UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

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ADVISORY COMMITTEE ON DIVERSITY FOR

COMMUNICATIONS IN THE DIGITAL AGE

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MEETING

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TUESDAY

SEPTEMBER 17, 2013

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The Advisory Committee met in the Commissioners Meeting Room, 445 12th Street, S.W., Washington, D.C., at 1:00 p.m., Henry Rivera, Chairman, presiding.

COMMITTEE MEMBERS PRESENT:

HENRY RIVERA, (Chair), Emma Bowen Foundation

for Minority Interests in Media

BARBARA KREISMAN, (Designated Federal Officer)

Federal Communications Commission

CAROLYN FLEMING WILLIAMS, (Deputy Federal

Officer), Federal Communications

Commission

NICOLE McGINNIS, (Deputy Federal Officer),

Federal Communications Commission

KARLA BALLARD, Broadband Opportunities

Coalition\*

MARIA BRENNAN, Women in Cable

Telecommunications\*

ERIC BROYLES, Expert Connect

BRIGETTE DANIEL, Wilco Electronic Systems,

Inc.

ERIN DOZIER, National Association of

Broadcasters

ANITA STEPHENS GRAHAM, Opportunity Capital

Partners\*

JESSICA GONZALES, The National Hispanic Media

Coalition\*

CHANELLE HARDY, National Urban League

CHARLES HARRELL, The IT Architect\*

JO ANN HELLER, for Antonio Guitano, CBS

DAVID HONIG, Minority Media Telecommunications

Council

RON JOHNSON, Solutions4Change

FAYE KUO, Communication Services for the Deaf\*

JASON LAGRIA, Asian American Justice Center

NICOL TURNER‑LEE, Minority Media

Telecommunications Council

STEVE ROBERTS, The Roberts Companies

ANDREW JAY SCHWARTZMAN, Free Press

DIANE SUTTER, Shooting Star Broadcasting\*

SYLVIA STROBEL, Alliance for Women in Media

LORIS ANN TAYLOR, Native Public Media\*

JOSEPH TORRES, Free Press

WALTER ULLOA, Entravision\*

MARK WALLACE, Cipher Communications

JIM WINSTON, National Association of Black

Owned Broadcasters

ALSO PRESENT:

BOB BUTLER, President, National Association of

Black Journalists

RUTHANNE M. DEUTSCH, Akin Gump

JEFFERI LEE, WHUT-TV

THOMAS REED, FCC

EDWARD SMITH, FCC

\*Participated by teleconference

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**HENRY RIVERA**

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

2:02 p.m.

MS. KREISMAN: Welcome to the fall meeting of the Diversity Advisory Committee. We have a number of people on the phone, and we have a number of people in attendance. Thank you very much, I hear it's a nice fall day out there.

Today, our format will be more of a discussion about the areas where we believe our membership has the expertise to provide best practices information from the Commission to assist it in achieving its public interest goals.

Our focus is to get away from the laundry list of recommendations and issues that we want the Commission to address, because there are many ways that companies, the companies you represent, can ask the Commission to address a particular issue. We call them Notice of Proposed Rulemaking, among other vehicles.

But rather, we'd like to have a discussion today about the ways that we can provide support to the Commission, and to the public, to achieve a diverse community and many aspects of communications industries.

So today, we'd like to consider all presentations, where we can all provide input as to whether we think we here have the expertise to take the issue up, and recommend the project to the Chair.

The idea is, looking at the companies that we represent, whether we, and in our companies, can amass information and expertise that the Commission doesn't ordinarily have, and provide it with respect to a particular project.

And so, I didn't distribute paper on this one, because I'd like the chairs of the committees to consider taking a look at the projects that they had on their pieces of paper, and thinking about which is the one that looking at the paper here, and the companies that are represented, that we have the information that if we put it together collectively we could provide the Commission with information that would help understand best practices in a particular area.

And, this is - when I see Federal advisory committees that really worked in a really effective way, that's what they've done. They haven't said, here Commission, you look at this issue, but instead they said, here's an issue that we think that we have knowledge, and we have experience with, and if we get together collectively we think we can provide you with a basis upon which to arrive at best practices, recognized best practices, in that area. And, that's the new approach that I think we'd like our Committee to try to take.

And, I guess so that's a little bit of a difference, and with that I guess I'll turn it over to Henry here.

CHAIRMAN RIVERA: Well, welcome all. Thank you for taking your time out of your busy schedules to be with us today.

As our Federal Designated Officer has just suggested, we are going to do something a little different than this Commission has ever done. And, that's because Chair Clyburn did want us to give some thought to some ideas that we could put before her, and say to her, essentially, here, these are some things that we think, as Barbara pointed out, we can help you with, and that we'd like you to ask us to work on.

So, that's where we are coming from. That's what we will be discussing later today.

I want to thank all the subcommittees, and, particularly, the subcommittee chairs for their leadership and jumping on this as quickly as they did, so as to set the stage for those conversations.

I want to also thank Barbara for all her work in getting us ready for this meeting, and, of course, Tom Reed from our CBO for all of his help. So, thanks very much.

Do we want to take the role on the phone?

MS. KREISMAN: That might make good sense.

So, why don't I go to the phone now, phone people, why don't you state your names.

MR. ULLOA: Walter Ulloa.

MS. KREISMAN: I couldn't hear you. Bad start.

MR. ULLOA: Walter Ulloa.

MS. KREISMAN: Thank you very much.

MS. GONZALES: Jessica Gonzales.

MS. KREISMAN: Try that one again.

MS. GONZALES: Jessica Gonzales, from National Hispanic Media Coalition.

MS. KREISMAN: Thank you.

MS. TAYLOR: Loris Taylor from Native Public Media.

MR. HARRELL: Charles Harrell, II, of the IT Architect Corporation.

MS. BALLARD: Karla Ballard,

Broadband Opportunities Coalition.

MS. HELLER: Jo Ann Heller for Anton Guitano, CBS Radio.

MS. BRENNAN: Maria Brennan, Women in Cable Telecommunications.

MS. KREISMAN: Anyone else? Thank you very much.

MR. KUO: (Through Interpreter) Faye Kuo, President of Legal and Compliance for CSB, speaking through an interpreter.

MS. KREISMAN: Could you repeat that one more time?

MR. KUO: Yes. It's Faye Kuo.

MS. KREISMAN: Got it, thank you.

MR. KUO: Speaking through an interpreter with CSB.

MS. KREISMAN: Thank you.

CHAIRMAN RIVERA: All right. Well, we'll introduce ourselves, so that the folks on the phone know who is here.

Erin, do you want to start, and we'll come around this way, follow with David and so forth.

MS. DOZIER: Erin Dozier, with the National Association of Broadcasters.

MR. HONIG: David Honig, with the Minority Media and Telecommunications Council.

MS. TURNER-LEE: Nicol Turner-Lee, now with the Minority Media and Telecommunications Council.

MR. JOHNSON: Ronald Johnson, Solutions for Change.

MS. KREISMAN: Barbara Kreisman, DFO.

CHAIRMAN RIVERA: Henry Rivera.

MR. SMITH: Edward Smith, Incentive Auction Task Force.

MS. DEUTSCH: Ruthanne Deutsch, Akin Gump.

MR. REED: Tom Reed, OCBO.

MS. FLEMING-WILLIAMS: Carol Fleming-Williams, OCBO.

MS. McGINNIS: Nicole McGinnis, with the FCC, now in the Public Safety Bureau.

MS. HARDY: Chanelle Hardy, National Urban League.

MR. LAGRIA: Jason Lagria, Asian-American Justice Center.

MS. STROBEL: Sylvia Strobel, Alliance for Women in Media.

MR. SCHWARTZMAN: Andy Schwartzman, My association is now Free Press.

MR. TORRES: Joseph Torres, Free Press.

MR. WINSTON: I'm Jim Winston, National Association of Black Owned Broadcasters.

MR. LEE: Jeffrey Lee, WHUT Public Television Representative.

MR. ROBERTS: Steve Roberts, President of Roberts Broadcasting Company.

MS. DANIEL: Brigette Daniel, Electronics, Wilco Electronic Systems, Inc.

MR. BROYLES: Eric Broyles, Expert Connect.

MR. BUTLER: Bob Butler, President, National Association of Black Journalists.

CHAIRMAN RIVERA: Very good. Thank you all for being here.

We will hear from Chairman Clyburn at some point during our meeting.

MS. KREISMAN: She's got a video.

CHAIRMAN RIVERA: She's a video, that's what I meant.

MS. KREISMAN: Yes.

CHAIRMAN RIVERA: She's already recorded it.

MS. KREISMAN: Yes.

CHAIRMAN RIVERA: Okay. So, we can play it now.

MS. KREISMAN: It's all set.

CHAIRMAN RIVERA: All right, well, let's roll the Chairwoman.

Thank you.

CHAIRWOMAN CLYBURN: (Through video)

Good afternoon, everyone.

First, let me thank Chairman Henry Rivera for his dedication of leadership, Barbara Kreisman, for working so diligently to organize this meeting, and Designated Federal Officers Carolyn Williams and Nicole McGinnis, for their efforts and support of the Committee's endeavors.

Regretfully, I am unable to join you in person, but I couldn't let this moment pass without again extending my sincere thanks to each member of this Committee for all the hard work you do on behalf of the Agency and the American people.

As you know, the mission of this Committee is to strengthen the FCC's diversity agenda, and examine regulatory policies to enhance opportunities for minorities, women, and small business in communication.

I am excited that we have taken up the task of delivering innovative ideas on how to accomplish this important goal.

I would also like to recognize the subcommittee chairs, Ron Johnson, Dianne Sutter, Dr. Nicol Turner-Lee, and David Honig, who have been hard at work with their groups on suggested avenues of research or possible initiatives that might further our objectives.

The initiatives you have identified for today's agenda are all important, but one I would like to highlight is a licensed devices and services. It's an area that I think has the potential for many small business opportunities, since the spectrum is unlicensed there's less capital needed to develop business models.

Over the past two decades, the Commission has adopted rules to promote communication services and devices over unlicensed spectrums, which as you know is largely used for devices like monitors and garage door openers. Now, due to the development of WiFi services, it is an integral part of how nation-wide and regional commercial mobile wireless companies are providing service to consumers.

TDY spaces is another type of unlicensed spectrum that I hope will yield considerable benefits. The FCC adopted final rules in 2010, and we are already seeing a number of companies creating devices that can provide services to businesses and across college campuses. More small businesses need to understand and take advantage of the opportunities that unlicensed spectrum has to offer.

I look forward to hearing your ideas about cultivating this area, as we stand ready to work alongside you to develop these concepts.

Before I leave you, I must acknowledge that the FCC has taken another step forward in its effort to understand have media outlets serve our community.

I also know Tom Reed is here today, to talk to you about the study commissioned in 2012, to examine the current body of literature of the critical information needs of the American public. He will provide you with an update on this research and answer your questions.

We are now poised to field test the model, and will run a pilot in a single market. The study will look at media ecologies, the types of critical information made available in a single ecology, as well as how individuals obtain information within that ecology.

Final policy cannot be made in a vacuum. With your help, encouragement, and professional muscle, I know we can continue to do good work.

Have a great and productive afternoon, and I look forward to our continued collaboration.

CHAIRMAN RIVERA: Tom and Barbara, I hope you will carry back to the Chair our gratitude for her taking time to make that - make those remarks to us.

MS. KREISMAN: The only reason she's not here is she's away on travel.

CHAIRMAN RIVERA: Right, no, I know that.

So anyway, tell her thanks, and we will certainly take her words of encouragement to heart.

So, Tom, you are up.

MR. REED: Thank you, Henry.

Good afternoon, everybody, and as Chairman Clyburn mentioned I'm going to talk to you a little bit about where we are with the Critical Information Needs Research Project. And, as she said, I'm very happy to report that we are at the next stage.

I think as many of you know, and maybe I'll just go back and do a brief overview, in 2012 we commissioned a study by USC Annenberg, School of Journalism. They pulled together a group of scholars to do an inventory of all of the scholarships that have been on critical information needs and studies of various media ecologies, and how they impact diverse communities.

That study was released in June of 2012, and one of its recommendations was that we do a more detailed and in-depth study of markets that then was pulled together in September of 2012. We gathered another group of experts, social scientists, political scientists, and a media specialist, to answer questions about what kind of research design would we pull together in order to study particular markets, digging into markets, answering questions like what kind of information was being provided in a particular market. How do individuals and diverse minority groups extract information, important information, from those various media ecologies.

And so, the research design was completed. We, actually, commissioned a company, Social Solutions International, that completed, with the consultation of that research group, a research design model.

The model was released and made public in April. We've gotten comments back on that model and incorporated it, but now we've gone back to SSI, and as the Chairman mentioned, we now have the go ahead to test that research design model. So, we are excited about that.

We are in the process now of working with SSI to select a market, one that we think is going to be as diverse as possible, that's going to be able to kick out the kind of information that we are going to need so that we can go on and make sound policy.

But again, this is a test pilot. I think this process is probably going to take, I think we've been told, about eight to ten months to select a market, and to pull all the research design in that market, to determine where the bugs are, what questions we need answered, and to make sure that we are getting the data back that we need.

The last, our hope is that we can take this tool and deploy it in a number of markets, so that we can get a broad swap of data that the Agency can, actually, act on. So, this was an important next step, and we all have Chairman Clyburn to thank for making sure that we can martial the resources to get it done. It's taken time. It's been incremental, but we'll get this stuff done, and then the stage will be set to more expansive study.

So, I just - if you have any questions I wanted to cede most of my time, Edward Smith, Smitty, is here to talk to you about incentive auctions. I know that's high on everybody's list.

But, certainly, if you have any questions about where we are with critical information needs I'm here to answer them.

CHAIRMAN RIVERA: Thank you, Tom.

Any questions for Tom?

Seeing none, Smitty, you've got the floor. Welcome, we are glad you are here.

MR. SMITH: Thank you, Henry, happy to be here. Thank you.

So, this presentation can take as long as an hour, so I promise I will keep it very short, and will give you a high overview, ten to 15 minutes. But, of course, you know, if you have any questions feel free to ask after the presentation, and, certainly, we are open to ex partes for anybody who is interested. So, talk to us later about it, or just talk to me after the meeting, I'll be happy to answer any questions you have.

So, if they could turn on the - okay, there we are. All right, so, I guess it would be good to start by giving a quick definition of what the incentive auctions are. They are a voluntary, and that's key, market-based needs of re-purposing the spectrum by encouraging licensees, in this instance we are talking about broadcast television licensing, full-power Class A stations, to voluntarily relinquish some of their spectrum usage rights in exchange for the share of proceeds from another auction of new re-purposed licenses to mobile broadband providers for flexible use.

So, the really key and important thing here that we are talking about is that this is a voluntary process. Now, this is voluntary for participants such as the broadcasters, but not so much for the FCC. So, the auction will be happening, and we are targeting 2014. So, you know, we are in the process right now of our rulemaking, and moving right along. We've had a lot of support. It's something that crosses multiple bureaus, so it's a full Agency effort.

So, to get to why we are doing this, aside from the fact that Congress directed us to do, I'll talk a little bit about our four key objectives.

The first is to relieve the spectrum crunch, and to give you an idea of what I mean by spectrum crunch, it's, basically, summed up by saying, more users, using more devices that themselves use more spectrum.

To give you a sense of that in the overall view, Cisco right now projects that by year 2016 U.S. consumers will be consuming 1,700 pedabytes of data per month. And so, a pedabyte is equal to 1 million gigabytes, which is a tremendous amount of data. To give you an idea that might be a little bit more tangible, your average flip phone user, non-Smart Phone user, you know, a few of you probably still have those, you would use about 4 megabytes of data per month. Your average Smart Phone user, something that is probably more common in the room, your iPhones or your Android devices, those users use on average about 150 megabytes of data per month. And, for your tablet users, you are talking about 517 megabytes of data per month on average.

So, you can see the dramatic step up that has resulted in part in the increased data consumption that we are talking about when we say spectrum crunch.

So, that is one of our prime objectives in conducting the auction, is to free up spectrum in pursuit of reaching the President's goal of 500 megahertz of new spectrum for mobile broadband use by 2020.

Second objective is to provide for a healthy broadcast initiative. We expect that coming out of the auction there will continue to be a vibrant and healthy broadcast initiative. They can expect that the auction will be something that a lot of broadcasters will be interested in, but not all. And, it is structured in such a way to provide a range of options for broadcasters who are interested in participating, and while still preserving the service of broadcasters who are not.

What I mean by a range of options is, the statute lays out three main ways for a broadcaster to participate. First, the broadcaster can opt to relinquish it's license and go off the air, cease operation, and receive the money from the forward auction, receive compensation for their six megahertz of spectrum.

Two, a licensee can opt to channel share, that is, technically, it's very similar to multi-casting, but partnering with another broadcaster to share the 19.4 megabytes down stream that that broadcaster provides on a 6 megahertz channel. And, in many cases they could arrange to share dynamically, depending on the needs of the individual broadcasters at the time.

Or, to bid to move from UHF, ceding their 6 megahertz spectrum, and receiving a 6 megahertz channel in VHF, which depending on the broadcaster in question, and the population they are trying to reach, and how they reach that population, may be an attractive option for them.

And so, as you can see, this is not a zero sum equation. This is a situation in which there are options for broadcasters to participate and continue broadcasting, or continue distributing their content by alternative means, using the compensation they receive in the auction.

Also, it's critical always to fulfill statutory fiscal objectives. So, that's, basically, you know, meeting the requirements that Congress set on us, with respect to how much money is supposed to come out of the auction and how it's supposed to be used.

So, forward auction proceeds must exceed reverse auction payment. So, what that means is that the auction of the wireless mobile broadband licenses, the proceeds from that auction, must be enough to pay broadcasters for the cost of their licenses in the reverse auction. We have to cover reimbursement for moving broadcasters, so unlike the DCB transition Congress allocated $1.75 billion, or up to $1.75 billion, for the cost of paying the reimbursement costs of channel reassignments. So, when a station moves from one channel to another, the cost of that, the reasonable cost of that, would be compensated for. And also, the cost for MPVDs to continue carrying their signals.

And also, administrative costs of the FCC for conducting the auction. And, above and beyond that, for anything beyond those closing conditions, we also are to help fund other priorities, such as First Net, deficit reduction, and e-911.

And then finally, promoting innovation in a vibrant mobile market, and what that means is, that goes towards what the Chairwoman just talked about, which is, you know, making sure that there is a spectrum allocated to unlicensed purposes, because of the important of un-license for a catalyst for the mobile broadband environment. And, this is something that all of the Commissioners have expressed strong support for, and also, you know, something that, you know, that we received significant comment on, and support from license providers as well.

So, key design goals. I'll move through this quickly, but simplicity, efficiency and transparency. Simplicity, we recognize that the key to the auction being a success is that it attract the interest and participation of broadcasters. And so, we want to make it as simple as possible for broadcasters to participate in the auction.

This does not, unfortunately, mean simplicity for the FCC. It is a very, very complicated process that we are engaged in, but the complexity that we have to deal with is aimed at making sure that it is less complex for the broadcasters better interested in participating.

Efficiency, again, we want optimal outcomes, and we also want the auction to be conducted in as quick a manner as possible, while doing it right. One of our sort of mantras is get it done quickly, but get it done right. And so, efficiency is key for us.

And transparency. Again, we believe that in order to make sure stakeholders, particularly, broadcasters, are engaged in this, and willing to participate, that it's as transparent a process as possible, which is why we are very active in our outreach and are constantly trying to, you know, make sure that people have all their questions answered, and understand how this auction works.

You know, we have a website, fcc.gov/learn, where you can find a lot of interesting resources that can help you understand more and more about the auction, and we are constantly doing workshops, and presentations, and going out to conferences when we can afford to do so.

So, this graphic is a very, very basic illustration of what I've just been talking about, the reverse and forward auction, and how they are interrelated.

As you can see, in box 1, broadcasters, we have, you know, these are the people who have the goods. All right. Broadcasters who have spectrum that we are hoping will participate in the auction. They work through a reverse auction process, box 2 and 3, and in Appendix C of Notice of Proposed Rulemaking, we proposed a particular - we call it straw man, but a proposed auction design that is a descending clock auction. It's a type of dynamic auction, where price begins high and will continue to drop, and as the price drops in the reverse auction broadcasters, depending on how they value their stations, will either elect to continue participating in the auction, or elect to drop out, at which point they will receive a channel in their current band, and receive protections as required by the statute, protections of their populations served and service areas.

And then we see on the other side, so the reverse auction, basically, gives you your supply curve. The other side we have the mobile broadband providers, and the forward auction. And so, mobile broadband providers are buying re-purposed and re-packaged licenses for mobile broadband. We proposed in the Notice of Proposed Rulemaking that this be done on an EA basis, but, you know, all of this is still open and no decisions, obviously, have been made. So, that is all up to the Commission. But, this is a forward auction, that is similar to forward auctions we've done in the past, and the Commission has had experience with forward auctions since 1993. But, it's different, because unlike any other forward auction the Commission is in the process of auction - well, will be in the process of attempting to auction a spectrum that it does not itself have.

So, there is a close interrelationship between the reverse and the forward auction. And, as you can see down there in No. 6, it's the integration of the two, trying to make sure that the forward and reverse auctions operate in sync, and also sort of 6 represents what will be our closing condition, making sure that, you know, we have established a condition that will allow us to recover the right balance of spectrum, as relates to the amount of revenues that come out of the auction. So, this is also a very important decision for the Commission to make.

And 7, again, goes back to the point that I will be talking about more today, and that the Chairwoman identified as being a top priority for the Commission, but, you know, making sure that there is adequate opportunity for unlikely spectrum, both as TV white space devices and other unlicensed devices, you know, and guard bands and duplex gaps for the band plan.

So, this is our time line. So, we are past the NPRM stage. We put that out back in late September. September 28th was when it was adopted and released October 2nd. We went through a period of stakeholder input, received well over 400 comments. We have done - the Commission as a whole has done over 200 ex parte meetings. We've had, you know, countless meetings on this.

We are working towards the report and order, and then once we put the report and order out we will be moving through pre-auction stages with additional notices and, perhaps, additional orders, working towards the auction itself in 2014. And then, post auction will have a transition period that will be a period during which broadcasters are moving off of their channels to new channels if they were to be repacked, or off air if they've opted to go off air, and mobile broadband providers are engaged in their build-out processes.

So, that is, hopefully, my short enough version, and if - I don't know if we have time for questions.

CHAIRMAN RIVERA: Yes, that we do.

Anyone have any questions for Smitty?

MS. DANIEL: Thank you, Edward "Smitty" Smith for the presentation. This is probably the first time we've had it explained, so this is very good to see.

I think this is going to be a very interesting time for our country to kind of have this opportunity. So, I wasn't sure if the Commission is already looking at diversity goals, minority goals, wondering if there's any type of incentive to have companies partner.

I don't think you want to see what has happened in the past happen in the future, particularly, talking about license spectrum. So, I didn't know if that has been planned or if that's in the works right now.

MR. SMITH: So, yes. The Commission, in our NPRM we asked a lot of questions about how could we best promote diversity, whether we are talking about on the reverse auction side, in trying to maintain opportunities for broadcasters, you know, to continue, you know, sort of broadcasting and distributing their content, or on the forward auction side with respect to bidding credits, designated entity status, or, you know, other types of auction design mechanisms that could help make sure that there are opportunities for, you know, people beyond, you know, purely major players.

So, we are definitely looking into that, and we are definitely looking at those questions.

One question that I have gotten before, with respect to the reverse auction in particular, is the concern about the possibility that given, you know, we believe this is a very attractive economic opportunity for broadcasters, given the attractiveness of the opportunity, does it create the possibility that we'll see broadcasters going off of the air that serve minority communities, especially, with respect to language communities.

And, you know, in response to that, you know, our thinking has often been, you know, (A) as I said, this is not a zero sum equation, and so there are opportunities for broadcasters to participate and receive substantial revenues from the auction, while still continuing to broadcast or to distribute their content through other means. You know, we are constantly sensitive to trying to make sure that since we do believe it's a good economic opportunity, we are not foreclosing opportunities from anyone in the interest of trying to preserve a particular sort of services in areas.

But, we are always looking into that.

And, on the forward auction side, you know, both with respect to the opportunities for innovation and for small business - for entrepreneurship and small business owners with respect to unlicensed, we are definitely considering things with respect to bidding credits and deeds.

CHAIRMAN RIVERA: Good question, Brigitte, thank you.

Nicol.

MS. TURNER-LEE: Hey, Smitty.

MR. SMITH: How you doing?

MS. TURNER-LEE: Good. So, I want to follow up on Brigitte's comment, and this, actually, going to be part of the presentation on the unlicensed spectrum side.

We had talked a little bit about having some of the commercial spectrum allocated for public use. But, looking at your equation, it looks like all of the spectrum will be sort of auctioned off for commercial use, or for some kind of resale, you know, rightfully so for the revenues.

However, in our group we did talk about, you know, will there be some partitioning of some of that spectrum that is a little bit more steady and reliable than white space for schools, or libraries, or other types of community use benefits.

MR. SMITH: So, with respect to more stable - first of all, we will look at any options that are presented to us. And so, to the extent - and I'm very familiar with the record, because I've read a lot of comments, but to the extent that you feel that there are comments with respect to that, that you haven't gotten in, please do get them in.

MS. TURNER-LEE: Yes.

MR. SMITH: So, first.

Second, with regard to stability, access that is more consistent than TV white spaces, you know, that is definitely something that we are sensitive to, which is why we proposed in the Notice of Proposed Rulemaking and are considering now, making sure that we have unlicensed use in the guard bands, and unlicensed use in the duplex gap.

So, you know, this is clearly something that we think is very important, especially, with respect to guard bands and the duplex gap, looking at providing enough uniform spectrum for unlicensed nation-wide, as opposed to just on a, you know, area-by-area piecemeal basis, as you might find with white spaces.

And also, you know, making sure that we have sufficient amounts of spectrum allocated to unlicensed, you know, through things like guard bands and operations in the duplex gap, to create enough of a market incentive for, you know, the manufacturers to, actually, make the devices necessary to operate on that spectrum.

So, yes, we are thinking about that.

MS. TURNER-LEE: Okay, thank you.

CHAIRMAN RIVERA: Yes, please, Jefferi.

MR. LEE: I don't know you, Smitty, but hi, Smitty. That seems to be the way to get started here.

On the side where you have a non-commercial license, and channel sharing comes into play, an education channel or license can share with a commercial license, as I understand it. That's the proposal, so that the limitations that education channels have, licensees have, that limit them in some aspects to using part of their spectrum for commercial, will be abated?

MS. KREISMAN: No, not really, because the way sharing works - do you mind if I get that?

MR. SMITH: No, go ahead.

MS. KREISMAN: The way sharing works is that, basically, you are sharing by agreement the spectrum, but you are individual licensees, with all the rules and obligations of a licensee.

So, with respect to the non-commercial station, it would be held to the same rules as always, and the commercial to their own set of rules.

But, even by agreement you are sharing spectrum, you -

MR. LEE: So, there would be two separate licenses given.

MS. KREISMAN: - right, that's exactly right.

MR. LEE: So, there are two separate licenses.

So that, when the expansion of the use of the spectrum is given through technology advancement, and what you can actually do with your part of the spectrum that you end up with, the commercial licensee that gets half a spectrum today, but through technology advances may end up with the same net effective value of a full spectrum.

MS. KREISMAN: Correct. Also, there's one assumption you had in there, which is not, necessarily, an assumption, and that's by agreement, "...doesn't have to be split evenly." So, I just wanted to point that out.

And again, to protect us here, these are all proposals, and there will be final decision on this, of course, that will come out in the rules.

MR. LEE: Is there any proposal to have a test period, where if you decide to go with a partner in a sharing provision, and you do it, and then you just find out this isn't working.

MS. KREISMAN: Well, no, there's not, but - but, we are really looking for a pilot. So, if you have any candidates now, we would be delighted to give you authority to do that on a test basis. And, we've got a deal, we'll get you a deal that your just spectrum that you normally would be on will just sit there, you have an STA to operate an alternate facility, because we've been dying to have a pilot.

So, you just give me a call if you can get one.

MR. LEE: I have a partner that's - a perspective partner that comes to me who wants to do that.

MS. KREISMAN: I'm sure you have, because I've been looking for one.

MR. LEE: Who wants to do it, but one of the questions, and it ties back to the technology part of this thing is, can you do a shifting.

MR. SMITH: That's dynamic spectrum share.

MR. LEE: Dynamic spectrum sharing, because there's one where you may have, like I have a public televisions channel that has a base, we don't have a lot of football games, basketball games, or anything, we can get this much. But, this other partner that's come to me has some other - he may on Tuesdays and Thursdays may want this much of the spectrum.

MR. SMITH: You are speaking to the long version of the presentation, but yes, indeed. We are talking about dynamic spectrum sharing.

MR. LEE: Dynamic spectrum sharing.

MR. SMITH: Based upon, you know, the particular needs of the broadcasters.

And so, if you've got a guy who is using - who is broadcasting in HD, and he's got basketball, and football, and things like this, you know, where you are going to need a larger percentage of that 19.4 megabyte per second downstream, then, yes, you can have - you know, you can shift and you work that out with your sharing partner, your channel sharing partner.

But, as Barbara said, you know, we are very much looking for that.

MS. KREISMAN: There will not be a testing period once the report and order comes out, but now there's a great opportunity for you to see whether it works with no obligation to return spectrum, with no obligation to keep it going. It's really a great - and we would ask that you let us use you as a poster child, so everyone can see if it works or doesn't work. So, we are really hopeful that it will work.

MR. SMITH: As long as you can get a divorce without - I mean, a no fault divorce, I think we might be -

MS. KREISMAN: Right now you can.

MR. SMITH: - you can, okay.

MS. KREISMAN: Later you can get a divorce, too, but you better do the pre-nup real carefully.

MR. LEE: The pre-nup real carefully. I got my man right here. We are working on our pre-nup already, as far as finding a perspective date.

Okay, thank you.

CHAIRMAN RIVERA: Thank you, Jefferi.

Anyone else with questions? Yes?

MR. LEE: Jason, from Asian Advancing Justice. As the staff knows, there aren't that many minority-owned broadcasters, and there is that worry that a lot of them are going to sell their stations during this option.

And, I know, for example, in the Asian-American community a lot of them have already sold their stations to prospectors, for example.

So, I'm just wondering if you could talk about what kind of outreach and education the Commission has done to broadcasters, minorities in specific, about educating about the options, like sharing, for example, so they do stay on the air, versus just selling out. Selling their station, not selling out, sorry.

MR. SMITH: Well, so as I said, you know, we have been sort of doing as much outreach as we can, given our sort of funding restrictions right now. Obviously, you know, things are tightened in Washington right now. But, you know, we were out at the NAB show. We've gone out to a number of conferences. We do a lot of webinars and we think that webinars are a good way to get people information without having to, actually, go out and see somebody in person, and pay for the plane ticket and the hotel costs. So, you know, we've done online presentations and online webinars.

Our media chief, Bill Lake, and Rebecca Hanson, have been very active in our outreach so far.

We accept ex parte requests from anyone who submits them. So, we have - we are batting 1,000, and if anybody wants to come in to talk to us about it, we'll certainly, you know, meet you right here on home turf.

But, you know, we can always be doing more, and we are trying to, you know, do more outreach to make sure that people are fully informed, and that's definitely one of our big priorities.

So, you know, if you have any folks who are interested in working with us, or coming to talk to us, or even if you were interested in working with us to do a presentation, you know, whether it's online or a teleconference, we'd be more than happy to.

But, yes.

MS. KREISMAN: We have a number of companies that have done also their own webinars, based upon the information of PBS. We've had several of them.

So, if there are any organizations represented here that want us to participate with you, we are happy to do that. But, NAB has done some. PBS has done a lot of them. So, the word is getting out, but we can always look to more education.

And, there is also a consumer education piece that will be reflected in our rules also, as we did during the DTB transition.

CHAIRMAN RIVERA: Yes, Jim.

MR. WINSTON: Yes, I just wanted to say that Bill Lake and Gary Epstein are both planning to participate on a panel at the NABOC conference October 2nd through 4th here in town.

So, yes, they were very eager to help us try to get the word out as well.

A question, low-powered television, what is the Commission contemplating in terms of trying to preserve some of the existing low-power television, because I know they are not officially protected.

MR. SMITH: Right.

MR. WINSTON: So, is there anything the Commission is doing, particularly, in trying to preserve some of those?

MS. KREISMAN: We have some ideas, actually, that I'm not - we are still working on, but we think that, especially, in rural areas, where LPTV is most significantly relied upon, we are not sure of the real impact of the repacking on them in those locations.

So, I think part of this is to see what really the impact is, and also we have some ideas that we're developing now as to maybe there are ways that we can help them find spots, but we have to further explore those.

But, they cannot participate in the auction and they are not protected.

MR. SMITH: And, this is statutory, so for those that don't know, the statute provides protection and allows participation by Class A full-power stations, but not low-power TV or translators.

But, yes, we are sensitive to, you know, the concerns of the low-power TV community, and also, you know, translators, especially, in the Western states.

MS. KREISMAN: I always look at them as a little service that could, because, you know, their demise was predicted during the DTV transition, and as you know that didn't happen.

So, while I'm not telling you there won't be an impact on them, I'm really hopeful that, especially, in more rural locations there won't be an impact on them. But, that remains to be seen, and the repacking and the band plan gets developed.

MR. SMITH: And, just last point on that is, you know, one concern that folks have had, especially, with respect to LPTV, is that when - our proposed market variable band plan would result in us reclaiming more spectrum in certain rural areas than a national baseline, and that by doing so we would squeeze out stations that don't have interference protection, LPTV and translator stations. And, the fact of the matter is, at least what we are looking at right now, and expecting to propose, is that we would reclaim a national baseline amount that would not seek to reclaim spectrum - more spectrum in rural areas than in sort of our major markets.

Though, for some rural areas, they still, even if we don't reclaim spectrum, there may need to be repacking, but that's still something we are looking into to study.

CHAIRMAN RIVERA: Any other questions?

Yes, Steve.

MR. ROBERTS: Yes, Steve Roberts, Roberts Broadcasting.

You said you had a longer version. Is that online or hard copy here? I haven't seen it.

MR. SMITH: Yes, no, I think we've got - this one I think we do have several - I guess if we got an updated one on line, but, yes, we do, and I can give you - I can give you one if you want.

MR. ROBERTS: Yes, or if you could send one out to me.

MR. SMITH: Yes, or send one out.

CHAIRMAN RIVERA: Because we have not seen it. We've been trying to get more data.

MR. SMITH: Okay.

CHAIRMAN RIVERA: On what you guys are doing on that.

And, what's your time line? You said 2014, that's a long time. Is that first quarter, second quarter, third quarter, any idea?

MS. KREISMAN: Everyone says there is no way we are going to make it.

MR. SMITH: Yes, it's funny what people think.

You know, right now we are still figuring out our time line. You know, 2014, I would be - I would not expect to see it happening early 2014, but I think you'd be pretty safe thinking later 2014, because, yes, as Barbara said, you know, people are already saying that's going to be a challenge for us to make.

MS. KREISMAN: The key will be when we get our rules out, and the timing, and that also may, you know, be influenced by when our new chairman comes on board, and there are a lot of other factors.

CHAIRMAN RIVERA: Sure. Thank you.

CHAIRMAN RIVERA: Anything else? No?

Smitty, you done good. Great job, thank you very much.

Lots to consider from the minority perspective. That's one of the reasons we wanted this committee to have this briefing, and I know this is an issue that's very near and dear to Chairwoman Clyburn. So, that's another reason we wanted you to have this briefing.

The Chair is going to exercise a prerogative or rearranging our agenda, so that we can get a guest, Ruthanne Deutsch, who has been good enough to come and brief us on the second part of Fisher v the University of Texas, and I didn't want to impose more than we had to on her time. So, we'll let her go now, if that's okay with you, Ruthanne, and then you can stay or go out and enjoy the weather as you like. All right?

MS. DEUTSCH: Thank you very much.

It's a delight to be here, and my first career, before I became a lawyer, was as an Economist. And so, I was fascinated by that last presentation, and I really want to know how are you going to set that first pilot. It's going to be the big challenge, or one of them.

But anyway, thank you.

Yes, but you have to start somewhere, right? Anyway - that was my economist days.

But now, back to lawyer-ness. So, I was here, when was the last meeting?

CHAIRMAN RIVERA: About six months ago.

MS. DEUTSCH: Six months ago. So, about as long as it took to decide this case, or even around the same time.

This was one of the most anticipated and longest-delayed cases of the term, and at the end of the day it came out not with a bang, but with a whimper.

So, the good news is that Grutter was not overruled, and the parties, in fact, in their briefing, and at oral argument, even the challenger, Abigail Fisher, the Counsel on behalf of this white woman who was claimed to have been denied admission to the University of Texas because of affirmative actions policies there, her counsel clarified it in oral argument that they were not asking the court to overturn Grutter.

So, wait, wait, wait, wait, all term. The first arduous case is one of the last decided, and at the end of the day you get an almost unanimous opinion authored by Justice Kennedy, Justice Ginsburg was the only dissenting Justice, 7:1, because Justice Kagan was recused from the case, because she had been involved when she was Solicitor General prior to joining the court, that, basically, says right standard, wrongly applied, go back and decide whether Texas' plan really satisfies strict scrutiny.

But, affirming Grutter, but with a little bit of caution in the sense of, we are not - we are not deciding today, we are not questioning today, our precedent that the educational benefits that come from diversity is a compelling state interest that can justify race-based measures.

And so, the only thing that the court really questioned is kind of, you know, nothing majority opinion in some ways, was whether the 5th Circuit, which was the Court of Appeals in the case, gave too much deference to the University of Texas on how that interest was satisfied.

And, Justice Kennedy, writing for seven, said, yes, you did, you took the university at their word, when they said they made good faith efforts, and they had tried other things and they didn't work, and that was not strict scrutiny. You misapplied our standard. And, he gave a tweak on a very famous adage the court often says in many cases, that strict scrutiny is strict in theory and not fatal - and can be fatal in fact, but shouldn't be.

And, here he says, well, it also shouldn't be feeble in fact, and here it was.

In her dissent, Justice Ginsberg said, I don't see how on this record this plan could not satisfy strict scrutiny, so she was a little skeptical, but, you know, a lot of commentators think that one of the reasons for the delay was that the court was trying to reach some kind of internal compromise. And, you know, effectively, got a lowest common denominator, where they agreed to let Grutter live for another day, and as one commentator said in an analysis that his first year law students, you know, could have done before the court even heard the case, you know, just march through the routine application of the strict scrutiny standard and not get involved in the details, because I would bet there was not - there were not seven justices on the court that agreed that the university's program did not satisfy strict scrutiny.

The interesting thing about the opinion, or, perhaps, the concurrences, and, in particular, Justice Thomas concurred, Justice Kennedy's opinion is 13 pages long. You know, most of it marches through the court's prior precedents on affirmative action, and just sort of like, you know, law review articles, interesting part of that march through is he's very careful to say that in Bakke, the original affirmative action decision 25 years before Grutter, where Justice Powell and a concurrence that sort of became the principle that Grutter endorsed and made, you know, precedential.

When he talked about how diversity could be a compelling state interest, he also disavowed the idea that remedying past discrimination could justify affirmative action programs in higher education, and Justice Kennedy sort of took pains to note that, which I think is an interesting part of the opinion.

So, we are only talking about education benefit for diversity interests, as sort of remaining clearly endorsed by the court at this point, but the remedying past discrimination perspective has been cast aside at least in the higher education context.

And then, he talks about strict scrutiny, and he, basically, says, you know, you really - the court really has to make the university, or make the government prove, that there are no race neutral alternatives. And, it's not - you can't just take them at their word at that.

And, you know, Justice Ginsberg, also in dissent kind of questions that and said, well, you know, the total idea of having a race neutral alternative is problematic as well, because even the university's top 10 percent plan, which says, you know, top 10 percent from every public high school in Texas are automatically admitted, has a racial undercurrent, because the neighborhoods are segregated, and, you know, there is socioeconomic bases that explain, you know, where different high schools are. And so, her dissent kind of questions that.

But, let me make sure I'm not missing anything - so, at the end of the day the majority remands, and, in fact, the 5th Circuit just recently, which is the court it was remanded to, announced a briefing schedule, so the parties are going to have another round of briefing in the Appeals Court, and argument probably before the end of the year, where they are going to argue about whether or not the university already has a critical mass of diverse student body, whether or not race neutral workable alternatives were really tried, whether or not the petitioner, Abigail Fisher, has standing even to pursue this case. That could be a way of just kicking it out of the courts completely, because she's already graduated. So, there's about eight questions that they've asked the parties to read, and we'll see what happens on remand. And, the devil is in the details.

In terms of the aftermath at the court about this decision, the concurrences are, basically, an invitation for the next case to frontally challenge Grutter, which was not done here, maybe as a litigation tactic by the parties.

Justice Gullia has a one-paragraph concurrence, which he had a bunch of this term, basically, saying Grutter should be overturned. And, I said that, you know, in my dissent of Grutter, and I reiterate it here, but because the parties don't ask for it I concur in the result that the plan doesn't withstand scrutiny.

Justice Thomas wrote a 20-page concurrence that was longer, you know, by 50 percent, than Justice Kennedy's majority, and this might be another reason that the case took so long to cook at the court. And, his concurrence was - it chronicles how, I mean, his theory, basically, is that today's proponents of affirmative action in university admissions are no different than the defenders of segregation when cases like Sweatt and Brown v Board of Education were briefed, and he has a sort of chilling, you know, page after page of quoting from briefs, and saying compare this with that, compare this with that.

And, you know, the bottom line, this quote sort of crystallizes his tone and rhetoric throughout the opinion, and I recommend reading it because he is sort of one of the strongest voices, I think, in the intellectual discourse today in this country of how affirmative action, actually, hurts minorities, and this is quite a strong piece about it. But, he says, "The Constitution does not pander to faddish theories about whether race mixing is in the public interest."

Strict scrutiny, in his view, is only satisfied in the court's precedence outside of higher education when it's a threat to national security, so he quotes Korematsu, the Japanese evacuation case, or to overcome past discrimination. He leaves that door a teeny bit open, outside of higher education.

But, in terms of the educational context, he said the alleged benefits to the races that were argued in defending segregation were insufficient to justify racial segregation then, and they are equally insufficient, you know, the benefits of diversity could justify racial discrimination now. That's his position.

And then, Justice Ginsberg, as I alluded to already, dissented, and, you know, was pretty clear that the university's plan could satisfy strict scrutiny on the existing record, and we'll see what happens on remand.

But, that was Fisher, it was more a story about what wasn't done than what was, because at the end of the day universities that are pursuing the types of admission policies that they've been pursuing since Grutter can continue to do so, and arguably the same legal standard applies. But, it's definitely in the cross hairs, I would say, this law.

And, you know, I'll leave it to David, who I think is also going to talk to you, talk about the import for this committee and for the work of the Commission, obviously, you know, there's a statutory mandate here that is not the case with public universities, but I think this opinion confirms something that we suggested in the last presentation, that the serious evaluation of race neutral alternatives, you know, wink, wink, as Justice Ginsberg says, with the eye that you are really using those, you know, socioeconomic or geographic or whatever, that they are effectively going to get at racial diversity questions as well, whether or not, you know, your face is more constitutionally protected to be race neutral than not.

And, I'll pass the mic to David, but I'm more than happy to answer questions as well.

Thank you.

CHAIRMAN RIVERA: I think David is going to make his remarks in connection with his subgroup's recommendations.

So, are there any questions for Ruthanne on this case?

Andy?

MR. SCHWARTZMAN: This is not a question. It's just - it's an expression of appreciation, this is a wonderfully cogent and useful presentation. I appreciate it.

CHAIRMAN RIVERA: Thank you, and, yes, it was.

Anyone else?

Well, Ruthanne, thank you very much.

MS. DEUTSCH: Thank you, my pleasure.

CHAIRMAN RIVERA: You are always welcome here.

MS. DEUTSCH: Okay, I appreciate it. I learned a lot, so thank you.

CHAIRMAN RIVERA: All right. So, we'll move on now to the recommendations to the Chair. And, the way we are going to do this is that, we will ask the subcommittee chairs to give their report, and make their recommendations one by one, and we will vote on all of them.

Hopefully, we can do this by consensus or unanimity, that's always better. But, if there are dissenting views, then we'll have to vote, and we'll vote by majority rule. And, if there's a majority to send something up, we'll do that.

Again, these are not recommendations to the Chair for action. These are recommendations from the subcommittees asking the Chair to consider having us develop these ideas into full-blown recommendations.

So, with that, I will turn the floor over to Ron Johnson, and ask him to go forth.

MR. JOHNSON: Okay. Thank you, Mr. Chairman. Good afternoon, everyone.

CHAIRMAN RIVERA: Good afternoon.

MR. JOHNSON: It's good to be here.

First, let me say we do have one of our task force members in the audience with us today, Channel Hardy, from the National Urban League, or did she leave? I think she left. Okay. And, Charles Harrell from the IT architect called in.

Several of our members had conflicts today, and certainly send their apologies for not being able to participate.

Are there any members - other members of the task force on the phone now? Okay, thank you.

CHAIRMAN RIVERA: You got a yes from somebody.

MR. JOHNSON: Would you give your name, please?

MS. BALLARD: Hi, this is Karla Ballard. I'm still on the phone.

MR. JOHNSON: Okay, thank you. Thank you.

First of all, let me thank our rappateur on this, Jocelyn James, the attorney, all of you know her. She has added a great sense of understanding to me about the legal ramifications of some of this.

And also, I would like to especially thank, going forward, and I think this will be of interest to the Chair and all of you all, that Virginia State University School of Engineering and Technology, and their Research Institute, Advanced Research Institute, has a real interest in this, and have agreed to provide whatever pro bono services that they can to help us in this process, Mr. Chairman. So, we'd like to welcome Virginia State to this discussion.

My Alma Mater, I will have to give full disclosure on that. Thank you. Undergraduate Alma Mater.

I guess I will start my remarks by saying that supply diversity and leveling the playing field really has to do with job creation and economic growth for diverse communities. And, we've talked about that somewhat already this morning.

Chairman Rivera gave our task force, and I suppose I speak for all the task forces, some pretty clear instructions about our concepts today, so that my colleagues will not have to repeat these I will tell you what they are right now.

First, that our concepts would have to be realistic, and secondly, they should take, at least in our case, will take into consideration the Adarand constraints, and most of you all are very familiar with what those might be, and for all of the task forces we were charged to consider the budget constraints that the FCC has, as they begin to consider and, hopefully, try to implement some of the recommendations or comments that we are going to make here today.

So, let me first begin by saying also that we have three concepts. The Chair asked that we either have two or three, and you can imagine I would take the liberty - our committee would take the liberty of offering up three. And so, if he said two we would have offered two, if he said four we would have said four. But, he said two to three, and so we have elected to present three for your hearing this afternoon.

The overall purpose of our task force is to try to design a feasible way to help the Commission eradicate barriers to entry, which, hopefully, will increase opportunity for greater access to capital, and access to procurement opportunity for diverse companies, meaning MWBEs.

One of our task force members suggested, and we adopted this suggestion, that we would also include persons with disabilities, PWDs, as a part of our consideration. And, we are looking at whether or not that is something that we can do in the context of this first concept, and concept two and three. I think we can. We might have to have further consideration along those lines.

In addition to that, our work is being guided by, basically, principles, and let me tell you what they are very quickly. Our recommendations will look at best private sector procurement practices by diverse companies, obviously, what the FCC can do to stimulate private sector actors to recruit, and retain, and grow diverse companies in their supply chain, and how the FCC should design a supply diversity program conference and stimulating relationships between diverse companies and the regulated industry.

As most of you know, and as a practical matter, much data is needed to determine the value of the supply diversity market, which means what WMBEs have to offer, number one, and some estimate of how much business is currently being done between regulated industry and diverse companies. We think this information is very important to the FCC. At the same time, we think it is essentially, as we go through this process, that we ask a couple of questions.

And, first of all, whether or not the FCC regulated industry is, actually, syncing to engage MWBEs in this process, whether or not the FCC is providing an effective forum, or can provide an effective forum, for these groups to come together and discuss matters of mutual interest, and thirdly, whether or not we can suggest, or should suggest, to the FCC that it create a sustaining venue for private industry, the regulated private industry, and diverse companies, to come together on a periodic basis to discuss these matters around supply diversity.

And so, we had three concepts our committees does that we would like to share with you right now very quickly. I know time is of essence here.

Our first concept is to measure in some way the outreach to minority and women entrepreneurs by FCC licensees, who are currently engaged in broadband employment and infrastructure development.

As a quick background, according to FCC-regulated industry SEC filings, billions of dollars are spent annually on deployment and infrastructure development by companies providing wireless and wire-line broadband services. A number of regulations exist that require multi-channel video programming distributors to engage in outreach efforts. But, similar efforts are not required of other licensees.

As technology continues to converge, many Commission licensees provide similar services to communities, without the benefit of a standardized way to outreach and report their requirements to their constituents.

Now, without these these uniform requirements, it is difficult for us to access the level of participation by minority and women-owned suppliers as a whole.

There is a need for a platform neutral method of assessing market participation by these companies, as contractors, and as subcontractors. Taking into account Adarand restrictions and budget constraints, the task force would recommend that we would examine how the Commission could measure the level of participation of these companies who contract with FCC-regulated licensees that are engaged in broadband deployment and, particularly, broadband infrastructure development.

And so, we've come away with an expected outcome if this recommendation or concept is accepted by the body. And, that expected outcome would be the establishment of a viable tool that could provide a constitutional defensible and practical way for the FCC to measure MWB participation in the regulated industry. That would be the outcome as a result of this concept, if this concept is accepted.

The second concept -

CHAIRMAN RIVERA: Can you hold off just a second?

MR. JOHNSON: Yes.

CHAIRMAN RIVERA: Let's go ahead and consider this recommendation.

MR. JOHNSON: All right, thank you, Mr. Chairman.

CHAIRMAN RIVERA: Thank you.

So, does anyone have any questions for Ron on this idea from that subcommittee?

Steve?

MR. ROBERTS: Could you restate that again, and give us a little more clarity, because I'm not quite sure what those tools would be that you mentioned in your presentation.

MS. KREISMAN: What would be our role, the Committee's role, in developing those tools? How would they go about it?

MR. JOHNSON: Well, I think, to your point, Barbara, I would suspect that that analysis of where we go from here is something we probably need to think about, because we are not sure as a committee. We have not gotten, in our task force at least, you know, that much work done on this concept. We, essentially, wanted to lay it out and get your comments and then move ahead.

But, I think, Steve, to your point, one of the greatest issues in looking at, from our perspective, the extent to which diverse companies are participating in the industry, is that we don't know. We simply don't know the extent to which diverse companies are participating in terms of dollars.

At the same time, we are not certain of the extent to which the regulated industry is, actually, reaching out to diverse companies to engage their services and their business.

And fundamentally, I think to creating an environment where vendors can take place, it's important that we have those two analyses done. And so, our concept would be to first do that analysis.

MR. ROBERTS: That's - I understand your framework, and I would certainly support that.

MR. JOHNSON: Okay, thanks.

CHAIRMAN RIVERA: Anyone else?

Yes, Jim.

MR. WINSTON: It sounds like you describe two things. One was finding out who the companies currently do work with, and then second, figuring out what they are doing to reach out to minority women businesses.

It seems to me that finding out who they are doing business with now is simply - we don't need a tool, we just need something - we just need someone to say, tell us. Now, I don't know if the Commission feels it has the authority to do that, but it seems to me that the first part is, tell us who you are doing business with.

And then second, you measure - the second part is to measure what they are doing to outreach to more.

I don't know if that - it sounds like that's what I heard, you tell me if I'm hearing correctly or not.

MR. JOHNSON: No, I think you are right on point, Jim. From our perspective, though, we are not certain whether or not the FCC has the authority to require the regulated industry to report that information to it. And, perhaps, it does have that authority, but we are not sure at this point.

And, if it does, that's a good thing. I mean, certainly, the FCC could request it. If it does not have the authority from a regulatory perspective, we would have to find a way to get to that point, where industry is willing to provide that type of data to the FCC.

It is fundamental data, from our perspective, to developing an approach to getting more diverse companies engaged with these companies.

MR. ROBERTS: Does the FCC have the authority to create something like an NFL Rooney Rule?

MS. KREISMAN: Well, I think we are going to the area where exactly I didn't want to go.

MR. ROBERTS: Okay.

MS. KREISMAN: We are not really here on the proposal, it's that I think it would be really helpful for those of you who are very knowledgeable, have businesses, to come up with a plan as to what data you, for example, would feel comfortable sharing as a first step.

Again, to emphasize the emphasis to be on what our expertise could be, and what we can find from fellow industry participants, as opposed to what the FCC does or does not have the authority to do.

Again, we are going down this same path we sort of usually end up with, which is not always particularly helpful. I don't know that the FCC wants to take this on right now, but I think it would have a much better basis to take it on if at least it knew from us what the industry here would feel comfortable with, as opposed to it going out, if that makes any sense.

MR. JOHNSON: Yes, it does.

MS. KREISMAN: Okay.

CHAIRMAN RIVERA: David?

MR. HONIG: There is a path there that the Commission has quietly been focused on. And, that is, in the - Congress requires the Commission to provide various reports on competition. The Video Competition Report that was presented, I think, in April, and which a public notice is issued regarding the subject of the questionnaire to be used for the 2013 report that will be issued in the spring of 2014.

Acting Chairwoman Clyburn had a public notice issued by the Wireless Bureau a couple months ago, going to the question of whether that wireless competition report should also inquire into minority women-owned business participation insofar as it relates to and demonstrates the health of the industry in terms of competition.

Interestingly, then Commission Kevin Martin, in 2002, when the concurring statement of the EEO rules really first proposed that we not just look at minority participation in terms of diversity, but also look at it in terms of its impact on competition, where the Commission's authority is quite clear.

Our task force, that will report later, has also addressed this in the context of, as Ron pointed out, the fact that the procurement reporting rule applies right now only to cable and MVPDs as a consequence of it being in the `93 Cable Act. But, there probably, I guess you could discuss this with OGC, there's no legal impediment given 334 of the Communications Act to extending that to other platforms. The Commission would have to develop a record, but it can be done.

CHAIRMAN RIVERA: Thank you, David.

Again, as Barbara has pointed out, we are - these don't have to be perfect. Not all the i's have to be dotted, or the t's crossed. We are saying, Madam Chair, here's an idea, if you'd like us to develop this and look at some of these questions that you posed, well, we can do that.

We may find that the Commission doesn't have the authority. Or, we may find that it does, as David has pointed out, under certain circumstances.

So, let's just keep that in mind as we move forward.

Any other questions?

Are you ready for the question then?

All right. All those in favor say aye.

(Chorus of ayes.)

CHAIRMAN RIVERA: Any opposed?

All right, thank you.

Ron, please proceed with the next recommendation.

MR. JOHNSON: Thank you, Mr. Chairman.

Concept 2 was to - or is to establish a self-measurement of how minority and women-owned entrepreneurs engage in contracting with the FCC-regulated industries.

This is probably a little easier to get to, I would think, from a process perspective. So, in an effort to assess the market for diverse suppliers, with FCC-regulated industries, the Commission's Office of Communication Business Opportunities should engage, in our opinion, a two-step process, and let me explain what that two-step process would be.

First, it could, with our assistance, invite diverse suppliers to voluntarily complete a confidential survey discussing their experiences in providing services across all sectors, all industry sectors. This information could include the types of services provided by those suppliers, whether these suppliers are provided to - whether these services are provided to government or private sector entities, or both, how these businesses come across opportunities in the private sector, the length of the contracts, opportunities to leverage their relationships across industries, and how their experiences working with various sectors differ within industry, meaning carriers, equipment manufacturers, OEM systems integrators, service providers, et cetera.

And secondly, the OCBO could replicate a panel discussion that we had the last year, consisting of diversity in industry, at which time two members of our committee, by the way, served on that. And, following that successful forum, a select number of survey respondents then could engage with industry executives on procurement best practices in sort of a closed kind of discussion, or more narrow discussion. And, out of that we would be able to identify more clearly what some of the barriers to entry would be with respect to diverse companies.

And so, the outcome of this, or expected outcome, would be an increased level of awareness of diverse experiences and expectations that could be shared with the FCC-regulated industry, and then develop that into a publishable set of procurement best practices for the public and for the FCC to have available to it.

And so, Mr. Chairman, that is the second concept that we would like to proffer.

CHAIRMAN RIVERA: So, essentially, data gathering with the end result that the FCC and the public would have a list of best practices that could guide.

MR. JOHNSON: That is correct. And, through a format that has already been established by Tom Reed's office.

CHAIRMAN RIVERA: Questions? Any questions?

All those in favor say aye.

(Chorus of ayes.)

CHAIRMAN RIVERA: Anyone opposed?

Thank you.

Last recommendation, Ron.

MR. JOHNSON: Okay, thank you, Mr. Chairman.

No. 3, our concept recommendation is that the FCC would host a website on industry and procurement best practices, and access to capital.

As a continuous learning tool, the conference panel discussions, along with previous discussions, convened by the FCC, on access to capital and procurement practices could be inexplicitly, we think, packaged into a FCC e-learning website, and to further advance the FCC's commitment to procurement that this website could house similar panels and workshops that other organizations and government entities have sponsored, or intend to sponsor.

The internet searches could be directed to the website via various internet search engines currently available to the public, and so the FCC would not have to spend any money to ensure that that occurs.

And so, the expected outcome here would be, basically, two. The public and the FCC-regulated industry would have access to a repository of information in one credible location, the FCC.

And secondly, the regulated industry could be assured that the FCC is aware of issues about procurement diversity, and access to capital, and begin to look more closely at what some of these barriers are.

And so, that would be - No. 3 is a mechanism to have this information that we gather from concepts one and two available, not only for the FCC to see, but, more importantly, for the FCC-regulated industry to have access on an ongoing, real-time basis.

We think that 3 is very important to 1 and 2, because it only works if 1 and 2 or somehow culminated and codified in concept 3, because it's then available to everyone to see.

CHAIRMAN RIVERA: Tom, do you have any points you want to make?

MR. REED: No, I think in the interest of time, I know Ron and I have talked about these concepts, and some of these certainly, some of the goals that are aspirational for the CBO, particularly, with pulling together a composite of location for intelligence on supplier diversity and access to capital.

And, I look forward to talking with Ron and his group more on how we can develop that.

CHAIRMAN RIVERA: Great, thank you.

Any questions for Ron on this depository of information?

All right. All those in favor say aye.

(Chorus of ayes.)

CHAIRMAN RIVERA: Any opposed?

(Aye.)

CHAIRMAN RIVERA: Thank you.

All right, thank you, Ron, nice job.

MR. JOHNSON: Mr. Chair, thank you very much.

CHAIRMAN RIVERA: Diane, are you on the phone by any chance? Probably not.

The Chairman of the Market Entry Barriers Subcommittee could not be with us today, and she is a very busy business woman, and I think she's at the Radio Show at NAB.

So, I am reluctant to take up her task force's recommendations without her. So, I think, Barbara, that we are going to suggest that we are going to postpone doing that for another day, and move on to Nicol.

MR. ROBERTS: Mr. Chair, before you do, we did have a very extensive conversation, our subcommittee did. So, I don't know what happened to the report, but we should have our Chair do it.

But, I just want to let you know, we have been busy working.

CHAIRMAN RIVERA: Yes, Diane was kind enough to share the minutes with me, and it was obvious that you had a very robust conversation, both at the meeting and, apparently, subsequently.

MR. ROBERTS: Right.

CHAIRMAN RIVERA: So, again, that's another reason I'm reluctant to proceed without her.

So, Nicol, you have the floor, Madam.

MS. TURNER-LEE: Thank you, Mr. Chairman.

So, I represent the Unlicensed Devices Inspection Subcommittee, with several of you, actually, who are here in attendance. And, what I will do is, basically, just go over some of the concepts that we discussed, and tie that into some of the work of the subcommittee, because we saw this as sort of an ongoing extension. But, we do have a couple that, actually, fall out of the purview that the subcommittee just thought they were important to offer as concepts.

CHAIRMAN RIVERA: Okay.

MS. TURNER-LEE: So, for those of you that aren't familiar, the subcommittee has been working on the use of unlicensed spectrum and devices for the benefit of minority entrepreneurs, as well as communities, and it was very great to hear the IT gentleman, actually, talk about that as one of the concepts of consideration, because we feel it's such a burgeoning market that we have to pay attention to this area, particularly, as we look at the rate of innovation and the inclusion of people of color in this innovation.

So, I'm not going to take the time, I'm, basically, going to go right into our four concepts for consideration, and I will do as my colleague here has done, and kind of stop to explicate and take questions on what our thinking was around those particular areas.

The first one that we introduced to the Chairman for consideration was around strategies and best practices for involving MWBEs and upcoming incentive spectrum auction. How timely, making our presentation today to the Committee.

And, we recommended that this particular Committee assist in recommending outreach technical assistance, public/private sector matching to ensure some level of participation in the upcoming auction.

And, I want to, and I'm sort of off record here, include the comments of Brigitte Daniel, who is on this Committee, of ensuring that there's some diversity goals around this upcoming auction, and what that looks like. So, I thought her comment was spot on with regards to having some type of outline plan, and it appears that there's been some mention and comment, but we think that this Committee should play a critical role, sort of codifying what those goals are as we move forward. So, we'd like to offer that up.

One other thing we were going to offer as an example to sort of help this Committee in our education round why this is such a critical area.

On September 4th, a deal was solidified with Grain Management, in partnership with AT&T and Verizon Wireless, for the purchase of spectrum in the bandwidth of 700 megahertz, Band B, from Verizon, and C brought form AT&T. That deal was the largest minority-owned business deal, valued at $287 million, and we feel that there are some best practices. It was addressed by the FCC. It was, obviously, some good principles and practices that were in play, and we'd like to, actually, recommend something I think that is the Commission's authority, which is to invite them to one of our meetings to discuss how that deal went through and what was involved with that. What was the discussion? What were the benchmarks? How did the companies work with the Grain Management to, actually, make that happen?

In addition to that, some of you may not be aware, National Urban League, MMTC, as well as NCLR, were also offering advice to that deal. So, we think that's, again, a very nice model to look at as we move forward with the incentive spectrum auction. And, since we have until next year, I'm sure we'll have another meeting to, actually, have them invited. So, that is our first recommendation, to just again ensure that this Committee has some role in helping the Commission in the creation of diversity goals, and strategies and best practices for involving MWBEs and offering up for the next meeting Grain, as well as the corporate partners and community partners, to come and discuss the best practices around how that transaction occurred.

So, I will stop there.

CHAIRMAN RIVERA: All right, thank, and, Barbara, we ought to take note of that suggestion, try to get them on the agenda, if that's okay with you, Tom. Good.

Any questions on the incentive auction involvement by minorities? All right.

All those in favor say aye.

(Chorus of ayes.)

CHAIRMAN RIVERA: Okay. Anyone opposed?

Motion carries.

Nicol, the next recommendation.

MS. TURNER-LEE: The next recommendation that we have, and I'll be quick to save time, was focused on the use of unlicensed spectrum and devices for community pilots, for example, telehealth and remote education.

We felt that this Committee could suggest ways that the Commission could leverage unlicensed spectrum, to create community-wide by hot spots that promotes access to these services for seniors, low-income people, and rural residents.

So again, as we heard today, I guess you all again were reading our Committee's mind. It's very important to think about unlicensed spectrum for community access, as well as unlicensed devices.

And, in listening again to the Acting Chairwoman, there's a possibility also to have this exploration of new devices that could be catered to schools, and libraries, and hospitals, et cetera, particularly, as we are looking at broadband as the platform to enable many of these social functions.

So, our Committee, in particular, was working towards some policy language that we would like to introduce to this Committee that we think might be good language as a way to kind of introduce into, not only the incentive spectrum auctions, but also E-Rate and other initiatives that the FCC is currently taking on, that just, again, carves out some level of bandwidth for these types of functions.

We feel, in our Committee and our discussion, at some point this will come around to us, and we'll be trying to figure out why the kids that are in certain schools are not getting access to the latest devices. That can run, you know, e-book as opposed to text books, that conversation. So, that is one of the concepts that we'd like to put before this Committee.

Our Committee has volunteered to work on that policy language to bring to this Committee for discussion and for clarification, and also for some type of approval that can be brought up to the Commission.

CHAIRMAN RIVERA: Okay.

MS. TURNER-LEE: So, that is our second concept approach.

CHAIRMAN RIVERA: All right. Any questions on the use of unlicensed spectrum for these uses that Nicol has outlined? No?

All those in favor?

(Chorus of ayes.)

CHAIRMAN RIVERA: Anyone opposed?

Great, thank you.

MS. TURNER-LEE: And now, these last two, and again, these aren't, necessarily, within our bandwidth of our Committee, but we felt that these were really important, and in many ways, Chairman, they are, actually, kind of connected, but I'll split them out, and then I'll share them, just like Ron did, because they probably need to be together.

The third concept was the discussion and documentation of best practices in public/private sector partnerships around educational and community digital learning initiatives.

We thought that this Committee could support the Commission in development of a guide for how these partnerships are cultivated, resources implemented for other people who are interested into that game.

Many of us are aware of the successes of what we see by the private sector side, educational initiatives, what we see broadcasters do, you know, what we see innovators do, with regards to STEM, et cetera. And, what we had thought in our Committee, that they are not documented, and they are not, necessarily, in one place to think about ways for the Commission to take those best practices and encourage others to actually get more involved.

We also feel, MMTC just filed comments, for example, around E-Rate, that there are some possible rules that can be looked at, in terms of charitable giving of the private sector towards many of these initiatives. That type of conversation could come out as well if we had a guide to how these public/private sector partnerships, actually, are panning out.

So, we thought, again, this Commission - this Committee could offer to the Commission something that's very quick and easy, based on the talent that is already on this Committee, which is to really think about what has, actually, happened out there to advance digital learning and community education goals.

CHAIRMAN RIVERA: All right. So, any questions for Nicol on the assembling of best practices for education and digital learning?

MR. LEE: This is not a question, I'd ask you to look at public television.

MS. TURNER-LEE: Public television, too, yes.

MR. LEE: And, how we do those things already creating public/private partnerships, and especially around education and in under-served units - I mean, communities. So, that would be a suggestion of somewhere for you to look.

MS. KREISMAN: Also, I wanted to say that you could - the Committee's structure now can change with respect to whatever - you should certainly, if this is one of the projects, be a participant in that committee. So, you are not - we are not limited to the committee structure now -

CHAIRMAN RIVERA: Right.

MS. KREISMAN: - or participation, and I thought I would mention that.

CHAIRMAN RIVERA: That's a very good point you make. Thanks very much for bringing that out.

So, anything else?

All in favor?

(Chorus of ayes.)

CHAIRMAN RIVERA: Anyone opposed?

Great, Nicol?

MS. TURNER-LEE: So, and this last one, as I close, could possibly tie to the third one. I like our Designated Officer, Barbara's comment, because we don't have a committee on this last one as well, which is the importance of core principles around STEM.

So, all of us have had a conversation around STEM. Our Committee talked extensively about STEM. We've all researched it. We know the implications of communities of color by not having core values and core competencies around STEM and the types of jobs that are created around STEM concepts, as well as the way it bridges the educational achievement gap.

So, our recommendation here was to come up with a core set of principles, a core digital learning and science, technology, engineering map, or STEM principles, that serve as a guide for bridging national educational achievement gaps, especially, among people of color and low-income students. And, we thought that this Committee could bring a set of principles and practices that can be considered by the Commission in the development of digital learning initiatives.

So again, that could, actually, be tied to No. 3, as part of the work much like Ron had talked about some of these things being sort of interrelated. But, we felt that there was, again, this Committee could drive the leadership on thinking about what are those core principles.

Right now we see a lot of great conversation of value coming out of the Department of Education. We've seen stuff coming out of the FCC, again, with the expertise around this table, the importance of really putting out those values and principles, coupled with our No. 3, right, which are best practices, might, actually, advance this conversation on what that looks like for communities of color.

Just a last plug on that. One of the things that I learned recently is that, with STEM, if you don't introduce that to young people, or young Black boys, for example, before 6th grade, they tend not to want to pursue those careers. And so, we have all had the conversations of the different times of intervention, but we've not seen this very progressive conversation and set of principles and practices, and things that are being implemented now, that could, actually, advance this dialogue.

So, we put that forth. And, in fact, I'd like to - my Committee is okay - kind of combine 3 and 4 to not offer so many ideas, but to see if there's a way to, actually, have this conversation around best practices around digital learning and education processes, in addition to strategies and principles for advancing STEM and digital learning and knowledge among communities of color.

CHAIRMAN RIVERA: Thank you.

I'd just note that should the Chair's office want you to develop that into a full-blown recommendation, I think your committee would have to tie that somehow to the Commission's jurisdiction.

MS. TURNER-LEE: Yes.

CHAIRMAN RIVERA: And say, you know, why this isn't, essentially, the Department of Ed. I think it's a wonderful concept, it's just that, you know, how does this work for the FCC?

MS. TURNER-LEE: Yes.

MR. LEE: One of the reasons - one of the ways you can tie it together that we found in public television, we've developed a lot of apps and things for the education, but going into under-served communities -

MS. TURNER-LEE: Right.

MR. LEE: - all this stuff is useless, because they don't have the application, I mean, they don't have the -

CHAIRMAN RIVERA: The tools.

MR. LEE: - the tools.

CHAIRMAN RIVERA: Yes.

MR. LEE: So, there's a great wealth of apps and information in education and STEM money, but we can't use it in the communities of color, because they don't have laptops, they don't have internet access.

CHAIRMAN RIVERA: Right.

MR. LEE: They don't have all the tools that you need to use all the technology that out there.

CHAIRMAN RIVERA: And, some of them are digital illiterate.

MS. TURNER-LEE: Right. Right.

MR. LEE: Exactly.

MS. FLEMING-WILLIAMS: I would just like to add -

CHAIRMAN RIVERA: Yes, Carolyn?

MS. FLEMING-WILLIAMS: - that under the FCC's National Ordering Plan, there are provisions that talk about digital literacy and private and public partnerships. So, that's a place where you can get a start.

CHAIRMAN RIVERA: Excellent, so they may be a link there.

Nicol?

MS. TURNER-LEE: Any time, actually, I mean, if you look at the bigger picture, and the bigger tunnel, right, it does tie to the conversation that we want to have around the use of unlicensed devices in these schools, because if you have those core principles, and you can accelerate access to these devices, then they don't have to go to private schools to get access to iPads and others for learning. But, they need the unlicensed spectrum to be able to run the devices.

So, it's part of the whole ecosystem that our Committee - and I think that's one of the reasons why our Committee sort of supported this, because we see it as the broad highway for, actually, making sure the schools are up to par on that.

CHAIRMAN RIVERA: Yes, Brigitte.

MS. DANIEL: Just to piggy-back off of what Ms. Fleming said, the FCC and the Department of Education did initiate the Digital Learning Fact Forum initiative, so that could also be an example of tie in.

CHAIRMAN RIVERA: Exactly.

MS. DANIEL: It's a very thin line, but it's all kind of interrelated at this point in time.

CHAIRMAN RIVERA: We just have to be explicit. That's my only point.

MS. TURNER-LEE: Okay.

CHAIRMAN RIVERA: It makes it easier.

Anything else? All right.

All those in favor?

(Chorus of ayes.)

CHAIRMAN RIVERA: Anyone opposed?

Nicol, thank you and your Subcommittee.

MS. TURNER-LEE: Thank you.

CHAIRMAN RIVERA: Nicely done.

MS. TURNER-LEE: No, thank you, thank you to all the Committee members.

CHAIRMAN RIVERA: David.

MR. HONIG: First, I'd like to thank the members of the EEO Working Group, who met September 4th, and had a number of conversations after that, and worked on the recommendations that we presented to the full Committee, a rather thick, granular version has been presented, fully footnoted, and I'll summarize it today.

The members of the working group are Jason Lagria, Karla Ballard, who is on the phone, Sylvia Strobel, and a few members who could not make it do, Jessica Gonzales, Karen Narasaki, Rudy Brioche and Andy Schwartzman, who I wanted to especially acknowledge because the underlying Equal Opportunity Rule was the subject of a petition for rulemaking that the Office of Communication of the United Church of Christ filed. And, Andy is, actually, old enough to have written it, which he did. And, thank you.

So, one thing that's important to realize about the issue of equal employment opportunity is that it has a very long history at the FCC. The FCC was the first Federal agency to require non-discrimination and broad outreach for employment for its regulatees.

That happened originally in 1968 with the Statement of Non-Discrimination, and then with rules first proposed in `69, and enacted in 1971 under the chairmanship of Chairman Wiley, and when Commissioner Hooks served on the Commission, and those rules took effect and they are assiduously enforced. Fourteen stations got designated for hearing over a period of five years, because of evidence of discrimination.

Minority women employment in broadcasting increased by over 50 percent, and that has never happened before or since. So, clearly, enforcement of rules does result in diversity.

Diversity has always been the primary basis for these rules, as well as preventing discrimination. As we know, and we summarized some of it in our presentation, there has been some controversy over what the Commission can do without it being regarded as race conscious. But, as the Commission has kind of stalled in figuring out the answers to that question, we've, unfortunately, had some retrogression. There's been no data collected officially. Fortunately, there has been some data collected by industry stakeholders, most significant of which is the study done every year by the National Association of Black Journalists, their Diversity Census, and examination of TV newsroom diversity. That study has been put together each of the last several years by Bob Butler, a member of NABJ, as a labor of love.

He was just elected the President of NABJ, and he has driven in and has visited with us, and is here today, and I'd like to yield some time to him to present the study, and put it in context.

MR. BUTLER: Thank you, David. Thank you, Mr. Chairman, and Members of the Committee.

NABJ started collecting this information about back in 2007, because we tried to find out the diversity of the industry, the networks, the TV stations. And, the industry, basically, said, thanks, but no thanks. We are not going to give you the information.

So, we began, basically, an investigative reporting project to find out who was calling the shots in newsrooms. We think it's very important to know who calls these shots, because we constantly have reminders why it's important.

We had the Boston Bombing, in which the suspect was described as a dark-skinned male. Even though I know for a fact that there were people of color in the newsrooms of some of these organizations saying, wait a minute, how do we know that, why are you saying that? And, it turned out to be wrong.

There was nobody in a position that could have said, wait, stop, let's not do that. So, I think it's important to have this information. We started doing this report, it's released every year. We are working on the most recent report that should be coming out, I say should be because I was elected President this year, and it kind of got in the way of my research.

But, I think it's important to note the report looks behind the scenes in newsrooms. We don't look at the reporters and the anchors. We look at the managers, because those people are the ones who decide the news agenda.

We know that in this report there are 295 stations owned by 19 different companies, and the diversity of management is, basically, 12 percent. 12 percent includes African Americans, Native Americans, Asian Americans and Hispanics.

I point out this, because the country diversity is about 35 percent. There's a big disparity there.

Now, I have no trouble if you are in a place that does not have much diversity. Take a city with very little diversity, you have none in your newsroom. I have a big problem with that, if you are in a place like New York City, or Washington, D.C., or Chicago, and you have a newsroom that's run by people, nobody that looks like me, or looks like Joe, or other people that might have the sensitivity.

So, I just wanted to be - to point this out to the Commission, and it's very timely. Mr. Reed was talking about the CIN study, which NABJ was a partner in developing the research model. And, one of the things missing from that was employment data, and that's something that we are very good at getting now, because we are reporters, and we know how to get the information.

So, I just wanted to come and talk to you about this report, the importance of it, and the fact that it's going to continue, we are going to continue getting the report out, and we'd like you all to take a copy of the report, it's available online at nab.org/diversitycensus, or you can Google it at 2012 NABJ Diversity Census. There's a lot of data in there.

What you can do with this report, you can look at the stations in the report, and it can tell you the race and gender of all the news managers. And, like I said, 12 percent is a far cry from 35 percent. We want to make sure that one day the people that are calling the shots in the newsrooms represent America, but they do not do that right now.

Thank you.

MR. HONIG: Thank you so much.

One of the recommendations, we have four from the working group, goes to whether this - these rules that kind evolve under the premise of promoting diversity, which is vitally important, how does that apply in the context of common carriers or Title 1 services that may, to a lesser extent, but not to it's full extent, is broadcasting or cable, directly impact diversity of content.

The Committee has, in the past, recommended that under the principle of platform neutrality these broadcast and cable rules be extended to other regulated platforms, which are kind of merging the lines, or blurring among them in any case. And, the working group recommends this first recommendation, that the Commission consider how it might do that, and under what justifications, irrespective of whether strict scrutiny applies, all rules should be well justified. And, in particular, should consider the diversity rationale, should consider whether these rules would promote competition has been discussed, would prevent discrimination, and would remedy the present effects of past discrimination in these businesses. And, that would be a dialogue that the Committee should have with OGC.

Second recommendation -

CHAIRMAN RIVERA: Let's hold off there, David. Let's just vote on that one recommendation.

MR. HONIG: Oh, sure.

CHAIRMAN RIVERA: Okay? So, any questions for David on extending the EEO rules to platforms other than broadcasting and cable?

MS. DOZIER: Question, sorry, this has been brought up in another proceeding currently, this proposal that you just made.

MR. HONIG: Yes. The Committee voted on a similar recommendation a few years ago, and it's also been the subject of filings in the ongoing broadcast EEO proceeding, but there is no separate docket that's been created to look at EEO in other industries besides broadcasting and cable.

MS. KREISMAN: I would, respectfully and politely, urge you not to approve this, because this is exactly the kind of thing that I don't think - we need to focus on issues where we are sharing our expertise.

There's another vehicle for this kind of a proposal, it's a proposal, a notice of rulemaking, a request for rulemaking. There's a legal way to do this, where there's comment, and there's an opportunity, a formal opportunity for people in the industry to respond.

I would, respectfully, argue that we would better - better use of our time would be to look around us, take our collective expertise, and look at the type of issues that the other two committees have suggested.

CHAIRMAN RIVERA: And, it's being - it's in another - it's already being considered as Erin points out in another docket.

MR. HONIG: It's in 98-204. And, has been put forward as a proposal and the Diversity Committee has endorsed it. So, it's the Commission's call whether to expand the scope of that docket to, specifically, include this, or whether to break it off into another docket, but it's been fully briefed up. So, it's really the Commission's call.

MS. KREISMAN: And then, the Commission already has it before it, and they can decide its timing. But again, it's not an issue where we are - we are in a unique position to use the extraordinary expertise, and there have been some examples today, this isn't one. This is a really - just addressing an issue that's already before the Commission in another context, and using it as a way to lobby it, I suppose, I don't know.

But again, I don't think it's a good use of our resources. Again, I would, respectfully, request that you not approve it.

CHAIRMAN RIVERA: I think - I don't understand the point, David, of our sending this to the Chair to have this developed, when it is already before the Commission.

MR. HONIG: But, nothing has been done. And -

CHAIRMAN RIVERA: Well, that's another issue.

MR. HONIG: Yes.

CHAIRMAN RIVERA: And, I don't think that that -

MS. KREISMAN: And, if that issue - there are other vehicles outside of this Commission if you think the Commission hasn't acted in a particular area, one that you have pending pleadings, or have advocated. That's not our committee. That's an independent action by you with respect to your other hat.

So, I think that's important.

CHAIRMAN RIVERA: Any other comments on this?

Andy?

MR. SCHWARTZMAN: I don't know if my mic is working, but, perhaps, what might be appropriate is to hold off on this for the next meeting, and maybe have a dialogue between the Committee and Commission staff, and decide whether or not to bring it back for next meeting.

CHAIRMAN RIVERA: I think that's a course the Chair would prefer to take, David. Let's hold off on it, and see whether we want to do that.

So, if that's all right with everyone, we'll just go ahead and table this. We won't need to vote on it right now.

So, Erin, thank you for pointing that out. Appreciate it.

Go ahead, David, with your next recommendation.

MR. HONIG: So, the second recommendation that we made relates to audits and enforcement, which the Commission has used for the last 12 or so years to review broadcasters and cable companies recruitment, and whether their EEO programs that they filed with the Commission have been effectuated.

Here we looked at the fact that very few stations fail an audit. The level of enforcement is about 2 percent of where it was in the mid 1990s. Of course, we know that the rules have changed, but we did not feel that that should inhibit the Commission from assiduously enforcing the rules that it has.

And, we've come up with some kind of sub-recommendations, or things that the Commission could do to enhance the strength and effectiveness, and credibility in some instances, of EEO enforcement.

One of those is to simply recognize that presently it's housed in the Media Bureau. I think it may be the only enforcement staff in the Commission which is not housed in the Enforcement Bureau, and thus, we've suggested that the Civil Rights Branch should be created there that would encompass other similar areas of civil rights enforcement, such as transactional advertising and procurement non-discrimination across all platforms, that the commission enhance and kick up a notch the audits that it does, and not hesitate to take cases that involve egregious misconduct and look at them in hearing, and to conduct kind of more audits and deeper ones, on-site review, and looking particularly at the single most important factor I think that we identified is to look at what the Commission has honed in on in the past as most indicative of discrimination.

Presently, audits only examine whether an employer recruits broadly from places other than word of mouth from its own staff. That is one element that the Commission considers when determining whether a licensee has engaged in intentional discrimination.

But, the other element that it considers is whether that excessive word of mouth recruitment was done from a homogenous staff. What the case law says, and makes clear, is that if your staff is heterogenous, and you rely, primarily, on that staff for recruitment, it doesn't tend to replicate a homogenous staff over time. It may be inefficient and unbusinesslike, but it's not unlawful.

Unfortunately, the Commission kind of treats that the same as if you are doing word of mouth recruitment, primarily, from a homogeneous staff, which the Commission has found and the courts agree, is inherently discriminatory, would be grounds for hearing.

The way to cure that is to, and we address in our next recommendation, actually, which relates to Form 395 data, is that if there appears to be excessive use of word of mouth recruitment to then look at the second step, which was, well, was the workforce homogenous or not.

So, before turning to that recommendation, I'd like to put forward these specific proposals relating to audits for consideration.

And also to note, and we say this in the report, that there is a particular area where minority employment, particularly, seems to have just collapsed, and that's radio journalism. That has never been examined by the Commission. Data seems to show that almost no minorities work in radio journalism anymore, except at Spanish language, Asian language, and minority-owned stations, and that this might be a proper subject for the Commission to consider under 403 of the Communications Act, just as it considered matters such as payola back in the say under that statute that allows for broad investigation into an area that goes to the Commission's effectiveness of its rules.

CHAIRMAN RIVERA: So, this is, basically, a proposal to enhance EEO enforcement, and you mentioned several - the audit, and looking, specifically, at radio journalism and so forth.

So -

MS. KREISMAN: Again, I would urge you not to support these proposals. We've seen these from you, David, before.

The value of this Committee really is the expertise it brings cumulatively. It's not recommending that the Commission do something that it's been asked to do before in a different context.

To do that devalues the goal - our goal. If we can be perceived as a Committee that has a unique perspective, based upon the industries and the information that you have, that really makes our work product extremely valuable and special.

Again, I urge you not to, because these are recommendations that have been made before. They are not based on our cumulative expertise, and they are fine to be considered in another forum, but not here.

CHAIRMAN RIVERA: Anyone else?

Jim?

MR. WINSTON: I'm a bit troubled, because I think the charter of the Committee is changing, and I got that from Barbara's opening statement today. And, I was curious about what she meant when she made that statement. And, I'm curious now about what it is the Commission wants from this Committee.

MS. KREISMAN: To operate as a Federal Advisory Committee, which it really never has. I've, actually, had a lot of experience with Federal Advisory Committee, and I've seen the wonderful work that can be done when a committee brings its joint experience together and shares its expertise in a way that we can't gather the information.

I'll give you an example. Let's say we wanted to do something on recruitment and hiring. And, you wanted to give us information that we otherwise couldn't get.

One way to do it, for example, I've just picked this out, I'm not suggesting this be it, that all of your companies put together in a room, all of the people that you have, actually, doing that job, sharing what works for them, and what they've been successful at and what they haven't. All of a sudden, you are bringing together a bunch of different minds representing different areas, putting together a best practices approach that has worked across various industries.

There's no way for us here at the FCC to get - have access to that kind of an expertise in such a defined way. What we've traditionally done is not anything different than your organization can do without this committee, come in with a bunch of suggestions or rule proposals, that's not sharing your expertise. And that, I think, is the unique charge of this Committee, and I don't think we've been successful in the past doing it, and there's been a lot of frustration.

We've made recommendations, people have knocked their brains out making recommendations, but what the Commission needs from us is our expertise.

Your proposals hit on it beautifully. Your proposals hit on it beautifully. Don't you see the distinction between that and the proposals that are being made now? I don't know how else to describe it. I'm not as articulate as some of you. Maybe you could help.

CHAIRMAN RIVERA: Let's let Jim have - do you have a follow-up?

MS. KREISMAN: Okay.

MR. WINSTON: I'd like to hear some of my other colleagues.

CHAIRMAN RIVERA: Joseph, you are up.

MR. TORRES: Yes. I just want to - before I worked at the Free Press I was the Deputy Director for the National Association of Hispanic Journalists. And, as Bob said, it shouldn't be the job of an DJ to have an investigative reporting project. And, I know a little bit, and Maurice Foster for NABJ writes this as well, to get the data I mean they, literally, have to do a covert - before, ask members within NABJ within these newsrooms to help them with it, because, as he says, the companies don't want to give them data, and they are partners with the companies. He's saying companies come to their conferences and recruiting, and these best practices you are talking about, these conversations have been going on for years about conferences. What is the best practice to recruit people of color?

And, when it comes to color, what should you be aware of in trying to go to the job fair and, you know, to put out your - to represent yourself well for the job. This has been happening for a long time.

And yet, Bob, has to be - he has to have investigator journalism skills, NABJ Vice President, now President, and I think this is the frustration, that we are not getting any results. And meanwhile, you may have a situation where newspapers and broadcasts, they say newspapers, the number of journalists of color that work in newspapers is dramatically declining.

So, it gets to the point where Bob said in the very beginning, that this is a real issue that really impacts people's lives, and how, ultimately, at the end of the day we are getting how we are covered and how we are viewed.

And, we are trying to, I think what Bob is saying, and what David is saying, I think this gets to the heart of it. So, to think that we are just relying on industry best practices, a lot of us around the table have been trying that for years with not much success.

MR. REED: Just sort of to echo what Bob was saying. Obviously, there's a lot of agreement around this table about what the issues are.

I think, you know, my focus, and Barbara's focus, has been to marry what the FCC is looking at, what we can do with the expertise that's in this room. That's one of the reason we put together the subcommittees.

So, nobody is saying that EEO enforcement is not a problem. One thing I will point out is that, a number of these proposals, I think all of them, are all pending before the CWA docket. So, if they are pending, it's, frankly, not the best use of this Committee's time, if those proposals are already pending before the FCC.

As Barbara pointed out, I think, as we've seen in a couple of the subcommittees, we are seeing concepts that are being advanced that can come back to us.

I think Andy's suggestion is a good one, too, aside from the fact that these proposals are already pending before the FCC and the CWA docket, it may be useful for us to have an off-channel conversation about them, in terms of understanding exactly what's happening with them at the FCC at this moment.

So, it's not taking these things off the table, but it is certainly making sure that we have our focus appropriately set on the issues that the FCC is looking at, that we need some advice, broad advice and expertise on, and that's what we are getting, at least partially here.

So, I just wanted to add that.

CHAIRMAN RIVERA: Thank you, Tom.

Nicol?

MS. TURNER-LEE: No, I think this - I think this whole conversation today has been valuable, and we appreciate the Commission, actually, coming to this Committee, and, you know, to agree with Barbara from the standpoint of finding ways to make this Committee much more effective, and getting the Commission to understand how we can be a helpful and value add.

I guess the challenge is, by not putting any proposals on the table around EEO enforcement sends a really big message that that's not important to us. And, I think if you look at all of the proposals that have come forth today from supplier diversity to more inclusion of minorities in some of these, you know, popular and up-and-coming and emerging technologies, EEO is, actually, probably one of those critical areas that's probably a little bit more mature than these other spaces, but has to be addressed.

And, I think one way to, actually, have the Committee that worked on those proposals walk away feeling that they've contributed to the dialogue is, perhaps, to do what I think Ron recommended in his, which is to really go a little deeper than that with what has been done in this area. We have seen this platform quickly grow, where it's not the traditional companies and media that are under-represented when it comes to people of color.

As has been mentioned from this Committee, we've seen enforcement, maybe not yet heavy as it was before, in a time where we are seeing economy with tightening controls, and tightening opportunities, and seeing the space that, essentially, becomes the next gateway for people of color, not just in the professional realm, but also on the blue collar realm.

So, I don't know. I mean, I put it out to this Committee to think about ways to, actually, bring back, I think, several of those good recommendations of just revisiting, to see how well we are doing, and maybe offer that more as a recommendation, as opposed to, you know, coming in with that, what I think I'm hearing, is reiteration of the preceding, but being a little bit more proactive as an advisory committee, as to how do we go back and revisit what was before us, and maybe taking some models like the NABJ model, or things that NAMIC has done and WIPP has done, to really see where we are, because if we don't take that on I think we are going to miss some of those opportunities going forward.

CHAIRMAN RIVERA: All right.

Yes, David?

MR. HONIG: When this Committee was established in 2003, it was very clear that one of the core areas that it was going to address, and in which members were recruited because they had broad expertise, was equal employment opportunity. That was one of the three major purposes of the Committee, and has been ever since.

We've been down the path, and let me just acknowledge that in this room alone is over 100 years of collective experience on equal employment opportunity. The experts in the country are in this room today. We went down the path of developing best practices, which, appropriately, was the right first step and first approach.

We, actually, wrote a book that was commissioned and put in the Commission's website in 2004, and came up with specific recommendations for how the equal employment opportunity rules could be tweaked to take account of the fact that the industry was shrinking and that more issues were arising for enforcement purposes in the context of retention, as opposed to recruitment.

Unfortunately, no action was taken on those recommendations, and it has been nine years. Other organizations have filed comments at the time that this happened and since, and nothing has been done. This is not an area that a credible advisory committee can retreat from.

We have seen a collapse in enforcement. We are seeing a collapse in employment, at a time when the Nation is becoming - going into having a digital economy. There's no issue more critical on which we have more expertise.

So, I just wanted to encourage, with great respect for the Commission's prerogatives, the body to not retreat from this area, which I think is fundamental to what it does, and fundamental to what the Commission does.

I would close by just noting that what has been asked of us is to propose concepts. The Chair of the Commission can accept or reject them. That's a dialogue that the Committee can have with the Chair, or the incoming Chair, as to what direction to take it, but, certainly, one thing that the task force found not acceptable is another nine years of no significant action on a matter that's vital to competition and diversity.

CHAIRMAN RIVERA: David, why don't we go ahead and - did you have something else, Jim, that you wanted to add?

MR. WINSTON: Well, I think this is an important dialogue we are having right now.

CHAIRMAN RIVERA: I agree.

MR. WINSTON: And, I'm sorry that Diane Sutter wasn't able to be on the call today, because some of the recommendations, or some of the concepts that came out of our Committee probably got caught up in this same conversation. And so, that's why I wanted for us to understand what it is we are saying the Committee's role is going forward, because I think it needs clarification. Let me put it that way.

CHAIRMAN RIVERA: All right. Point taken.

David - Mr. Butler?

MR. BUTLER: If I may, thank you very much.

My members are wondering why it is that the FCC is quick to fine a network when there's a wardrobe malfunction in the Super Bowl, yet allows employers to get away with not hiring our members. That doesn't make sense to my members. It doesn't make sense to me, as to why the Federal Government, in its regulatory role, doesn't have the kind of data it needs to do a proposed rulemaking, and, actually, relies on an outside organization to collect the data for it.

We just have a lot of questions in the role of the FCC in regulating the industry. You know, we have companies out there that are putting product on the air that is biased, and it's supposed to be unbiased, because they are part - they are on the public airways. We have companies and stations putting information out there that is inaccurate, and, in fact, can be construed as violating FCC policy, and nothing is done.

So, I understand that you want the Committee to come back to you with things that would move the process forward, but a lot of people are asking, how long is it going to take before we get actual enforcement from our Federal regulators.

CHAIRMAN RIVERA: Thank you.

David, what I'd like to suggest is, we hear your other two recommendations, and then we come back and revisit this, see what kind of reaction we get with the other two recommendations.

MR. HONIG: Sure.

CHAIRMAN RIVERA: We're not going to vote on this second recommendation at this point.

MR. HONIG: The third recommendation speaks to the question of transparency in the 395 data. One reason for that was already stated, which is being able to know whether a recruitment practice rises to the level of intentional discrimination. And, the other is, really, just in the interest of transparency, and ensuring that members of the public have information about their licensees that serve them, that would help them to make good choices, in terms of viewer-ship, listener-ship, and participation themselves as job applications and as people who work in the industry.

The recommendation is simply that the Commission restore the collection and public access to this critical information, and notes that there is no legal impediment to doing so.

And, if I can just state briefly, the fourth recommendation relates to the FCC EEOC Memorandum of Understanding from 1978. This, actually, is a matter that has not been taken up. I think it's the only matter that we have that's not presently before the Commission.

And, right now, that Memorandum of Understanding requires both agencies, when they receive a complaint of discrimination against a broadcaster or cable company to notify the other, and decide which of them will take the lead.

Here, now that the Commission has gone to the process - gone to a - gravitated to a procedure based on audits, this would suggest that that memorandum be amended such that when a Commission audit uncovers possible discrimination, that would trigger a notification to the EEOC, and vice versa when the EEOC receives a serious complaint of discrimination by a regulatee it would forward that to the Commission initially for a special audit.

CHAIRMAN RIVERA: All right, thank you.

Barbara, do you want to speak to these?

MS. KREISMAN: I guess I have the - I don't want to repeat myself, I understand the feeling of some of the members here. I'm not telling you that any of the comments you've made are not correct, I'm just looking at the scope of this body, and I think I have the same problems with all of the recommendations.

CHAIRMAN RIVERA: Okay. Anyone else?

Nicol?

MS. TURNER-LEE: Yes. So, just to add to that, and so we can sort of honor the work of the Committee, should the conversation be around how can we take this bigger rock issue of EEO enforcement and, perhaps, bring before the Commission a concept of looking at maybe a culmination of what we've heard today, you know, taking that head on.

I mean, David mentioned the 2004 best practice document, 2013, almost 2014. I know a lot of traction was not met, but I'm just curious, I think, Barbara, this is kind of what you are getting at, to sort of shovel out rocks and paths we can effectuate change around.

MS. KREISMAN: Using the expertise of this body, right, as opposed to, you know, saying, Commission, you haven't done this or this. There are other forums - I'm not telling you you shouldn't be upset about it, but there are other forums to do that. I'm looking at this to be a constructive forum, and again, using the expertises of many people here.

MS. TURNER-LEE: I honestly think that we'll get back to some of these issues. They are not going to go away, they are, actually, still there, and they are still unresolved. But, I think in terms of repackaging it, so that it can be heard, I think - I mean, I speak for myself, but it's imperative that we bring before the Commission a concept around EEO and EEO enforcement.

CHAIRMAN RIVERA: Point well taken.

I think also, it's difficult, as I said initially, again just conceptually, going to the Chair to say, we want you to help us - we want you to ask us to develop these concepts, so that you might consider them, when the Commission has already considering them in other dockets. I mean, we've got to kind of deal with that.

That isn't what Chair Clyburn asked us to do. So, we've got to deal with that. I like your suggestion.

Does anyone else have some thoughts?

MR. WINSTON: Yes, I'm just interested. In one of the iterations of this Committee over the past, what, decade, there was suggested that we should receive suggestions from the Commission about which subjects we should be -

CHAIRMAN RIVERA: Absolutely.

MR. WINSTON: - we should be addressing.

CHAIRMAN RIVERA: Absolutely.

MR. WINSTON: And, I don't know -

CHAIRMAN RIVERA: That has not changed. What's changed is our ability to go to the Chair to say, give this to us to work on.

MS. KREISMAN: Right. And, here is the expertise we have to help you. That's the piece I'm getting at.

CHAIRMAN RIVERA: That's what's changed. It's a nuance, but I think it's an important one.

MR. WINSTON: Yes.

CHAIRMAN RIVERA: In the way that we are doing our work.

This Chair has said, I'm willing to consider your suggestions about what it is that you want to work on. We haven't had that up to this point.

MR. WINSTON: And, I think that's what I heard David providing, was these are our thoughts about issues pending before the Commission.

CHAIRMAN RIVERA: Right.

MR. WINSTON: But, I hear you all saying that they are already being considered, and I understand that. I guess, my concern is that the Diversity Advisory Committee, as you said, we represent a variety of viewpoints. It seems to me that if we come together as this diverse body and say to the Commission, collectively, we believe these are important issues, that has a different weight than if we come separately in our individual capacities.

So, saying that we shouldn't repeat it here troubles me, because I think it does have a different message if it comes from this body, as opposed to as if it comes from us in a common rulemaking proceeding.

So, I feel like, to some extent, the voice of this Committee is being narrowed, and, you know, and maybe what I'm hearing from Barbara, maybe what you are saying to me is that, if you do it now your voice will be heard.

MS. KREISMAN: Also, there's a piece missing in your recitation.

MR. WINSTON: Okay.

MS. KREISMAN: Not just - all the issues mentioned here are important, but the piece is, which of these issues can we, actually, help with the expertise that we have in the industries that we represent. This is another piece of it here. What can we provide by cumulatively putting our information and expertise together, which is different than an issue in a legal proceeding. It's different. It's harder, actually.

MR. WINSTON: Well, all I would say is that, if ideas come out of a subcommittee here, then it seems to me that we have the - you know, it's appropriate for the subcommittee to bring to the full Committee, and have a vote on whether or not this is something we want to present to the Commission.

MS. KREISMAN: That's what's happened today.

MR. WINSTON: And, well, you know, but I heard you saying don't bring this to us, which is what is troubling. I think if the body says we want to say this to the Commission, I'd like to have some dialogue about whether or not we should be saying it to the Commission.

MS. KREISMAN: Well, I think, actually, in my role I can tell you what I think, because it's in the constructs of our charter. I think that is my role here, first of all.

And, I don't think our role here is to use this body to raise issues we've already raised with the Commission in another - as a way to lobby them, or repeat it, especially, if it's pending in another proceeding. I do not think that's the role, and I do not think that's contemplated by our charter.

So, I will say that. And, I don't think every idea is appropriate to be raised, not that they aren't important ideas, but, no, I don't see the role of this Committee has broadly as it has, and I think it could be more effective if it's narrower, sticks to the charter, and sticks to the expertise of the Committee. I think it will be much more valuable, and much more appreciated, and much more effective.

MR. WINSTON: This is a very helpful dialogue. I think shortly as we go forward in our subcommittees we need to be conscious of the guidance you are providing us today.

So, I thank you for that.

MS. TURNER-LEE: Barbara, I just have a question.

Can we go back, though, before the Commission and ask, as part of the Subcommittee work, that the Committee is interested in kind of revisiting, you know, where these things are, and if they are progressive enough to sort of accommodate, you know, this changing landscape, something like that.

I mean, I think there's some value in doing that.

MS. KREISMAN: I think, you know, that's something to explore, I think, in your working group. And, basically, you know, I break it down as, what is it that we want to explore, how can we bring our expertise to help explore it, as opposed to just say you do it. What we want to get away from is that, this Committee has been a lot like this, you do it Commission. Here's another idea for you to do.

I think the most successful committee, actually, produce their own body of work. I think I can point to them, Security Reliability Council, they, actually, put - they, actually, came up with defense plans that have been adopted by many of the broadcast television and radio stations, that would have been putting all people in the room from different companies, and combing their cumulative expertise to come up with best practices. Then there's a body of work. There's a body of work that they claim is attributable to them.

I'd love us to be able to come up with something that we say, this is the work of our Committee, look at it. Here it is on the website, we've done it, you can rely on it for this reason.

It's hard. It's harder. It's harder than just saying, okay, here's an issue, you do it. And, I'm not being disrespectful, please.

CHAIRMAN RIVERA: I think also I'd just like to note that, you know, we have been operating under a structure where we have been asked to work on certain things. And, when I was told that that was how we were going to operate, I thought that was going to be better for us than the other way we had been operating.

You've been on this Committee since its beginning, and you know how we used to operate. And, I thought that because of the fact that we were sending up all these recommendations and they weren't acted on.

So, I thought, well, that's fine, let them ask us to - tell us what they want us to work on, and then we can do that, and we would do that, and I told them, look, if we're going to operate this way, then when we send you stuff you've got to act on it. After all, you told us you wanted us to work on it.

So, but that hasn't worked out so well, from my perspective, and I know from other people it's been fairly frustrating. A lot of you have shared your frustration individually. And now, Chairwoman Clyburn has offered us another way. She said, okay, you tell me what you want to work on, and then we can consider it up here, and then we can send you some stuff.

So, I would hate to go back to her with something that she didn't mean. If we send some stuff back to her that we didn't - she didn't mean this, you know, and I think we are hearing from Barbara what she's talking about.

So, this is the kind of thing that we don't - we don't want to send her back, I don't think. I like Nicol's - I like Nicol's approach. I think that this - the Committee worked hard on this. I know David put a lot of blood, sweat and tears into these recommendations, but I think it can be repackaged to meet the criteria that Chairwoman Clyburn has established, in terms of how we ought to look at this going forward.

So, you know, and the buck has got to stop here. I put this email out after I chatter with her, and, obviously, it's created some confusion, at least among two of the subcommittees, and so I apologize for the confusion that I caused.

But, I think, David, we ought to follow Nicol's suggestion and not vote on these, to table them, and try to repackage them and try to understand how we can better meet Chairwoman Clyburn's criteria and give her something that meets those criteria that we can go to work on.

MR. HONIG: I can concur with that. I don't want to speak for the entire working group, but just for myself.

I would like to note, there is a question of jurisdiction that it might be useful to clarify, because it really lies in other places, and that is whether the fact that there is a pending petition for rulemaking, or that a matter has been raised by third parties in a docket, deprives this Committee of jurisdiction over it.

What would happen, for example, if the Committee put forth a recommendation, and while it was considering it a third party filed a petition for rulemaking? Would that take it off of our table? Or, is it relevant to whether we ought to be heard about it?

Many of the best recommendations from the advisory committee on civil rights came from the industry experts, and private sector experts, and academics came together, specifically, to consider recommendations that third parties had made, the Nation's rules on red line, environmental justice, on environmental regulations in many cases, consumer protections often came about because of the intervention and participation and guidance of advisory committees at a time when agencies and departments were somewhat vexed considering aggressive proposals that had been made and propounded by third party organizations.

And, it was, particularly - and this - we've had some experiences like that here as well. So, it's just a question, just to be sure that we understand what we can do and what we can't and why, that would be useful to be clarified.

CHAIRMAN RIVERA: Well, under the instructions, as I received them, as I understand them, what you suggest is not within our purview right now.

Now, that doesn't mean it couldn't be. The Chair could say, you know, this petition has been filed, we'd like your collective expertise on it, and we think you have something to offer to the Commission's process here.

But, right now, that's not what I understand we are supposed to be doing.

So, if it's all right with everyone, we'll table these recommendations at this point, and we will revisit them when they, hopefully, can be repackaged, and we've still got to deal with the other - with market barriers to entry recommendations.

So, we'll take that up as soon as we can.

MS. TURNER-LEE: So, Mr. Chairman, the protocol, will we do a conference call, or will those just be delivered to us in some type of package, so that we don't delay the deliverable to the Commission?

CHAIRMAN RIVERA: Right. I don't know. A lot of it will depend on David's way to repackage this.

MS. KREISMAN: Can't do a conference call, but it still counts as a meeting.

CHAIRMAN RIVERA: So, we have to give notice and so forth.

MS. TURNER-LEE: Okay.

CHAIRMAN RIVERA: So, it's not - it's just not as easy as calling a conference call.

MS. TURNER-LEE: Okay, yes, because we still have to hear the other committees.

CHAIRMAN RIVERA: Right. So, I'd like to adjourn this meeting, unless there is anyone who has anything else to bring before this August body.

Yes, Steve?

MR. ROBERTS: When do you think the next meeting might be?

CHAIRMAN RIVERA: Well, I haven't had an opportunity to talk to Barbara or to Tom about this, but I'm hoping that we can meet some time in December. I know December is not a great time, but we have not - we've only met twice this year, and so I'd like to get another meeting under our belt.

And, as soon as we - Barbara has got to find out when this room is available. It's in great demand. So, we'll see what we can do. And, as soon as we find out we will put the word out.

MS. KREISMAN: Is there any terrible dates in early December, because I know we are in conflict with a radio show now. Would you please let me know, and I'll -

CHAIRMAN RIVERA: Send Barbara an email.

Again, Barbara, thanks for all your work. Tom, thank you for all your work. We really appreciate it.

And, I'm going to call this meeting adjourned. Thank you all for coming.

(Whereupon, the above-entitled matter went off the record at 4:27 p.m.)