

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

2:02 p.m.

1
2
3 MS. KREISMAN: Welcome to the fall
4 meeting of the Diversity Advisory Committee.
5 We have a number of people on the phone, and
6 we have a number of people in attendance.
7 Thank you very much, I hear it's a nice fall
8 day out there.

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

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

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

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

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

17 And so, I didn't distribute paper
18 on this one, because I'd like the chairs of
19 the committees to consider taking a look at
20 the projects that they had on their pieces of
21 paper, and thinking about which is the one
22 that looking at the paper here, and the

1 companies that are represented, that we have
2 the information that if we put it together
3 collectively we could provide the Commission
4 with information that would help understand
5 best practices in a particular area.

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

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

22 CHAIRMAN RIVERA: Well, welcome

1 all. Thank you for taking your time out of
2 your busy schedules to be with us today.

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

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

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

21 I want to also thank Barbara for
22 all her work in getting us ready for this

1 meeting, and, of course, Tom Reed from our CBO
2 for all of his help. So, thanks very much.

3 Do we want to take the role on the
4 phone?

5 MS. KREISMAN: That might make good
6 sense.

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

10 MR. ULLOA: Walter Ulloa.

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

13 MR. ULLOA: Walter Ulloa.

14 MS. KREISMAN: Thank you very much.

15 MS. GONZALES: Jessica Gonzales.

16 MS. KREISMAN: Try that one again.

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

19 MS. KREISMAN: Thank you.

20 MS. TAYLOR: Loris Taylor from
21 Native Public Media.

22 MR. HARRELL: Charles Harrell, II,

1 of the IT Architect Corporation.

2 MS. BALLARD: Karla Ballard,
3 Broadband Opportunities Coalition.

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

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

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

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

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

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

16 MS. KREISMAN: Got it, thank you.

17 MR. KUO: Speaking through an
18 interpreter with CSB.

19 MS. KREISMAN: Thank you.

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

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

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

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

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

11 MR. JOHNSON: Ronald Johnson,
12 Solutions for Change.

13 MS. KREISMAN: Barbara Kreisman,
14 DFO.

15 CHAIRMAN RIVERA: Henry Rivera.

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

18 MS. DEUTSCH: Ruthanne Deutsch,
19 Akin Gump.

20 MR. REED: Tom Reed, OCBO.

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

1 MS. MCGINNIS: Nicole McGinnis,
2 with the FCC, now in the Public Safety
3 Bureau.

4 MS. HARDY: Chanelle Hardy,
5 National Urban League.

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

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

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

12 MR. TORRES: Joseph Torres, Free
13 Press.

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

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

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

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

1 MR. BROYLES: Eric Broyles, Expert
2 Connect.

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

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

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

9 MS. KREISMAN: She's got a video.

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

12 MS. KREISMAN: Yes.

13 CHAIRMAN RIVERA: She's already
14 recorded it.

15 MS. KREISMAN: Yes.

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

18 MS. KREISMAN: It's all set.

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

21 Thank you.

22 CHAIRWOMAN CLYBURN: (Through

1 video)

2 Good afternoon, everyone.

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

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

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

21 I am excited that we have taken up
22 the task of delivering innovative ideas on how

1 to accomplish this important goal.

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

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

16 Over the past two decades, the
17 Commission has adopted rules to promote
18 communication services and devices over
19 unlicensed spectrums, which as you know is
20 largely used for devices like monitors and
21 garage door openers. Now, due to the
22 development of WiFi services, it is an

1 integral part of how nation-wide and regional
2 commercial mobile wireless companies are
3 providing service to consumers.

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

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

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

22 I also know Tom Reed is here

1 today, to talk to you about the study
2 commissioned in 2012, to examine the current
3 body of literature of the critical information
4 needs of the American public. He will provide
5 you with an update on this research and answer
6 your questions.

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

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

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

21 CHAIRMAN RIVERA: Tom and Barbara,
22 I hope you will carry back to the Chair our

1 gratitude for her taking time to make that -
2 make those remarks to us.

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

5 CHAIRMAN RIVERA: Right, no, I know
6 that.

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

10 So, Tom, you are up.

11 MR. REED: Thank you, Henry.

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

18 I think as many of you know, and
19 maybe I'll just go back and do a brief
20 overview, in 2012 we commissioned a study by
21 USC Annenberg, School of Journalism. They
22 pulled together a group of scholars to do an

1 inventory of all of the scholarships that have
2 been on critical information needs and studies
3 of various media ecologies, and how they
4 impact diverse communities.

5 That study was released in June of
6 2012, and one of its recommendations was that
7 we do a more detailed and in-depth study of
8 markets that then was pulled together in
9 September of 2012. We gathered another group
10 of experts, social scientists, political
11 scientists, and a media specialist, to answer
12 questions about what kind of research design
13 would we pull together in order to study
14 particular markets, digging into markets,
15 answering questions like what kind of
16 information was being provided in a particular
17 market. How do individuals and diverse
18 minority groups extract information, important
19 information, from those various media
20 ecologies.

21 And so, the research design was
22 completed. We, actually, commissioned a

1 company, Social Solutions International, that
2 completed, with the consultation of that
3 research group, a research design model.

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

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

18 But again, this is a test pilot.
19 I think this process is probably going to
20 take, I think we've been told, about eight to
21 ten months to select a market, and to pull all
22 the research design in that market, to

1 determine where the bugs are, what questions
2 we need answered, and to make sure that we are
3 getting the data back that we need.

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

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

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

1 CHAIRMAN RIVERA: Thank you, Tom.

2 Any questions for Tom?

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

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

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

17 So, if they could turn on the -
18 okay, there we are. All right, so, I guess it
19 would be good to start by giving a quick
20 definition of what the incentive auctions are.
21 They are a voluntary, and that's key, market-
22 based needs of re-purposing the spectrum by

1 encouraging licensees, in this instance we are
2 talking about broadcast television licensing,
3 full-power Class A stations, to voluntarily
4 relinquish some of their spectrum usage rights
5 in exchange for the share of proceeds from
6 another auction of new re-purposed licenses to
7 mobile broadband providers for flexible use.

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

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

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

7 To give you a sense of that in the
8 overall view, Cisco right now projects that by
9 year 2016 U.S. consumers will be consuming
10 1,700 pedabytes of data per month. And so, a
11 pedabyte is equal to 1 million gigabytes,
12 which is a tremendous amount of data. To give
13 you an idea that might be a little bit more
14 tangible, your average flip phone user, non-
15 Smart Phone user, you know, a few of you
16 probably still have those, you would use about
17 4 megabytes of data per month. Your average
18 Smart Phone user, something that is probably
19 more common in the room, your iPhones or your
20 Android devices, those users use on average
21 about 150 megabytes of data per month. And,
22 for your tablet users, you are talking about

1 517 megabytes of data per month on average.

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

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

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

22 What I mean by a range of options

1 is, the statute lays out three main ways for
2 a broadcaster to participate. First, the
3 broadcaster can opt to relinquish it's license
4 and go off the air, cease operation, and
5 receive the money from the forward auction,
6 receive compensation for their six megahertz
7 of spectrum.

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

17 Or, to bid to move from UHF,
18 ceding their 6 megahertz spectrum, and
19 receiving a 6 megahertz channel in VHF, which
20 depending on the broadcaster in question, and
21 the population they are trying to reach, and
22 how they reach that population, may be an

1 attractive option for them.

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

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

16 So, forward auction proceeds must
17 exceed reverse auction payment. So, what that
18 means is that the auction of the wireless
19 mobile broadband licenses, the proceeds from
20 that auction, must be enough to pay
21 broadcasters for the cost of their licenses in
22 the reverse auction. We have to cover

1 reimbursement for moving broadcasters, so
2 unlike the DCB transition Congress allocated
3 \$1.75 billion, or up to \$1.75 billion, for the
4 cost of paying the reimbursement costs of
5 channel reassignments. So, when a station
6 moves from one channel to another, the cost of
7 that, the reasonable cost of that, would be
8 compensated for. And also, the cost for MPVDs
9 to continue carrying their signals.

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

16 And then finally, promoting
17 innovation in a vibrant mobile market, and
18 what that means is, that goes towards what the
19 Chairwoman just talked about, which is, you
20 know, making sure that there is a spectrum
21 allocated to unlicensed purposes, because of
22 the important of un-license for a catalyst for

1 the mobile broadband environment. And, this is
2 something that all of the Commissioners have
3 expressed strong support for, and also, you
4 know, something that, you know, that we
5 received significant comment on, and support
6 from license providers as well.

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

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

22 Efficiency, again, we want optimal

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

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

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

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

5 As you can see, in box 1,
6 broadcasters, we have, you know, these are the
7 people who have the goods. All right.
8 Broadcasters who have spectrum that we are
9 hoping will participate in the auction. They
10 work through a reverse auction process, box 2
11 and 3, and in Appendix C of Notice of Proposed
12 Rulemaking, we proposed a particular - we call
13 it straw man, but a proposed auction design
14 that is a descending clock auction. It's a
15 type of dynamic auction, where price begins
16 high and will continue to drop, and as the
17 price drops in the reverse auction
18 broadcasters, depending on how they value
19 their stations, will either elect to continue
20 participating in the auction, or elect to drop
21 out, at which point they will receive a
22 channel in their current band, and receive

1 protections as required by the statute,
2 protections of their populations served and
3 service areas.

4 And then we see on the other side,
5 so the reverse auction, basically, gives you
6 your supply curve. The other side we have the
7 mobile broadband providers, and the forward
8 auction. And so, mobile broadband providers
9 are buying re-purposed and re-packaged
10 licenses for mobile broadband. We proposed in
11 the Notice of Proposed Rulemaking that this be
12 done on an EA basis, but, you know, all of
13 this is still open and no decisions,
14 obviously, have been made. So, that is all up
15 to the Commission. But, this is a forward
16 auction, that is similar to forward auctions
17 we've done in the past, and the Commission has
18 had experience with forward auctions since
19 1993. But, it's different, because unlike any
20 other forward auction the Commission is in the
21 process of auction - well, will be in the
22 process of attempting to auction a spectrum

1 that it does not itself have.

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

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

1 gaps for the band plan.

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

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

1 build-out processes.

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

5 CHAIRMAN RIVERA: Yes, that we do.

6 Anyone have any questions for
7 Smitty?

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

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

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

1 if that's in the works right now.

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

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

19 One question that I have gotten
20 before, with respect to the reverse auction in
21 particular, is the concern about the
22 possibility that given, you know, we believe

1 this is a very attractive economic opportunity
2 for broadcasters, given the attractiveness of
3 the opportunity, does it create the
4 possibility that we'll see broadcasters going
5 off of the air that serve minority
6 communities, especially, with respect to
7 language communities.

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

22 But, we are always looking into

1 that.

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

9 CHAIRMAN RIVERA: Good question,
10 Brigitte, thank you.

11 Nicol.

12 MS. TURNER-LEE: Hey, Smitty.

13 MR. SMITH: How you doing?

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

18 We had talked a little bit about
19 having some of the commercial spectrum
20 allocated for public use. But, looking at
21 your equation, it looks like all of the
22 spectrum will be sort of auctioned off for

1 commercial use, or for some kind of resale,
2 you know, rightfully so for the revenues.

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

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

17 MS. TURNER-LEE: Yes.

18 MR. SMITH: So, first.

19 Second, with regard to stability,
20 access that is more consistent than TV white
21 spaces, you know, that is definitely something
22 that we are sensitive to, which is why we

1 proposed in the Notice of Proposed Rulemaking
2 and are considering now, making sure that we
3 have unlicensed use in the guard bands, and
4 unlicensed use in the duplex gap.

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

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

21 So, yes, we are thinking about
22 that.

1 MS. TURNER-LEE: Okay, thank you.

2 CHAIRMAN RIVERA: Yes, please,
3 Jefferi.

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

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

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

19 MR. SMITH: No, go ahead.

20 MS. KREISMAN: The way sharing
21 works is that, basically, you are sharing by
22 agreement the spectrum, but you are individual

1 licensees, with all the rules and obligations
2 of a licensee.

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

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

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

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

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

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

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

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

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

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

1 facility, because we've been dying to have a
2 pilot.

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

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

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

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

14 MR. SMITH: That's dynamic spectrum
15 share.

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

1 Thursdays may want this much of the spectrum.

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

6 MR. LEE: Dynamic spectrum sharing.

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

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

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

20 MS. KREISMAN: There will not be a
21 testing period once the report and order comes
22 out, but now there's a great opportunity for

1 you to see whether it works with no obligation
2 to return spectrum, with no obligation to keep
3 it going. It's really a great - and we would
4 ask that you let us use you as a poster child,
5 so everyone can see if it works or doesn't
6 work. So, we are really hopeful that it will
7 work.

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

11 MS. KREISMAN: Right now you can.

12 MR. SMITH: - you can, okay.

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

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

20 Okay, thank you.

21 CHAIRMAN RIVERA: Thank you,
22 Jefferi.

1 Anyone else with questions? Yes?

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

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

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

20 MR. SMITH: Well, so as I said, you
21 know, we have been sort of doing as much
22 outreach as we can, given our sort of funding

1 restrictions right now. Obviously, you know,
2 things are tightened in Washington right now.
3 But, you know, we were out at the NAB show.
4 We've gone out to a number of conferences. We
5 do a lot of webinars and we think that
6 webinars are a good way to get people
7 information without having to, actually, go
8 out and see somebody in person, and pay for
9 the plane ticket and the hotel costs. So, you
10 know, we've done online presentations and
11 online webinars.

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

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

20 But, you know, we can always be
21 doing more, and we are trying to, you know, do
22 more outreach to make sure that people are

1 fully informed, and that's definitely one of
2 our big priorities.

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

9 But, yes.

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

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

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

1 transition.

2 CHAIRMAN RIVERA: Yes, Jim.

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

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

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

16 MR. SMITH: Right.

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

20 MS. KREISMAN: We have some ideas,
21 actually, that I'm not - we are still working
22 on, but we think that, especially, in rural

1 areas, where LPTV is most significantly relied
2 upon, we are not sure of the real impact of
3 the repacking on them in those locations.

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

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

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

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

21 MS. KREISMAN: I always look at
22 them as a little service that could, because,

1 you know, their demise was predicted during
2 the DTV transition, and as you know that
3 didn't happen.

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

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

1 spectrum - more spectrum in rural areas than
2 in sort of our major markets.

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

7 CHAIRMAN RIVERA: Any other
8 questions?

9 Yes, Steve.

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

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

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

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

22 MR. SMITH: Yes, or send one out.

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

4 MR. SMITH: Okay.

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

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

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

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

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

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

6 CHAIRMAN RIVERA: Sure. Thank you.

7 CHAIRMAN RIVERA: Anything else?

8 No?

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

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

18 The Chair is going to exercise a
19 prerogative or rearranging our agenda, so that
20 we can get a guest, Ruthanne Deutsch, who has
21 been good enough to come and brief us on the
22 second part of Fisher v the University of

1 Texas, and I didn't want to impose more than
2 we had to on her time. So, we'll let her go
3 now, if that's okay with you, Ruthanne, and
4 then you can stay or go out and enjoy the
5 weather as you like. All right?

6 MS. DEUTSCH: Thank you very much.
7 It's a delight to be here, and my first
8 career, before I became a lawyer, was as an
9 Economist. And so, I was fascinated by that
10 last presentation, and I really want to know
11 how are you going to set that first pilot.
12 It's going to be the big challenge, or one of
13 them.

14 But anyway, thank you.

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

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

20 CHAIRMAN RIVERA: About six months
21 ago.

22 MS. DEUTSCH: Six months ago. So,

1 about as long as it took to decide this case,
2 or even around the same time.

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

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

17 So, wait, wait, wait, wait, all
18 term. The first arduous case is one of the
19 last decided, and at the end of the day you
20 get an almost unanimous opinion authored by
21 Justice Kennedy, Justice Ginsburg was the only
22 dissenting Justice, 7:1, because Justice Kagan

1 was recused from the case, because she had
2 been involved when she was Solicitor General
3 prior to joining the court, that, basically,
4 says right standard, wrongly applied, go back
5 and decide whether Texas' plan really
6 satisfies strict scrutiny.

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

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

21 And, Justice Kennedy, writing for
22 seven, said, yes, you did, you took the

1 university at their word, when they said they
2 made good faith efforts, and they had tried
3 other things and they didn't work, and that
4 was not strict scrutiny. You misapplied our
5 standard. And, he gave a tweak on a very
6 famous adage the court often says in many
7 cases, that strict scrutiny is strict in
8 theory and not fatal - and can be fatal in
9 fact, but shouldn't be.

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

12 In her dissent, Justice Ginsberg
13 said, I don't see how on this record this plan
14 could not satisfy strict scrutiny, so she was
15 a little skeptical, but, you know, a lot of
16 commentators think that one of the reasons for
17 the delay was that the court was trying to
18 reach some kind of internal compromise. And,
19 you know, effectively, got a lowest common
20 denominator, where they agreed to let Grutter
21 live for another day, and as one commentator
22 said in an analysis that his first year law

1 students, you know, could have done before the
2 court even heard the case, you know, just
3 march through the routine application of the
4 strict scrutiny standard and not get involved
5 in the details, because I would bet there was
6 not - there were not seven justices on the
7 court that agreed that the university's
8 program did not satisfy strict scrutiny.

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

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

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

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

22 And, you know, Justice Ginsberg,

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

13 But, let me make sure I'm not
14 missing anything - so, at the end of the day
15 the majority remands, and, in fact, the 5th
16 Circuit just recently, which is the court it
17 was remanded to, announced a briefing
18 schedule, so the parties are going to have
19 another round of briefing in the Appeals
20 Court, and argument probably before the end of
21 the year, where they are going to argue about
22 whether or not the university already has a

1 critical mass of diverse student body, whether
2 or not race neutral workable alternatives were
3 really tried, whether or not the petitioner,
4 Abigail Fisher, has standing even to pursue
5 this case. That could be a way of just
6 kicking it out of the courts completely,
7 because she's already graduated. So, there's
8 about eight questions that they've asked the
9 parties to read, and we'll see what happens on
10 remand. And, the devil is in the details.

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

17 Justice Gullia has a one-paragraph
18 concurrence, which he had a bunch of this
19 term, basically, saying Grutter should be
20 overturned. And, I said that, you know, in my
21 dissent of Grutter, and I reiterate it here,
22 but because the parties don't ask for it I

1 concur in the result that the plan doesn't
2 withstand scrutiny.

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

18 And, you know, the bottom line,
19 this quote sort of crystallizes his tone and
20 rhetoric throughout the opinion, and I
21 recommend reading it because he is sort of one
22 of the strongest voices, I think, in the

1 intellectual discourse today in this country
2 of how affirmative action, actually, hurts
3 minorities, and this is quite a strong piece
4 about it. But, he says, "The Constitution
5 does not pander to faddish theories about
6 whether race mixing is in the public
7 interest."

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

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

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

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

15 And, you know, I'll leave it to
16 David, who I think is also going to talk to
17 you, talk about the import for this committee
18 and for the work of the Commission, obviously,
19 you know, there's a statutory mandate here
20 that is not the case with public universities,
21 but I think this opinion confirms something
22 that we suggested in the last presentation,

1 that the serious evaluation of race neutral
2 alternatives, you know, wink, wink, as Justice
3 Ginsberg says, with the eye that you are
4 really using those, you know, socioeconomic or
5 geographic or whatever, that they are
6 effectively going to get at racial diversity
7 questions as well, whether or not, you know,
8 your face is more constitutionally protected
9 to be race neutral than not.

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

13 Thank you.

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

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

19 Andy?

20 MR. SCHWARTZMAN: This is not a
21 question. It's just - it's an expression of
22 appreciation, this is a wonderfully cogent and

1 useful presentation. I appreciate it.

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

4 Anyone else?

5 Well, Ruthanne, thank you very
6 much.

7 MS. DEUTSCH: Thank you, my
8 pleasure.

9 CHAIRMAN RIVERA: You are always
10 welcome here.

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

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

20 Hopefully, we can do this by
21 consensus or unanimity, that's always better.
22 But, if there are dissenting views, then we'll

1 have to vote, and we'll vote by majority rule.
2 And, if there's a majority to send something
3 up, we'll do that.

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

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

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

15 CHAIRMAN RIVERA: Good afternoon.

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

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

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

4 Are there any members - other
5 members of the task force on the phone now?

6 Okay, thank you.

7 CHAIRMAN RIVERA: You got a yes
8 from somebody.

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

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

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

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

20 And also, I would like to
21 especially thank, going forward, and I think
22 this will be of interest to the Chair and all

1 of you all, that Virginia State University
2 School of Engineering and Technology, and
3 their Research Institute, Advanced Research
4 Institute, has a real interest in this, and
5 have agreed to provide whatever pro bono
6 services that they can to help us in this
7 process, Mr. Chairman. So, we'd like to
8 welcome Virginia State to this discussion.

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

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

18 Chairman Rivera gave our task
19 force, and I suppose I speak for all the task
20 forces, some pretty clear instructions about
21 our concepts today, so that my colleagues will
22 not have to repeat these I will tell you what

1 they are right now.

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

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

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

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

17 In addition to that, our work is
18 being guided by, basically, principles, and
19 let me tell you what they are very quickly.
20 Our recommendations will look at best private
21 sector procurement practices by diverse
22 companies, obviously, what the FCC can do to

1 stimulate private sector actors to recruit,
2 and retain, and grow diverse companies in
3 their supply chain, and how the FCC should
4 design a supply diversity program conference
5 and stimulating relationships between diverse
6 companies and the regulated industry.

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

18 And, first of all, whether or not
19 the FCC regulated industry is, actually,
20 syncing to engage MWBEs in this process,
21 whether or not the FCC is providing an
22 effective forum, or can provide an effective

1 forum, for these groups to come together and
2 discuss matters of mutual interest, and
3 thirdly, whether or not we can suggest, or
4 should suggest, to the FCC that it create a
5 sustaining venue for private industry, the
6 regulated private industry, and diverse
7 companies, to come together on a periodic
8 basis to discuss these matters around supply
9 diversity.

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

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

19 As a quick background, according
20 to FCC-regulated industry SEC filings,
21 billions of dollars are spent annually on
22 deployment and infrastructure development by

1 companies providing wireless and wire-line
2 broadband services. A number of regulations
3 exist that require multi-channel video
4 programming distributors to engage in outreach
5 efforts. But, similar efforts are not
6 required of other licensees.

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

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

17 There is a need for a platform
18 neutral method of assessing market
19 participation by these companies, as
20 contractors, and as subcontractors. Taking
21 into account Adarand restrictions and budget
22 constraints, the task force would recommend

1 that we would examine how the Commission could
2 measure the level of participation of these
3 companies who contract with FCC-regulated
4 licensees that are engaged in broadband
5 deployment and, particularly, broadband
6 infrastructure development.

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

17 The second concept -

18 CHAIRMAN RIVERA: Can you hold off
19 just a second?

20 MR. JOHNSON: Yes.

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

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

3 CHAIRMAN RIVERA: Thank you.

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

6 Steve?

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

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

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

1 comments and then move ahead.

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

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

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

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

1 MR. JOHNSON: Okay, thanks.

2 CHAIRMAN RIVERA: Anyone else?

3 Yes, Jim.

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

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

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

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

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

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

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

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

22 MS. KREISMAN: Well, I think we are

1 going to the area where exactly I didn't want
2 to go.

3 MR. ROBERTS: Okay.

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

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

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

1 as opposed to it going out, if that makes any
2 sense.

3 MR. JOHNSON: Yes, it does.

4 MS. KREISMAN: Okay.

5 CHAIRMAN RIVERA: David?

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

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

1 in terms of competition.

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

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

21 CHAIRMAN RIVERA: Thank you, David.

22 Again, as Barbara has pointed out,

1 we are - these don't have to be perfect. Not
2 all the i's have to be dotted, or the t's
3 crossed. We are saying, Madam Chair, here's an
4 idea, if you'd like us to develop this and
5 look at some of these questions that you
6 posed, well, we can do that.

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

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

13 Any other questions?

14 Are you ready for the question
15 then?

16 All right. All those in favor say
17 aye.

18 (Chorus of ayes.)

19 CHAIRMAN RIVERA: Any opposed?

20 All right, thank you.

21 Ron, please proceed with the next
22 recommendation.

1 MR. JOHNSON: Thank you, Mr.
2 Chairman.

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

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

16 First, it could, with our
17 assistance, invite diverse suppliers to
18 voluntarily complete a confidential survey
19 discussing their experiences in providing
20 services across all sectors, all industry
21 sectors. This information could include the
22 types of services provided by those suppliers,

1 whether these suppliers are provided to -
2 whether these services are provided to
3 government or private sector entities, or
4 both, how these businesses come across
5 opportunities in the private sector, the
6 length of the contracts, opportunities to
7 leverage their relationships across
8 industries, and how their experiences working
9 with various sectors differ within industry,
10 meaning carriers, equipment manufacturers, OEM
11 systems integrators, service providers, et
12 cetera.

13 And secondly, the OCBO could
14 replicate a panel discussion that we had the
15 last year, consisting of diversity in
16 industry, at which time two members of our
17 committee, by the way, served on that. And,
18 following that successful forum, a select
19 number of survey respondents then could engage
20 with industry executives on procurement best
21 practices in sort of a closed kind of
22 discussion, or more narrow discussion. And,

1 out of that we would be able to identify more
2 clearly what some of the barriers to entry
3 would be with respect to diverse companies.

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

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

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

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

21 CHAIRMAN RIVERA: Questions? Any
22 questions?

1 All those in favor say aye.

2 (Chorus of ayes.)

3 CHAIRMAN RIVERA: Anyone opposed?

4 Thank you.

5 Last recommendation, Ron.

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

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

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

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

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

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

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

22 We think that 3 is very important

1 to 1 and 2, because it only works if 1 and 2
2 or somehow culminated and codified in concept
3 3, because it's then available to everyone to
4 see.

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

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

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

18 CHAIRMAN RIVERA: Great, thank you.

19 Any questions for Ron on this
20 depository of information?

21 All right. All those in favor say
22 aye.

1 (Chorus of ayes.)

2 CHAIRMAN RIVERA: Any opposed?

3 (Aye.)

4 CHAIRMAN RIVERA: Thank you.

5 All right, thank you, Ron, nice
6 job.

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

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

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

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

20 MR. ROBERTS: Mr. Chair, before you
21 do, we did have a very extensive conversation,
22 our subcommittee did. So, I don't know what

1 happened to the report, but we should have our
2 Chair do it.

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

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

10 MR. ROBERTS: Right.

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

14 So, Nicol, you have the floor,
15 Madam.

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

18 So, I represent the Unlicensed
19 Devices Inspection Subcommittee, with several
20 of you, actually, who are here in attendance.
21 And, what I will do is, basically, just go
22 over some of the concepts that we discussed,

1 and tie that into some of the work of the
2 subcommittee, because we saw this as sort of
3 an ongoing extension. But, we do have a
4 couple that, actually, fall out of the purview
5 that the subcommittee just thought they were
6 important to offer as concepts.

7 CHAIRMAN RIVERA: Okay.

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

21 So, I'm not going to take the
22 time, I'm, basically, going to go right into

1 our four concepts for consideration, and I
2 will do as my colleague here has done, and
3 kind of stop to explicate and take questions
4 on what our thinking was around those
5 particular areas.

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

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

17 And, I want to, and I'm sort of off
18 record here, include the comments of Brigitte
19 Daniel, who is on this Committee, of ensuring
20 that there's some diversity goals around this
21 upcoming auction, and what that looks like.
22 So, I thought her comment was spot on with

1 regards to having some type of outline plan,
2 and it appears that there's been some mention
3 and comment, but we think that this Committee
4 should play a critical role, sort of codifying
5 what those goals are as we move forward. So,
6 we'd like to offer that up.

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

11 On September 4th, a deal was
12 solidified with Grain Management, in
13 partnership with AT&T and Verizon Wireless,
14 for the purchase of spectrum in the bandwidth
15 of 700 megahertz, Band B, from Verizon, and C
16 brought form AT&T. That deal was the largest
17 minority-owned business deal, valued at \$287
18 million, and we feel that there are some best
19 practices. It was addressed by the FCC. It
20 was, obviously, some good principles and
21 practices that were in play, and we'd like to,
22 actually, recommend something I think that is

1 the Commission's authority, which is to invite
2 them to one of our meetings to discuss how
3 that deal went through and what was involved
4 with that. What was the discussion? What
5 were the benchmarks? How did the companies
6 work with the Grain Management to, actually,
7 make that happen?

8 In addition to that, some of you
9 may not be aware, National Urban League, MMTC,
10 as well as NCLR, were also offering advice to
11 that deal. So, we think that's, again, a very
12 nice model to look at as we move forward with
13 the incentive spectrum auction. And, since we
14 have until next year, I'm sure we'll have
15 another meeting to, actually, have them
16 invited. So, that is our first
17 recommendation, to just again ensure that this
18 Committee has some role in helping the
19 Commission in the creation of diversity goals,
20 and strategies and best practices for
21 involving MWBEs and offering up for the next
22 meeting Grain, as well as the corporate

1 partners and community partners, to come and
2 discuss the best practices around how that
3 transaction occurred.

4 So, I will stop there.

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

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

11 All those in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN RIVERA: Okay. Anyone
14 opposed?

15 Motion carries.

16 Nicol, the next recommendation.

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

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

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

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

19 So, our Committee, in particular,
20 was working towards some policy language that
21 we would like to introduce to this Committee
22 that we think might be good language as a way

1 to kind of introduce into, not only the
2 incentive spectrum auctions, but also E-Rate
3 and other initiatives that the FCC is
4 currently taking on, that just, again, carves
5 out some level of bandwidth for these types of
6 functions.

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

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

22 CHAIRMAN RIVERA: Okay.

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

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

6 All those in favor?

7 (Chorus of ayes.)

8 CHAIRMAN RIVERA: Anyone opposed?

9 Great, thank you.

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

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

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

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

17 We also feel, MMTC just filed
18 comments, for example, around E-Rate, that
19 there are some possible rules that can be
20 looked at, in terms of charitable giving of
21 the private sector towards many of these
22 initiatives. That type of conversation could

1 come out as well if we had a guide to how
2 these public/private sector partnerships,
3 actually, are panning out.

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

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

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

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

20 MR. LEE: And, how we do those
21 things already creating public/private
22 partnerships, and especially around education

1 and in under-served units - I mean,
2 communities. So, that would be a suggestion
3 of somewhere for you to look.

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

11 CHAIRMAN RIVERA: Right.

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

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

17 So, anything else?

18 All in favor?

19 (Chorus of ayes.)

20 CHAIRMAN RIVERA: Anyone opposed?

21 Great, Nicol?

22 MS. TURNER-LEE: So, and this last

1 one, as I close, could possibly tie to the
2 third one. I like our Designated Officer,
3 Barbara's comment, because we don't have a
4 committee on this last one as well, which is
5 the importance of core principles around STEM.

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

15 So, our recommendation here was to
16 come up with a core set of principles, a core
17 digital learning and science, technology,
18 engineering map, or STEM principles, that
19 serve as a guide for bridging national
20 educational achievement gaps, especially,
21 among people of color and low-income students.
22 And, we thought that this Committee could

1 bring a set of principles and practices that
2 can be considered by the Commission in the
3 development of digital learning initiatives.

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

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

21 Just a last plug on that. One of
22 the things that I learned recently is that,

1 with STEM, if you don't introduce that to
2 young people, or young Black boys, for
3 example, before 6th grade, they tend not to
4 want to pursue those careers. And so, we have
5 all had the conversations of the different
6 times of intervention, but we've not seen this
7 very progressive conversation and set of
8 principles and practices, and things that are
9 being implemented now, that could, actually,
10 advance this dialogue.

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

21 CHAIRMAN RIVERA: Thank you.

22 I'd just note that should the

1 Chair's office want you to develop that into a
2 full-blown recommendation, I think your
3 committee would have to tie that somehow to
4 the Commission's jurisdiction.

5 MS. TURNER-LEE: Yes.

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

11 MS. TURNER-LEE: Yes.

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

17 MS. TURNER-LEE: Right.

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

21 CHAIRMAN RIVERA: The tools.

22 MR. LEE: - the tools.

1 CHAIRMAN RIVERA: Yes.

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

7 CHAIRMAN RIVERA: Right.

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

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

13 MS. TURNER-LEE: Right. Right.

14 MR. LEE: Exactly.

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

17 CHAIRMAN RIVERA: Yes, Carolyn?

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

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

3 Nicol?

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

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

21 CHAIRMAN RIVERA: Yes, Brigitte.

22 MS. DANIEL: Just to piggy-back off

1 of what Ms. Fleming said, the FCC and the
2 Department of Education did initiate the
3 Digital Learning Fact Forum initiative, so
4 that could also be an example of tie in.

5 CHAIRMAN RIVERA: Exactly.

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

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

11 MS. TURNER-LEE: Okay.

12 CHAIRMAN RIVERA: It makes it
13 easier.

14 Anything else? All right.

15 All those in favor?

16 (Chorus of ayes.)

17 CHAIRMAN RIVERA: Anyone opposed?

18 Nicol, thank you and your
19 Subcommittee.

20 MS. TURNER-LEE: Thank you.

21 CHAIRMAN RIVERA: Nicely done.

22 MS. TURNER-LEE: No, thank you,

1 thank you to all the Committee members.

2 CHAIRMAN RIVERA: David.

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

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

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

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

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

22 Diversity has always been the

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

19 He was just elected the President
20 of NABJ, and he has driven in and has visited
21 with us, and is here today, and I'd like to
22 yield some time to him to present the study,

1 and put it in context.

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

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

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

18 We had the Boston Bombing, in which
19 the suspect was described as a dark-skinned
20 male. Even though I know for a fact that
21 there were people of color in the newsrooms of
22 some of these organizations saying, wait a

1 minute, how do we know that, why are you
2 saying that? And, it turned out to be wrong.

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

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

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

1 Americans and Hispanics.

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

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

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

1 know how to get the information.

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

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

19 Thank you.

20 MR. HONIG: Thank you so much.

21 One of the recommendations, we have
22 four from the working group, goes to whether

1 this - these rules that kind evolve under the
2 premise of promoting diversity, which is
3 vitally important, how does that apply in the
4 context of common carriers or Title 1 services
5 that may, to a lesser extent, but not to it's
6 full extent, is broadcasting or cable,
7 directly impact diversity of content.

8 The Committee has, in the past,
9 recommended that under the principle of
10 platform neutrality these broadcast and cable
11 rules be extended to other regulated
12 platforms, which are kind of merging the
13 lines, or blurring among them in any case.
14 And, the working group recommends this first
15 recommendation, that the Commission consider
16 how it might do that, and under what
17 justifications, irrespective of whether strict
18 scrutiny applies, all rules should be well
19 justified. And, in particular, should
20 consider the diversity rationale, should
21 consider whether these rules would promote
22 competition has been discussed, would prevent

1 discrimination, and would remedy the present
2 effects of past discrimination in these
3 businesses. And, that would be a dialogue
4 that the Committee should have with OGC.

5 Second recommendation -

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

9 MR. HONIG: Oh, sure.

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

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

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

1 besides broadcasting and cable.

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

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

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

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

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

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

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

22 CHAIRMAN RIVERA: I think - I don't

1 understand the point, David, of our sending
2 this to the Chair to have this developed, when
3 it is already before the Commission.

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

6 CHAIRMAN RIVERA: Well, that's
7 another issue.

8 MR. HONIG: Yes.

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

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

18 So, I think that's important.

19 CHAIRMAN RIVERA: Any other comments
20 on this?

21 Andy?

22 MR. SCHWARTZMAN: I don't know if my

1 mic is working, but, perhaps, what might be
2 appropriate is to hold off on this for the
3 next meeting, and maybe have a dialogue
4 between the Committee and Commission staff,
5 and decide whether or not to bring it back for
6 next meeting.

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

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

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

16 Go ahead, David, with your next
17 recommendation.

18 MR. HONIG: So, the second
19 recommendation that we made relates to audits
20 and enforcement, which the Commission has used
21 for the last 12 or so years to review
22 broadcasters and cable companies recruitment,

1 and whether their EEO programs that they filed
2 with the Commission have been effectuated.

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

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

15 One of those is to simply recognize
16 that presently it's housed in the Media
17 Bureau. I think it may be the only
18 enforcement staff in the Commission which is
19 not housed in the Enforcement Bureau, and
20 thus, we've suggested that the Civil Rights
21 Branch should be created there that would
22 encompass other similar areas of civil rights

1 enforcement, such as transactional advertising
2 and procurement non-discrimination across all
3 platforms, that the commission enhance and
4 kick up a notch the audits that it does, and
5 not hesitate to take cases that involve
6 egregious misconduct and look at them in
7 hearing, and to conduct kind of more audits
8 and deeper ones, on-site review, and looking
9 particularly at the single most important
10 factor I think that we identified is to look
11 at what the Commission has honed in on in the
12 past as most indicative of discrimination.

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

20 But, the other element that it
21 considers is whether that excessive word of
22 mouth recruitment was done from a homogenous

1 staff. What the case law says, and makes
2 clear, is that if your staff is heterogenous,
3 and you rely, primarily, on that staff for
4 recruitment, it doesn't tend to replicate a
5 homogenous staff over time. It may be
6 inefficient and unbusinesslike, but it's not
7 unlawful.

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

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

21 So, before turning to that
22 recommendation, I'd like to put forward these

1 specific proposals relating to audits for
2 consideration.

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

19 CHAIRMAN RIVERA: So, this is,
20 basically, a proposal to enhance EEO
21 enforcement, and you mentioned several - the
22 audit, and looking, specifically, at radio

1 journalism and so forth.

2 So -

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

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

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

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

22 CHAIRMAN RIVERA: Anyone else?

1 Jim?

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

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

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

21 One way to do it, for example, I've
22 just picked this out, I'm not suggesting this

1 be it, that all of your companies put together
2 in a room, all of the people that you have,
3 actually, doing that job, sharing what works
4 for them, and what they've been successful at
5 and what they haven't. All of a sudden, you
6 are bringing together a bunch of different
7 minds representing different areas, putting
8 together a best practices approach that has
9 worked across various industries.

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

21 We've made recommendations, people
22 have knocked their brains out making

1 recommendations, but what the Commission needs
2 from us is our expertise.

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

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

12 MS. KREISMAN: Okay.

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

15 CHAIRMAN RIVERA: Joseph, you are
16 up.

17 MR. TORRES: Yes. I just want to -
18 before I worked at the Free Press I was the
19 Deputy Director for the National Association
20 of Hispanic Journalists. And, as Bob said, it
21 shouldn't be the job of an DJ to have an
22 investigative reporting project. And, I know

1 a little bit, and Maurice Foster for NABJ
2 writes this as well, to get the data I mean
3 they, literally, have to do a covert - before,
4 ask members within NABJ within these newsrooms
5 to help them with it, because, as he says, the
6 companies don't want to give them data, and
7 they are partners with the companies. He's
8 saying companies come to their conferences and
9 recruiting, and these best practices you are
10 talking about, these conversations have been
11 going on for years about conferences. What is
12 the best practice to recruit people of color?

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

18 And yet, Bob, has to be - he has to
19 have investigator journalism skills, NABJ Vice
20 President, now President, and I think this is
21 the frustration, that we are not getting any
22 results. And meanwhile, you may have a

1 situation where newspapers and broadcasts,
2 they say newspapers, the number of journalists
3 of color that work in newspapers is
4 dramatically declining.

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

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

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

22 I think, you know, my focus, and

1 Barbara's focus, has been to marry what the
2 FCC is looking at, what we can do with the
3 expertise that's in this room. That's one of
4 the reason we put together the subcommittees.

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

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

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

1 happening with them at the FCC at this moment.

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

9 So, I just wanted to add that.

10 CHAIRMAN RIVERA: Thank you, Tom.

11 Nicol?

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

21 I guess the challenge is, by not
22 putting any proposals on the table around EEO

1 enforcement sends a really big message that
2 that's not important to us. And, I think if
3 you look at all of the proposals that have
4 come forth today from supplier diversity to
5 more inclusion of minorities in some of these,
6 you know, popular and up-and-coming and
7 emerging technologies, EEO is, actually,
8 probably one of those critical areas that's
9 probably a little bit more mature than these
10 other spaces, but has to be addressed.

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

22 As has been mentioned from this

1 Committee, we've seen enforcement, maybe not
2 yet heavy as it was before, in a time where we
3 are seeing economy with tightening controls,
4 and tightening opportunities, and seeing the
5 space that, essentially, becomes the next
6 gateway for people of color, not just in the
7 professional realm, but also on the blue
8 collar realm.

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

1 don't take that on I think we are going to
2 miss some of those opportunities going
3 forward.

4 CHAIRMAN RIVERA: All right.

5 Yes, David?

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

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

22 We, actually, wrote a book that was

1 commissioned and put in the Commission's
2 website in 2004, and came up with specific
3 recommendations for how the equal employment
4 opportunity rules could be tweaked to take
5 account of the fact that the industry was
6 shrinking and that more issues were arising
7 for enforcement purposes in the context of
8 retention, as opposed to recruitment.

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

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

22 So, I just wanted to encourage,

1 with great respect for the Commission's
2 prerogatives, the body to not retreat from
3 this area, which I think is fundamental to
4 what it does, and fundamental to what the
5 Commission does.

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

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

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

21 CHAIRMAN RIVERA: I agree.

22 MR. WINSTON: And, I'm sorry that

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

10 CHAIRMAN RIVERA: All right. Point
11 taken.

12 David - Mr. Butler?

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

15 My members are wondering why it is
16 that the FCC is quick to fine a network when
17 there's a wardrobe malfunction in the Super
18 Bowl, yet allows employers to get away with
19 not hiring our members. That doesn't make
20 sense to my members. It doesn't make sense to
21 me, as to why the Federal Government, in its
22 regulatory role, doesn't have the kind of data

1 it needs to do a proposed rulemaking, and,
2 actually, relies on an outside organization to
3 collect the data for it.

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

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

20 CHAIRMAN RIVERA: Thank you.

21 David, what I'd like to suggest is,
22 we hear your other two recommendations, and

1 then we come back and revisit this, see what
2 kind of reaction we get with the other two
3 recommendations.

4 MR. HONIG: Sure.

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

8 MR. HONIG: The third recommendation
9 speaks to the question of transparency in the
10 395 data. One reason for that was already
11 stated, which is being able to know whether a
12 recruitment practice rises to the level of
13 intentional discrimination. And, the other
14 is, really, just in the interest of
15 transparency, and ensuring that members of the
16 public have information about their licensees
17 that serve them, that would help them to make
18 good choices, in terms of viewer-ship,
19 listener-ship, and participation themselves as
20 job applications and as people who work in the
21 industry.

22 The recommendation is simply that

1 the Commission restore the collection and
2 public access to this critical information,
3 and notes that there is no legal impediment to
4 doing so.

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

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

18 Here, now that the Commission has
19 gone to the process - gone to a - gravitated
20 to a procedure based on audits, this would
21 suggest that that memorandum be amended such
22 that when a Commission audit uncovers possible

1 discrimination, that would trigger a
2 notification to the EEOC, and vice versa when
3 the EEOC receives a serious complaint of
4 discrimination by a regulatee it would forward
5 that to the Commission initially for a special
6 audit.

7 CHAIRMAN RIVERA: All right, thank
8 you.

9 Barbara, do you want to speak to
10 these?

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

19 CHAIRMAN RIVERA: Okay. Anyone
20 else?

21 Nicol?

22 MS. TURNER-LEE: Yes. So, just to

1 add to that, and so we can sort of honor the
2 work of the Committee, should the conversation
3 be around how can we take this bigger rock
4 issue of EEO enforcement and, perhaps, bring
5 before the Commission a concept of looking at
6 maybe a culmination of what we've heard today,
7 you know, taking that head on.

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

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

1 here.

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

11 CHAIRMAN RIVERA: Point well taken.

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

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

1 Does anyone else have some
2 thoughts?

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

9 CHAIRMAN RIVERA: Absolutely.

10 MR. WINSTON: - we should be
11 addressing.

12 CHAIRMAN RIVERA: Absolutely.

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

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

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

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

1 important one.

2 MR. WINSTON: Yes.

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

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

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

13 CHAIRMAN RIVERA: Right.

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

1 come separately in our individual capacities.

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

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

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

15 MR. WINSTON: Okay.

16 MS. KREISMAN: Not just - all the
17 issues mentioned here are important, but the
18 piece is, which of these issues can we,
19 actually, help with the expertise that we have
20 in the industries that we represent. This is
21 another piece of it here. What can we provide
22 by cumulatively putting our information and

1 expertise together, which is different than an
2 issue in a legal proceeding. It's different.
3 It's harder, actually.

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

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

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

21 MS. KREISMAN: Well, I think,
22 actually, in my role I can tell you what I

1 think, because it's in the constructs of our
2 charter. I think that is my role here, first
3 of all.

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

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

21 MR. WINSTON: This is a very helpful
22 dialogue. I think shortly as we go forward in

1 our subcommittees we need to be conscious of
2 the guidance you are providing us today.

3 So, I thank you for that.

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

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

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

16 MS. KREISMAN: I think, you know,
17 that's something to explore, I think, in your
18 working group. And, basically, you know, I
19 break it down as, what is it that we want to
20 explore, how can we bring our expertise to
21 help explore it, as opposed to just say you do
22 it. What we want to get away from is that,

1 this Committee has been a lot like this, you
2 do it Commission. Here's another idea for you
3 to do.

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

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

22 It's hard. It's harder. It's

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

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

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

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

1 you told us you wanted us to work on it.

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

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

17 So, this is the kind of thing that
18 we don't - we don't want to send her back, I
19 don't think. I like Nicol's - I like Nicol's
20 approach. I think that this - the Committee
21 worked hard on this. I know David put a lot
22 of blood, sweat and tears into these

1 recommendations, but I think it can be
2 repackaged to meet the criteria that
3 Chairwoman Clyburn has established, in terms
4 of how we ought to look at this going forward.

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

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

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

21 I would like to note, there is a
22 question of jurisdiction that it might be

1 useful to clarify, because it really lies in
2 other places, and that is whether the fact
3 that there is a pending petition for
4 rulemaking, or that a matter has been raised
5 by third parties in a docket, deprives this
6 Committee of jurisdiction over it.

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

13 Many of the best recommendations
14 from the advisory committee on civil rights
15 came from the industry experts, and private
16 sector experts, and academics came together,
17 specifically, to consider recommendations that
18 third parties had made, the Nation's rules on
19 red line, environmental justice, on
20 environmental regulations in many cases,
21 consumer protections often came about because
22 of the intervention and participation and

1 guidance of advisory committees at a time when
2 agencies and departments were somewhat vexed
3 considering aggressive proposals that had been
4 made and propounded by third party
5 organizations.

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

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

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

22 But, right now, that's not what I

1 understand we are supposed to be doing.

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

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

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

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

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

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

22 MS. TURNER-LEE: Okay.

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

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

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

10 Yes, Steve?

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

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

20 And, as soon as we - Barbara has
21 got to find out when this room is available.
22 It's in great demand. So, we'll see what we

1 can do. And, as soon as we find out we will
2 put the word out.

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

7 CHAIRMAN RIVERA: Send Barbara an
8 email.

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

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

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

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