5 tailored and race was used too mechanically.

6 This is a case where Chief Justice Roberts had  
7 his famous phrase that the only way to stop  
8 discrimination on the basis of race is to stop  
9 discriminating on the basis of race.

10 So just a little personal aside.

11 I clerked for Justice Ginsburg in 2008, so  
12 joined right after this case was decided  
13 because it was one of the last -- I think it  
14 was the last decision that issued in 2007.

15 And the opinion was hundreds of pages long.

16 And Justice Breyer has an incredibly long  
17 dissent.

18 And the court, the clerks at  
19 least, I mean, I think the justices were  
20 pretty much already traveling for the summer,  
21 but the clerks were incredibly polarized that  
22 year. It was a decision that generated a lot

1 of tension, a lot of animosity, deep, deep  
2 divides within the institution, at least on  
3 the clerk level.

4 But the upshot of this backdrop is  
5 that diversity, viewpoint diversity, in  
6 education is a compelling interest. And so  
7 that survived. But attempts at quantification  
8 or rigid, formulaic goals at achieving that  
9 are very constitutionally risky.

10 And then, as I'll talk about a  
11 little bit more when we go over the argument,  
12 in Fisher, there are lots of inherent  
13 contradictions and problems that arise from  
14 this approach because it's a little bit  
15 wanting to have your cake and eat it, too and  
16 having targets but not being able to measure  
17 them. So it creates some issues.

18 Just so that -- you guys know  
19 Metro Broadcasting and Adarand, but just as a  
20 quick -- Metro Broadcasting applied  
21 intermediate scrutiny to an equal protection  
22 challenge of FCC pop programs designed to

1 benefit minority groups. So that decision has  
2 been overturned, at least in terms of the  
3 level of scrutiny.

4 In Metro Broadcasting,  
5 intermediate scrutiny applied to viewpoint  
6 diversity in media. Now it hasn't come up  
7 again, but if the court I think were to get  
8 it, my guess is -- and we argued for this in  
9 the amicus brief, that the compelling interest  
10 of viewpoint diversity would survive in media  
11 as it has in education but that a strict  
12 scrutiny standard would be applied to it.

13 And then in Adarand, that's the  
14 case that overturned the intermediate scrutiny  
15 or scrutiny and said that in general, racial  
16 classifications imposed by the federal  
17 government are analyzed under a strict  
18 scrutiny standard.

19 And in terms of the Adarand  
20 studies that the Commission does, you know,  
21 the test for any race-conscious program,  
22 government program, going forward is whether

1 there is a strong basis in evidence for the  
2 government's conclusion that remedial action  
3 is necessary. And so I think nothing in this  
4 precedent sort of undermines the need for  
5 evidence. In fact, it strengthens it. And,  
6 as you'll see in terms of the debate during  
7 Fisher, it can pose some traps as well because  
8 to the extent that you use numbers in targets,  
9 then you're accused of being mechanical. So  
10 it gets tricky.

11 Fisher came out of -- Abigail  
12 Fisher is a white student that was rejected by  
13 the University of Texas to their undergraduate  
14 program. The University of Texas has I would  
15 say an infamous history of racial  
16 discrimination and, you know, after Bakke but  
17 before Grutter was decided actually began a  
18 race-conscious admissions policy that was  
19 struck down by a lower court of appeals. The  
20 Supreme Court hadn't yet ruled in Grutter.  
21 And Justice Powell's concurrence was just  
22 that. It wasn't binding precedent.

1           So when that happened, the state  
2 legislatures came up with an alternative that  
3 was a race-neutral alternative. They came up  
4 with what's called the top ten percent plan,  
5 where the top ten percent of graduates in high  
6 schools in Texas automatically are accepted to  
7 the University of Texas.

8           So that top 10 percent plan fills  
9 about 85 percent of the slots in the  
10 university and was successful but not as  
11 successful as the university wanted in  
12 increasing representation of under-represented  
13 minorities. And it was particularly not  
14 successful in obtaining the kind of diversity  
15 within diversity that they were looking for.

16           So that not every minority came  
17 from, you know, a low-income background and  
18 was in an inner city school and, you know, in  
19 the words of oral argument that the Solicitor  
20 General ruled you could have, you know, a  
21 Hispanics classics major and, you know, a  
22 black elite musician and a white top athlete,

1 you know, that people didn't have to fit the  
2 stereotypes associated with their groups.

3 So the current plan was  
4 implemented after Grutter. And it hued  
5 incredibly closely to the instructions in  
6 Grutter as well as the admonitions in Justice  
7 Kennedy's dissent. A very individualized,  
8 holistic assessment of student applicants were  
9 raised, in the words of the district court.  
10 It was affirmed by both the district court and  
11 the lower court of appeals before the Supreme  
12 Court granted cert and raised as a factor of  
13 a factor of a factor.

14 There is a composite score that's  
15 put together that is not  
16 outcome-determinative. The admissions  
17 counselors received training, but when you are  
18 looking at a person and you are looking at  
19 what they have done, you are allowed to look  
20 at their race. That is basically what the  
21 plan is.

22 The Supreme Court granted cert.

1 And everybody freaked out because it was  
2 basically like if any plan, you know, follows  
3 Grutter, this is it. They're only granting to  
4 either strike down Grutter or gut it, as  
5 Sotomayor said during oral argument.

6 And, as I mentioned, there are  
7 only eight people deciding the case. And they  
8 knew that when cert was granted. Justice  
9 Kagan, you know, recused herself right  
10 afterwards or might have even been recused  
11 from the cert process. So something is  
12 cooking.

13 Some of the interesting issues in  
14 the case and things to pay attention to,  
15 Abigail Fisher and her lawyers, they said from  
16 the outset, it's there in their question  
17 presented, they reiterated it during oral  
18 argument before the court, they do not want to  
19 overrule Grutter. So they are basically  
20 saying this program doesn't satisfy strict  
21 scrutiny. They're not trying to completely  
22 throw out the court's recognition of

1 compelling interest in diversity.

2 Both sides agree there is a  
3 compelling interest, but the issues arise when  
4 they say, "Well, how do you say it's a  
5 necessary goal? And how do you show that the  
6 program is achieving that goal?"

7 Justice Scalia during argument  
8 because the university said, "We're pursuing  
9 this goal because we want to reach a critical  
10 mass, so that people don't feel isolated, so  
11 that minorities are not monolithic, so that  
12 there's viewpoint diversity, so that we are  
13 creating the kind of leadership in a  
14 multi-cultural, multi-ethnic state like Texas  
15 that can lead and succeed and inspire."

16 And the other side said, "You're  
17 looking at demographics. You try to track  
18 demographics."

19 And there was a lot of back and  
20 forth during oral argument, where at one  
21 point, Justice Scalia said, "Well, what is  
22 critical mass? It's like grabbing a cloud,

1       you know."

2                   And there was absolute refusal on  
3       the part of the Solicitor General and the  
4       university's lawyer to put any numbers or to  
5       even say with two exactly similar applicants  
6       that race would be dispositive in any given  
7       case because -- and that's because of the way  
8       the holistic works. It depends. You know,  
9       are they similar oboe players or are they  
10      similar athletes? And if the university needs  
11      an oboe player and not an athlete, race may or  
12      -- you know, so the way admissions worked  
13      there, they couldn't answer these questions.  
14      But the justices were frustrated.

15                   I think that Justice Sotomayor  
16      probably got it right when she said that "You  
17      may not be asking us to overrule Grutter, but  
18      you are asking us to gut it."

19                   And my guess on reading the  
20      transcript and the fact that they granted it  
21      all is that we're going to get a decision  
22      striking down the program offered by Justice

1 Kennedy, who is the swing vote again, that  
2 will, say, leave a very, very, very tiny  
3 window open for considering race, but, you  
4 know, it's hard to know how it can be even  
5 tinier than what they already did. So I'm not  
6 very good at predictions, but I'm not  
7 optimistic about the result I guess is the  
8 general prediction.

9 In terms of implication for the  
10 work here, I think that more evidence is  
11 always good and always persuasive. And  
12 knowledge is power in this area, particularly  
13 because the agency and the Committee have, you  
14 know, more than one compelling interest to  
15 serve. It's not only viewpoint diversity.  
16 You have a statutory mandate to remedy past  
17 discrimination. And the court has treated the  
18 remedial cases differently.

19 And there's work to be done and  
20 value to be had in building a record and even  
21 building a record and an analysis to show the  
22 extent to which race-neutral measures can

1       serve race-conscious objectives, you know,  
2       because I think the top ten plan did not get  
3       all the way there, but it did do something  
4       and, you know, focuses on socioeconomic  
5       background and regional diversity. And other  
6       non-constitutionally suspect categories can do  
7       a lot of the work and get you a lot of the way  
8       down the road that race-conscious measures  
9       might raise flags.

10               In Adarand and then in Grutter,  
11       the court insisted that strict scrutiny is not  
12       strict in theory but fatal in fact, but I'm  
13       wondering, you know, whether with the current  
14       court, that that adage is still the case.

15               But the good news is that  
16       compelling interest I think is going to  
17       survive. And I don't think there's any doubt  
18       that that interest is present multi-fold in  
19       media because not only are you talking amongst  
20       yourselves. You're talking to us. And you're  
21       creating an informed citizenry. And you're  
22       the way that we speak to each other and learn

1 about each other. And we made that argument  
2 in our brief.

3 And I'm sure David has more to say  
4 about it. But, you know, I salute your work,  
5 and I wish you all the best. Thank you.

6 CHAIRMAN RIVERA: Thank you,  
7 Ruthanne.

8 David? Can I go ahead with David?  
9 And then we'll open it up for questions.  
10 Thanks, Rudy.

11 MEMBER HONIG: So I'd like to  
12 address how what the court is about to do  
13 could impact particularly the question of  
14 diversity in the media. It's not immediately  
15 something you think of because usually when we  
16 think of diversity in the media, we think of  
17 it as a close cousin to diversity in  
18 education. But it's more than that.

19 One of the issues that was  
20 presented in this brief that Ruthanne held the  
21 pen on with MMTC and the former commissioners  
22 and Chris Wright was the fact that, like other

1 industries, the media benefits greatly in  
2 terms of innovation, diversity, and  
3 competition to the extent that it is able to  
4 attract and employ people who have been  
5 exposed while they were in college and  
6 professional school to a diverse learning  
7 environment.

8           The way we put it -- I'm going to  
9 quote briefly from this brief -- "The  
10 promotion of diversity in higher education is  
11 essential to the promotion of diversity in the  
12 mass media because the nation's colleges and  
13 universities are the pipeline for opportunity  
14 in the mass media and the trainers of future  
15 media programmers and journalists.

16           Diversity in higher education  
17 allows not only for a robust exchange of ideas  
18 on campus. It is an essential predicate for  
19 ensuring a robust exchange of ideas in  
20 communication through mass media.

21           For those trained in journalism or  
22 communications, an environment that alerts

1       them to the continued existence of racial bias  
2       and stereotypes and affords them the  
3       opportunity by living example to dispel such  
4       biases is doubly important. And journalists,  
5       programmers, and media owners of all races who  
6       have been educated in a diverse and culturally  
7       sensitive environment would be better able to  
8       avoid unconscious racial biases and to more  
9       effectively communicate in a way that fosters  
10      understanding among, across racial and ethnic  
11      divides, rather than exacerbating such  
12      divisions.

13                   Now, the other way that this  
14      decision could impact what we do derives from  
15      the fact that the law on diversity in the  
16      media, in fact, flowed from and was very much  
17      informed by the law on diversity in education.

18                   When we think of the Metro  
19      Broadcasting case, it quoted very extensively  
20      from some of the education cases because in  
21      many ways, after you graduate from school, the  
22      way that you become exposed to diversity in

1 the workplace really is kind of the successor  
2 to your exposure to it in school. And much  
3 the same happens within the sense that it is  
4 a crucible of discussion and learning.

5 So what could happen in this  
6 decision, there are about three or so possible  
7 outcomes. And this is somewhat of an  
8 oversimplification. One is that maybe the  
9 program in Texas is thrown out but the fact  
10 that diversity in education is a compelling  
11 government interest is retained, in which case  
12 the impact on the media industry would  
13 probably be that it would be harder for  
14 universities to diversify themselves and,  
15 thus, feed people who had been exposed to that  
16 into this industry. And that would be  
17 unfortunate.

18 Second, the court could hold that  
19 diversity in education is not a compelling  
20 government interest anymore. It could reverse  
21 that part of Grutter, notwithstanding that Ms.  
22 Fisher didn't ask them to do that. It could

1       happen.

2                       Were that to happen, the court  
3       could do it in one of two ways. It could look  
4       at the question of diversity in education just  
5       by itself and not say anything about diversity  
6       in the media. Maybe there would be a footnote  
7       or some dictum suggesting that, "Well, we  
8       don't have a record on that. Maybe it  
9       survives but diversity in education doesn't  
10      survive." That's for another case. You could  
11     almost imagine that one of the opinions would  
12     almost be read as inviting the bringing of  
13     such a case, which would have much the same  
14     outcome as this case does.

15                      And the other way the court could  
16     conceivably handle it is to just say,  
17     "Diversity, whether in any context is not a  
18     compelling government interest anymore." I  
19     think that's unlikely, but it's theoretically  
20     possible. And there certainly are at least  
21     two justices who clearly, maybe three, who  
22     seem to have that view.

1                   Now, what would that mean in terms  
2 of what happens with the current state of the  
3 Commission's consideration of proposals to  
4 advance diversity? Well, one predicate for  
5 proposals that could be race-conscious is that  
6 after Parents Involved, if the only way to  
7 achieve diversity is through race-conscious  
8 measures, such measures have to be a last  
9 resort. The Commission has to have tried  
10 race-neutral methods first. And certainly no  
11 one can say the Commission has tried all of  
12 them yet.

13                   But if it were to reach that  
14 point, it would need to have before it what  
15 are called Adarand studies, which look at,  
16 what are the disparities, how did we get these  
17 disparities, what was their cause, what was  
18 the history and why this interest is  
19 compelling, and why the methods being  
20 considered are narrowly tailored.

21                   Those studies have been done by  
22 the Commission before. They were produced and

1 released in this room on December 12th, 2000.  
2 When Bill Kennard was chair, there were five  
3 such studies. They cost over \$2 million to  
4 do. And they have, unfortunately -- and they  
5 were superb. They have, unfortunately, sat on  
6 the shelf ever since.

7 The data used for those studies  
8 derived from, came from the years 1996 to  
9 1999. So it is long since stale. And, except  
10 for the historical study to be done again, it  
11 would have to be started over.

12 So one might ask, "Well, my  
13 goodness. If we're not going to be able to  
14 use race-conscious methods at all, one  
15 potential outcome of this decision, would it  
16 still be desirable to do these Adarand  
17 studies?" Well, to some extent, yes because  
18 it's always good to kind of remember that  
19 data-driven policy meeting is desirable,  
20 irrespective of whether it's also necessary to  
21 meet a constitutional test.

22 So my answer to that would be that

1 the Commission, irrespective of the result of  
2 this case, should continue to press forward in  
3 trying to get those studies done, at least to  
4 the extent that they're useful in fashioning  
5 the kinds of remedies, whether they're  
6 race-neutral or potentially race-conscious,  
7 that could result in preserving and expanding  
8 diversity in the media or in other industries.

9 That's it.

10 CHAIRMAN RIVERA: Thank you. All  
11 right.

12 I'm going to throw it open for  
13 questions. Rudy, do you want the first  
14 question?

15 MEMBER BRIOCHE: I believe David  
16 answered that question. I have several  
17 questions, but I will just ask the first  
18 threshold question. David answered it partly.  
19 I was trying to get a sense of, you know, at  
20 least within the jurisprudence, the overlap  
21 between, you know, the race-conscious measures  
22 you mentioned and the goal of achieving

1 diversity, to what extent the court recognizes  
2 that that is still, in fact, a goal to be  
3 reached. And within that, you know,  
4 race-conscious methods may be one of, you  
5 know, many particular aspects. To what extent  
6 is there an overlap between the two? Are we  
7 talking about where they can get a decision  
8 purely on the race-conscious methods, not  
9 necessarily on the achievement of diversity as  
10 a goal?

11 MS. DEUTSCH: The validity of  
12 viewpoint diversity as a goal in higher  
13 education I don't think is seriously being  
14 challenged by Fisher in this case.

15 David suggested maybe the court  
16 would reach out and say, "Well, that's not a  
17 legitimate goal." I don't think they're going  
18 to go that far. But the court does  
19 distinguish because I think the issue is you  
20 have a goal but you don't have a means to  
21 measure it because they basically backed  
22 themselves into a corner where they -- you

1 know, from 1978 with quota, you know, in Bakke  
2 and not wanting quotas, up through Parents  
3 Involved.

4 So it makes it very difficult to  
5 show that you are crafting a program that is  
6 narrowly tailored to meet a goal when the goal  
7 cannot be based on something that you measure.

8 CHAIRMAN RIVERA: Nicol?

9 MEMBER TURNER-LEE: So I have a  
10 question. And I think this is actually a  
11 really good overview for the Committee. And  
12 I am very much aware as an MMTC board member,  
13 some of the precedence behind paralleling what  
14 will happen in this case to the media  
15 industry.

16 I guess my question is, though,  
17 much of that legal framework is also designed  
18 for a traditional structure. So the  
19 educational system has a legacy of being very  
20 traditional; whereas, what we are seeing today  
21 in the media and communications industry is a  
22 lot more fluid, right?

1                   And so I guess the question I have  
2                   for you, even though this is something that we  
3                   actually want to monitor and see how it is  
4                   correlated with media diversity, are there  
5                   other cases, precedence, you know, that we  
6                   should really be paying attention to that will  
7                   ultimately impact media diversity with these  
8                   new boundaries?

9                   And, David, I know you have been  
10                  watching this, but it is something to think  
11                  about. I mean, the journalism field is under  
12                  attack. Digital is still an uncharted  
13                  territory when it comes to diversity.

14                  So just curious. You know, are we  
15                  thinking forward with regards to other legal  
16                  frameworks that we should be looking at?

17                  MS. DEUTSCH: I mean, off the top  
18                  of my head, you know, I mean, I think there  
19                  are First Amendment and other issues that come  
20                  up, and in terms of racially suspect,  
21                  constitutionally racially suspect, cases, I  
22                  haven't seen any that deal with the more

1 cutting-edge media.

2 And, in fact, it sort of makes  
3 sense because you don't have one  
4 decision-maker that you can say, "You are  
5 doing something where you are using race in an  
6 inappropriate way to allocate a scarce  
7 resource," whether it's admission to the  
8 university or entitlement to a government  
9 program.

10 Adarand is a case and Metro  
11 Broadcasting, where you have a finite  
12 government good that is being allocated. And  
13 I guess the Commission, you know, still does  
14 stuff like that. So it's going to come up,  
15 but there haven't been recent cases.

16 MEMBER HONIG: And very careful in  
17 the way it's proceeded in this area. One has  
18 to keep in mind what I think -- Ruthanne, help  
19 me, make sure I have this right -- that there  
20 is one change in the law that we often  
21 overlook that came from Parents Involved in  
22 2007.

1           In 1989, there was a case called  
2           J. A. Croson v. City of Richmond, in which  
3           Justice O'Connor wrote the opinion. And she  
4           basically said that a government before it  
5           could undertake a race-conscious measure would  
6           be expected to undertake most, not all, that  
7           the human mind can come up with but most  
8           race-neutral measures first and be able  
9           reasonably to say, "Well, it's unlikely that  
10          we're going to solve this problem without a  
11          race-conscious measure."

12                 Parents Involved tightened that  
13          somewhat, actually quite a bit. If you read  
14          Justice Kennedy's opinion, it was clear that  
15          he wants government actors to basically  
16          exhaust essentially all potential race-neutral  
17          measures in good faith in the hope that maybe  
18          they will work and then only turn to  
19          race-conscious measures as a last resort.

20                 In many agencies and cabinet  
21          departments that use, for example, a socially  
22          disadvantaged business definition, which may

1 be regarded as race-conscious in some  
2 instances, they have already tried a vast  
3 number of and probably enough to satisfy  
4 Parents' race-neutral steps.

5 The FCC is a little behind them,  
6 however, because it has not come up with a  
7 race-neutral eligible entity definition which  
8 is effective. It has not considered quite a  
9 number of race-neutral proposals, but it has  
10 them under consideration. So it's maybe a  
11 couple of years behind where other agencies  
12 are.

13 What would happen if the court  
14 calls into question in some way whether  
15 diversity in the media is a compelling  
16 governmental interest, the Commission would  
17 still need to try in good faith, just as it is  
18 now, to consider race-neutral measures and see  
19 if they can be made to work.

20 Certainly one of the proposals  
21 that came out of, actually a predecessor of  
22 this Diversity Committee in 1990, when the

1 Commission had its Minority Ownership Advisory  
2 Committee, came from Jim Winston at NABOB, who  
3 was a member of that Committee at that time,  
4 as he is now. And that is the Commission  
5 ought to in the normal course whenever it  
6 takes a major rulemaking decision or considers  
7 a major merger that could have implications  
8 across the board look at, just as it does with  
9 the OMB showing that it has to make, the RFAs,  
10 look at, consciously examine, the impact of  
11 that decision on minorities and women on  
12 diversity so that there aren't unintended  
13 consequences that are adverse. And that  
14 affects a great deal of what the Commission  
15 does that may on its face, on the surface of  
16 it seem not to have anything directly to do  
17 with race and gender but, nonetheless, has  
18 those consequences.

19 That proposal, which has been  
20 endorsed by over 50 organizations, is still  
21 pending. And, Jim, I hope before you retire  
22 that the Commission will grant it.

1 (Laughter.)

2 CHAIRMAN RIVERA: Other questions?  
3 Other questions? Yes?

4 MEMBER ROBERTS: Mr. Chair, I just  
5 wanted to thank both Ruthanne and David. You  
6 know, I have read a lot of synopses of these  
7 cases. And, being a lawyer, I guess I always  
8 have that crazy desire to look at interesting  
9 cases.

10 But I will tell you your synopsis  
11 on where we are, how we have gotten to where  
12 we are today has been excellent on both of  
13 your cases. And I know it takes a lot of time  
14 to do this. So thank you because I don't  
15 think we're paying them anything, Mr. Chair.  
16 No, no. Good.

17 (Laughter.)

18 CHAIRMAN RIVERA: About as much as  
19 we're paying you.

20 (Laughter.)

21 MEMBER ROBERTS: Yes, that's  
22 right. Well, they're broke, then.

1 (Laughter.)

2 CHAIRMAN RIVERA: Yes.

3 MEMBER ROBERTS: But I hope that  
4 -- this case is very, very important and  
5 particularly its impacts upon media. I hope  
6 that, Mr. Chair, if the decision comes out  
7 before our next meeting, that maybe we will  
8 have a call meeting so that we can all be  
9 informed for our constituency. Because I think  
10 this is very, very -- and it will have a very  
11 long-term impact upon what we do here today.

12 Thank you.

13 CHAIRMAN RIVERA: Yes. That was  
14 my feeling exactly. We will try to get the  
15 word out. And hopefully we can ask you to  
16 come back once the decision is out.

17 Thank you.

18 Eric?

19 MEMBER BROYLES: This is I guess  
20 for Ruthanne and for David. In thinking about  
21 O'Connor's comment about, yes, 25 years from  
22 now and let's call it changed jurisprudence,

1 right, I know you said you don't like to  
2 hazard guesses on things, but what if the  
3 justices in this case or maybe, if not in this  
4 case, the next case took a line of that  
5 thinking and said, "You know what? Because  
6 technology is such that, you know, you have  
7 YouTube, right, that doesn't cost, there's no  
8 barrier to entry with a YouTube video clip,  
9 and because of technological changes," but  
10 then the other piece of it, though, would be  
11 the demographic shift, right, if you would  
12 take a guess, is something like that going to  
13 come up? Would you think that something like  
14 that might? They're saying that we don't need  
15 to take, that it's not compelling interest  
16 anymore, right, because you have technological  
17 changes, you have demographic shifts.

18 CHAIRMAN RIVERA: So diversity is  
19 no longer a compelling interest.

20 MS. DEUTSCH: I would think that  
21 the demographic shift would point the other  
22 direction. I mean, that is certainly the

1 argument that Texas made, that the  
2 demographics of the state were changing  
3 incredibly and the flagship and lead  
4 university was not mirroring that demographic  
5 shift.

6 So I think you're asking two  
7 separate questions, right?

8 MEMBER BROYLES: Right.

9 MS. DEUTSCH: Because, again, for  
10 something like a scarce license to, you know,  
11 part of the spectrum or entry into an elite  
12 higher education institution, where you have  
13 scarce resources and where they're not being  
14 allocated in accord with the underlying  
15 demographic, I think there is still going to  
16 be a compelling interest.

17 If it's a non-scarce resource,  
18 like being able to post to YouTube, yes, I  
19 think, although there are studies that talk  
20 about access to broadband and access to  
21 wireless technology and things like that, so  
22 not everybody can post to YouTube --

1                   MEMBER BROYLES:  What if the  
2                   justices say -- I hear you on if there are  
3                   fewer people -- well, what if the justices  
4                   say, "You can protect yourself with the vote  
5                   now"?  If you think about somebody like John  
6                   Hart Ely, right, political process theory,  
7                   right, --

8                   MS. DEUTSCH:  Right.

9                   MEMBER BROYLES:  -- at the whims  
10                  of the majority, you have a franchise --

11                  MS. DEUTSCH:  And, in fact, it was  
12                  the state legislature in Texas that passed the  
13                  top ten.  I mean, the justices are perfectly  
14                  capable of saying, you know, "It's not  
15                  necessary to do anything.  Things will fix  
16                  themselves," if that's what you're asking.

17                  I don't think they're going to go  
18                  that far, but I might be wrong.

19                  CHAIRMAN RIVERA:  David?

20                  MEMBER HONIG:  It is important to  
21                  remember that there is actually another case  
22                  in the Supreme Court this term that addresses

1 this question that you posed, which is  
2 basically are we now where Justice O'Connor  
3 thinks we will be in 2028? Have we reached  
4 the promised land? Is there any further need  
5 because this problem of race has been solved?  
6 And that case is Shelby County, Alabama v.  
7 Holder, which challenges the constitutionality  
8 of section 5 of the Voting Rights Act.

9 And the principal theory on which  
10 Shelby County is proceeding is that, in fact,  
11 we elected an African American President,  
12 voting rights violations are in their view  
13 rare, although that is a matter of degree and  
14 there is a factual record to the contrary.

15 And one of the justices at oral  
16 argument made a statement which, frankly, if  
17 you were there, people gasped that, well, even  
18 though there was a 98 to nothing vote to  
19 continue this provision just a few years ago,  
20 in 2006, in the Senate, this justice said,  
21 "Well, it's hard to get people to vote against  
22 a racial entitlement."

1           So it is quite possible that, at  
2           least in dictum in that case and possibly in  
3           this one, that question may be addressed, if  
4           not completely answered.

5           MS. DEUTSCH: And just another  
6           note from a different oral argument. In the  
7           DOMA case, at one point one of the advocates  
8           said, "Well, why do we even have to do  
9           anything because, you know, the gays are so  
10          politically active. And you're going to fix  
11          things on your own. You're not really a  
12          disenfranchised political group."

13          So yes, there's definitely that  
14          willingness, at least, to go off at oral  
15          argument. Whether they can transfer that into  
16          a, you know, written opinion that has to be  
17          based in precedent and, you know, conform, at  
18          least in form, to their role as judges is  
19          another question.

20          CHAIRMAN RIVERA: Please join me  
21          in thanking Ruthanne and David for that great  
22          presentation. Appreciate it. Thank you.

1 (Applause.)

2 CHAIRMAN RIVERA: So more on this  
3 case as it develops and we get a decision.  
4 And we'll keep you informed about this for  
5 sure.

6 David, do you have a report from  
7 your task force?

8 MEMBER HONIG: Yes. Thank you.

9 EEO ENFORCEMENT

10 MEMBER HONIG: I first want to  
11 recognize the members of the EEO Working Group  
12 who worked last year on the issue that we were  
13 assigned, which was to examine the feasibility  
14 of a study and statistics which would develop  
15 statistics, and best practices on  
16 FCC-regulated and ancillary industries on  
17 recruitment, training, and promotion of  
18 minorities and women.

19 The members of the working group  
20 were Andy Schwartzman, Jason Lagria, and Karen  
21 Narasaki, Jessica Gonzalez, Karla Ballard,  
22 Rudy Brioche, and Sylvia Strobel. And thank

1 you very much for your work on this project.

2 We did, in fact, prepare a  
3 comprehensive proposal and estimate for  
4 conducting such a study and costed it out.  
5 Unfortunately, it presently appears that there  
6 aren't the funds to conduct that study, but it  
7 is waiting for maybe the sequester to lift and  
8 perhaps it can be done.

9 In the course of our work looking  
10 at those questions, a number of ancillary  
11 issues arose that perhaps it would be  
12 desirable for us to consider this year. One  
13 of those is looking at the FCC's current  
14 regulatory program and the extent to which it  
15 recognizes best practices and, as the  
16 Commission has said, really, since it adopted  
17 equal employment rules in 1968, it hopes that  
18 companies will do more than the bare minimum  
19 in order to develop genuine diversity in these  
20 industries.

21 So the question, then, was, the  
22 audit program that the Commission now has

1 working, does it produce diversity?

2 The second big question that came  
3 up was whether we need more granular data.  
4 This is the so-called form 395 question which  
5 has been pending since 2002, whether to have  
6 a snapshot or photograph of who is employed.

7 The reason that this came up was  
8 because the purpose of the current equal  
9 employment rules is not so much to promote  
10 diversity as to prevent discrimination.  
11 That's what the Commission has said when it  
12 reinstated some of those rules after a couple  
13 of court cases in 1998 and 2001 that cut them  
14 back.

15 And the Commission does have a  
16 long line of precedent saying that it is  
17 inherently discriminatory if a company  
18 recruits primarily by word of mouth from a  
19 homogeneous staff. And if you think about  
20 that, there are some elements of that. If you  
21 recruit by word of mouth but you don't have a  
22 homogeneous staff, that may be inefficient,

1 but it's not discriminatory.

2 If you have a homogeneous staff  
3 but you recruit by a number of means, that is  
4 not discriminatory. That is desirable, but  
5 it's only when those two things occur together  
6 that the EEOC and the courts and the  
7 Commission have said that it is inherently  
8 discriminatory. And because it tends to  
9 replicate the current status of the staff  
10 being homogeneous.

11 So how do you know? We know now  
12 whether recruitment is done largely by word of  
13 mouth because that is what the audits looked  
14 at and that is what the renewal applications  
15 of the EEO programs have to show, but we don't  
16 know the other half of that equation, which is  
17 whether the staff is homogeneous. So the  
18 question that might be looked at is, well,  
19 maybe there is a way to know that's tailored  
20 to address that question of whether there is  
21 discrimination.

22 We also looked at the question of

1 what about the fact that, particularly the  
2 broadcast industry in some respects may be  
3 shrinking in some ways, the EEO obligations of  
4 stations have typically tended to focus more  
5 on recruitment than what happens when people  
6 do become employed.

7 In 2004, the Diversity Committee  
8 looked at it, came out with a recommendation  
9 that those obligations be restructured to  
10 focus more on mentoring, on training, on  
11 promotion, on retention than on just  
12 recruitment. Those recommendations remain  
13 pending. And perhaps now that the industry  
14 has evolved somewhat more, it may be a good  
15 time to look at that again.

16 And, finally, the question of  
17 whether the equal employment obligations and  
18 a related one that Congress imposed on cable  
19 in 1993, the cable procurement rule, looking  
20 at how MBEs and women-owned businesses have an  
21 opportunity to get contracting work at cable  
22 systems, that has to be reported on. It's

1 managed. Unfortunately, it's managed by the  
2 EEO staff. It simply has been placed there.  
3 But whether those initiatives ought to be  
4 expanded across platforms in light of the  
5 Commission's preference for platform  
6 neutrality; that is, should they be applied to  
7 wireless, to wire line, to satellite, to other  
8 industries that the Commission looks at? And  
9 what about information industries, those  
10 regulated under Title I? It's a question that  
11 the Diversity Committee considered in 2008,  
12 passed a recommendation that the Commission  
13 should extend these. There is technically a  
14 common carrier EEO rule, has been since 1976,  
15 but it's not been applied.

16 So that's one other question that  
17 seemed to be timely in light of the fact that  
18 it hasn't been looked at in a while. Yet, we  
19 are gravitating more and more in the structure  
20 of the industry towards other means of  
21 distribution being available besides just  
22 broadcasting. So this may be a good time to

1 look at those issues.

2 CHAIRMAN RIVERA: Thank you, David.

3 Any questions of David? Yes,  
4 Jessica?

5 MEMBER GONZALEZ: This is perhaps  
6 not directly on point but I think very  
7 related. I am wondering if there is a way  
8 that this Committee this year can help infuse  
9 more diversity into the FCC itself. I think  
10 that's something that we could probably help  
11 quite a bit with around the table here.

12 CHAIRMAN RIVERA: Thank you.

13 MS. KREISMAN: If we could hire  
14 anybody, maybe.

15 (Laughter.)

16 MEMBER GONZALEZ: Whenever you are  
17 ready, we will have lists of folks.

18 CHAIRMAN RIVERA: There you go.  
19 That would be very helpful.

20 MEMBER GONZALEZ: No. I wasn't  
21 going there.

22 (Laughter.)

1                   CHAIRMAN RIVERA: Any other  
2 questions for David? All right. If not, we  
3 -- oh, I'm sorry? Go ahead, Jason.

4                   MEMBER LAGRIA: I was just  
5 wondering, you know, with the issue decision  
6 coming probably by the next meeting if we  
7 could somehow, maybe our committee, look at  
8 ramifications of what the justices actually  
9 say in that opinion. I know we'll have an  
10 update but maybe some sort of recommendation.

11                  CHAIRMAN RIVERA: Sure. Let's see  
12 what they say first. And then we can decide  
13 those kinds of questions. But that's one of  
14 the reasons I wanted a briefing, so we could  
15 lay some groundwork. But it's a good point.  
16 Thank you for raising it.

17                               Anything else?

18                               (No response.)

19                  CHAIRMAN RIVERA: Okay. I'd like  
20 to move on to our final report. We are  
21 fortunate to have with us Phylis Eagle-Oldson,  
22 who is the President and CEO of the

1 organization called Emma Bowen Foundation for  
2 Minority Interests in Media. And with her is  
3 Jarred Hill, who is a product of that program.

4 In the spirit of full disclosure,  
5 I have to tell you that I was Vice President  
6 of the Emma Bowen Foundation for many, many,  
7 many years. I had a role in getting it off  
8 the ground, and I still remain on the board,  
9 so just so you know that.

10 Jarred made me feel very old a  
11 moment ago --

12 (Laughter.)

13 CHAIRMAN RIVERA: -- when he told  
14 me that he was a year old when we started the  
15 Emma Bowen Foundation --

16 (Laughter.)

17 CHAIRMAN RIVERA: -- and now he's  
18 a product of it.

19 And, with that, I'll turn it over  
20 to Phylis. Thank you for being here.

21 THE EMMA BOWEN FOUNDATION FOR  
22 MINORITY INTERESTS IN MEDIA

1 MS. EAGLE-OLDSON: First of all, I  
2 really appreciate the invitation to come and  
3 talk to you. Any time I have a chance to, I  
4 really do appreciate the opportunity to be  
5 here.

6 And I love talking about the Emma  
7 Bowen Foundation. I think it is one of the  
8 programs that the industry as a whole can be  
9 very proud of. We have a lot of success  
10 stories. And we have tremendous support from  
11 the industry in our corporate partners, in our  
12 board of directors in making this a successful  
13 program. So it's one of the few things that  
14 I'm very -- in listening to all of the things  
15 that everybody has angst about, it's nice to  
16 have something that we can point to and say,  
17 "This actually works," and we get the support  
18 from the industry.

19 So the first thing I wanted to  
20 show you is a PSA. Part of our recruitment  
21 process is to get the word out so that  
22 students will apply to a program. And so this

1 is a PSA that will help you just get a brief  
2 overview.

3 (Whereupon, a video was played.)

4 MS. EAGLE-OLDSON: So that's a PSA  
5 that runs. We also have one that is in  
6 Spanish that runs as well throughout the  
7 country. And if you will just give me a  
8 second, I've got a little bit of a PowerPoint  
9 presentation here. There we go. Okay.

10 Our mission of the foundation is  
11 to recruit and develop a pipeline of diverse  
12 talent for the media industry. And, as Henry  
13 mentioned, we have been in existence for 24  
14 years. Next year we will be celebrating our  
15 25th anniversary.

16 So our goals for this program are  
17 to recruit the best and the brightest. We  
18 offer hands-on experience in professional  
19 development for our students. We establish  
20 high standards of excellence and job  
21 performance and academics. We create  
22 networking and mentoring opportunities, which

1 are central for career development. We  
2 facilitate conversions to full-time  
3 employment. And we maintain ongoing  
4 affiliation with all of our graduates.

5 Just quickly about us. We were  
6 established in '89. We currently have 39  
7 corporate partners. We have a very engaged  
8 board of directors, which I think is a keynote  
9 for our success because it's a top-down  
10 commitment by all of our companies.

11 We are exclusively focused on the  
12 media industry, primarily in both broadcast  
13 and cable. And we now have a tech track so  
14 that we're getting some of our vendors. Like  
15 Motorola and Arris have now become a part of  
16 the Emma Bowen Foundation.

17 We currently support about 250  
18 interns each year. Most of the interns are in  
19 at least three, if not four, years in the  
20 program. So it's a multi-year internship  
21 program.

22 We have more than 600 program

1 graduates. And we have foundation offices in  
2 D.C., New York, and L.A., all donated by our  
3 corporate partners.

4 This is a brief look at our  
5 corporate partners. I'll leave that up for a  
6 second.

7 The basic program elements of the  
8 Emma Bowen Foundation. It's a paid multi-year  
9 work/study program. All of our students also  
10 earn scholarship dollars, matching whatever  
11 they earn in salary each year. So it really  
12 helps with paying for college educations,  
13 particularly for our students that are really  
14 terrifically bright. And this gives them an  
15 opportunity to go to a better school than they  
16 might have if they just had to rely on family  
17 resources to pay tuition.

18 As I mentioned, we have a new  
19 media and technology track, matching  
20 scholarship funds. All of our students are  
21 evaluated annually by their supervisors. And  
22 they get direct feedback to help them grow

1 professionally and develop.

2 They have accountability for  
3 maintaining grades. They must have a 3.0 GPA  
4 to stay in the program, have to turn in their  
5 transcripts every semester.

6 We have an annual summer  
7 conference, which helps them to broaden their  
8 view not only of their company, in particular,  
9 but then the industry on a broader basis. And  
10 that also helps with them being able to  
11 network with industry professionals and to  
12 create the network that will be established  
13 for the next generation of media executives  
14 because they get to know each other as well.

15 We have a junior forum, which  
16 allows our students to meet with recruiters  
17 across the country, of media recruiters, so  
18 that they have a chance to think about what  
19 they are going to do for finding a full-time  
20 job a year before they graduate from college.

21 We also have a career fair for  
22 seniors that virtually all of our corporate

1 partners participate in for their key  
2 recruiters as well.

3 We have a link mentoring program,  
4 which is a very key part of our program, to  
5 help students learn about working with  
6 mentors. And there are various other  
7 components of this. We do this in two cities  
8 every year. About 60 of our students get  
9 involved in this program every year.

10 We have a wide variety of resource  
11 guides. And we do a lot of broad training and  
12 professional development for both our students  
13 and our graduates.

14 We just recently formed an active  
15 alumni association. And we have very active  
16 and ongoing relationship with all of our  
17 graduates. And that helps in two ways. One,  
18 when they're getting ready to make a job  
19 change, we can pull them to the industry. We  
20 can help connect them to other sources, to HR  
21 executives, and other media companies. And  
22 when media companies are looking for talent,

1 they can come to us. And we can reach out to  
2 our graduates as well.

3 For the recruitment part of it, I  
4 won't go into this in a lot of detail. You  
5 have been sitting for a long time. Suffice it  
6 to say we recruit locally. It's a customized  
7 recruit for every opening that we have within.  
8 So if a corporate partner says, "I want to  
9 place a student in Atlanta" or "New York" or  
10 "Dallas," we would custom recruit for that  
11 particular location. Each slot we probably  
12 will give a company maybe three to five  
13 candidates. The company actually makes the  
14 final selection of the student that will stay  
15 with them throughout their time in the  
16 program.

17 It is very competitive. I will  
18 tell you that for this year, we have around 80  
19 slots for 2013 to fill. We probably have well  
20 over 2,000 applications. So it's a very, very  
21 competitive process, which really I think  
22 helps us to bring the best and brightest to

1 the industry. We do all the pre-screening and  
2 then send the final candidates for selection.

3 While in the program, students are  
4 required to work every summer, 8 consecutive  
5 weeks for a 40-hour work week. They must  
6 attend a four-year college or university; as  
7 I mentioned, a 3.0 GPA or better and have to  
8 maintain it the entire time they are in the  
9 program.

10 While they are in the program, we  
11 encourage the companies to rotate students to  
12 a variety of functional areas. So if a  
13 student goes in saying, "The only thing I know  
14 about media is on air," they don't have a clue  
15 about all of the other opportunities that may  
16 exist within the company for marketing and  
17 sales, public relations, legal, HR, finance,  
18 marketing, and this gives them a chance. By  
19 having this rotation, they have a sort of  
20 chance to test drive other careers and other  
21 functional areas before they graduate from  
22 college. So you can even sort of

1 course-correct for school if they decide they  
2 want to go into a different area of media than  
3 they first thought they might.

4 As I mentioned, all of the  
5 students are evaluated. And that helps give  
6 feedback so they can make minor adjustments  
7 when necessary. All of the development pieces  
8 that we encourage our students to participate  
9 in so they come away with a much broader  
10 understanding, more sophisticated, they have  
11 a network.

12 And when they graduate from  
13 college, you can imagine a college graduate  
14 has four years of experience on their resume.  
15 They have a fabulous network of industry  
16 executives that are all there and coaching  
17 them. They have the foundation at their back.  
18 It really gives them a step up compared to  
19 their counterparts that are coming out of  
20 school with just any kind of summer job.

21 And because they also have access  
22 to all of these recruiters -- and,

1 interestingly, we just had a senior phone call  
2 a few weeks ago with all of the industry  
3 recruiters and our Class of 2013 graduates.  
4 And the majority of the recruiters said, "Emma  
5 Bowen on your resume is like the Good  
6 Housekeeping Seal of Approval. It gets to the  
7 top of the pile." So we're very happy to know  
8 that our students have that reputation coming  
9 with them as they are looking for jobs in the  
10 industry.

11 The commitment that our corporate  
12 partners make -- and I can't emphasize enough  
13 how wonderful they are -- is the direct work  
14 experience, skill development, increasing  
15 levels of responsibility. Many, many of our  
16 students by the time they are in their second  
17 and third year are doing the work that they  
18 would never have a chance to do as an intern  
19 had they not had this multi-year experience  
20 coming back.

21 The rotations, the evaluations in  
22 developmental feedback, and probably most

1 essential is the mentoring. I can't tell you  
2 the number of executives who sit down  
3 personally with students and talk to them and  
4 advise them. It gives the student confidence  
5 that they can have that relationship with a  
6 senior-level executive, and it helps to really  
7 guide them to navigate some of the  
8 difficulties of corporate life.

9 The fact that our companies  
10 matched and pay for the interns and help  
11 support the foundation financially as well is  
12 a huge commitment, both in time and in  
13 resources, by all of our corporate partners.  
14 And we have a very high conversion rate.  
15 About between 60 and 70 percent depending upon  
16 the economy and the year of our students take  
17 jobs in the media, some with their corporate  
18 partner if the spaces or the opportunities are  
19 available but certainly among our corporate  
20 partner family.

21 And, just to give you a quick --  
22 and then I am going to leave time for Jarred

1 because he has a great story, but just to give  
2 you an example of what I am talking about, I  
3 am going to go through a few of these. Joe  
4 Sutton, Class of 2009, a news editor at CNN  
5 and the Peabody Award winner. And I ask you  
6 to focus on their grad year versus what they  
7 are doing.

8 Meagan Aguayo was our 2012 Student  
9 of the Year. I just got a video of a piece  
10 that she put together for marketing for Bright  
11 House yesterday and absolutely rave reviews  
12 from the Creative Director for Bright House,  
13 saying, "She is the best thing we have had  
14 here. Our clients love her. She puts  
15 together some of the best pieces."

16 Michael Estime is a meteorologist  
17 in Lexington, Kentucky.

18 Michelle Redberg, a Native  
19 American student in Minneapolis, who is with  
20 WCCO-CBS, was just named an account executive  
21 with that station.

22 Some of you may know the name Gio

1 Benitez if you see any of ABC. I know  
2 Marcellus knows him personally. And he just  
3 was picked up by ABC as a national  
4 correspondent. And he just broke a new  
5 record. He's only been with them for 3  
6 months, did 92 segments in 3 months, which was  
7 a new record for ABC.

8 Arnell Davis just yesterday was  
9 promoted to Associate Marketing Manager at  
10 HBO, Class of 2010.

11 Adrienne Cordero has had two  
12 promotions with Comcast. She became Manager  
13 of Ad Sale Support with Comcast Spotlight.  
14 She hired an Emma Bowen graduate as her  
15 assistant when she was a supervisor. That  
16 assistant just got her previous job when she  
17 moved up, which was really great for us.

18 Alejandro Fonseca, another, was  
19 hired by his corporate partner, NBC, in Miami.

20 Nephtaly Rivera is with Hearst.

21 Angi Zavalla was in government  
22 relations with Comcast in Chicago.

1                   Dominique Ricks is on air in  
2                   Lynchburg, Virginia.

3                   Becky Ho has a wonderful story.  
4                   She went into marketing. She is Assistant  
5                   Manager of Consumer Products with Disney-ABC  
6                   and has had multiple promotions as well.

7                   And I won't go through -- there  
8                   are many, many of these that are just really  
9                   great success stories. I want to mention one  
10                  more before I do Jarred. Rodney Hawkins, who  
11                  is down here on the bottom right, great story  
12                  for him.

13                  He graduated from Howard  
14                  University in 2011. He joined CBS as part of  
15                  a special news associates program. He was  
16                  assigned to the presidential campaign right  
17                  out of the box. He was very good at his job.  
18                  He's in the digital area. He was assigned to  
19                  Vice President Biden and has spent probably  
20                  three months of the end of the presidential  
21                  campaign flying around on Air Force Two.

22                  When I caught up with him just

1 recently, he was at the Vatican covering the  
2 new pope. And if you were listening to  
3 coverage on CBS during the Boston crisis, his  
4 name was all over it because he was reporting  
5 live from Boston. And this is a young man who  
6 graduated in 2011.

7 We have just wonderful  
8 opportunities for our students. And I think  
9 it's because of the commitment of the  
10 companies that help us to create these  
11 opportunities.

12 With that, I would like to  
13 introduce you to Jarred Hill, who will tell  
14 his story.

15 MR. HILL: When you went through  
16 that list, it makes me feel like a slacker.

17 MS. EAGLE-OLDSON: Not hardly.

18 MR. HILL: Gosh, I'm not doing  
19 anything with my life.

20 Well, my name is Jarred Hill. I  
21 was with C-SPAN when I was in the program. So  
22 it's interesting. The program starts off

1 typically with people that are going into  
2 their senior year of high school -- or excuse  
3 me -- they are seniors going into their  
4 freshman year of college. I started off going  
5 into my senior year of high school. I have a  
6 late birthday. So I was 15 going into this.  
7 I was like "TV. I'm going to work for MTV or  
8 like BET." I got put at C-SPAN.

9 (Laughter.)

10 MR. HILL: In the beginning, I was  
11 like "All right." But it was an amazing  
12 opportunity because it taught me so much, not  
13 only about television, not only about  
14 government, of which I knew nothing, but about  
15 working in a professional environment, which  
16 for a 15-year-old kid is an amazing  
17 experience, and being able to go back every  
18 summer, oftentimes during my winter breaks  
19 because I was here, too. And working and  
20 becoming a part of this team and a part of  
21 this family was experience that I would not  
22 have gotten anywhere else.

1                   While I was with C-SPAN, as Phylis  
2                   said, part of the goal is for these students  
3                   to kind of move around the company. So I got  
4                   a chance to work with the field crews. I  
5                   worked in marketing. They have a bus that  
6                   travels through the country. So I got a chance  
7                   to ride on that, write press releases while  
8                   still in college, which was kind of amazing.

9                   But then one of the real  
10                  interesting things was one summer, I was  
11                  working in the International Programming  
12                  Department, a very small department. And at  
13                  that time, there was no one that spoke  
14                  Spanish. I was a Spanish minor. And so I  
15                  forget what was happening exactly during that  
16                  summer, but, for some reason, they needed  
17                  someone to be able to call Latin American  
18                  media markets to get information. I was like  
19                  "Well, I kind of speak Spanish."

20                                They're like "Oh, really? Are you  
21                                sure?"

22                                I was like "Yeah, yeah. I do."

1                   And then 30 seconds later, they  
2                   said, "Okay. Great. Call the embassy. Find  
3                   out what."

4                   And I was like "All right." It  
5                   worked out. I did well, I guess. I didn't  
6                   get fired. But that really is a testament to  
7                   the trust that the companies have in the  
8                   students and in the foundation that these kids  
9                   are good, they know what they're doing, you  
10                  can trust them with real work and expect it to  
11                  be done as if they are a real employee.

12                 Coming out of the foundation, I  
13                 graduated from Morehouse College in 2010. I'm  
14                 from this area but kind of bounced around.  
15                 After graduation, I moved up to New York City,  
16                 where I was an NBC page. I worked there with  
17                 The Today Show in publicity for one of our  
18                 phone companies' focus features and then with  
19                 Saturday Night Live, giving out tickets. The  
20                 best part was that I got to go watch the show  
21                 for free, which you would be surprised how few  
22                 people do that. I was like "All right. I'll

1 take it" and get paid for it. Great.

2 So I did that. But then I knew  
3 that I wanted to work in journalism. So I  
4 kind of was trying to figure out my way. And  
5 a position opened up at Dateline, where I  
6 worked as the Assistant to the Executive  
7 Producer, also did some assistant producing  
8 and helped him manage his social networking  
9 profiles, fantastic experience. I learned so  
10 much about television, journalism, the  
11 internet, business, running a television show  
12 basically, knowing that it wasn't necessarily  
13 vain that I wanted to go in, at least not at  
14 that time.

15 I jumped ship, and I took the leap  
16 into local news. And that's how I ended up at  
17 WMDT on the Eastern Shore. It's been a  
18 learning experience in so many ways. I kind  
19 of say that I now live in America because I  
20 have only ever lived in D.C., New York, and  
21 Atlanta. So this is an eye opener in a lot of  
22 ways, but it has been great. I have been

1       there for about seven months now so far.

2                       But I am really just here as a  
3 cheerleader for the foundation and kind of as  
4 a spokesperson and advocate for the dozens of  
5 friends that I have that are doing amazing  
6 things to start off in the program and the  
7 hundreds of other people like me that either  
8 have or will come through it and do amazing  
9 things in the industry.

10                      I think it's the perfect thing for  
11 the media industry because it really does give  
12 minority students the opportunity to see what  
13 is out there and to realize that some of these  
14 jobs and positions are real things that real  
15 people do and they can do them themselves as  
16 well.

17                      That's all I've got.

18                      (Applause.)

19                      CHAIRMAN RIVERA: Any questions  
20 for Jarred or Phylis?

21                      (No response.)

22                      CHAIRMAN RIVERA: Okay. Well,

1 thank you again for coming --

2 MS. EAGLE-OLDSON: Our pleasure.

3 CHAIRMAN RIVERA: -- and sharing  
4 the foundation with us. All right.

5 NEW BUSINESS & ADJOURNMENT

6 CHAIRMAN RIVERA: Well, that  
7 completes our agenda. Is there any new  
8 business? Mr. Roberts?

9 MEMBER ROBERTS: Yes. Mr.  
10 Chairman, just a couple of quick things.

11 Some of you who I've known for a  
12 long time, you know in my former life, I was  
13 a locally elected official and served on a  
14 number of national boards, including the  
15 National Black Caucus Locally Elected  
16 Officials, which represents about 7,000  
17 African American mayors and city council  
18 people as well as I have served on National  
19 League of Cities' board.

20 Just recently at their March  
21 meeting, -- and this is without my prompting  
22 -- they passed a resolution, which they have

1 sent to the President and to Congress and  
2 governors concerning promoting job creation  
3 and economic diversification through  
4 attraction and expansion of film, television,  
5 and digital media production. They were very  
6 much aware that I serve on this Committee.

7 I did not know this was coming,  
8 but I would like to at least pass this around.  
9 Maybe staff can get it to the members who are  
10 not here so that they can understand that we  
11 do have support out there in these local  
12 communities. And so I would like to pass this  
13 around because I was asked to at least present  
14 it to this task force.

15 And then, secondly, you know, we  
16 are very concerned, those of us who are  
17 broadcasters, about the consolidation of the  
18 industry. Particularly we are concerned with  
19 this recent announcement with Sinclair. We  
20 just see that again more of the fewer voices  
21 of diversity occurring out with the  
22 acquisition of TV stations by large groups.

1 Very, very few small group owners will be  
2 existing in the years to come if we as not  
3 only this task force but as a Commission  
4 should really look into these issues.

5 Thank you, Mr. Chairman.

6 CHAIRMAN RIVERA: Thank you,  
7 Steve. I am wondering if you could visit with  
8 Tom Reed about these issues that you have  
9 tabled here and to see if there's any way we  
10 can do anything about any of these issues and,  
11 if so, what that might be. So if you could  
12 find a mutually convenient time to do that in  
13 person or by phone, I think that would be  
14 helpful.

15 MEMBER ROBERTS: Yes. That would  
16 be great.

17 CHAIRMAN RIVERA: Thank you for  
18 raising those important issues with us.

19 MEMBER ROBERTS: Good. Thank you.

20 MS. KREISMAN: And I will  
21 distribute those to the rest of the group.

22 MEMBER ROBERTS: Thank you,

1 Barbara.

2 CHAIRMAN RIVERA: Sherman?

3 MEMBER KIZART: Thank you, Mr.

4 Chairman. This question is more posed to you  
5 and to Tom around that there has been a lot of  
6 attention focused on this whole issue of  
7 foreign ownership as a tool to help increase  
8 minority ownership. I only know what I have  
9 been reading in the trade press, particularly  
10 over the past maybe three or four months.

11 That particular Coalition for  
12 Broadcast Investment -- I think that's the  
13 name of the organization that's been touting  
14 the whole issue about I guess foreign  
15 investment. One of the things that they have  
16 been very consistent in saying is that that  
17 could also be a tool by which they could help  
18 increase the number of minority owners.

19 So my question is, what role will  
20 the Committee play in this whole area and if  
21 there is a role that we will play, and just  
22 kind of get some feedback and direction on how

1 we may or may not be involved in that process.

2 And I have certainly heard people  
3 like Commissioner Pai talk about how he is  
4 supportive of that area to a certain extent.  
5 I don't want to speak for him, but he and I  
6 were having a conversation.

7 So there seems to be quite a bit  
8 of buzz and dialogue about that whole area.  
9 And I wanted to see, is there a role that we  
10 will play or should play or won't play in the  
11 whole area?

12 CHAIRMAN RIVERA: Yes. The -- I'm  
13 sorry?

14 MS. KREISMAN: Actually, that  
15 issue is before the Commission. And it has  
16 been put out for public comment. So right now  
17 I don't know what the timing is on receipt of  
18 those comments, but someone -- I forget the  
19 name of the group -- filed a request that we  
20 consider modifying our rules with respect to  
21 foreign ownership in the broadcast area.

22 It presents a lot of interesting

1 issues, controversial issues. So right now  
2 it's in the early stages because the public  
3 has been given the opportunity to file  
4 comments.

5 MEMBER KIZART: Well, my thought  
6 is early stage, maybe that's an opportunity  
7 for us to get our arms around it and see if  
8 there is a role that we could play around  
9 where that issue goes.

10 CHAIRMAN RIVERA: Well, we can  
11 certainly think about that, but as of this  
12 point, the Commission has not asked for this  
13 Committee's input on that. And we can  
14 certainly think about that and work with Tom.  
15 And I invite you to have a conversation with  
16 Tom about this and see if it is a possibility.

17 It sounds like it is a little late  
18 in the game in terms of this thing as far as  
19 it may have already left the barn. I just  
20 don't know. But it is an important issue. I  
21 think it involves minorities, and it is  
22 something that we might legitimately take up.

1 But as of this time, we don't have any mandate  
2 to do that. It doesn't mean we couldn't have  
3 one at some point, but, again, it may be a  
4 little late in the game. But talk to Tom  
5 about it. I think that would be the best  
6 thing to do for you. Yes.

7 Yes, Jim?

8 MEMBER WINSTON: One more issue I  
9 just wanted to put on the table here because  
10 we have talked a lot about the -- and, Tom, I  
11 will be following up with you -- decline of  
12 diversity in broadcasting.

13 And obviously it is an issue that  
14 I spend a lot of time thinking about. I have  
15 been trying to figure out the ways of  
16 addressing the continuing decline of minority  
17 ownership.

18 And I read a Congressional  
19 Research Service report that came out last  
20 year that stated that the federal government  
21 spent in fiscal year 2011 \$750 million in  
22 commercial advertising.

1           The federal government is actually  
2           an advertiser. A little over half of that  
3           comes from the Department of Defense but  
4           Treasury, Transportation, Homeland Security,  
5           and HHS all spend \$30 to \$50 million each.

6           And it dawned upon me, well, you  
7           know, the Federal Communications Commission at  
8           least is a part of the federal government,  
9           even if it's not an Executive Branch. And I  
10          know that there is a great deal of  
11          conversation within federal agencies. And it  
12          just occurred to me that perhaps there is an  
13          avenue of communication that the FCC can help  
14          open that would help minority broadcasters get  
15          into the pipeline for some of that federal  
16          broadcasting dollars.

17          So I wanted to throw it out there.  
18          Barbara, that's probably not something you  
19          have considered in the past, but maybe there  
20          are some avenues that we can look to to how we  
21          help minority broadcasters get into that  
22          pipeline.

1 MS. KREISMAN: That is really  
2 interesting, yes. I think that is a follow-up  
3 with Tom.

4 MEMBER WINSTON: Great. Thanks,  
5 Barbara.

6 CHAIRMAN RIVERA: And I'm going to  
7 ask Ron. Would you think about that a little  
8 bit as well, that question? It's not exactly  
9 supplier diversity, but it has that aroma, if  
10 you will. So yes. If you could talk to both  
11 Tom and Jim and see if this is something your  
12 committee can look at.

13 MEMBER KIZART: Actually, it is  
14 supplier diversity, I would say, in terms of  
15 those dollars, advertising dollars, are  
16 flowing back to minority-owned broadcast  
17 properties. That is part of how major  
18 corporations evaluate their supplier  
19 diversity.

20 CHAIRMAN RIVERA: Yes, my thinking  
21 as well.

22 Anything else?

1 MR. REED: On that, on Jim  
2 Winston's point, if my memory serves me  
3 correct, didn't the Clinton administration do  
4 an executive order towards its last years to  
5 look at that very point that I think only two  
6 percent of advertising dollars go into  
7 ethnic-owned media. So it's not an  
8 unprecedented issue for the government to  
9 address.

10 MEMBER WINSTON: The Clinton  
11 administration did an executive order on this  
12 very point. And in 2009, President Obama did  
13 an executive order telling the agencies to do  
14 more with small businesses. So they have been  
15 approaching this in a broad way, but we  
16 haven't gotten down to see the net results  
17 yet.

18 CHAIRMAN RIVERA: Okay. Yes.  
19 It's been a long time, huh?

20 MEMBER WINSTON: Yes.

21 CHAIRMAN RIVERA: All right.  
22 Well, we're going to stand adjourned if

1       there's nothing else to come before this  
2       august body. Watch your email for the next  
3       meeting. We'll try to meet again probably  
4       sometime in the fall. Trying to get all of  
5       you guys together in the summertime is just  
6       really tough. So we'll see when we can get  
7       the room. And I'll talk with Tom and see when  
8       is best for us, but just watch your email. I  
9       think that is the best way to do this.

10                        Meanwhile, again, I would  
11       encourage you if you are not on one of the  
12       task forces, get on. If you are on one and  
13       you want to get on another one, that's  
14       permitted if you would like to do that. If  
15       you have got any thoughts or comments about  
16       this meeting or future meetings, please let me  
17       know and Barbara as well.

18                        Again, thank you all for coming.  
19       Thank you for your time. It's much  
20       appreciated.

21                        (Whereupon, the foregoing matter  
22       was concluded at 4:14 p.m.)

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Court Reporter

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