

FEDERAL COMMUNICATIONS COMMISSION

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ADVISORY COMMITTEE ON DIVERSITY FOR
COMMUNICATIONS IN THE DIGITAL AGE

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Thursday, May 7, 2009

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The Advisory Committee on Diversity for Communications in the Digital Age convened in the Commission Meeting Room of the Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. at 10:00 a.m., Henry Rivera, Chairman, presiding.

PRESENT:

MICHAEL COPPS, Acting FCC Chairman
ROBERT McDOWELL, FCC Commissioner
HENRY RIVERA, Chairman
BARBARA KREISMAN, FCC
JAMILA-BESS JOHNSON, FCC

PAULA SILBERTHAU, FCC
PAULA MICHELE ELLISON, FCC
ROBERT RADCLIFFE, FCC
JOYCELYN JAMES, FCC
CAROLYN FLEMING WILLIAMS, FCC
ERIN DOZIER, FCC
JANE E. MAGO, National Association of

Broadcasters

KAREN K. NARASAKI, Asian American Justice
Center
HOWIE HODGES, One Economy Corporation
MELISSA NEWMAN, Qwest
ANNE LUCEY, CBS
RAUL ALARCON, JR., Spanish Broadcasting System

JENNY ALONZO, Mio.TV
GEOFFREY C. BLACKWELL, Chickasaw Nation
Industries, Inc.

PRESENT: (Continued)

MATTHEW BLANK, Showtime
MARIA E. BRENNAN, American Women in Radio &
Television

KATHY BROWN, Verizon
RALPH DE LA VEGA, AT&T
RALPH B. EVERETT, Joint Center for Political
and Economic Studies
STEVEN HILLARD, Council Tree Investors, Inc.
DAVID HONIG, Minority Media &
Telecommunications Council

RODNEY E. HOOD, National Credit Union
Administration
RONALD JOHNSON, Ronson Network Services Corp.
DEBRA LEE, BET Networks
JAKE OLIVER, Afro-American Newspapers
SUSAN FOX, Disney Corporation
JAMES M. ASSEY, JR., National Cable and

Telecommunications Association
ANTOINETTE C. BUSH, Skadden, Arps, Slate,
Meagher & Flom, LLP
DIANE SUTTER, Shooting Star Broadcasting
CHARLES M. WARFIELD, JR., ICBC Broadcast
Holdings, Inc.
MICHAEL V. ROBERTS, The Roberts Companies
JAMES WINSTON, National Association of Black-

Owned Broadcasters
ANITA STEPHENS-GRAHAM, Opportunity Capital
Partners
ANDREW J. SCHWARTZMAN, Media Access Project
HARRY WINGO, Google, Inc.
LEONIE CAMPBELL-WILLIAMS, Asian-American

Justice Center

RAYMOND R. GUTIERREZ, CBS Television Networks

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

2 (10:12 a.m.)

3 MS. KREISMAN: Good morning,
4 Chairman Copps, and Chairman Rivera. Lucky I
5 have two chairmen here.

6 Welcome, everyone, to the first
7 meeting of the Advisory Committee for
8 Diversity in the Digital Age, under it's
9 newly-reconstituted charter. Thank you for
10 taking time from your busy schedules to be
11 here this morning and also to take time to
12 telephone in.

13 You have a packet of information
14 before you, and it has in it most of the
15 information that we've already emailed, but
16 there is updated contact information, updated
17 email lists, and I'm sure I've missed some,
18 and there might be some on there that you
19 don't want to be on there. Please email me
20 and let me know so I can contact you in a way
21 that you find appropriate.

22 Also, we've added to the packet

1 our new DTB brochures. As you know, we are
2 focused on this DTB transition, so anything
3 you guys can help, although it's outside the
4 authority of this Committee, we'd appreciate
5 any help you can. And those brochures are
6 both in English and in Spanish.

7 With that, I'd like to turn this
8 over to Chairman Rivera.

9 CHAIRMAN RIVERA: Thanks, Barbara.
10 Barbara, as you all may know, is our
11 Designated Federal Officer, so we will be
12 working with her quite closely. You will be
13 working with her quite closely.

14 I've just wanted to add my welcome
15 to Barbara's, and add my gratitude as well.
16 You all are going to work very hard, and I'll
17 tell you that in advance.

18 We've got a lot to do, and really
19 appreciate your willingness to take your time
20 and your talent and to lend it to us as we
21 move forward to enhance the -- and redress the
22 issues around diversity in the ownership of

1 telecommunication facilities.

2 So, I'm looking forward to working
3 with you. I think we have a great
4 opportunity, because we have a great bunch of
5 Commissioners who are ready, willing and able
6 to move this agenda, so we've -- we've got a
7 tremendous opportunity in front of us, and I
8 hope that we -- and I know that we will grab
9 the brass ring here. So, I look forward to
10 working with all of you.

11 With that, I'd like to go ahead
12 around the table and introduce ourselves, and
13 your company, and then we will let the
14 Chairman deliver some remarks and also Rudy
15 Brioche is here representing Commissioner
16 Adelstein.

17 And a little later Commissioner
18 McDowell will be joining us. So, we will
19 interrupt wherever we are to permit him to
20 make some opening remarks.

21 So, we'll go this way. Jamila, do
22 you want to go ahead and --

1 MS. JOHNSON: Sure. Jamila-Bess
2 Johnson, Media Bureau.

3 MR. RATCLIFFE: Bob Ratcliffe,
4 Media Bureau.

5 MS. WILLIAMS: Carolyn Fleming-
6 Williams. I'm the Director of OCBO.

7 MS. NARASAKI: Karen Narasaki,
8 President of the Asian-American Justice
9 Center.

10 MR. HODGES: Good morning. My
11 name is Howie Hodges, and I'm with Oje Economy
12 Corporation here representing our CEO, Ray
13 Ramsey. And we bring the power of broadband
14 to low-income communities. We're a nonprofit.

15 MS. NEWMAN: Hi. I'm Melissa
16 Newman, and I'm with Qwest.

17 MS. LUCEY: Ann Lucey with CBS
18 Corporation, representing Matt Blank from
19 Showtime.

20 MR. WINGO: Hi. I'm Harry Wingo
21 from Google.

22 MS. DOZIER: Hi. I'm Erin Dozier

1 from the National Association of Broadcasters.
2 I'm temporarily representing Jane Mago of the
3 NAB, who should be here in a few moments.

4 MR. OLIVER: Hi. I'm Jake Oliver.
5 I'm the publisher of the Afro-American
6 Newspapers.

7 MS. STEPHENS-GRAHAM: Hi. Good
8 morning. I'm Anita Stephens-Graham. I'm a
9 partner with Opportunity Capital Partners.
10 It's a private equity firm. And I'm also the
11 chairman of the National Association of
12 Investment Companies.

13 MR. ALARCON: Good morning, ladies
14 and gentlemen. Raul Alarcon from Spanish
15 Broadcasting System, the largest Hispanic-
16 owned radio and TV entity in the United
17 States.

18 MS. LEE: Hi. I'm Debbie Lee.
19 I'm chairman and CEO of BET Networks, which is
20 a large global multimedia company, targeted to
21 African-Americans.

22 MR. SCHWARTZMAN: I'm Andy

1 Schwartzman, and I'm president and CEO of the
2 Media Access Project.

3 MR. EVERETT: I'm Ralph Everett.
4 I'm president and CEO of the Joint Center for
5 Political and Economic Studies.

6 MS. BROWN: Good morning. I'm
7 Kathy Brown from Verizon. I'm happy to be
8 here.

9 MR. ASSEY: Good morning. I'm
10 James Assey with the National Cable and
11 Telecommunications Association.

12 MR. WARFIELD: Good morning.
13 Charles Warfield, president and COO for ICBC
14 Broadcast Holdings, Inc.

15 MR. BLACKWELL: Good morning. My
16 name is Geoffrey Blackwell. I'm with
17 Chickasaw Nation Industries. I'm here also
18 because of my involvement with the National
19 Congress of American Indians, Native Public
20 Media and the National Federation of Community
21 Broadcasters.

22 MR. JOHNSON: Good morning,

1 everyone. My name is Ronald Johnson, and I
2 represent and own Ronson Network Services
3 Corporation and we work with infrastructure,
4 telecom companies around America. Thank you.

5 MR. HONIG: I'm David Honig,
6 executive director of the Minority Media and
7 Telecommunications Council.

8 MS. COOK-BUSH: I am Toni Cook-
9 Bush and I am representing my client, Virgin
10 Mobile.

11 MS. FOX: I am Susan Fox and I'm
12 with Walt Disney.

13 MR. GOODFRIEND: Hi. I'm Dave
14 Goodfriend, on behalf of my client, Council
15 Tree Communications.

16 MR. WINSTON: Hi. I'm Jim
17 Winston, executive director and general
18 counsel of the Nation Association of Black-
19 Owned Broadcasters.

20 MS. BRENNAN: Hi. I'm Maria E.
21 Brennan, president of American Women in Radio
22 and Television. And I want to know who we

1 thank for the coffee this morning.

2 MS. KREISMAN: The FCC approved
3 it. They never do. But only if I promised
4 never to ask again.

5 MS. ELLISON: Good morning,
6 everyone. I'm Michelle Ellison, and I'm the
7 Acting General Counsel for the FCC.

8 MR. BRIOCHE: Rudy Brioche with
9 the Commissioner Adelstein with the FCC.

10 ACTING CHAIRMAN COPPS: Mike
11 Copps.

12 CHAIRMAN RIVERA: Well, thank you,
13 everyone. It's -- as you can see, it's a very
14 talented group.

15 MS. KREISMAN: Phone.

16 CHAIRMAN RIVERA: Oh, phone.

17 Excuse me. Exactly. And Jane's here, Jane
18 Mago. Welcome, Jane. We're glad you made it.

19 Folks on the phone, could you
20 identify yourself, please.

21 MR. DE LA VEGA: Good morning,
22 Henry, this is Ralph De La Vega from AT&T

1 Mobility.

2 CHAIRMAN RIVERA: Thank you,

3 Ralph.

4 MS. PATRICK: Susan Patrick from

5 Patrick Communications.

6 MR. ROBERTS: Michael Roberts,

7 Roberts Broadcasting.

8 CHAIRMAN RIVERA: Say that again,

9 please.

10 MR. ROBERTS: Michael Roberts,

11 Roberts Broadcasting. I own three power TV

12 stations.

13 CHAIRMAN RIVERA: Thank you,

14 Michael.

15 MR. ROBERTS: All right. Thank

16 you.

17 MR. BLANK: Matt Blank, CEO,

18 Showtime Networks.

19 MS. ALONZO: Jenny Alonzo, Mio.TV.

20 MS. CAMPBELL-WILLIAMS: Leonie

21 Campbell-Williams, Director of Communications

22 for the Asian-American Justice Center.

1 MR. GUTIERREZ: Ray Gutierrez,
2 representing Matt Blank, Showtime Network.

3 MS. SUTTER: Diane Sutter,
4 Shooting Star Broadcasting and Dean of the
5 Broadcast Leadership Training Program for the
6 NAB.

7 CHAIRMAN RIVERA: Anyone else?

8 MR. HOOD: Rodney Hood, National
9 Credit Union Administration.

10 CHAIRMAN RIVERA: Hi, Rodney.

11 MR. HOOD: Good morning, Henry.

12 CHAIRMAN RIVERA: Anybody else on
13 the phone?

14 MR. HILLARD: Yes. Steve Hillard
15 with Council Tree Communications.

16 CHAIRMAN RIVERA: Hi, Steve.

17 MR. HILLARD: Good morning.

18 CHAIRMAN RIVERA: Anyone else on
19 the phone?

20 (No verbal response.)

21 CHAIRMAN RIVERA: All right.

22 Well, thank you for joining us on the phone.

1 I know Jenny Alonzo tried to make her airplane
2 in New York, and it didn't go, and the next
3 flight was full, so she turned around and went
4 back to the office. So, we appreciate her
5 making the effort and being with us on the
6 telephone.

7 MS. ALONZO: Thank you so much,
8 Henry.

9 CHAIRMAN RIVERA: As I said, I
10 thought it was -- I think it's a great group,
11 very talented group, and we are looking
12 forward to making use of all of your
13 resources.

14 Just a point of personal privilege
15 here, I would be remiss if I didn't take note
16 of the fact that Geoffrey Blackwell was with
17 us, and he's making me feel very old, because
18 his father and I are classmates, law school.

19 So, I've known the Blackwells for
20 many, many, many years, and it's really
21 gratifying to see Geoffrey here. So, thanks
22 for being here, Geoffrey.

1 And with that, I will yield the
2 floor to Chairman Copps.

3 ACTING CHAIRMAN COPPS: Well,
4 thank you, Henry, and good morning all. Let
5 me be the first to welcome you to this initial
6 meeting of our re-Chartered Diversity Advisory
7 Committee.

8 I want to thank each of you for
9 being willing to step up to the plate and, for
10 your service, I know how vital this work is,
11 not only to me and to the FCC, but really to
12 all of the American people.

13 And I know how busy you all are.
14 You know, there's an old saying, "When you
15 want something done, ask a busy person." And
16 that's what we're -- we're doing here.

17 When I was over at the Commerce
18 Department during the Clinton Administration,
19 I had the privilege of running and overseeing
20 the Advisory Committees over there. There
21 were a bunch of them.

22 We could not have done our work

1 without the input of those Advisory
2 Committees, and I really saluted the
3 willingness of folks to sacrifice and step up
4 to the plate and give of their time and use
5 their resources to come to Washington and to
6 do their jobs, and in return you deserve to be
7 heard and your recommendations need to be
8 seriously considered.

9 Many of you have previously served
10 on this Committee. Welcome back. Some of you
11 are new to the Committee. We are really
12 excited about you being here. This Committee
13 has always cared very, very deeply about the
14 issues and has been willing to step up to the
15 plate for years.

16 So, what has changed is not so
17 much the composition or the bent, really, of
18 the Committee, but the priority that your
19 issues we're going to have here at the FCC.
20 You will be heard.

21 The sad truth is that these issues
22 haven't been the priority they should have

1 been around here for the last eight years or
2 so. It is time to turn the page. We are
3 turning the page.

4 I wanted to express special thanks
5 to my friend and former FCC Commissioner,
6 Henry Rivera, for his willingness to chair
7 this Committee one more time and for the
8 vision and leadership he has brought to these
9 issues through a long and distinguished
10 career, both in government and out.

11 Henry brings a wealth of vision
12 and experience and practical good judgment
13 that has served this Committee very well in
14 the past, and I know will do so again. So,
15 thanks to you, my friend, for stepping up and
16 doing this again.

17 CHAIRMAN RIVERA: Thank you, Mr.
18 Chair.

19 ACTING CHAIRMAN COPPS: We are all
20 here because we know that American's strength
21 is its diversity. America will succeed in the
22 21st Century, not in spite of its diversity,

1 but because of its diversity.

2 We must nurture the individual
3 talents and genius and creativity of all of
4 our people. Our economic well-being and,
5 indeed, our very democracy depend upon it.

6 And that's why diversity issues
7 have been one of my top priorities for the
8 nearly eight years I have been here, and while
9 I have been Acting Chair for the last three
10 months, even with the unprecedented effort
11 that we are making on DTB transition, this
12 effort that you're involved in is one that
13 simply can wait no longer.

14 So, I have a challenge to you this
15 morning. It's to be bold, to take these
16 issues and run with them. This is not a
17 ceremonial appointment. This is your chance
18 to make a real and lasting difference, and I
19 hope that you will set an aggressive agenda
20 for yourselves and that you will not hesitate
21 to propose aggressive actions.

22 I do have a couple of requests.

1 First, along with whatever else you decide to
2 take up, I ask you to take an immediate look
3 at some pressing issues on minority and female
4 ownership of the media so that the Commission
5 can have the benefit of your advice and
6 counsel as we move forward to correct the
7 neglect of so many years.

8 I won't go into a lot of detail
9 about the shameful state of affairs in which
10 we find ourselves, although I certainly could.
11 A couple of statistics quickly tell the story
12 clearly enough in a country that is now more
13 than one-third minority, people of color own
14 just over three percent of full-power
15 commercial television stations. Three
16 percent.

17 Is it any wonder that issues of
18 interest to the minority community so often do
19 not get the attention that they deserve and is
20 it any wonder that minorities are so often
21 stereotyped in caricature, and that positive
22 contributions made by the minority community

1 to our culture and our country are so often
2 overlooked.

3 And the state of female ownership
4 is also dismal. Women are 51 percent of our
5 population, yet they own 5.8 percent of those
6 TV stations I talked about, and only about six
7 percent of radios. That is not acceptable,
8 either.

9 As many of you know, the
10 Commission took some forward steps back in its
11 2007 Diversity Order, but we could have and we
12 should have done much, much more.

13 I think the FCC showed a timidity
14 that is all too common when it comes to this
15 subject, as always the excuse was that we
16 lacked an adequate record to do more.

17 But if we lacked an adequate
18 record, and we didn't have the data, who is to
19 blame? Why didn't we go out and get it?

20 And if the FCC suddenly awoke in
21 late 2007 to the realization that we didn't
22 have the record, wouldn't that have been the

1 time to launch the Adarand Studies that are
2 legally-necessary to justify a more targeted
3 approach.

4 We need your help in making sure
5 we have the factual record to justify a more
6 targeted approach to assess the ongoing
7 usefulness of previous Adarand Studies and to
8 recommend any additional studies that you
9 think may be necessary to help us legally
10 sustain our work going forward.

11 I also hope you will give us a
12 recommendation concerning a possible interim
13 method that has been suggested for increasing
14 diversity, something called full-file review.

15 The Commission needs to be on
16 solid footing if we're going to think about
17 implementing something like that. I know the
18 prior Diversity Committee did some excellent
19 work in both these areas, the Adarand Studies
20 and the full-file review.

21 And I understand that your very
22 able Chairman has already distributed a

1 memorandum to you discussing these issues. I
2 need you to address any further concerns as
3 has been raised by any other group, and I
4 think that this collection of folks with this
5 years of experience may think of some other
6 questions to ask or T's that need to be
7 crossed, or I's dotted.

8 I want your best judgment on how
9 we can make aggressive action sustainable and
10 on full-file review, I want your judgment on
11 whether and if so we might implement it on an
12 interim basis while more targeted approaches
13 are being considered by this Committee and by
14 the full Commission.

15 I reject the notion that we must
16 choose between rules that are effective and
17 rules that are judicially sustainable. We
18 understand and appreciate the sensitivity of
19 the courts, but that doesn't mean we have to
20 be shy of taking any kind of positive action
21 at all, and too often we have been shy.

22 We can and we must have policies

1 that are both bold and legally sustainable.
2 And we need to act quickly. We're fortunate
3 in this country right now, I think, that a
4 window of reform has been pried open, but
5 history teaches that you never know how long
6 those windows are going to stay open before
7 they close again.

8 So, I know it's asking a lot, but
9 I would like to have the Committee's
10 recommendations on the Adarand Studies and
11 full-file review, certainly, within the next
12 four months.

13 Let me add just a word or two
14 about broadband and other priority here at the
15 FCC. Congress has given the FCC one of the
16 most important and far-reaching jobs we have
17 ever had, and that is to develop at long-last,
18 a national broadband plan for the United
19 States of America. It's something I've been
20 calling for for eight years.

21 We have a long, long way to go to
22 put American at the forefront of broadband

1 penetration and broadband use, but it's a
2 challenge we need to meet. These are, after
3 all, the opportunity-creating tools of the
4 21st Century, and getting them out to all our
5 people -- and I always underline that word,
6 "all."

7 No matter who you are or where you
8 live or what the circumstances of your
9 individual lives may be, you've got to have
10 access to these opportunity-creating tools.
11 This is simply the most important
12 infrastructure challenge that faces this
13 generation of Americans.

14 So, I hope this Committee will
15 also take an active role in helping us develop
16 a national broadband plan -- we have to submit
17 it to Congress by next February -- that will
18 bring affordable value-laden broadband to all
19 of our citizens.

20 As I said, everyone in this
21 country needs to be on the receiving end, not
22 only of these wonderful new technology tools,

1 but the other point is, everyone in this
2 country should have equal opportunity to help
3 build and manage the infrastructure itself.

4 Before I close, there is one topic
5 that I do not expect this Committee to
6 address. That would be the fairness doctrine.
7 I almost hesitate to mention it, because it
8 seems so obvious. But apparently there are
9 some who remain confused. I hope not
10 willfully.

11 So, those who claim that promoting
12 diversity and addressing the woeful effects of
13 past discrimination are the equivalent of
14 bringing back the fairness doctrine
15 understanding neither the fairness doctrine
16 nor more importantly, the lack of opportunity
17 that minorities and women have when it comes
18 to owning and operating the enterprises that
19 allow us to communicate with one another.

20 What you are about is righting the
21 wrong of generations of denied opportunity.
22 When all the statistics show us still heading

1 in the wrong direction, most people without an
2 axe to grind appreciate the wisdom of that old
3 adage, "Justice delayed is justice denied."

4 Resurrecting the straw man of a
5 bygone fairness doctrine to deflect this
6 country's passage to equal opportunity is a
7 kind of issue-mongering that has no place in
8 the United States of American in the 21st
9 Century.

10 So, keep your eyes on the prize
11 here. It's within sight now. After years of
12 not so benign neglect, we are on the cusp of
13 actually moving forwards a media that can
14 reflect this nation's wonderful diversity.

15 And recognizing that as a nation
16 we all progress together, or we don't progress
17 at all.

18 So, again, thank you for taking
19 this on. If there's anything you need along
20 the way, please ask. Barbara Kreisman,
21 Jamila-Bess Johnson and Carolyn Williams from
22 our FCC team are excited about the process of

1 working with you and making sure you get the
2 help you need in order to do your job. And I
3 thank them for their willingness to help you.

4 And I think most of you know, my
5 door is always open. I look eagerly forward
6 to the critical advice that I am confident you
7 will provide, the sooner, the better.

8 And I will guarantee you this:
9 Your recommendations will receive immediate
10 attention by me and my colleagues. We won't
11 let your recommendations gather dust this time
12 around.

13 So, thanks again for being part of
14 what I think is going to be something
15 historic, not just in the annals of the FCC,
16 but hopefully for the country, too.

17 CHAIRMAN RIVERA: Thank you, Mr.
18 Chairman.

19 (Applause.)

20 CHAIRMAN RIVERA: Well, thank you,
21 Mr. Chairman. That's music to our ears. It
22 really is, and we appreciate the sentiments

1 you've expressed and the inspirational message
2 that you've given today.

3 With that, Rudy, would you care to
4 deliver Commissioner Adelstein's remarks?

5 MR. BRIOCHE: First, I'd like to
6 thank Chairman Copps for such a moving and
7 inspiring set of comments. I think it's very
8 refreshing to have someone leading the FCC to
9 deliver such a bold set of comments and I very
10 much appreciate that.

11 Good morning. My name is Rudy
12 Brioche, and I serve as Commissioner Jonathan
13 Adelstein's legal advisor on media issues.

14 I'd like to extend Commissioner
15 Adelstein's heart-felt disappointment for not
16 being able to join you here today, this first
17 meeting of the newly re-chartered Advisory
18 Committee on diversity issues concerning the
19 digital age.

20 As you all know, the FCC has
21 several Advisory Committees and all of these
22 Advisory Committees serve an important role

1 advising and proposing policy solutions and
2 recommendations to the Commission.

3 But, as the Chairman has said,
4 unfortunately, many of these policy
5 recommendations and proposals have fallen on
6 deaf ears for many years. They have either
7 been filed in a folder marked "No further
8 discussion necessary," or they've been left to
9 collect dust.

10 The numerous forward thinking and
11 progressive consensus proposals that this very
12 Committee has worked very hard to develop over
13 a decade only saw the light of day and were
14 only considered when it was politically
15 expedient to do so.

16 In other words, as the Third
17 Circuit Court of Appeals said in the landmark
18 "Prometheus Decision," the FCC's action or
19 failure to act has been inconsistent with our
20 obligation to promote spectrum available to
21 all people without any discrimination on the
22 basis of race, national origin, sex.

1 As Chairman Copps has said and as
2 many of you have said throughout the movement,
3 justice delayed is, indeed, justice denied.

4 So, we're pleased that now the
5 Commission, under new, bold, committed and
6 purposeful leadership of the Chairman and the
7 new direction of the White House, it is now
8 time for us to roll up our sleeves and first
9 to get to work.

10 However, in order for us to do
11 anything meaningful and to have a chance of
12 withstanding any strict scrutiny of the D.C.
13 Circuit and the Supreme Court, we must first
14 define the current state of minority
15 participation in communication, particularly
16 in the media space.

17 That's why Commissioner Adelstein
18 is pleased that the Commission has launched a
19 proceeding to update our Form 323, and to
20 gather reliable data on the precise nature of
21 minority and female ownership in broadcasting.

22 We need to develop recommendations

1 on the state of the past Commission's Adarand
2 Decisions, the nature of the scope and
3 methodology of any further studies and updates
4 and we need to develop recommendations on a
5 full-file review process that the FCC can
6 implement on an interim basis as the
7 Chairman's proposed, and as you have proposed
8 and have considered previously.

9 But in addressing the inequities
10 of broadcasting is only the first step. We
11 need to look to reform the FCC's actions
12 concerning advanced services as well.

13 For instance, last year, in the
14 700 MHz auction, women-owned bidders failed to
15 win any licenses and minority-owned bidders
16 won less than one percent of all licenses in
17 this rather historic auction. And this is
18 despite the fact that women constitute over
19 half of the population and minorities, one-
20 third of the population.

21 As Commissioner Adelstein said
22 then, and I quote, "It's appalling that women

1 and minorities were virtually shut out of this
2 monumental auction. It's an outrage that the
3 FCC has failed to counter the legacy of
4 discrimination that has kept women and
5 minority from owning their fair share of the
6 public spectrum.

7 "Here we had an enormous
8 opportunity to open the airways to a new
9 generation that reflects a diversity of
10 America and, instead, we just made a bad
11 situation even worse."

12 In closing, he said, "This gives a
13 whole new meaning of the term 'white spaces'
14 in public spectrum."

15 The result of the 700 MHz auction
16 were unconscionable, disappointing and
17 contrary to the statutory obligation of the
18 Commission.

19 We believe that the Advisory
20 Committee as it is constituted today, led by
21 Chairman Rivera and many of you here, experts
22 and practitioners in law, business,

1 broadcasting, that we can now begin to make
2 real, meaningful, lasting changes.

3 So, on behalf of Commissioner
4 Adelstein, than you for volunteering the time,
5 since I'm aware that no one is getting paid
6 for this, at least by the FCC.

7 But, thank you for your time and
8 we look forward to working with you and our
9 doors are always open, so please feel free to
10 contact us whenever you need anything, and
11 we'll be as responsible as possible. So,
12 thank you very much.

13 CHAIRMAN RIVERA: Thank you, Rudy.
14 Appreciate the good remarks, and please tell
15 the Commission we missed him.

16 All right. Do you want to go
17 through this section, Barbara?

18 MS. KREISMAN: Is Paula here?
19 Paula, why don't you come on up. Paula is
20 with the General Counsel's Office, and there
21 are just some technical matters that I think
22 it would be good to just mention briefly. We

1 won't take a lot of time on this.

2 But, first of all, I'd like to
3 call to your attention the charter, which is
4 a very short document, three pages, and it
5 would be good to read it, because that really
6 is very broad.

7 But, at your convenience, take a
8 look at it, because that is the scope of what
9 we're supposed to be doing here at the
10 Committee. And again, it's written in a very
11 broad manner.

12 Paula is going to give you a
13 briefing, but the bottom line is that there is
14 a whole Federal Advisory Committee Act that
15 dictates how we proceed. And the bottom line
16 is that, is that any recommendations by this
17 full Committee is done in a public manner so
18 the public has input, the public sees what's
19 going on.

20 However, you are entitled to a
21 free-flowing discussion in private with
22 respect to any of your working groups so that

1 you have to worry about that being publicized.
2 You are free to give your opinion, and there's
3 across, and back-and-forth.

4 And Paula is going to give you the
5 professional way to handle this.

6 MS. SILBERTHAU: Barbara has now
7 stolen my thunder.

8 MS. KREISMAN: Sorry.

9 MS. SILBERTHAU: She just
10 summarized the critical facts here. There is
11 a statute. It's very short. It governs FACA
12 operations and the guiding principles are
13 openness in government, diversity in
14 membership -- which is clearly satisfied here
15 -- and public accountability.

16 And those principles illuminate
17 the few rules that are established to carry
18 out FACA. The first major point is that the
19 FACA meetings, like this, have to be open,
20 have to be available to the public.

21 It has to be timely noticed. You
22 can't just call a meeting tomorrow, because

1 that's sort of inconsistent with providing
2 advance notice, and this agency does all it
3 can to make the notices available to everyone,
4 even beyond what is legally-required.

5 One question that arises sometimes
6 is: What are meetings? And meetings are not
7 just meetings in places like this. They could
8 be meetings by teleconference. It could be
9 meetings by video conference, and it could be
10 meetings by internet communications.

11 So, that's something, you know, to
12 keep in mind. You can't sort of -- not that
13 anyone would want to, but you can't just sort
14 of set up a chat room and have live
15 communications back and forth and say, aha!

16 That's not a meeting because we're
17 not there personally. Obviously that doesn't
18 work, and it would be inconsistent with the
19 spirit of FACA and the letter of the law.

20 The other question that sometimes
21 arises is coordination with the DFO. It's
22 very important to remember we can't call

1 impromptu meetings, and that the times and the
2 places have to be coordinated, in this case,
3 with Barbara.

4 And that actually goes for the
5 subcommittees as well. Subcommittees need to
6 be the agendas and the timing need to be
7 coordinated through the FCC representative.
8 And sometimes there's confusion on that,
9 because people think it's just a subcommittee,
10 it's not official.

11 But, in terms of -- there are
12 looser rules, but in terms of the coordination
13 of the meetings and setting things up and what
14 you're going to do, that should be done
15 through the DFO.

16 Some other minor points. The
17 minutes of the meeting are kept open to ensure
18 public access, and the chairperson has to
19 certify the accuracy of the minutes. And
20 again, this is so that if someone wants to
21 come and just find out what's going on,
22 members of the public, they can do that.

1 Meetings can only be closed in
2 extreme cases with the approval of the head of
3 the agency. I don't think that's going to be
4 a major issue here. There are some groups
5 where there are discussion of trade secrets or
6 classified governmental materials, national
7 security matters. In those rare instances
8 with advance approval, meetings can be closed.

9 A reminder that the records are
10 kept open and that they're subject to also
11 disclosure under FOIA, and all documents that
12 are submitted are maintained by the FCC.

13 On the key point of the difference
14 between the full meetings of the FACA which
15 have to be open and the functioning of working
16 groups, there is an exception in FACA to some
17 of the openness requirements for working
18 groups, but to make sure that that -- that
19 these exceptions are maintained, the Act looks
20 at how the groups function.

21 And typically, working groups can
22 gather information, develop working plans, do

1 studies, draft reports and discuss preliminary
2 fundings, but the subcommittees cannot speak
3 on behalf of the FACA, and therefore, anything
4 that's developed by your working groups goes
5 up to the full Committee, and everything needs
6 to be fully debated at the full Committee
7 level because obviously in the working groups
8 you don't have everyone's input.

9 So, the key thing that courts look
10 at is, is the working group just preliminary
11 or are its actions being debated at the full
12 FACA level, and basically the test is, are the
13 working groups acting like a FACA or are they,
14 you know -- and are their actions being rubber
15 stamped.

16 You don't want rubber stamps. You
17 want everything to come up to this entire
18 group to be evaluated and formalized.

19 I think the other point on that is
20 that the subcommittees shouldn't be making
21 direct recommendations to the FCC. It's just
22 a subcommittee report. Again, it flows

1 through the full Committee.

2 And in terms of the size of the
3 working groups, generally our advice is just
4 try to set them up so that it's not a quorum
5 of the members. Because, if you start having
6 so many people in a working group, just -- you
7 know, it starts looking like a full Committee.

8 So, that's just something to keep
9 in mind as you're setting the groups up.

10 Finally, just to remind you that
11 even though all of you are members of the
12 FACA's, you're still subject to ex parte rules
13 as individuals. So, if there is a
14 communication with the Commission or with
15 agency staff about the merits of a pending
16 rulemaking, you don't sort of get a free pass
17 in that regard for being a member of the FACA.

18 If you do communicate in any
19 capacity on the merits of an ongoing
20 rulemaking, you would need to follow the ex
21 parte rules and within 24 hours provide a
22 written communication -- you know, file

1 something that demonstrates that you have had
2 that communication with the staff or the
3 Commission.

4 And I think those are the key
5 points.

6 MS. KREISMAN: Any questions for
7 Paula?

8 MS. COOK-BUSH: I have a question.
9 So the ex parte question, so that means if we
10 discuss something in this room like today,
11 that the subject of a proceeding with the
12 Commission, would you file an ex parte about
13 whatever we said?

14 I'm just trying to understand when
15 the ex parte requirement arises.

16 MS. SILBERTHAU: That is probably
17 true, and it can be fairly short, but to the
18 extent that it's about an ongoing rulemaking,
19 and that there are members of the FCC staff
20 here or the Commissioners, that would be, you
21 know, well-advised.

22 MS. DOZIER: May I ask a question.

1 Like in an open forum there's generally an
2 exception under the ex parte rules when it's
3 an open and public forum, that if there's a
4 presentation that's made, that that does not
5 require an ex parte filing, would that not be
6 the case in the course of this meeting as
7 well?

8 MS. SILBERTHAU: If that's the
9 case, I defer to my ex parte folks at OGC.

10 MS. DOZIER: I believe that's the
11 case.

12 MS. SILBERTHAU: Okay.

13 CHAIRMAN RIVERA: I think there's
14 an exception to that.

15 MS. ELLISON: I actually think
16 Jane is correct and this is a public forum.
17 There's a public record made of the
18 discussion, which is available for anyone to
19 access. If we have to clarify that, we will,
20 yes.

21 CHAIRMAN RIVERA: Thanks, Michele.

22 Thanks, Paula.

1 MS. SILBERTHAU: Okay.

2 CHAIRMAN RIVERA: And for those of
3 you who don't know, Jane Mago is a former
4 Designated Federal Officer of this Committee.
5 So, she -- yes, the original. Right.

6 Okay. I just wanted to mention a
7 couple of things building and what Paula said.
8 Our meetings here are public, as she said. We
9 are available on the web, I think. We are --
10 the public is here. The press is here. So
11 you might bear that in mind as you want to
12 formulate your thoughts.

13 We have a website. You might want
14 to check into our website. It's on the FCC
15 master site, and you will go from there into
16 the Federal Advisory Committee section and to
17 our website.

18 So, all of our stuff is going to
19 be there, so anytime you need something, check
20 there.

21 I just want to reiterate that the
22 decisionmaking process, in the past what we

1 have done is divided ourselves into
2 subcommittees or task forces, depending on the
3 area that we're working on, and I will ask you
4 to, once we set those up, and we'll discuss
5 that in a minute, I'll ask you to decide what
6 subcommittees you'd like to be on.

7 You're not limited in terms of the
8 number of subcommittees you can be on. If you
9 want to be on all of them, that's fine. If
10 you want to be on one of them, that's fine.

11 If I don't hear from you about
12 your preference, I'll assign you to one, and
13 then if you have second thoughts about that,
14 we can discuss moving you to another one.

15 So, the subcommittees are the
16 folks who -- that's really where the work gets
17 done. That's where the rubber meets the road
18 in terms of the way we get things done. They
19 produce reports and recommendations to the
20 full Committee.

21 They use -- they can make use of
22 people who are not on the Advisory Committee.

1 We call those people subject matter experts.
2 You can bring them in to talk to them. You
3 can talk to them individually, and they will
4 help you formulate the recommendation.

5 The recommendation then comes to
6 the full Committee where the subcommittees
7 makes a report, and then the full Committee
8 votes on the recommendation and discusses it.

9 So, that's sort of the way we make
10 decisions. And I think I've talked about the
11 subject matter experts and so forth. Okay.
12 Are there any questions about any of this?

13 (No response.)

14 CHAIRMAN RIVERA: It sounds a
15 little more complicated than it is, but once
16 we get -- roll up our sleeves and get to
17 work, it works pretty well.

18 We will have -- we will designate
19 chairmen of these subcommittees to call
20 meetings and to move the agenda of the
21 subcommittees. We will assign specific topics
22 to these subcommittees to work on, and there

1 will be deadlines and so forth.

2 As you heard, the Chairman wants a
3 recommendation from us on full-file review and
4 the Adarand Studies no later than September,
5 so the subcommittees that will be working on
6 those recommendations has got to get cracking.

7 We -- he wanted to make it 90
8 days, and I told him that was the summer and
9 that would be pretty tough for all of us to do
10 that. But -- so, he relented to 90 days. But
11 you can see, he's very intent on getting our
12 recommendations with regard to those
13 particular things.

14 I have told you by email that I
15 would bring these two issues up, and I've sent
16 you a recommendation that this Committee sent
17 to the Commission in, I believe it was October
18 of last year.

19 Is that right, David? Was it
20 October? Yes. On full-file review.

21 And I'm going to ask Joycelyn
22 James to come over here. Joycelyn, where are

1 you? You can sit right here. And just give
2 you a synopsis of that document and the work
3 of the Committee that worked and produced this
4 really fine piece of paper.

5 If you haven't had an opportunity
6 to look at it, I commend it to you. It's a
7 good piece of work.

8 I've asked Joycelyn to do this
9 because she was the rapporteur for that
10 subcommittees, and she has done a lot of work
11 on it. So, Joycelyn, the floor is yours.

12 MS. KREISMAN: The report is in
13 your packet if you want the full report.

14 MS. JAMES: Good morning,
15 everyone. As Henry just mentioned, I assisted
16 the eligible entity subcommittees last year
17 with the preparation of this eligibility
18 subcommittees report and recommendation.

19 And, as you're aware, the last
20 year in the Broadcast Diversity Order, the
21 Commission adopted an Eligible Entities
22 paradigm that mirrored the small business

1 definition. And many commenters felt that
2 that definition was too dilute.

3 So, the task of the eligibility
4 subcommittees was to explore other paradigms
5 that could increase -- do better to increase
6 ownership for minorities and women-owned
7 licensees.

8 And so, to that end, the
9 subcommittees interviewed subject matter
10 experts in constitutional law and education
11 policy, and in FCC practice and procedure, and
12 came to the conclusion that, a socially and
13 economically disadvantaged business definition
14 would do more to increase FCC licensees for
15 minorities and women. However, there did not
16 seem to be enough data to base such a
17 definition at that time.

18 We hope to have one with
19 flexibility similar to the Department of
20 Transportation's that does not use quotas, it
21 has rebuttable presumptions, something that
22 could stand constitutional review.

1 However, those programs all were
2 based on current data before the agency at the
3 time. And as we're aware, the Chairman just
4 mentioned, the FCC does not necessarily have
5 that current data right now. We have Section
6 257 reports from 2000.

7 There was some reports done in
8 2007 -- that were issued in 2007, but many
9 researchers found that the data the FCC
10 provided, that they based these reports on was
11 woefully inadequate.

12 So, what they proposed to do at
13 that time was to look at full-file review.
14 And what full-file review is, is an admissions
15 program that States such as California and
16 Texas adopted after those states passed
17 legislation that barred race-based academic
18 admissions.

19 And what that does is, it looks at
20 the entire application. It looks at the
21 applicant's entire application for factors of
22 diversity that do not include that -- are not

1 base solely on race. Race is still a factor,
2 but it is not the sole determining factor.

3 And so we interviewed people to
4 see how that definition could be applied to
5 FCC practice and procedure and concluded that
6 it could be done if the proper -- with the
7 proper administration. And there are a lot of
8 questions that would have to be answered, and
9 many of those questions are found in page, I
10 think 29 and 30, of the eligible entities
11 report.

12 So, at this point, what the -- the
13 final conclusion of that subcommittees was,
14 that right now what the FCC needs to do is
15 collect data so that at some point if the --
16 let me back up a little bit.

17 During the Broadcast Diversity
18 Report there -- the Broadcast Diversity Order,
19 the Commission did adopt some race-neutral
20 proposals, and the way that the strict
21 scrutiny is set up at this point is that you
22 have to -- an agency needs to pursue race-

1 neutral proposals before it can pursue race-
2 based proposals.

3 So, at this point, these proposals
4 have just been adopted last year. Some of
5 them have not been implemented, so the
6 Commission will now need time to assess how
7 that implementation is going, how these race-
8 neutral proposals are increasing minority and
9 female ownership before it can get to a point
10 where it can justify having an SDB definition.

11 In the interim, the subcommittees
12 suggested that it adopt full-file review, and
13 full-file review does not trigger the same
14 type of race-based scrutiny that an SDB
15 program would because it is not -- it does not
16 turn on race as the sole determining factor.

17 So, the final recommendation was
18 to -- for the Commission to continue to
19 collect data on minority and female ownership,
20 and to initiate notice and comment on full-
21 file review, based on some of the questions
22 provided in the report.

1 CHAIRMAN RIVERA: Thank you,
2 Joycelyn. Very nice job. Appreciate it.
3 Don't go anywhere.

4 Are there any questions for
5 Joycelyn, about this?

6 So, it's basically race-neutral
7 initiatives that have been adopted by the
8 Commission, an evaluation of those and a
9 determination of whether they're working, and
10 from there, if they're not working, the
11 Commission could move into a race-based type
12 of criteria if it were backed up by
13 appropriate studies.

14 In the interim, the Commission
15 could move to this full-file review process.

16 Susan.

17 MS. FOX: One question --

18 MR. DE LA VEGA: Henry, this is
19 Ralph De La Vega. I have a question for you.

20 MS. FOX: -- which is -- this may
21 be a matter for further discussion with the
22 Commission. Do you, or does anyone have a

1 sense for the race-neutral initiatives that
2 have already been adopted, but not
3 implemented, when they will be implemented, or
4 what the time frame is there, because that
5 obviously affects --

6 CHAIRMAN RIVERA: Right.

7 MS. FOX: -- everything else.

8 CHAIRMAN RIVERA: Right. David,
9 do you have an answer to that?

10 MR. HONIG: Yes.

11 CHAIRMAN RIVERA: Okay.

12 MR. HONIG: Well, of the
13 initiatives that the FCC adopted in December
14 2007 that went into effect July 15th, 2008,
15 the most important was the advertizing non-
16 discrimination rule, which certainly is
17 focused on trying to eliminate a major market
18 entry barrier that's persisted for many years.

19 There is, as yet, no person on the
20 Commission staff assigned to implement this
21 rule, and the way the rule is written, it
22 really turns upon an obligation that adheres

1 at license renewals, so it would take a few
2 years probably to implement it for best
3 practices to be designed and for the
4 Commission to be able to measure its impact.

5 I think probably at least two
6 years, realistically, as well as many of the
7 other initiatives that were adopted.

8 I also wanted to just add that
9 full-file review can be designed in a way
10 which is -- in which race, itself, is actually
11 not a factor. It can be designed either way.

12 For example, it can look at
13 whether an applicant for a program has
14 overcome disadvantages which could include
15 race discrimination or many other factors, the
16 overcoming of which is predictive of success.
17 That's a race-neutral criteria.

18 CHAIRMAN RIVERA: Is that
19 responsive?

20 MS. COOK-BUSH: Well, I just had
21 one other question, but -- so, were there any
22 policies adopted that went to the question

1 related to ownership?

2 In other words, the advertizing
3 discrimination really goes to existing
4 broadcasters and existing ownership, but were
5 there any policies adopted that go to the
6 question of, you know, using for example, the
7 DOT definition to see whether or not that had
8 a positive impact on a number of new entrants
9 that resulted.

10 MR. HONIG: Sure. Just to give a
11 few of the examples, the Commission in 2007 --
12 and all of these were on the recommendation of
13 this Diversity Committee -- relaxed the equity
14 debt-plus rule in order to try and bring the
15 broadcast seller paper market back.

16 It announced that it would waive
17 the construction permit extension rule. If
18 you could get a longer period to build-out a
19 station if you sold it to or if you were a
20 small business.

21 And it restored the distress sale
22 policy in more dilute form, but still it's

1 there in the event that there's a hearing and
2 someone loses their license, but then they can
3 sell to a small business for a discount.

4 These are examples of initiatives
5 which are probably modest in scope. They are
6 race-neutral. There are a number of them, and
7 an assessment would need to be made as to
8 these and others as to how effective that they
9 are.

10 MS. COOK-BUSH: I guess I just
11 have one sort of follow-up question which is
12 -- I thought where we -- where you were going
13 was that the Commission was going to adopt
14 basically the DOT policy, since that's already
15 in effect, you know, and that could be in
16 place while we're -- you know, during this
17 time period while we're doing the assessment,
18 and that wouldn't preclude also, you know,
19 doing a full-file review at the same time,
20 would it?

21 MS. JAMES: Now. The issue with
22 adopting the DOT policies is that the DOT

1 policies were based on studies that the --
2 that Congress had in front of it that was --
3 and at this point, the Commission does not
4 have current studies.

5 And so, there is no -- while
6 there's no expiration date on the staleness of
7 data, but courts have said that it is better
8 for an agency to have -- to make decisions on
9 current, reliable data.

10 And the reliable data that we have
11 is ten years old. As I mentioned, the data,
12 the research that was released and -- the
13 studies released in 2007, many of the
14 researchers had complaints about the quality
15 of data that the Commission provided, and so
16 there's a question as to whether that --
17 whether or not that research is strong enough
18 for the Commission to base a -- such a model.

19 CHAIRMAN RIVERA: Other questions?

20 Yes.

21 MR. DE LA VEGA: It's my question,
22 Henry.

1 CHAIRMAN RIVERA: Okay. Yes, go
2 ahead.

3 MR. DE LA VEGA: About that issue
4 is, since the prior Committee recommended that
5 data be refreshed, has anything else been done
6 about that or has that been sitting since
7 October with no action taken, how long will it
8 take to get the studies done and how much will
9 they cost?

10 CHAIRMAN RIVERA: Do you want to
11 take that, David?

12 MR. HONIG: In everyone's packet
13 today is the text of an order that the
14 Commission released two days ago. This is the
15 Form 323 report, the fourth report in order,
16 also acting on a recommendation that this
17 Committee made to revise the format for
18 collecting data on broadcast station
19 ownership, just to get a good photograph at a
20 point in time by race and gender of broadcast
21 ownership.

22 So, that has just occurred. It's

1 a fine order, and certainly the studies that
2 could be based on data such as that which will
3 be elicited by the reports submitted by
4 broadcasters in response to this order are yet
5 to be forthcoming.

6 CHAIRMAN RIVERA: Yes. Who asked
7 that question? I'm sorry.

8 MR. DE LA VEGA: That was Ralph De
9 La Vega.

10 CHAIRMAN RIVERA: Okay. Ralph.
11 Thank you.

12 MR. DE LA VEGA: So does this
13 order then begin the process of getting the
14 data that the prior Committee recommended so
15 that the approach that SDB recommends could
16 perhaps be implemented in the future? Is it
17 sufficient to take that kind of scrutiny?

18 MS. JAMES: Yes, it does.

19 MR. DE LA VEGA: Okay.

20 MS. JAMES: It begins the process
21 of collecting current, reliable data.

22 MR. DE LA VEGA: And when do we

1 think that data will be collected? When will
2 that be finished?

3 MS. JAMES: I think, according to
4 the order, broadcasters have to submit their
5 reports in November, I believe, November of
6 this year, and every two years after that. Is
7 that correct?

8 CHAIRMAN RIVERA: Yes.

9 MS. JAMES: Okay.

10 MR. DE LA VEGA: Okay. Thank you
11 very much.

12 CHAIRMAN RIVERA: Thank you,
13 Ralph.

14 Jen.

15 MS. ALONZO: My question goes to
16 the scope of the data gathering.

17 Traditionally, the focus of this
18 Committee has gone beyond simply the broadcast
19 industry, and while I think it's fine to
20 collect data that focuses on an area and moves
21 forward, I think that the scope of the data
22 needs to eventually go beyond just the

1 broadcast ownership area.

2 And, you know, do we have plans to
3 try to go that route?

4 CHAIRMAN RIVERA: Thank you.

5 That's a very good point and those kinds of
6 things, hopefully, will be dealt with at the
7 Committee level, subcommittee level, and then
8 brought to us in a new recommendation.

9 Any other questions on it?

10 Yes, Gary.

11 MS. NARASAKI: I apologize if it's
12 in our packet, but I'm hoping that we could
13 get a list of all of the recommendations that
14 were made and which ones are in progress, and
15 how long they're going to take and why
16 recommendations that were not adopted, why
17 they were not adopted. In other words, are
18 there things that we should be considering
19 now.

20 And, the second thing is, if the
21 data is collected this year, how long will it
22 take to have enough data to do the studies

1 that would be required to be able to follow
2 what the Department of Transportation does?

3 CHAIRMAN RIVERA: I'm going to let
4 Joycelyn and David answer the second question.

5 As to the first one, David is
6 going to give us, in a moment, a reprise of
7 what the Committee has been doing in the past.
8 And we can get you a more comprehensive list.
9 Or, actually, it's on the website. You can
10 access it yourself.

11 In terms of why certain
12 recommendations were not adopted, won't be
13 able to answer that question. Don't know --
14 don't know the answer.

15 Do one of you want to take the how
16 long is it going to take?

17 MR. HONIG: The Form 323, of
18 course, is just for broadcasting. There is
19 also not especially good data for telecom, and
20 there would need to be another proceeding on
21 collecting that data as well, and for cable
22 and for the other industries.

1 Once that data exists, studies
2 probably could be produced based on it,
3 assuming the resources are available in six to
4 nine months, including a period at the end for
5 peer review and for presentation and
6 discussion here.

7 Implementation of new regulations
8 or deregulation based upon those reports add
9 another nine months or so, and then evaluation
10 of the programs, add perhaps a year. So,
11 we're -- how old will we be then? Probably
12 about two or three years, total. It's in the
13 best case.

14 CHAIRMAN RIVERA: It's not a
15 short-term fix.

16 Yes, Jim. I'm sorry.

17 MR. WINSTON: Given the timetable
18 that Dave just talked about, I think one of
19 the things we might want to consider and, as
20 you said, these issues are probably
21 appropriate for a subcommittees, but I think
22 we need to look at the possibility of the

1 Commission commissioning an outside study of
2 ownership statistics, separate and apart from
3 the 323 and separate and apart from any other
4 proceeding they do for telecom, but I think --
5 and, you know, an outside entity with the --
6 you know, objective of collecting the data as
7 opposed to analyzing the data. I think that
8 might be a place to begin.

9 CHAIRMAN RIVERA: Great. Great
10 point.

11 I just wanted to introduce this --
12 this topic now. We're not going to solve it
13 now. It's going to take a lot of work at the
14 subcommittees level. We've got a great start
15 in terms of our document and recommendation
16 already.

17 We've got a short fuse, so those
18 of you who are interested in working on this,
19 let me know at your earliest convenience.

20 I want to move now to the Adarand
21 Studies document that I sent you in concept.
22 We've talked a little bit about that already,

1 but Joycelyn, can you summarize that for the
2 folks.

3 MS. JAMES: Okay. Yes. Some of
4 this I mentioned earlier regarding where we
5 are with the studies, and as I mentioned, as
6 most of us are aware *Adarand v. Pena* made it
7 so that race-based regulations are subject to
8 strict scrutiny and must be narrowly tailored
9 to meet a compelling government interest.

10 And the issue in front of us is
11 the narrow tailoring as far as the regulations
12 go. The subcommittees identified numerous
13 possible compelling government interest that
14 a full-file review could meet.

15 But the issue we're having is the
16 narrow tailoring, and in order for something
17 to be narrowly tailored, there has to be --
18 the agency will have to have the proper data
19 in front of it.

20 And -- let's see. I think I
21 mentioned -- as I mentioned -- yes. We have
22 -- the FCC has not exhausted its race-neutral

1 alternatives. And before you can consider any
2 race-based proposals the Supreme Court has
3 determined that you have to exhaust the race-
4 neutral alternatives.

5 As we discussed earlier those
6 race-neutral proposals are currently waiting
7 to be implemented and they have not been
8 implemented.

9 So, after these race-neutral
10 alternatives have been implemented when the
11 Commission has had time to assess how valuable
12 they were as far as increasing minority and
13 female ownership, then you can turn to race-
14 based alternatives.

15 And those race-conscious programs
16 such as the SDB programs have withstood strict
17 scrutiny when the government has actual record
18 evidence of disparities.

19 And as I mentioned before at this
20 time, the government has evidence of those
21 disparities, but the evidence is stale, and
22 would not likely stand the strict scrutiny

1 review that current courts are applying to
2 race-based measures.

3 CHAIRMAN RIVERA: All right.

4 Thank you, Joycelyn.

5 Anything else on that? No? All
6 right. Thank you very much. Nicely done.

7 So, I'd like to move now to a
8 brief recap of what -- oh, excuse me. Hey,
9 Rob.

10 Commissioner McDowell has joined
11 us, and as I told you, we would interrupt our
12 proceedings to hear from him. So, Rob, come
13 on up.

14 COMMISSIONER McDOWELL: Mr.
15 Chairman, good to see you.

16 First of all, my apologies for
17 interrupting. I had some other things going
18 on this morning, so we couldn't make it here
19 at the outset, so we'll keep this very brief
20 because you have some important work to get
21 started on.

22 So, I'm delighted you all are

1 coming back together, and it's great to see so
2 many faces here. Many of them familiar, some
3 new, and that's great.

4 I think it's important to note
5 that as I have read about this Committee
6 reconvening from many different sources, that
7 if there are folks who want to be on this
8 Committee who aren't, please contact my
9 office, and we want to keep this Diversity
10 Committee as diverse as possible from all --
11 any definition of that word.

12 So -- but, please do contact me
13 because this is rechartered for a couple more
14 years, but the door doesn't have to close on
15 who's going to have a say here. So, I think
16 it's very important.

17 I really do look forward to the
18 advice and the debate that this Committee will
19 put forth, so thank you very much for signing
20 on to commit your heart and soul and brains to
21 this endeavor, and many thanks to the Chairman
22 here for his continued leadership.

1 So, as you know, I've been an
2 active supporter on several initiatives to
3 support new and existing minority
4 broadcasters, including of course, the ban on
5 advertizing, the discrimination in
6 advertizing, in other words, the bar against
7 any -- no urban, no Spanish dictates.

8 It had been estimated at the time,
9 before the current economic slump that that
10 might have added another hundred million
11 dollars into the pockets of broadcasters who
12 desperately needed it. And I think that was
13 very, very important to do.

14 Also, I think relaxing certain
15 attribution rules to encourage greater
16 investment in licenses controlled by small
17 businesses, including those owned by women and
18 people of color. I think that has been a
19 priority as well.

20 You know, this week one of my all
21 time heros passed away, Jack Kemp. And I have
22 a former staffer, my chief of staff, Angela

1 Giancarlo used to work for Jack Kemp, and one
2 of the many things he used to say was, "You
3 can't have capitalism without capital."

4 And so I think for this Committee
5 we need to really put a priority on access to
6 capital and what we can do. I think we have
7 a tremendous opportunity in the midst of this
8 economic hail storm when there are
9 broadcasters who will be going out of business
10 or having to conduct fire sales, to make
11 lemonade out of those lemons.

12 What can we do if those assets are
13 being put up for sale, to see what we can do
14 to encourage small businesses of all kinds,
15 but especially those owned -- to be owned,
16 hopefully by women and people of color.

17 The bottom line there, though,
18 comes from what we discussed last summer,
19 access to capital, and how do you do that.

20 So, I don't think, really, any
21 initiatives the FCC can do is more important.
22 So, let's figure out how we can do this, and

1 this isn't going to be easy.

2 I don't have the magic bullets for
3 you, but I do want to work with you on that
4 issue, because I think that once we have an
5 answer to that question we will be able to
6 solve these problems.

7 So, any case, I will keep it short
8 -- or maybe I've already blown that
9 opportunity. Sorry about that -- and let you
10 carry on with your good work and thank you all
11 very much. Look forward to working with you.

12 And, of course, all of you know --
13 or if you don't, you should, Rosemary Harold,
14 right there, my legal advisor for all things
15 media, and again, if there folks who want to
16 serve in this Committee who are not on this
17 Committee, please let her know, in particular.

18 CHAIRMAN RIVERA: Good work.

19 Thank you.

20 COMMISSIONER McDOWELL: Good work.

21 Thank you all very much.

22 (Applause.)

1 CHAIRMAN RIVERA: Thank you,
2 Commissioner. We appreciate those words.

3 All right. As I was about to say,
4 the -- I wanted -- I've asked David to give us
5 a brief reprise of what the Commission -- this
6 Committee, excuse me, has been doing in its
7 past two iterations, and he's not going to
8 tell us everything, but sort of hit some high
9 points, I think.

10 So, David.

11 MR. HONIG: Thank you, Henry. On
12 the Commission's website there is a
13 comprehensive list, as well as copies of all
14 of the recommendations that the Committee,
15 since 2003, has taken up and adopted and
16 considered.

17 I think this -- Barbara has
18 distributed sort of a Cliff Notes version that
19 we put together, and just to highlight four
20 big points.

21 The Committee has not just adopted
22 recommendations. It's also thought through

1 issues in a way in which those who don't make
2 decisions on the 8th floor could use them. It
3 has issued two comprehensive reports on
4 workplace diversity, including a very thorough
5 best practices book.

6 It provided, of course, this
7 report we've spoken about on the definition of
8 eligible entities and full-file review. It
9 held, on July 29th, 2008, in New York City at
10 the Schomburg Center for African-American
11 history and culture, the first conference on
12 access to capital that the Commission has held
13 in about 30 years, and that was really held at
14 the initiative of Commissioner Deborah Taylor
15 Tate.

16 And fourth, and just the day-to-
17 day work of the Committee has really been to
18 follow though in the spirit of Section 257 of
19 the Telecommunications Act, and it's 47 USC
20 257 Codified, which adopted in 1996, provides
21 that the Commission should be looking at its
22 rules comprehensively to determine whether any

1 of them may be imposing barriers to entry,
2 particularly but not exclusively with respect
3 to participation by minorities and women, and
4 where necessary, lift those barriers.

5 And the Commission is to provide a
6 report on that to Congress every three years.
7 This is actually a triennial year, 2009, when
8 such a report will be due at the end of the
9 year.

10 And the Diversity Committee has
11 been rather prolific. It's offered nine
12 recommendations that the Commission has
13 approved, most of them in that December 2007
14 order, some of those that I'd spoken of
15 earlier, as well as 44 recommendations that
16 the Commission still has under consideration.

17 The most significant of the
18 recommendations in terms of potential impact,
19 perhaps, that the Commission has adopted that
20 the Committee recommended was this
21 transactional nondiscrimination rule that
22 Commissioner McDowell spoke about, and that

1 really, after 24 years crossed the finish line
2 because of his initiative, really, and
3 Commissioner Adelstein's initiative. That's
4 how that happened.

5 So, that's a quick summary of what
6 we've done. And for the rest of it, if you go
7 to www.fcc.gov on the right-hand side, hit the
8 link to the Diversity Committee, everything
9 else will pop up.

10 CHAIRMAN RIVERA: Any questions
11 for David about what we've been doing?

12 (No response.)

13 CHAIRMAN RIVERA: All right. I'd
14 like to throw it open at this point to all of
15 you to get some ideas if you've got any about
16 what you think we ought to be taking up. And
17 again, process would be to move these ideas
18 into subcommittees. We'd form subcommittees,
19 and then move these ideas into subcommittees
20 for work and recommendations to be brought
21 back to this Committee.

22 So, the floor's open. Jim.

1 MR. WINSTON: A subject I think
2 probably falls under the access to capital
3 subcommittee. As we talk about access to
4 capital in the current recession, one of the
5 problems that is confronting the broadcast
6 industry is existing broadcasters having
7 difficulty with their current financial
8 obligations due to constraints placed upon
9 them by their lenders.

10 As Commissioner McDowell pointed
11 out, there are companies that are probably
12 going to be going out of business in this
13 recession. Right now it appears that far too
14 many of those companies may be minority-owned
15 companies.

16 And so, I think that one of the
17 first things we have to look at is how do we
18 save some of the minority companies that
19 already exist.

20 And what we are finding is that
21 many of them that are actually, you know, able
22 to survive on an operating basis, in spite of

1 the economic downturn are having difficulty
2 with their lenders because of technical
3 defaults, meaning they are out of compliance
4 with their covenants, so that their ratios are
5 out of whack.

6 And even though they are making
7 current payments on their loans, they are
8 being declared in default by their lenders.

9 And many of these lenders, of course, are the
10 same lenders who the Government is bailing out
11 with TARP money, TALF money.

12 And, you know, supposedly that
13 money was going to make capital available, and
14 instead, these banks are actually tightening
15 constraints on existing borrowers so that --
16 so that we have the exact opposite result,
17 that they are using the taxpayers' money to
18 put some of these important companies out of
19 business.

20 So, you know, I think that that's
21 something that I'm not exactly sure. Toni
22 Bush and I have been talking about that for

1 some time about how we put that in front of
2 the group here, but I want it to be floated
3 out there as something for an agenda item for
4 us to look at.

5 CHAIRMAN RIVERA: Terrific.

6 MR. HONIG: I don't know if Toni
7 wanted to add on that at all.

8 MS. COOK-BUSH: Well, I think that
9 is an important issue and it came up at the
10 MMTC policy luncheon with Acting Chairman
11 Copps some time ago, and he did express an
12 interest on that, and I think that would be an
13 important area to move on, and fairly quickly,
14 because I think that we're going to see the
15 negative impact of this fairly soon on
16 minority and woman-owned broadcast stations.

17 CHAIRMAN RIVERA: Good idea.

18 MR. WINSTON: Let me add just one
19 more point, if I may.

20 CHAIRMAN RIVERA: Yes.

21 MR. WINSTON: Because, when you
22 mentioned Chairman Copps -- one of the things

1 that Chairman Copps raised over a year ago in
2 a transaction that was pending before the
3 Commission, was the influence of private
4 equity funds and hedge funds in ownership in
5 the broadcast industry, that because these
6 entities are unregulated on many levels, the
7 Commission had very little information about
8 these entities.

9 And the hedge funds are very much
10 a key component of the pressure being placed
11 on minority-owned companies today, and many of
12 them are lenders in these consortiums that
13 broadcast companies have found themselves in.

14 So, I think a subpart of that
15 question might be looking at private equity
16 and hedge funds and the impact, because their
17 reach seems to be far greater than the
18 Commission may have even discussed in that
19 prior order about a year or so ago.

20 So, I think that that's something
21 that ought to be added to that subject matter.

22 MS. COOK-BUSH: And I also want to

1 say that I'm not sure that this is something
2 that -- I mean, while it would be, you know,
3 worthy of a proceeding at the FCC, I really
4 think the issue is much -- is much more
5 imminent and needs to be addressed more
6 quickly.

7 And I think some of the things
8 that have been suggested, for example, were
9 for the Chairman to, you know, discuss these
10 issues with the Department of Treasury and
11 other, you know, entities that are looking at
12 it because the reality is, this is a very
13 small subset of, you know, the whole economy,
14 and it's, you know, going to be hard for small
15 station groups to get the attention of, you
16 know, people working on these issues and get
17 any focus on it.

18 But if we're going to have some
19 impact on it, I think the Chairman and the
20 Commissioners could certainly initiate
21 discussions. And I know that he's indicated
22 a desire to do that in other contexts, to have

1 more interagency cooperation, you know,
2 related to broadband and other issues.

3 And so -- but I think this is an
4 area where, you know, at least those
5 discussions got started fairly quickly, that
6 would be very important.

7 CHAIRMAN RIVERA: All right. We
8 can fast-track that then. Yes.

9 MR. ALARCON: On this matter,
10 please, for a moment. And my total agreement
11 with Jim and Toni's comments regarding this
12 question of access to capital, particularly at
13 this time when small broadcasters and minority
14 broadcasters are facing what all of us really
15 are facing in this moment in this economy, but
16 also the effects which I'm sure this Committee
17 has heard about before, and if not, I think it
18 should be brought up.

19 The question of the new
20 methodology that Arbitron, and particularly in
21 radio I'm speaking of, is using which is a
22 devastating effect to minority radio stations

1 and urban radio.

2 And you have also the question now
3 of the -- this looming question of the artist
4 royalty question for radio, which is if,
5 indeed, it is legislated and passed, that's
6 going to be a tremendous hit to minority
7 owners of broadcasting, stations and outlets.

8 And so, I couldn't agree more with
9 the question of the -- the entire question of
10 access to capital. I think -- I mean, I'm new
11 to this Committee. I'm not sure if there has
12 been a subcommittee with respect to this
13 question, but Jim's point about all of these
14 funds going to these institutions, and yet we
15 play such an important role in society, I
16 think, if there is a way for a subcommittee
17 maybe to be created around this question, I
18 think it's an important enough matter that
19 really deserves the attention of the Committee
20 and I absolutely second Jim and Toni's
21 comments regarding that.

22 CHAIRMAN RIVERA: Thank you. We

1 had a -- Dave, just a second. We had a
2 recommendation from this Committee on the
3 Arbitron issue which went up to the
4 Commission, and they are apparently in the
5 midst of doing something on it.

6 So, I'm -- that's not to say we
7 couldn't look at it again, but I just wanted
8 you to know that we did do something.

9 David.

10 MR. GOODFRIEND: Thank you, Mr.
11 Chairman. If I could please go back to
12 something that Rudy Brioche said on behalf of
13 Commissioner Adelstein, looking forward to
14 additional spectrum auctions that this
15 Commission is going to do in the readily
16 foreseeable future.

17 To paraphrase Rudy's comments, the
18 700 megahertz auction, the biggest in history
19 of that value of spectrum was a travesty. It
20 was a missed opportunity of colossal
21 proportions.

22 And the DE rules were a legally-

1 sanctioned method for addressing all the
2 issues that we're talking about today in the
3 area of minority, women ownership and probably
4 the fastest-growing aspect of the
5 communications space, wireless.

6 I believe that this Committee must
7 make a strong recommendation that any wireless
8 auction from this point forward include
9 strong, meaningful DE rules that have teeth,
10 that have consequence, and that will result in
11 increased ownership of FCC licenses by women
12 and minorities.

13 I'll just add one personal note.
14 I had a front-row seat watching major
15 corporations put together deals in advance of
16 the 700 megahertz auction. Prior to then
17 Chairman Martin releasing the rules for that
18 auction, there were minority firms teed up,
19 ready to partner, part of contractual drafts.
20 When the rules came out with no real DE
21 consequence whatsoever, those partners were
22 dropped.

1 If we want it to happen, it will
2 happen. If we don't, it won't. This
3 Committee should be unambiguous in making
4 their recommendation.

5 CHAIRMAN RIVERA: Thank you,
6 David.

7 Maria, did you have something?

8 MS. BRENNAN: No. I'm glad I let
9 Jim go first, because frankly he put it very
10 eloquently and so the issue of access to
11 capital and all of the facets that that
12 entails are very important to membership
13 owners of AWRT as well.

14 CHAIRMAN RIVERA: Right. Thank
15 you.

16 Anybody else? Oh, Andy.

17 MR. SCHWARTZMAN: Is this
18 microphone on?

19 CHAIRMAN RIVERA: Yes.

20 MR. SCHWARTZMAN: Does it matter?
21 Okay. First of all, is it in order to make a
22 general statement in addition to --

1 CHAIRMAN RIVERA: Of course.

2 MR. SCHWARTZMAN: Okay. Because I
3 would like to just briefly add to what
4 Chairman Copps said. On the internet there
5 have been some attacks on this Committee and
6 its function, and I think the people who would
7 wish to undermine the utility of this
8 Committee are, I would hope, simply being
9 naive and not understanding what's going on
10 here.

11 This is not an ideological
12 exercise. This is a Committee composed of
13 people from the left, right and center. It's
14 nonpartisan, it's substantially similar in
15 membership to the Committee which functioned
16 for several years under the last FCC
17 chairmanship.

18 As has been mentioned, diversity
19 is a core objective of the FCC, its mandate
20 under the Communications Act. This run in an
21 open and transparent manner, and the
22 membership of broadcasters, civil rights

1 leaders, telecommunications companies,
2 programmers, investors, entrepreneurs,
3 publishers are here because they have a shared
4 commitment to the ideal that a diverse media
5 and telecommunications ecology promotes
6 democracy as well as prosperity.

7 And I would hope that, you know,
8 this should be on the record as a Committee
9 that is here to work and is not here to target
10 small broadcasters as has been suggested.
11 It's here to promote the prosperity of the
12 broadcast industry and telecommunications
13 industries in general.

14 And in that connection, I would
15 want to pick up on something Chairman Copps
16 said or pointed to, which is the Commission's
17 mandate to create a broadband plan for the
18 nation by next February.

19 It would seem to me that it would
20 be appropriate for this Advisory Committee to
21 make recommendations that would become part of
22 the Commission's deliberations with respect to

1 establishing that broadband plan.

2 For example, I think internet
3 platforms can be used to promote diversity and
4 programming. Internet radio has become an
5 important supplement to terrestrial
6 broadcasting for niche programming, and I
7 think both need to prosper, but that kind of
8 function is just one example of what broadband
9 deployment can bring.

10 And I would hope that one way or
11 another, some consideration and
12 recommendations can come out of this
13 Committee.

14 CHAIRMAN RIVERA: Thank you, Andy.

15 Yes. Kathy.

16 MS. BROWN: Thank you, Henry.

17 First, let me thank you for inviting me onto
18 this Committee. I am delighted to be back in
19 this room and I'm delighted to be back with
20 all of you.

21 Let me just build on Andy's notion
22 around this broadband issue. Verizon is

1 obviously one of the major providers of
2 broadband ultra-fast broadband, wired and
3 wireless.

4 It is committed both in its
5 outreach to our communities, the way we work
6 with our customers and our employees to a
7 diverse workforce. We have a diverse market,
8 and so this is core to our DNA.

9 As we think about what's happened
10 over the last ten years, I think the world has
11 opened up in new ways for access for many
12 people, using many different types of
13 technologies.

14 As we think about and should think
15 about the broadcast area -- and by the way, in
16 my view, the opportunities in a DTB world with
17 more capacity available to each and every
18 broadcaster, and I think we ought to think
19 about that piece in the broadcast world.

20 But we also need to think about
21 the internet world, and think about access of
22 women and minority communities to broadband,

1 to the internet itself, but also programmers,
2 application providers and the formation of
3 capital in what, if I may call the new media.

4 And I think and hope that -- I see
5 some folks in the room, I think, who would be
6 interested in perhaps a working group on what
7 that looks like. There's not a lot of data
8 on, for instance, application providers or new
9 content providers in this space.

10 And we know from our experience on
11 FIOS, for instance, that folks who never had
12 access before to cable-like services and to
13 reach large audiences are now able to do that
14 because of the huge capacity that we're
15 providing.

16 So, this notion of minority
17 ownership programming of content and the
18 ability to actually reach communities through
19 this media I think is one that maybe could use
20 some discussion, and I would say and agree
21 with Andy that it would be appropriate for us
22 to give some -- some thoughts and

1 recommendation into the national broadband
2 agenda around those issues.

3 CHAIRMAN RIVERA: Thank you.
4 Debbie.

5 MS. LEE: First, I want to second
6 what Jim said earlier about the need to speed
7 up the process in terms of collecting data and
8 providing the Commission a platform to stand
9 on, or a statistical record to stand on.

10 I mean, we can't do anything about
11 the eight years of nonaction, but it seems
12 incredible to me that it might take two to
13 three years to correct that problem.

14 So, anything that we can do to
15 speed that up I think would be very helpful,
16 and I think this Committee should be very
17 vocal about that, and the need for a record,
18 because to -- you know, to use as an excuse
19 that we don't have a record to create
20 innovative mechanisms to get minorities
21 involved and women involved in media is just
22 unacceptable.

1 So, I think, you know, with all
2 the consolidation that's happened in the
3 industry with the lack of minority ownership
4 out there it just shouldn't take that long to
5 put the numbers together.

6 So, that's point one. Point two,
7 I want to second the thought that we need to
8 look at broadband, and because of this
9 Administration's commitment to it, because of
10 the amount of money that's put aside in the
11 stimulus package, and because it is still the
12 broad new frontier, I think it does have a lot
13 of opportunities for minorities and women on
14 the distribution side, on the programming
15 side.

16 Of course, no one's making a lot
17 of money on it right now, but hopefully down
18 the road there will be more opportunities.
19 But I think a subcommittee really focused on
20 what's going on in the digital environment
21 would be very helpful and is an area where
22 there should be a lot of new opportunities.

1 Thank you very much.

2 CHAIRMAN RIVERA: Yes. Karen.

3 MS. NARASAKI: Thank you, Mr.

4 Chairman. I want to join in support of both
5 doing something on access to capital. Over
6 the last two years, for the Asian-American
7 community, we've already lost two Asian-
8 American channels and not gaining very much in
9 that space, so I really believe that access to
10 capital has been one of the challenges, to
11 keep those fledgling efforts going.

12 And the second is very much on
13 weighing in on the broadband policy. We've
14 been working with the Urban League, the
15 National Council of La Raza, MMTC and the
16 Joint Center on -- we convened a group of
17 civil rights and activists and data users to
18 talk about broadband in the area of health
19 care and education on the application issues.

20 So, it's both being able to weigh
21 in on the structural and access issues, but I
22 think even more importantly, beginning to look

1 at how we can help support the ability to use
2 niche programming for education purposes to
3 minority communities as well.

4 And I think that's an enormous
5 opportunity for minority program developers
6 that we could really look into and help
7 support.

8 CHAIRMAN RIVERA: Thank you,
9 Karen.

10 Ron.

11 MR. JOHNSON: Mr. Chairman, I
12 would like to just follow onto Barbara and
13 Kathy's remarks about broadband. I think
14 before Chairman Copps left the meeting, he
15 made a very profound statement about his
16 desire and the Commission's desire to ensure
17 that all businesses would have the opportunity
18 to get involved in the maintenance and
19 construction side of broadband.

20 I think this is an area where,
21 when we peel back the onion on this whole
22 matter, you will find that that part of the

1 industry certainly lacks the number of
2 minority and small businesses that we would
3 like to see in the industry.

4 So, I would think that a part of,
5 and hopefully the part of the Adarand Study
6 that we will be engaged in will look at some
7 disparity issues related to that.

8 We spent an inordinate amount of
9 money, as we all know, on the capital expense
10 side of telecom, and it's that side of telecom
11 where we do not have, in my estimation, a
12 representative number of minority businesses
13 engaged.

14 I think this is also particularly
15 important, given stimulus, where we will spend
16 about \$7.2 billion at the state and local
17 level with nonprofits and others, with some of
18 the distinguished carriers around this table.

19 I'm not sure we can wait until a
20 year from now to have something in play that
21 will ensure that these businesses have the
22 opportunity to fully participate.

1 So, I would hope that we could
2 maybe move this idea to a subcommittee level
3 pretty quickly and try to get some resolution
4 before the full Committee in short order.

5 Thank you, Mr. Chairman.

6 CHAIRMAN RIVERA: Thanks, Ron.

7 Good thought. Susan.

8 MS. FOX: I was just going to make
9 a point about the studies, to construct from
10 listening to Chairman Copps this morning, is
11 -- and from everybody from Joycelyn's
12 excellent presentation is what is essentially
13 gating action.

14 And it seems that cross-cutting
15 every one of these Committees, every one of
16 the initiates, what's gating it is studies
17 that would allow the Commission to go further.

18 And a lot of us who were involved
19 in the earlier Adarand studies know that --
20 know their weaknesses, know where they are,
21 and also know that in many ways they weren't
22 as extensive as many of us would have liked to

1 have seen.

2 So, it seems to me that what we
3 need to do is grow -- take a subgroup of folks
4 who cross-cut all the Committees and create a
5 real priority list of what studies need to be
6 done and have consulting with that group a
7 constitutional scholar, one of Michele's fine
8 people in the General Counsel's Office who
9 could also advise that group on what the
10 Commission really needs and what's possible.

11 Also, I'd love to see somebody on
12 that Committee who's done these kind of
13 studies before, who may not be in this room,
14 whether it's somebody who is outside of our
15 world doing these large-scale studies, but
16 that be something in the immediate four-month
17 time frame that we're looking at.

18 CHAIRMAN RIVERA: All right.
19 Thanks. Great thoughts. David -- oh, I'm
20 sorry. David, hang on just minute.

21 Annette -- Anita. I'm sorry.

22 MS. STEPHENS-GRAHAM: Thank you,

1 Mr. Chairman. Just a couple of points, kind
2 of going back to the access to capital, and
3 following on a couple of comments that David
4 mentioned.

5 One of the things that I think we
6 need to be mindful of as we develop these
7 policies is that we don't create the
8 unintended consequences of disincentivizing
9 private capital from financing some of the
10 small businesses which certainly occurred in
11 some of the DE rules that came out.

12 So, I want to -- I think we should
13 pay attention to making sure that we are
14 looking at those types of consequences.

15 And, secondly, with respect to
16 broadband, because it is an important issue,
17 and I do think there are opportunities for
18 women and minorities, is to give some thought
19 to creating a more patient capital pool, if
20 you will.

21 If you think about private equity
22 in its traditional sense, you know, it's a

1 very, very focused and a very fast investment
2 cycle, if you will, and a very fast -- a very
3 short horizon.

4 And if we're talking about
5 broadband, which on a development scale, moves
6 much slower, you have a lot of ramp-up, and in
7 a marketplace where there's not a lot of
8 appetite for businesses that don't really
9 become profitable fairly quickly, that one of
10 the things we might want to tackle is how do
11 we create some sort of patient capital pool
12 that would be important and an incentive, you
13 know, for women and minority businesses that
14 are trying to take advantage of broadband
15 opportunities.

16 CHAIRMAN RIVERA: Right. Thanks,
17 Anita. Those are great ideas. Did someone
18 have their hand up?

19 MS. SUTTER: Mr. Chairman, this is
20 Diane.

21 CHAIRMAN RIVERA: Yes. Go ahead,
22 Diane.

1 MS. SUTTER: Thank you. To piggy-
2 back on what Anita was saying, I think we need
3 to realize that, when the access to capital en
4 banc hearing was held in New York last year,
5 that the world has dramatically changed since
6 we even held that hearing.

7 And that I think that you have to
8 divide the access to capital into two
9 different categories, both the debt and the
10 equity, because they now have very different
11 questions and concerns and certainly I think
12 we need to look at them separately, as well as
13 together.

14 The other thing that we have found
15 is that there's an opportunity, I think, in
16 the smaller regional banks which do not
17 understand broadcast and even broadband
18 lending, for potentially for us to take a
19 leadership role in devising some educational
20 tools for them so that they understand the
21 business in a way that causes them to be
22 willing to lend into these industries.

1 We have found that there are still
2 smaller banks and regional banks willing to
3 lend, but do not understand our businesses in
4 a way that we can be helpful in terms of
5 developing perhaps some guidelines, conducting
6 some seminars to help these regional and
7 smaller banks to understand our business.

8 CHAIRMAN RIVERA: Good ideas.
9 David.

10 MR. HONIG: I took the liberty of
11 going through what the Diversity Committee had
12 done and what's been proposed in this area
13 over the past several years to try to identify
14 a number of items, and some of them have just
15 been spoken to, that might be especially
16 appropriate for consideration, and I wanted to
17 just briefly run through these and tell you
18 how long they've been pending.

19 Now, this is hard to do when you
20 hear the dates. Whether the Commission should
21 allow AM expanded band station owners rather
22 than having to turn in the license to divest

1 them to a small business, pending since 2006.

2 Whether the Commission should
3 allow in some instances relaxation of some of
4 the local ownership rules around the edges if
5 a company makes a corresponding or greater
6 impact incubation, financial or otherwise of
7 a minority or woman-owned, or disadvantaged
8 broadcast company, also pending since 2006.

9 Whether the Commission should
10 undertake a process that could lead in the
11 next several years to the transformation of AM
12 stations into FM facilities on what is now TV
13 Channels 5 and 6, pending since last year.

14 Whether the Commission should
15 adopt the recommendations this Committee made
16 with respect to the revising and updating of
17 the Equal Employment rules relating more to
18 retention than recruitment, recommendation
19 made in 2004.

20 Whether the Commission should
21 enforce the advertizing nondiscrimination rule
22 that was adopted in 2007 and took effect in

1 2008.

2 Whether the Commission should make
3 the cable minority business and women-owned
4 business contracting rules, adopted in 1973
5 and never enforced, applicable across the
6 board to all of its regulated industries on
7 the principle of platform neutrality, that
8 recommendation taken up and adopted in 2008.

9 And I should add that our
10 colleague, Ron Johnson, who spoke, was our
11 subject matter expert in the development of
12 that recommendation.

13 Whether, just as a legal issue,
14 when the Commission issues a report and order
15 or an NPRM in a major rulemaking or considers
16 a major merger, it should adopt a statement
17 going to whether it would have any intended or
18 unintended impact on minority and women
19 ownership.

20 That proposal first considered by
21 the Diversity Committee in 2003, and first
22 made by the National Association of Black-

1 Owned Broadcasters in 1990.

2 And finally, whether the
3 Commission should consider borrowing from the
4 energy industry, the cap and trade program, a
5 program of credits that could be tradeable and
6 that would represent a company's contribution
7 to diversity as a means of both capital access
8 and diversity promotion, a recommendation made
9 by the Committee in 2004.

10 There are others, but those are
11 probably the highest impact ones that are low-
12 hanging and with potentially great impact, but
13 have not been considered.

14 CHAIRMAN RIVERA: All right.

15 Thank you, David.

16 MR. HONIG: God, that was painful.

17 CHAIRMAN RIVERA: Geoff, did you
18 have something?

19 MR. BLACKWELL: Yes, Mr. Chairman.

20 Thank you.

21 (Foreign language spoken)

22 I wanted to make sure to introduce

1 myself appropriate to my colleagues at this
2 Committee, and thank Chairman Copps and
3 Chairman Rivera, and our friends and
4 colleagues in OGC for carving out a chair for
5 Indian Country at this Committee.

6 I would agree with much of what
7 has been said around this table. There are
8 500, over 560 federally recognized Indian
9 tribes in the United States. There are 310
10 reservations.

11 By almost any measure of
12 communications and broadcast we bury the
13 needle in the red -- no pun intended -- on a
14 lack of service, a lack of listener, a lack of
15 viewership, a lack of ownership.

16 And we would underscore -- I would
17 underscore the importance of diversity in
18 Indian Country means the ability to care for
19 one's own people, the ability to care, the
20 ability to tell one's story in one's own
21 voice.

22 And it is in my generation of

1 American Indians that that ability, that
2 notion of home rule has come back to us, and
3 we do not intend to take a step backward in
4 being able to take care of our own children
5 and care for our own public safety.

6 Indeed, what we've learned working
7 with those in industry who would serve us is
8 that because of the challenges of the rules,
9 because of rules that envision a type of
10 competition that cannot be had in remote
11 America, the most remote portions of America,
12 but often falls upon our tribal nations to
13 become carriers of last resort, to be the last
14 sole voice to be able to broadcast to our own
15 peoples in our own language.

16 So, as we get down to the nitty-
17 gritty of certain issues, I would agree with
18 my colleague that has said that we have had an
19 unbelievable mishap in the 700 megahertz.

20 However, at the same time in the
21 2007 noncommercial educational FM window there
22 was an extraordinary participation by tribal

1 entities, over 50 applications, over 30
2 construction permits have been granted, and we
3 are encouraged by what we see in the
4 Commission's most recent rule, radio order for
5 the opportunity of a recognition for tribes to
6 serve themselves.

7 Now, that having been said, I
8 think part of my challenge and my commitment
9 to my colleagues around this table is to try
10 to find a common ground because we are not
11 just a minority entity in Indian Country, we
12 are not just minorities, we also are political
13 entities.

14 And we're perhaps maybe the most
15 -- one of the most recognizable minority
16 entities in the United States. I mean,
17 they've put us on the nickel and they've put
18 us on the dollar.

19 But, at the same time we're
20 perhaps the most misunderstood, because, one,
21 we suffer from age-old stereotypes and new
22 modern stereotypes that just misunderstand the

1 intentions of tribal governments and tribal
2 firms of Native Americans.

3 So, as we look at spectrum access,
4 as we look at access to capital, it goes
5 beyond just simply access to capital in Indian
6 Country, it also goes to issues of
7 sustainability.

8 And as we see a convergence of
9 technologies, it is true that almost with
10 respect to any critical infrastructure in
11 Indian Country, it only comes because tribal
12 lands are federal enclaves, it comes only as
13 a result of good government and good
14 regulation.

15 At any given time, maybe one
16 percent -- less than one percent of what the
17 FCC does is related to Indian Country, but 95
18 percent of what tribes do is related to the
19 federal government.

20 So, there may be an opportunity in
21 these convergence of technologies where this
22 Committee, perhaps one or two of its

1 subcommittees are forced to consider things
2 such as challenging as Universal Service Fund
3 reform.

4 That has been critical to the
5 eight tribal TELCO's that exist in the United
6 States. The opening of windows in rural
7 lands, services like low-power FM services and
8 other services that are targeted specifically.

9 And I would leave you with this
10 thought. One of the most encouraging things,
11 we've been asked to work with the Commission,
12 we've been invited to provide testimony to
13 NTIA and the USDA as they rolled out their
14 broadband stimulus, the BTOP program and the
15 program at USDA.

16 One of the most exciting -- one of
17 the most interesting foundational shifts in
18 that bill is that it begins to orient these
19 programmatic efforts at other agencies away
20 from what appears to be sort of a competitive
21 framework analysis and more to a community-
22 based analysis, and I think that is common

1 ground that we can all share and begin to
2 build upon.

3 That having been said, often our
4 challenge in Indian Country is demand
5 aggregation and I look across the table to
6 colleagues and other institutions and thank
7 you for the space here and thank you for the
8 time, Mr. Chair.

9 CHAIRMAN RIVERA: Yes. Thank you,
10 Geoff.

11 Anybody else have anything you
12 want to add?

13 (No response.)

14 CHAIRMAN RIVERA: If not, I would
15 ask the members of the public who are here, do
16 you have any ideas about things the Committee
17 ought to be taking up?

18 All right. Hearing none, I would
19 -- just procedurally, I think the way we'll do
20 this is we'll give you some ideas about some
21 subcommittees that we ought to set up,
22 distribute these various issues that have come

1 up around the table to these various
2 subcommittees to task them, send those out to
3 you, so watch your email for that, and ask you
4 if you've got any other ideas of issues we
5 ought to take up, and which subcommittees or
6 Committee that you want to serve on.

7 We'll have our next meeting
8 because we've got a deal with this full-file
9 review, and Adarand Studies issue in
10 September. I would think mid- to late
11 September, so we will be sending you notices
12 of that.

13 In the interim, obviously the
14 subcommittees, I would hope, would be meeting
15 and working so that we would have some solid
16 recommendations. Clearly we need them on the
17 Adarand and full-file review studies.

18 But if there are -- hopefully
19 there will be others as well, some of these
20 issues that Jim and Toni have raised. So, if
21 that's an acceptable way for us to proceed,
22 we'll do that.

1 Does anybody else have anything
2 they want to bring before the Committee?

3 (No response.)

4 CHAIRMAN RIVERA: I would like to
5 just thank again our FCC colleagues here,
6 Carolyn and Bob and Jamila and our Designated
7 Federal Officer and, of course, our very
8 distinguished General Counsel. We appreciate
9 your being here and we appreciate your support
10 very much.

11 So, unless there's anything else
12 we'll go ahead and stand adjourned. Thanks,
13 all, for coming. Really appreciate it.

14 (Whereupon, the above-entitled
15 matter went off the record at 11:55 a.m.)

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