

FEDERAL COMMUNICATIONS COMMISSION

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ADVISORY COMMITTEE ON
DIVERSITY FOR COMMUNICATION
IN A DIGITAL AGE

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Monday,
December 10, 2007

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This meeting was convened, pursuant to notice at 10:00 a.m., in the FCC Meeting Room, at the Federal Communications Commission, 445 12th Street, SW, Washington, D.C., Henry Rivera, Chairman, presiding.

MEMBERS PRESENT:

Chairman Henry Rivera
Barbara Kreisman
Andrew Schwartzman
Rodney Hood
Charlton Hoskins
James Winston
Susan Fox
Anne Lucey
Jonathan Adelstein
Sheba Chacko (via telephone)
Rebecca Klein (via telephone)
Marie Long (via telephone)
Vonya McCann
Maria Brennan (via telephone)
Robert Mendez (via telephone)
Ray Gutierrez (via telephone)
David Honig
Tara Sweeney (via telephone)
Connie Simon (via telephone)
Max Navarro (via telephone)
Margarita Wilder (via telephone)

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

2 10:04 a.m.

3 MEMBER KREISMAN: Is there anybody
4 out there?

5 MEMBER NAVARRO: This is Max
6 Navarro on the line.

7 CHAIRMAN RIVERA: Hi, Max.
8 Welcome.

9 MEMBER NAVARRO: Anybody out there?

10 MEMBER KLEIN: Hey, Max, it's Becky
11 Klein.

12 MEMBER NAVARRO: Hi, Becky. How
13 are you?

14 MEMBER KLEIN: Doing good. Thanks.

15 MEMBER NAVARRO: Are you in San
16 Antonio?

17 MEMBER KLEIN: As a matter of fact,
18 I am.

19 MEMBER NAVARRO: Yes. Yes. It's a
20 cool day here.

21 MEMBER KLEIN: Yes.

22 MEMBER KREISMAN: Max, Becky, can
23 you hear us?

24 MEMBER NAVARRO: Yes.

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1 MEMBER KREISMAN: Good. Anybody
2 else there?

3 MEMBER MENDEZ: Bob Mendez.

4 MEMBER SIMON: Connie Simon.

5 MEMBER CHACKO: Sheba Chacko, BT.

6 MEMBER SWEENEY: Tara Sweeney.

7 MEMBER BRENNAN: Maria Brennan with
8 AWRT.

9 MEMBER LONG: Marie Long with AT&T.

10 MEMBER KREISMAN: Great. Anybody
11 else on the phone?

12 Maybe we should go around and
13 introduce who's here around the table, maybe
14 starting with Rodney.

15 MEMBER HOOD: Yes. Good morning.
16 Rodney Hood is here from the National Credit
17 Union Administration.

18 CHAIRMAN RIVERA: Andy.

19 MEMBER SCHWARTZMAN: Andy
20 Schwartzman, Media Access Project.

21 MEMBER HONIG: David Honig, MMTc.

22 MEMBER McCANN: Vonya McCann,
23 Sprint Nextel Corporation.

24 MEMBER FOX: Susan Fox, Disney.

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1 MEMBER LUCEY: Anne Lucey, CBS,
2 Showtime.

3 CHAIRMAN RIVERA: Henry Rivera.

4 MEMBER KREISMAN: And I heard
5 somebody else just get on the phone.

6 MEMBER GUTIERREZ: Yes, this is Ray
7 Gutierrez, Showtime Network.

8 MEMBER KREISMAN: Great. Thanks.

9 Welcome, everybody. Welcome
10 members. Welcome to the Fourth meeting of the
11 Advisory Committee on Diversity for
12 Communications in a Digital Age.

13 Under our Charter Number Two, we
14 have some significant and rather exciting
15 projects underway. And I look at this meeting
16 as the opportunity for the entire membership
17 to become familiar with what's going on with
18 those projects, and also to be able to make
19 any suggestions or share any ideas.

20 This, I look as more of a working
21 meeting than the one of presentation of final
22 reports. I also understand that Chairman
23 Rivera has some additional issues to raise,
24 and with that I turn to Chairman Rivera.

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1 CHAIRMAN RIVERA: Okay.

2 Thank you, Barbara. And thank you
3 for your continuing support of the committee.
4 We're all deeply indebted to you for all your
5 work.

6 I think that we've got reports from
7 all three of our subcommittees, and then I'll
8 raise something when we finish at the end of
9 those reports, but I think we might as well go
10 ahead and get started, jump right in with
11 those reports, and I'll turn to Rodney Hood
12 who chairs our access to capital committee to
13 see -- and get a report from him.

14 MEMBER HOOD: Great. Thank you,
15 Mr. Chairman. And can you all hear me who are
16 joining us on the telephone?

17 MEMBER SCHWARTZMAN: Yes.

18 MEMBER HOOD: Splendid. Splendid.

19 Well, I'm very happy to report that
20 we are making great progress in bringing our
21 whole idea of a Wall Street conference, and
22 bringing that conference to fruition.

23 We do have a rough draft of an
24 outline, and I dare say that it's exactly

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1 very, very rough, but the important aspect is
2 that we at least have a template for what we
3 can do going forward in terms of putting the
4 providers of capital in direct contact with
5 those individuals hoping to receive funding so
6 they can have minority ownership
7 opportunities.

8 A great opportunity has come up
9 through Ms. Kreisman's attention, and that is
10 doing it at Barnard College, so we're looking
11 forward to getting more information from the
12 college, but that's a prominent women's
13 college up in New York, so we'll be able to
14 really draw both the Wall Street community,
15 but also work with some of the university
16 officials there at Barnard.

17 Do all of you on the phone have a
18 copy of the tentative draft that we are
19 planning as a conference? If you don't, I'll
20 just quickly walk through it, in the fact that
21 we are envisioning, beginning with an evening
22 reception leading up to the half-day of
23 activities.

24 So, the evening reception would be

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1 a public meeting of the Advisory Committee on
2 Diversity for Communications in a Digital Age,
3 and then we would follow our advisory meeting
4 with a networking reception.

5 The second day we will convene at
6 8:30 in the morning and we -- and again, these
7 are all proposed, but we would look at doing a
8 media and telecommunications market trend and
9 new business opportunities.

10 That would be a panel where we
11 would have folks who would possibly be
12 invited, including Mr. Kennard, Michael
13 Powell, or Eli Noam. They are from the
14 Columbia Business School.

15 Another opportunity would be a
16 panel where we would look at where to find
17 capital for the media and telecom
18 transactions, and that focus would be
19 specifically on sources of capital.

20 We would then also look at,
21 perhaps, doing a session on focus on
22 strategies for securing capital. We would
23 also like to extend an invitation for the
24 Members of the Commission to attend this event

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1 and especially giving Chairman Martin an
2 opportunity to address the group.

3 Following an address of some sort
4 by Chairman Martin, we would also like to give
5 the other commissioners a chance to talk about
6 some of the things that they have as current
7 issues, and also, perhaps, words of advice
8 that they could leave with those individuals
9 hoping to secure capital.

10 Then later, we would have a closing
11 address, hoping to invite Cathy Hughes from
12 Radio One where we think it would be a great
13 idea for those individuals seeking capital to
14 hear directly from someone who's been through
15 the process, to hear from, if you will, a very
16 successful person who can say, "This is what I
17 did in Point A and this is how I was able to
18 take that idea to fruition, and really have an
19 enterprise such as Radio One."

20 And after that we're looking at
21 doing what we would call a beauty pageant of
22 sorts where those individuals could meet with
23 the funders, with their business plans. Of
24 course, we don't expect transactions to be

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1 negotiated at this event, but at least they're
2 making contacts and they're giving those
3 providers of equity and capital at least some
4 contact points.

5 So, that's the conference in a
6 nutshell. Of course, it's very, very rough, I
7 mind you, but importantly enough, at least
8 we've put pen to paper to come up with some
9 ideas.

10 I think the next thing that we all
11 need to do from our committee is, once we've
12 gotten your imprimatur in the format, would be
13 to then secure funding sources for the
14 conference itself.

15 And fortunately, through Becky
16 Klein's help, I have been able to make contact
17 with a gentleman by the name of Robert Stuart
18 who works with the Private Equity Council.
19 That is a consortium of private equity firms
20 where they have now a point person who can
21 help them with day-to-day logistics, helping
22 them look at opportunities similar to this.

23 So, rather than having to all
24 individually go to Black Rock or Carlyle, he

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1 is the one, he is the one who would help us
2 not only partner with those groups in terms of
3 getting them invited to the conference, but
4 also the Private Equity Council has expressed
5 an interest in helping fund this particular
6 conference.

7 What I envision as a next step now
8 is, once again, we've gotten clarity around
9 the program, going back to the Private Equity
10 Council and asking them for direct funding.

11 And what I would like to do with
12 working with our committee, is come up with a
13 smorgasbord, if you will, rather than saying
14 to someone, "Would you underwrite the entire
15 conference," let's have perhaps a sponsor
16 underwrite the first evening reception.

17 The committee had thought about
18 maybe having that done at a Goldman, Sachs or
19 a Bear, Sturge or something like that, then
20 the next morning we would have the breakfast,
21 again, trying to pick, if you will, all of the
22 various events that require funding throughout
23 the day, and maybe have unique sponsors
24 aligned with them.

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1 So, with that being said, that is
2 my report and I'm open to any questions you
3 may have.

4 CHAIRMAN RIVERA: Thank you very
5 much, Rodney. Yes.

6 MEMBER SCHWARTZMAN: I just had a
7 technical question relating to problems we had
8 some years ago in a slightly analogous
9 situation. And this is for Barbara: Can the
10 Commission accept travel funding for
11 Commission staff for an event like this, and
12 is private sponsorship of the event itself
13 problematic in any way?

14 MEMBER KREISMAN: I have to -- I
15 haven't been to the General Counsel's office
16 there. We have some representatives sitting
17 there, because I wasn't sure at this point
18 exactly what our role is.

19 Whether -- one of the things that
20 was not subbed yet, whether this is going to
21 be something that was being sponsored by the
22 trade associations and some of the investment
23 houses. or whether the FCC was going to have a
24 co-sponsorship role, that was one of the

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1 issues in play, and I thought I had to have
2 the answer to that before I went to the
3 general counsel, quite frankly.

4 The other issue that's in play is
5 the timing. And maybe you want to speak a
6 little bit to that, David, because you had an
7 idea that you floated pretty recently in an
8 email with respect to the Kagen Financial
9 Conference.

10 MEMBER HONIG: Yes. In March,
11 Kagen Research does an annual conference in
12 New York on broadcast finance.

13 MEMBER KREISMAN: You came up with
14 an April date in your letter.

15 MEMBER HONIG: Was it April? They
16 haven't changed the date.

17 MEMBER KREISMAN: Yes. You said
18 April.

19 MEMBER HONIG: Yes.

20 MEMBER KREISMAN: Beginning of
21 April was your last email.

22 MEMBER HONIG: I think that's
23 right. Yes. I think they moved it this year.
24 They are usually about 150 to 200 people

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1 there, and the target group of private equity
2 houses that we're looking to attend are -- all
3 of them always attend. And large banks all
4 attend.

5 CHAIRMAN RIVERA: So we would piggy
6 back --

7 MEMBER HONIG: Yes. It could be
8 done --

9 CHAIRMAN RIVERA: -- basically off
10 of their --

11 MEMBER HONIG: The day before or
12 the day after.

13 CHAIRMAN RIVERA: Yes. Right.

14 MEMBER LUCEY: I just have one
15 other question.

16 CHAIRMAN RIVERA: Yes.

17 MEMBER LUCEY: David, I assume that
18 you've been part of this. My question was:
19 Given the fact that, David, your conference in
20 the summers become so successful that to make
21 sure that the lessons you've learned from your
22 summer conference from being shared with
23 Rodney who put together this conference, and
24 as we can drill down to get as specific as we

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1 can. I just raised that --

2 MEMBER HOOD: That's a splendid
3 point, Susan, and, yes, David has been a part
4 of our working group that helped us with the
5 draft. He has been the great institutional
6 memory, I think, of things of this nature.

7 So, not only has been involved
8 along with the Chairman, Ms. Kreisman and also
9 one of the former committee members, Mr. Ari
10 Fitzgerald. So, those have been the informal
11 folks working on this to date.

12 MEMBER KREISMAN: Yes. There was
13 an informal get-together where some of these
14 ideas came together, but this is an
15 opportunity for everyone here that, if you
16 have any thoughts about it, please speak up or
17 if you have any thoughts after this meeting,
18 including all of those on the phone there, all
19 these documents were sent as part of the
20 email, so you should be able to see, at least
21 a rough draft of what we had in mind.

22 And the purpose, of course, is to
23 bring people who need the financing to the
24 place where the investors are and that makes

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1 an easy -- it easy for them to attend the
2 conference, and so that's one of the goals,
3 educational, as to what's available,
4 opportunities that are available, but also put
5 people in a place where they're close to the
6 source of capital --

7 MEMBER LUCEY: Well, the question I
8 have is --

9 MEMBER SCHWARTZMAN: Hi. I'm sorry
10 to interrupt --

11 MEMBER KREISMAN: -- in the more
12 traditional medias.

13 MEMBER BRENNAN: This is Maria
14 Brennan. I'm on the phone. I don't know if
15 anyone else on the phone is hearing static and
16 feedback.

17 MEMBER ON PHONE: Yes.

18 MEMBER ON PHONE: A little static,
19 yes.

20 MEMBER BRENNAN: I'm having trouble
21 hearing the speakers when they are at the FCC.

22 CHAIRMAN RIVERA: All right. We'll
23 try to speak louder and into the mics. I'm
24 sorry about the static. I'm not sure what we

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1 can do about that.

2 MEMBER BRENNAN: Thanks, Henry.

3 MEMBER KREISMAN: Do you know what
4 helps sometimes on the -- people in the phone,
5 if you would mute your phone unless you're
6 speaking, sometimes some of that is coming
7 from your phones, themselves.

8 CHAIRMAN RIVERA: And also, if
9 you've got any blackberries around your
10 speakers, move your blackberries away from the
11 speakers. That helps sometimes, too.

12 So, Anne, do you have a point?

13 MEMBER LUCEY: Yes. I was just
14 wondering. If you draft off that Kagen
15 conference, are you sort of limiting it,
16 again, to traditional media, because those are
17 the people who might be participating there,
18 as opposed to the sort of new media out there?

19 That's always my concern, is that
20 it always seem to drift back to just the
21 traditional media when maybe it's -- we want
22 to open it up to --

23 CHAIRMAN RIVERA: Yes.

24 MEMBER KREISMAN: Certainly, our

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1 panels were directed to opening it up to other
2 opportunities, other than your traditional, to
3 look for other ways to get -- this is part of
4 our discussion, other ways to get in the
5 chain--

6 MEMBER LUCEY: Yes.

7 MEMBER KREISMAN: -- and not
8 traditionally, because many times the
9 opportunities are not in what people know
10 about today, but it's the future and emerging
11 technologies. That was at least the goals of
12 our panels.

13 Now, if the associating it with
14 Kagen takes us away from that goal, then
15 that's a thought.

16 MEMBER HONIG: In the last two or
17 three years Kagen has actually opened its own
18 conference up and broadened the definition of
19 its target group as well.

20 MEMBER LUCEY: To what?

21 MEMBER HONIG: To include new media
22 that interact with -- with traditional media.

23 MEMBER LUCEY: Does it include
24 telepony and all that? I mean, it's

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1 everything? I mean, are we excluded by just
2 grabbing onto -- I'm just curious. I'm just -
3 - because --

4 MEMBER HONIG: They now include
5 substantial participation, for example, from
6 internet companies that are distributors of
7 media.

8 MEMBER LUCEY: So, it's just media?

9 MEMBER HONIG: That's right.

10 MEMBER LUCEY: Is that -- we're
11 just focusing on media, it's not on all
12 telecom then, is that the goal, is to --

13 MEMBER HONIG: No. There isn't a
14 conference to be bootstrapped off that focuses
15 on both, but the one that probably, if we were
16 to bootstrap off someone, it probably has --
17 most of the players there is Kagen's.

18 CHAIRMAN RIVERA: Yes. I don't
19 think that the -- there's no intent to limit
20 this. And, in fact --

21 MEMBER LUCEY: I know, I know, but
22 I just wondered if you're drafting off
23 conferences kind of geared toward one sector
24 of service --

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1 CHAIRMAN RIVERA: It was just a
2 matter of convenience. Some of those folks
3 will be there who might want to come, and we
4 thought it was a good idea to piggy back, but
5 there -- again, as Barbara suggested, the
6 panel -- the panel's themselves are intended
7 to broaden the reach.

8 MEMBER KREISMAN: Also, the timing,
9 has that been established? I remember early
10 criticisms of April because there's a lot of
11 conventions right along that line. That may
12 not be the best timing.

13 I know that, you know, we certainly
14 would like to have this conference somewhere
15 in the first half of 2008, but that was one of
16 the issues that had not been nailed down yet.

17 CHAIRMAN RIVERA: Jim.

18 MEMBER WINSTON: And I share your
19 concern, but I don't -- I can't think of a
20 conference that exists now that's broad enough
21 to cover all -- to cover the entire telecom
22 industry.

23 But I think you're right. It would
24 be unfortunate if we weren't able to broaden

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1 the scope of our inquiry.

2 MEMBER LUCEY: Because I just
3 wonder about the venue, even. New York. I
4 mean, should -- what about Silicon Valley? I
5 mean, is that a better -- I don't know. I'm
6 just throwing it open --

7 MEMBER HOOD: We were actually
8 thinking that New York, just because of the
9 proximity to Wall Street and --

10 MEMBER LUCEY: Yes.

11 MEMBER HOOD: -- the banking
12 institutions there and the private equity
13 firms. There's no reason why --

14 MEMBER LUCEY: There's a lot of
15 venture capitalists on the West Coast, too. I
16 was just curious about it.

17 MEMBER HOOD: It's a good point,
18 but I think initially we thought we'd do that
19 -- who knows. If this is such a success,
20 maybe we can take to the West Coast.

21 MEMBER LUCEY: Yes.

22 CHAIRMAN RIVERA: David, Susan
23 raised a very good point that we discussed in
24 our working group in terms of the difference

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1 between this conference and the MMTC
2 conference. Can you hold forth on that one?

3 MEMBER HONIG: The MMTC conference
4 has tended to be for new entrants and small
5 companies, although it includes media and
6 telecom, mostly media.

7 And the equity providers and debt
8 houses that come tend to be in the \$20 million
9 and under range. We'd like that to change,
10 but that tends to be MMTC's constituency. The
11 idea of doing this in New York is to really
12 focus on much larger companies and larger
13 transactions, which we hope could also be
14 inspired to set up or invest in smaller funds
15 as well.

16 MEMBER FOX: It's helpful to know
17 that they're complimentary.

18 MEMBER HONIG: Yes.

19 MEMBER FOX: There's one --

20 MEMBER KLEIN: I think Rainbow/PUSH
21 does one, right?. Wall Street one that's
22 coming up in --

23 MEMBER FOX: In January.

24 MEMBER: In January, 5th through

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1 8th.

2 MEMBER KLEIN: -- so that won't --
3 okay.

4 MEMBER HOOD: Becky, do you have
5 anything to add to this conversation?

6 MEMBER KLEIN: I don't. I think
7 the questions I had are being asked and
8 answered, other than just getting some
9 direction at some point when we can decide the
10 funding sources and the profile of those
11 sources.

12 And if we do get it funded, or
13 various aspects of it funded from underwriters
14 that are Wall Street firms, is there an
15 opportunity to solicit funders that are other
16 than Wall Street firms that might be
17 interested stakeholders in this?

18 MEMBER HOOD: I think that's a
19 great point, Becky, and when I come up with
20 our committee's help in terms of what the
21 sponsorship opportunities should be, I have no
22 problem at all in having anyone who wants to
23 participate, participate in terms of being a
24 funder, so it wouldn't be limited to them

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1 exclusively.

2 MEMBER KLEIN: Okay.

3 CHAIRMAN RIVERA: All right. The
4 indications I'm getting from the chairman's
5 office is that they're very interested in our
6 pursuing this initiative, and the chairman,
7 himself, is very interested in participating,
8 so that's all very good news.

9 And so, if we're interested in
10 moving forward, I think we should do that.
11 All right. Well, that's good. Let's do that.

12 And, Rodney, you've got the ball
13 here, so we'll look to you for some leadership
14 in terms of next steps and --

15 MEMBER HOOD: Very well.

16 CHAIRMAN RIVERA: -- what kind of
17 help you need from us to move forward with
18 this.

19 As Rodney mentioned, the next
20 meeting of this committee would be in
21 conjunction with that conference, so it would
22 be -- early next year would be our next
23 meeting, and it would be there the afternoon
24 before.

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1 So hopefully you all can make your
2 way up there and, of course, we'll give you
3 all the details and so forth of where that's
4 going to be, followed by the reception and so
5 forth. So, it should be a very nice event, I
6 think, if we can it pulled off.

7 Yes, somebody on the phone?

8 MEMBER CHACKO: Yes. It's Sheba
9 Chacko. The static is still --

10 MEMBER KREISMAN: I'm not sure what
11 to do about it.

12 Our telecommunications office, is
13 there anything that we can do about this
14 static?

15 MEMBER CHACKO: Can we reopen the
16 bridge again?

17 MEMBER KREISMAN: Can we reopen the
18 bridge again?

19 CHAIRMAN RIVERA: Okay. Hang on
20 just a minute. Is it just one person, or is
21 everybody experiencing this awful static? All
22 right. If you all will hang up, we'll hang up
23 here and reopen the bridge, and then, you
24 know, give us a minute or so and then call.

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1 (Whereupon, the meeting went off
2 the record at 10:23 a.m. and reconvened at
3 10:24 a.m.)

4 CHAIRMAN RIVERA: Hello?

5 FEMALE SPEAKER: This is better.

6 CHAIRMAN RIVERA: Great. That seems
7 to be the consensus so far.

8 MEMBER GUTIERREZ: Hello? This is
9 Ray Gutierrez from Showtime Network.

10 CHAIRMAN RIVERA: Hey, Ray.

11 MEMBER GUTIERREZ: Much better. My
12 goodness.

13 MEMBER HONIG: Mr. Chairman, that
14 concluded my remarks.

15 CHAIRMAN RIVERA: All right. Well,
16 thanks much. As soon as Max gets on --
17 Hello?

18 MEMBER SWEENEY: Hello. This is
19 Tara Sweeney.

20 CHAIRMAN RIVERA: Hi.

21 MEMBER WILDER: Margarita Wilder.

22 CHAIRMAN RIVERA: Great.

23 MEMBER CHACKO: Connie Simon for
24 Paul Jones.

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1 CHAIRMAN RIVERA: Great.

2 Max or Becky, are you on yet?

3 MEMBER KLEIN: I'm on.

4 CHAIRMAN RIVERA: Okay.

5 MEMBER NAVARRO: Okay. This is
6 Max.

7 CHAIRMAN RIVERA: Hey, great, Max.

8 Okay, Max, since you're back, we're
9 going to go ahead and let you give your
10 report.

11 MEMBER NAVARRO: Okay. David, I'm
12 sorry, Henry.

13 CHAIRMAN RIVERA: Okay. Can you
14 hear me?

15 MEMBER MENDEZ: Yes. This is Bob
16 Mendez. I can hear you clearly.

17 MEMBER NAVARRO: Okay. Henry, as
18 you know, the subcommittee on emerging
19 technology submitted a recommendation back on
20 September 27th and that had to do with DTV
21 subchannels. After that recommendation that
22 we did have David come back to the
23 subcommittee and ask us to consider three more
24 recommendations, and so we did.

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1 We did have our conference call
2 November the 9th. I think there were like
3 four members of the committee on the
4 conference call and two or three people that
5 subject expects, and I believe two of them
6 were part of the FCC Media Build Bureau.

7 Unless the committee members have a
8 copy of the Congressional Federal Register or
9 a booklet in front of them it's going to be a
10 little difficult to explain what the
11 subcommittee was trying to do.

12 At the three different
13 recommendations that David proposed, David, to
14 explain those recommendations and why the
15 purpose of those recommendations were
16 submitted again to the subcommittee.

17 Of the three recommendations we
18 only looked at two, and basically they were
19 endorsements, not necessarily changing any of
20 the legislation that the FCC had already
21 committed to.

22 But, David, do you want to just
23 talk a little bit about the two
24 recommendations and tell the committee why you

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1 decided to come back and recommend
2 particularly the recommendation one and two,
3 David.

4 MEMBER HONIG: These actually are
5 the only matters that --

6 MEMBER KREISMAN: Hold one second.
7 This is like really weird, but whoever was
8 the last person to call in, you're the guy or
9 girl who's causing the static. The problem
10 is, I don't know who that is.

11 CHAIRMAN RIVERA: I don't, either.

12 MEMBER KREISMAN: Wow, I don't know
13 what to do. Does anyone think they might be
14 the last person who called in, because I'm
15 going to ask you to hang up and see if you
16 change, you make things better.

17 MEMBER MENDEZ: It could have been
18 me. Bob Mendez, was I the last one to sign
19 on?

20 MEMBER NAVARRO: This is Max --

21 MEMBER KREISMAN: Bob, do me a
22 favor. Hang up and then call back again.
23 We'll see if it changes.

24 MEMBER NAVARRO: Okay. But the

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1 static is not that bad on my end, anyway.

2 MEMBER KREISMAN: It is? Okay.
3 Why don't you proceed with the report and then
4 you can hang up and call back, Bob.

5 MEMBER MENDEZ: Okay. I'll do
6 that.

7 CHAIRMAN RIVERA: David.

8 MEMBER HONIG: Do you want me to go
9 ahead?

10 MEMBER KREISMAN: Sorry.

11 MEMBER HONIG: These FM
12 recommendations were really the only matter
13 that the diversity committee was charged with
14 reviewing that had been considered by the
15 previous diversity committee in 2004.

16 We drilled down a little deeper and
17 really were trying here to accomplish three
18 things at once. First, to find some way to
19 encourage the Commission to address the
20 consequences of years and years of minorities
21 getting inferior frequencies, inferior,
22 particularly FM allotments, as well as AM
23 allotments, lower power, farther from the
24 community of light -- from the center of the

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1 community where their audiences primarily
2 reside.

3 And, finding a way, therefore, to
4 help them to the extent possible and
5 consistent with other policies, relocate
6 closer to their audiences. This would then
7 have a salutary effect on their
8 creditworthiness and their ability to compete.

9 Another policy that we were trying
10 to harmonize this with is the Commission's
11 development of low-power FM, both as training
12 facilities and as facilities that serve unmet
13 needs in local communities.

14 And third was the longstanding
15 policy that the Commission has had derived
16 from the way it interprets Section 307(b) of
17 the Communications Act, under which it's
18 preferred that each local community that gets
19 a station located -- a license to it should be
20 presumed to be able to keep that allotment
21 rather than having it moved somewhere else.

22 These are difficult goals to
23 harmonize and I think the subcommittee has
24 done a good job at finding a way to do it.

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1 The first recommendation is fairly
2 straightforward simply to endorse the
3 Commission's recommendation to Congress for
4 legislation that would eliminate third
5 adjacent FM spacing restrictions found in the
6 rules now for low power FM.

7 The second one recommends that
8 essentially, to put this in lay language, if a
9 licensee wants to move from a community that
10 has only one station licensed to it, let's say
11 it's East Manassas, and they want to move to
12 East Arlington to be closer to downtown, they
13 could do that provided that they -- that the
14 licensee underwrites the cost of licensing
15 construction in a full year of operation of a
16 new LPFM service that would be in East
17 Manassas and thereby leave that community with
18 a service, perhaps even more locally focused
19 on the needs of that community than the
20 original station would have been trying to
21 serve the whole -- the whole market.

22 This would, thus, satisfy the
23 307(b) goal of local service. It would
24 satisfy the goal of promoting low LPFM as a

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1 local -- as a local service, and it would also
2 enable stations to move closer to the markets
3 they're trying to serve.

4 CHAIRMAN RIVERA: All right.
5 David, the recommendation --

6 MEMBER NAVARRO: Okay. Henry,
7 those two recommendations are really --
8 doesn't conflict with any of the -- in any of
9 the legislation that that's already been
10 proposed by the FCC, with consultations with
11 the Media Bureau, folks that were there.

12 These recommendations are basically
13 a refinement and an enhancement probably, to
14 legislation already proposed so, many members
15 felt pretty good about that and therefore we
16 had the majority of the folks on the
17 subcommittee adopt these two recommendations
18 back to the Diversity Committee.

19 CHAIRMAN RIVERA: All right. I
20 want to thank you, Max.

21 Jim, did you have a question?

22 MEMBER WINSTON: Yes, I do. Is the
23 recommendation for all move-ins, or only move-
24 ins where there's no remaining local service?

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1 MEMBER HONIG: Well, right now, a
2 move-in where there is remaining local service
3 wouldn't need this, so this would really be
4 aimed at move-ins where it would leave no
5 remaining local service.

6 CHAIRMAN RIVERA: Any other
7 questions?

8 MEMBER FOX: Yes, I have one. And
9 this is an issue that we've actually talked a
10 lot -- had a lot of policy discussions just
11 internally. And disclosure would actually
12 help us. And we just haven't weighed in in
13 favor of these because we've always been
14 cognizant of the policy issues around it.

15 Have you given thought to a back
16 story or analysis if there is a large degree
17 of -- urban migration has always been the
18 thought that stations could eventually just
19 slowly move into the city areas and we would
20 end up losing service in the outlying areas.

21 Was there thought given in your
22 discussions whether you take a look in two
23 years or five years at that issue or, where do
24 you go?

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1 MEMBER HONIG: The thought, I
2 think, was that, first, when you have
3 relocations toward the center of a market you
4 have an opportunity for backfilling, but the
5 issue of remaining service to the outlying
6 areas is really addressed by this idea of
7 having a low power FM station --

8 MEMBER FOX: It's creative. It
9 really is.

10 MEMBER HONIG: -- through the air.
11 And the idea is, it wouldn't just
12 be a repeater or translator, it would be one
13 that actually provides kind of the equivalent
14 of what a --

15 MEMBER FOX: A real nickel.

16 MEMBER HONIG: -- class a LPTV
17 would do.

18 MEMBER FOX: Okay.

19 MEMBER WINSTON: Well, the question
20 of move-ins, in general, I think the
21 Commission has been relaxing the move-in
22 standards that allow people to do move-ins.

23 The concern NABOB has had is that
24 they've been mostly large companies. I mean,

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1 you know, they are companies who have
2 engineers on staff every day looking for new
3 ways to move in stations, so that I haven't
4 seen minorities taking advantage of the move-
5 ins. It's mostly been the big companies who
6 are taking advantage of the move-ins.

7 MEMBER FOX: It's not cheap to go
8 through the process.

9 MEMBER HONIG: Yes.

10 MEMBER FOX: Is it not?

11 MEMBER HONIG: Yes.

12 MEMBER FOX: It takes money.

13 MEMBER HONIG: Yes, it takes money
14 just to have the engineers on staff to do be
15 doing all the studies to see what can be moved
16 in and how it can happen, so that I have --
17 you know, my experience has been that move-ins
18 have been good for consolidated, but not good
19 for small businesses and minorities.

20 So, I don't know that a
21 recommendation that facilitates move-ins is a
22 positive for our committee unless it's thought
23 that the Commission is already going to allow
24 these move-ins and this is sort of a back-

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1 filling to help the communities that are
2 losing service because the move-ins,
3 themselves, I think have been very
4 questionable.

5 MEMBER HONIG: Well, we've had
6 experiences with minority-owned companies that
7 are going to be doing more move-ins in the
8 future and would like to. The cost of doing
9 so has always been an impediment and one of
10 the difficulties imposed by the current
11 regulatory regime that discourages certain
12 types of move-ins, is that no wants to invest
13 the cost for -- unless there's going to be a
14 result.

15 Where a station can be moved in, of
16 course, there's an enormous benefit. As
17 crafted, of course, it implies across the
18 board, and I'd agree with Jim that much more
19 needs to be done to both relax the rules and
20 also encourage more minorities to take
21 advantage of them, and to reduce the cost of
22 doing so, which may be the subject of another
23 recommendation that we ought to focus on.

24 MEMBER NAVARRO: David, we did

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1 agree, I think, that perhaps over the next
2 couple of weeks, months, the subcommittee
3 would meet again and, based on some of your
4 comments, we would agree to look at other
5 types of recommendations, right? Hello.

6 MEMBER HONIG: I'm sorry. I
7 couldn't understand the question.

8 MEMBER NAVARRO: David, I think the
9 subcommittee did agree that in the future we
10 would consider some of the other
11 recommendations as well.

12 MEMBER HONIG: Okay.

13 CHAIRMAN RIVERA: All right. Shall
14 we vote on this? The Chair will take these as
15 -- recommendations, as a motion.

16 We take your point, Jim, that
17 perhaps this is not as focused on minorities
18 as it could be, but maybe we'll get some in
19 there. I mean, why not?

20 But, any other questions or points?

21 All those in favor of these
22 recommendations, say "Aye."

23 (Ayes all.)

24 CHAIRMAN RIVERA: All right. It

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1 sounds to me like the motion carried. Not
2 very enthusiastically, but it did carry.
3 We'll forward this --

4 MEMBER WINSTON: Can I be recorded
5 as an abstention?

6 CHAIRMAN RIVERA: Yes, indeed.

7 We'll forward this up to the
8 Commission, then, and see where we move from
9 there. Those of you who are here with me in
10 Washington know that we've been honored by the
11 presence of Commissioner Adelstein. And for
12 those of you on the phone, you've just been
13 notified of that.

14 And I'm going to turn the mic over
15 to him. I think he's got a few things to say
16 to the committee.

17 So, welcome, Commissioner
18 Adelstein.

19 COMMISSIONER ADELSTEIN: Well,
20 thank you, Henry. I appreciate all the work
21 you're doing and everybody here is doing on
22 this body. We really value your input. I
23 know it takes a lot of time from all the busy
24 schedules that you have and I just wanted to

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1 thank you for that.

2 I know we've talked a lot about --
3 each of you, about the issues of diversity and
4 how deeply I feel about it. There's no point
5 in repeating any of that, but I just wanted to
6 say that, and ask you a question subsequently,
7 but my main point is that you're doing great
8 work. It's very helpful to us. This
9 conference looks fantastic on Access to
10 Capital.

11 I think that kind of idea is great.

12 I've had the concept of trying to get an even
13 broader overview of all the different issues
14 that you were doing and the other Diversity
15 Committee is doing in MMTC and NABOB and all
16 the recommendations and getting a body
17 together which would involve all of you to
18 some extent to talk about that, and I just
19 wanted to make sure that you understood that
20 that does not reflect that I don't value what
21 you're doing.

22 I think what you're doing is
23 incredibly important, in that there's room for
24 a lot of discussion about all these issues.

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1 Now, one question, I really need
2 some advice, because you're an advisory
3 committee. I need advice. As you are
4 probably aware, we have before us pending a
5 lot of different ideas about -- actually, very
6 good ideas that could be very helpful in
7 promoting ownership that could come up as soon
8 as December 18th.

9 So, I've got to figure some things
10 out very quickly. And one of the fundamental
11 issues I'm struggling with which some of you
12 might have heard came up in the testimony
13 before the House Commerce Committee last week,
14 was the question of how you define eligible
15 entities, whether it is a SDB definition,
16 socially -- socially economically
17 disadvantaged businesses, or whether it's the
18 basic Small Business Administration
19 definition, which is another proposal that's
20 been made.

21 My preference is to go to SDB's,
22 but I wanted to get the opinion of anybody
23 here that was willing to share with me just
24 how important that is, because to me that

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1 seems to be a fundamental issue, that all of
2 the good ideas that we're talking about doing
3 on December 18th would be vastly undermined,
4 if not rendered valueless if we don't do the
5 right definition.

6 I don't know whether you agree that
7 that's correct or what -- I really wanted your
8 input, just if you don't mind if I ask if
9 anybody has any input on that -- on that
10 question, because I've got to know and I've
11 got to know fast.

12 So, you're down here, I got the
13 experts, I want to just get a quick sense from
14 you how important this SDB definition is
15 versus a broader definition.

16 MEMBER HONIG: Well, I think from -
17 -

18 CHAIRMAN RIVERA: If I could just
19 interrupt. I think that, Commissioner, we --
20 I was going to raise this subsequently at the
21 end of the meeting to see whether the
22 committee was interested in participating in
23 this definitional debate, but the Chairman has
24 asked us -- invited us to participate in the

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1 further notice aspect of the things that you
2 will be raising on the 18th. So -- but we can
3 -- anybody is -- so we would be speaking as a
4 committee at that point.

5 Now, if anybody has any points
6 they'd like to raise with the Commissioner
7 individually, have at it.

8 MEMBER WINSTON: On behalf of NABOB
9 -- not as a member of the committee, NABOB
10 would think the distinction is critical, that
11 if you're only talking about a small business
12 program, you're not going to do anything
13 significantly to advance minorities or women
14 because the vast majority of small businesses
15 are not owned by either minorities or women so
16 that you're not going to get to the heart of
17 the problem we're trying to address by an
18 overbroad definition of who's supposed to be
19 taking advantage of the programs.

20 So, I think an SDB definition is a
21 starting point. It should be the minimum
22 standard that the Commission should be looking
23 at.

24 MEMBER BRENNAN: And, Commissioner,

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1 this is Maria Brennan with American Women in
2 Radio and Television. I would concur with
3 NABOB in that respect, to start.

4 MEMBER HONIG: I'd concur with Jim
5 also. We did the math and for commercial
6 radio, the first 95 percent of stations are
7 owned by -- by SBA defines small businesses,
8 so it's very dilute to begin with.

9 But among all commercial radio
10 stations, 7.78 percent are minority-owned.
11 Among SBA-defined small businesses, just 5.88
12 percent are minority-owned, so the -- if you
13 use the SBA's small business definition, you
14 end up with a beneficiary class which is even
15 more dilute than the industry as a whole.

16 It would not only not be helpful,
17 it would actually be harmful. It would
18 actually be regressive. And the Commission
19 could not possibly, with a straight face,
20 adopt a definition based on small business,
21 saying that it's going to help minorities
22 when, in fact, it's going to exclude
23 minorities more so than if it was just open to
24 the general -- to everybody.

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1 Now, the ideal way to do this would
2 be to use an SDB definition. The Commission
3 has sought to develop one since 1996.
4 Unfortunately, the research that it did in --
5 which got us, I think, from a Constitutional
6 analysis standpoint, three-quarters of the way
7 there.

8 And published in 2000 has been left
9 stale for years. The underlying databases
10 were about ten years old, and now the clock
11 has been running, and it's, unfortunately,
12 probably necessary to start over.

13 So the question now, unfortunately,
14 is what can be done in the interim while the
15 Commission concludes, possibly with a restart,
16 the job of coming up with a constitutionally-
17 sustainable SDB definition.

18 The diversity and competition
19 supporters in the rulemaking proposed an
20 interim temporary procedure called Full File
21 Review which would consider for each applicant
22 for one of these programs whether the
23 applicant has overcome disadvantages, the
24 overcoming of which is both predictive, both

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1 of their likelihood of success in a
2 competitive environment, and their
3 contribution to diversity, what experiences
4 has the person or company derived which it
5 could share with the public.

6 There is a good model -- there are
7 two good models for this. One is the
8 admissions policies used by state universities
9 in Texas, California and Michigan after
10 resolutions were passed that required race-
11 neutral procedures in admissions.

12 And the other being the NAB's and
13 the Emma Bowen Foundation's choice of
14 candidates for their programs. The NAB's
15 program, in particular, which does not just
16 consider grades and test scores, but also
17 considers experiences.

18 It's actually about half
19 minorities, half women, and it also includes a
20 good many rural broadcasters, small market
21 broadcasters and veterans.

22 Those are substantial disadvantages
23 that people overcome. So, I think there's a
24 way to do this that would be race-neutral. It

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1 would not be the ideal. The Commission should
2 not lose sight of and should continue
3 assertively to move toward an SDB model.

4 But, in the meantime, there's
5 something that would be much more focused than
6 the regressive SDB definition that has been
7 kicked around.

8 And your point, Commissioner, that
9 the Commission seems poised to adopt maybe 10
10 or 12 initiatives, eight or nine of those are
11 contingent upon this definition, so that if
12 the definition isn't solved before the
13 Commission adopts these or at least before the
14 effective date of when these programs go into
15 effect, the Commission will have snatched
16 defeat from the jaws of victory.

17 CHAIRMAN RIVERA: Andy, do you have
18 something to add?

19 MEMBER SCHWARTZMAN: I think, in
20 the interest of time, what I would say would
21 just be to add detail to what's already been
22 said. I just -- for what it's worth, the
23 clients that I've been representing in this
24 proceeding strongly concur with the thrust of

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1 what you've already heard, and I could go into
2 detail for you, but I think the point's been
3 made.

4 CHAIRMAN RIVERA: Is that what you
5 need?

6 COMMISSIONER ADELSTEIN: Yes, that
7 was any contrary view or --

8 MS. CAREY: Actually, yes. On
9 behalf of the Chairman, I think that it's
10 important to the committee that -- sorry.

11 CHAIRMAN RIVERA: This is --
12 Michelle Carey from the Chairman's office, has
13 joined us.

14 MS. CAREY: On behalf of the
15 Chairman, I think it's important for the
16 committee to hear some of the legal concerns
17 that we have with an SDB definition and as
18 keying off of David's point, I think what
19 we're looking at is a race-neutral definition.

20 And we've asked Matthew Berry, who
21 is the deputy general counsel, to talk to you
22 just briefly about some of the legal issues
23 about adopting an SDB definition.

24 CHAIRMAN RIVERA: Yes. Why don't

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1 you sit here, Matthew.

2 MR. BERRY: Thanks for the
3 opportunity to speak this morning. As
4 Michelle indicated the Chairman's Office has
5 asked the Office of General Counsel at these
6 definitional issues and we have done so in
7 what I believe is a thorough and careful
8 manner, and I think that these definitional
9 issues that you have been discussing raise,
10 you know, very, very serious legal issues
11 that, you know, the committee and the
12 Commission as a whole needs to take account
13 of.

14 And we think that the threshold
15 question here is whether or not you adopt a
16 race-neutral definition or one that includes a
17 race-based classification. And to the extent
18 that you adopt a race-neutral definition, you
19 then are in the world of what's known to
20 lawyers as "rational basis or view," very,
21 very lenient review in terms of the courts.

22 To the extent that you use a
23 racially-based definition and I think it's
24 indisputably clear that the socially and

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1 economically disadvantaged business
2 definition, for instance, that's used in SBA
3 programs, is clearly a race-based definition
4 because there's a presumption that if you are
5 -- if a company is controlled by African
6 Americans, Hispanic Americans, Asian, Pacific,
7 Americans subcontinent, Pacific Americans, and
8 Native Americans, there's a presumption that
9 you qualify as an SDB, then you are in the
10 world of strict scrutiny.

11 And under strict scrutiny, the
12 courts look to see whether or not a program is
13 narrowly tailored for their compelling
14 government interest.

15 And, as the lawyers among you know,
16 strict scrutiny is the highest level of
17 scrutiny that a court will give a program.

18 And the Commission and -- this
19 standard was established by the Supreme Court
20 case of Adarand in 1995. Previously the
21 courts had said for federal race-based
22 classifications, you only use intermediate
23 scrutiny. In 1995, the court shifted and said
24 there's going to be strict scrutiny.

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1 And the Commission has had
2 experience with review of race-based
3 classifications under strict scrutiny. Twice,
4 in particular in front of the DC Circuit in
5 1998 and in 2001, the DC Circuit both times
6 struck down race-based classifications that
7 were used by the Commission and said it was
8 unconstitutional under Adarand.

9 And in these two cases it was a 6/0
10 rejection for the Commission, both times
11 unanimously the Commission -- the court said
12 that the Commission's race-based
13 classifications were unconstitutional.

14 In looking at the analysis, a
15 couple things that are particularly
16 noteworthy, first with respect to the
17 compelling interest prong, in the Lutheran
18 Church opinion in 1998, the DC Circuit
19 specifically held that the FCC's asserted
20 interest in broadcast diversity was not a
21 compelling interest.

22 So, that kind of that kind of
23 holding from the DC Circuit is very, very
24 troubling precedent in any bid to try to

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1 establish a race-based classification passes
2 strict scrutiny and that's something the
3 Commission would be up against if a race-based
4 classification were adopted.

5 Secondly, with respect to narrowing
6 tailoring, the courts precedent on narrow
7 tailoring demands a very, very, very close fit
8 between the classification that you're using
9 and the interest you're seeking to vindicate.

10 And it's been very, very difficult
11 with respect to narrow tailoring to have a
12 program, a race-based classification that
13 passes that. You did have one in a 5/4
14 opinion in the Grutter case in front of the
15 Supreme Court, however, with this current
16 Supreme Court and the latest round of opinions
17 in the Louisville Schools case and then the
18 Seattle Schools case, the Supreme Court said
19 that narrowing tailoring was not vindicated.

20 So, I mean, as the Office of
21 General Counsel sees it, we've also looked
22 into the idea of, well, if diversity isn't
23 going to work because of the Lutheran Church
24 opinion what about the idea that we're going

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1 to be remedying past discrimination and that's
2 going to be the interest.

3 And we've looked very, very
4 carefully at the evidence that's been
5 submitted in the record and the like, and the
6 courts have been very clear in terms of a
7 distinction between remedying overall societal
8 discrimination versus specific public
9 discrimination that the Commission may have
10 engaged in.

11 And, while there's some evidence in
12 the record, when you look at it in light of
13 the type of evidence that the courts have
14 demanded, in particular, let's say, in the
15 transportation context or the like, we are of
16 the opinion that it would be very difficult to
17 convince a court that this was justified in
18 terms of remedying past discrimination.

19 So, I think what we are left with
20 is a very, very serious concern, by no means
21 are we saying that it would be certain to
22 lose, but a very, very serious concern if you
23 move forward with an SDB definition, for
24 instance, a race-based definition, that what

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1 you will end up with is a very, very difficult
2 time defending this in court because, again,
3 you'll be up against strict scrutiny.

4 Whereas, if you move forward with a
5 race-neutral definition that is much, much
6 easier to defend. And so I think in terms of
7 trying to move forward with something that
8 will actually work in the real world in terms
9 of standing up, the conclusion that we have
10 come to certainly is that moving forward with
11 a race-based classification is much, much
12 riskier than moving forward with a race-
13 neutral classification.

14 And we certainly think that's
15 something, you know, it's up to the
16 policymakers to decide what to do with that
17 information, but it's certainly something that
18 we think needs to be taken into account
19 because if you just do something that's
20 declared to be unconstitutional, that really
21 just doesn't do any good at all and arguably,
22 is counterproductive.

23 So, that's just the perspective
24 that we wanted to share.

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1 CHAIRMAN RIVERA: Questions. Why
2 don't we take some questions, Matt.

3 MR. BERRY Sure.

4 CHAIRMAN RIVERA: Would that be all
5 right?

6 David.

7 MEMBER HONIG: Thank you. I'd like
8 to suggest that the idea of adopting an
9 interim race-neutral classification, such as
10 full file review, is not mutually-exclusive
11 from continuing to pursue the question of how
12 to justify a race-conscious definition.

13 I agree with you that it would be
14 difficult, but I don't agree on the reason for
15 its difficulty. In the Parents United case,
16 we basically saw reasoning used to hold for
17 the second time in three years diversity in
18 the education context as a compelling
19 governmental interest in language that I think
20 probably overrules or substantially undercuts
21 the Lutheran Church decision if it were
22 applied here.

23 The difficult -- the reason it's
24 difficult is that the Commission, since 2000,

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1 hasn't done any work. It hasn't commissioned
2 any meaningful studies. It's left the studies
3 that it has had sit in the shelf. Well,
4 that's over, we can't change it.

5 But the best course the Commission
6 could probably take would be to adopt the
7 least dilute, most effective, most fair race-
8 neutral interim definition that it can and
9 simultaneously recognize that while it may be
10 difficult, it doesn't hurt to try to see
11 whether a race-conscious definition could be
12 evolved.

13 Such a definition need not be based
14 on diversity here. You're right. It could be
15 based on a remedial theory and I would show --
16 indicate, too, that the record in the docket
17 on media ownership has shown years of FCC
18 ratification and involvement in
19 discrimination.

20 And also to promote competition,
21 the Commission's primary goal was just simply
22 finding a way to unlock the management and
23 entrepreneurial and creative of skills of vast
24 numbers of people who haven't had those

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1 opportunities. It's not efficient. And a way
2 to do that, if found to be compelling, and it
3 should -- would be worthy of being pursued.

4 So, if -- I wonder whether you
5 would agree that it might be useful for the
6 Commission to pursue both tracks
7 simultaneously, that is, adopt the best race-
8 neutral definition as an interim matter while
9 also renewing its efforts to see whether a
10 race-conscious definition could be sustained.

11 MR. BERRY: I think that's an
12 excellent question. With respect to the
13 second part of the question, the -- as I think
14 the Chairman of this Committee indicated, the
15 further notice seeks comment with respect to
16 the possibility of developing a race-conscious
17 definition that would be constitutionally
18 sustainable and, to the extent that the
19 Commission or others wish to explore that and,
20 you know, do the work that's necessary, you
21 know, that's not something that is for me to
22 comment on or oppose.

23 I think that to the extent you want
24 to do more research to have the Commission to

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1 do the work that you feel is necessary to have
2 a sustainable race-conscious definition, I
3 don't think it would be appropriate for me to
4 prejudge the outcome of that proceeding.

5 Certain, anything you come up with
6 will be subject to strict scrutiny, but to the
7 extent the Commission wishes to do that, that
8 is tee'd up in the further notice and I'm not
9 saying I'm here opposing that at all, because
10 I don't.

11 With respect -- and I also agree
12 with you that moving forward on a race-neutral
13 definition at this time is the appropriate
14 course of action. And the question then
15 becomes what is the best race-neutral way of
16 doing it. And that's more of a policy issue
17 that I'm not going to comment on.

18 I guess I would have two points
19 with respect to full file review, though, that
20 give me some concern, but -- and the first is
21 that I think with respect to how you would
22 define that, one must be very, very careful,
23 because, as I'm sure you're aware, in both the
24 Lutheran Church case and the

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1 Maryland/DC/Delaware Broadcaster's Association
2 case, the Commission went into court and
3 maintained that what was being done really was
4 not the use of a racial classification.

5 And there was no specific, you
6 know, quota, no specific -- it was not
7 designed to pressure in some sense and -- in
8 terms of having a race-based preference. And
9 in both times that the D.C. Circuit, I think,
10 took a really skeptical view of what the
11 Commission was doing and disagreed.

12 So, I think that any kind of full
13 file review, one would have to be very, very
14 careful to make sure that, indeed, it was
15 race-neutral.

16 The second point with respect to
17 the difficulty of full file review is that in
18 the educational context, when you are doing a
19 -- let's say for admissions purposes, if
20 you're carrying certain applicants to other
21 applicants and making a determination of who's
22 going to get the slot.

23 In the Commission's context when
24 you have mutual exclusivity, you go to

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1 auction. So, you would be measuring an
2 applicant against some kind of standard. And
3 the question is: How do you define the
4 standard and how do you do it in a race-
5 neutral way and how do you do it in a way
6 that's administratively viable.

7 And with respect to the latter
8 question, I would defer to the Media Bureau
9 and the likes in terms of how it's
10 administratively viable.

11 But again, you'd have to define the
12 standard and the process of review in such a
13 way that is genuinely race-neutral. You'd
14 also have to make sure that you don't take
15 into account impermissible First Amendment
16 considerations in terms of, let's say, looking
17 for what kind of program and commitments
18 they're going to make, et cetera.

19 So, I'm not saying that it's
20 impossible to do, I'm just saying that the
21 kind of full file review that you're talking
22 about raises a lot more complexities and legal
23 uncertainties than does what's in the item
24 right now, and I think that's something

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1 everyone should take into consideration.

2 But again, it all is -- I think the
3 courts have said in this area the devil is in
4 the details, so it's a question of what are
5 those details.

6 CHAIRMAN RIVERA: Go ahead.

7 MEMBER WINSTON: I wanted to chime
8 in because I'm not convinced that this is the
9 course of conduct that I would recommend for
10 the Commission.

11 It seems to me that what we're
12 being told is we're just going to have you
13 lose now as opposed to losing later. And it
14 seems to me that, given those two choices, I'd
15 rather take my chances and lose later if I
16 have to.

17 But the notion that, you know, you
18 look at this industry. You look at the racial
19 makeup of the licensees in this industry, you
20 look at the racial makeup of our country and
21 you say, "We're not going to do anything about
22 it because we may have trouble down the road
23 with the courts."

24 That isn't an acceptable answer to

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1 me. And I recognize that strict scrutiny is a
2 tough hurdle, but all these cases are fact-
3 based, and we're not looking at any -- you
4 know, we've not had any discussion about any
5 specific program or any specific way of
6 dealing with a race-conscious look at that
7 program.

8 So, until you put all those pieces
9 together in a way of going forward -- you
10 know, David pointed out we've got an awful lot
11 of information that's been developed in the
12 record over the course of the last decade.

13 Some of that record may be stale.
14 Some of it may not be. So, I don't think --
15 because there is some good information, good
16 studies in the record that were developed
17 several years back, and I think if you take
18 all the pieces together and say, "You know,
19 we're looking to have a winning strategy
20 that's going to make a difference," I think
21 you come out differently than if you say,
22 "We're going to cave now to do something that
23 we doubt is going to have any real impact."

24 And I don't think that that's --

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1 that's not a strategy that I would support.

2 CHAIRMAN RIVERA: Andy.

3 MEMBER SCHWARTZMAN: If I can take
4 time to respond to that.

5 CHAIRMAN RIVERA: Go ahead.

6 MEMBER SCHWARTZMAN: I think,
7 really, you're raising policy issues, so I'll
8 step in.

9 I think the Chairman agrees,
10 actually, with what David outlined, which is
11 that it's important to adopt the best race-
12 neutral definition right now while we continue
13 to work on other definitions, and I think he
14 believes that the item that we have put
15 forward to the Commissioners contains lot of
16 proposals and some significant reforms to our
17 rules that are going to be beneficial to many.

18 However, he still is open and, as
19 Henry mentioned, we are having a further
20 notice to look at whether we can expand the
21 definition in a constitutional manner, but he
22 believes that there are some significant
23 proposals and rule reforms that are going to
24 be beneficial to many.

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1 CHAIRMAN RIVERA: Andy.

2 MEMBER SCHWARTZMAN: I'd like to
3 concur, in general, with Jim's remarks, and I
4 do agree that there's no reason not to go
5 forward with a -- in the short term, with the
6 best race-neutral approach possible, but I do
7 want to stress that the pessimism that you are
8 expressing, Matt, as Jim says, may be
9 excessive.

10 The Commission has, on many prior
11 occasions, been willing to vote items where it
12 knew that its chances in court were less than
13 perfect, and I, you know, would encourage --
14 and I hope this committee will encourage the
15 Commission not to be gun-shy.

16 Two other observations about your
17 comments. First, you made reference to the
18 First Amendment difficulties of requiring news
19 and public affairs programming or programming
20 commitments of some kind or another -- I can't
21 remember exactly what you said.

22 I don't regard that as an
23 impediment. I regard that as an ideological
24 position, rather than something based on case

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1 law.

2 And the second observation that I
3 would make is that it's not necessary to take
4 new comments or build a new record to find
5 that there was 30 years of history of
6 systematic discrimination on the part of the
7 Federal Communications Commission in the
8 wording of broadcast licenses, awarding
9 licenses to segregationist institutions,
10 refusing licenses to minorities.

11 That's been established. There's a
12 literature on it and there's already a solid
13 basis for the Commission to find evidence of
14 past intentional discrimination in what
15 amounts to the vast majority of the incumbent
16 licenses presently there.

17 So, again, I think that there's a
18 strong factual platform from which to start,
19 and I would encourage you not to be as
20 pessimistic or -- and to view this as a much
21 more promising opportunity than I think I'm
22 hearing, Matt.

23 MEMBER HONIG: Briefly, too, I
24 agree with the comments that have been made.

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1 I think full file review would be --- could
2 best be characterized as having a moderate
3 level of difficulty.

4 In the space of a couple of months,
5 bright people can figure it out. Certainly,
6 it's not sufficient to rest on a small
7 business definition. That wouldn't -- that
8 wouldn't pass rational basis review because,
9 in fact, it's regressive.

10 But, we'd want to emphasize that
11 sometimes when the Commission has dealt with
12 issues related to minority ownership, it
13 adopts the report and order and then, in
14 effect, goes away for years. We've done that
15 now, we'll just let it rest.

16 And that seems to have been what
17 happened with the effort to get an SDB
18 definition, unfortunately. It's important
19 that it not happen again and that if the
20 Commission is going to adopt an interim
21 standard while it pursues the work needed to
22 tie down an SDB definition, I'd agree it may
23 not be as difficult as we feared it could be,
24 or take as long as we feared it could be, that

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1 the Commission would be well-advised to
2 establish a time period no more than six
3 months, eight months to finish the work,
4 budget it properly, collect what's already
5 been done, add to it anything that's
6 necessary, and then ramp it up and in the best
7 possible way, and defend it aggressively in
8 court.

9 MEMBER WINSTON: Am I correct, we -
10 - this Committee was organized in 2003? We've
11 been at it four years. What have we got to
12 show for it?

13 The notion that we're going to
14 suddenly, you know, the Commission is going to
15 get into high gear on these subject strikes me
16 as fanciful, and that's why I'm concerned
17 about what course of action we take now,
18 because I think we get into it once again,
19 justice delayed, justice denied situation of
20 never getting back to this.

21 So, if we've got -- if we'd got
22 something tee'd up now to actually happen, I'd
23 like to see it have some teeth in it, because
24 I don't know when we'll get a chance again.

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1 MEMBER WINSTON: No, I mean, I
2 certainly thing that these are difficult
3 issues, and I guess I will just respond in a
4 couple -- I wanted to respond on one point
5 that Andy had made.

6 And that is, with respect to the
7 evidence of public discrimination by the FCC,
8 again, this is something that lawyers in the
9 Office of General Counsel have looked at very
10 carefully in terms of the evidence that's just
11 been submitted into the record, and the -- I'm
12 not making any definitive statement because
13 one never knows how courts are going to come
14 out, and there's a good-faith argument to be
15 made on both sides.

16 But, when you look at the type of
17 evidence that's in the record here, versus the
18 type of evidence that's been used in the
19 transportation context, the evidence of direct
20 public discrimination by the FCC in the past
21 is significantly less than there was in the
22 transportation context, which was a public
23 discrimination.

24 And also, this has never been an

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1 interest that's been asserted in the past in
2 terms of FCC race-based classification, so I'm
3 not nearly as optimistic as you are in terms
4 of going forward with that as a rationale.

5 I'm not saying you can't. I'm not
6 saying you can't make a good-faith argument on
7 it, but I think looking at it in a neutral
8 manner, it's difficult to say that the case
9 here is nearly as compelling as it has been in
10 the transportation context. That's the only
11 thing I would say.

12 CHAIRMAN RIVERA: Well, thanks for
13 coming, Matt.

14 Commissioner, you got what you
15 needed?

16 COMMISSIONER ADELSTEIN: That was
17 great. I think it was an excellent discussion
18 back and forth and that's exactly why we pay
19 you so well.

20 Just so I understand it, my sense
21 is that your concern is that we not move
22 forward now with something that would undercut
23 the longer-term goals, better to try to get it
24 right, either do it now right or delay until

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1 such time as we can get the SDB definition or
2 at least some interim measure.

3 If we can't get the interim measure
4 by the date that we have a vote scheduled for,
5 then we ought to put that out to comment and
6 make sure we get it right instead of moving
7 ahead with something in the interim basis now
8 that might actually undercut us in the hopes
9 that someday we'll fix it. Is that accurate?

10 MEMBER HONIG: That would be my
11 position.

12 MEMBER SCHWARTZMAN: I agree with
13 that, too.

14 COMMISSIONER ADELSTEIN: Well, very
15 much, everybody, for -- that was fantastic.
16 That was a great discussion.

17 CHAIRMAN RIVERA: Thank you,
18 Commissioner. Thank you for coming.

19 That was completely unexpected, so
20 I hope everybody benefitted from that
21 conversation.

22 As I noted, we might as well stay
23 with this. I was going to bring this up at
24 the end of the meeting, but I'll bring it up

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1 now.

2 And I know -- Becky, are you still
3 with us?

4 MEMBER KLEIN: Yes, I'm still here-
5 -

6 CHAIRMAN RIVERA: Okay. Good,
7 because I'm --

8 MEMBER KLEIN: -- for about another
9 ten minutes.

10 CHAIRMAN RIVERA: Okay. Well, I
11 don't think this will take very long. As I
12 mentioned earlier, the Chairman has indicated
13 that there will be a further notice, that we
14 would -- we are invited to participate in
15 that.

16 If you all are interested in doing
17 that -- and I take it from the comments here
18 that we seem -- there seems to be a great deal
19 of interest.

20 Without objection, I'll go ahead
21 and form the subcommittee to deal with that,
22 and we will participate in that part of the
23 rulemaking.

24 Any objections to that?

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1 MEMBER KLEIN: Henry, this is
2 Becky. I have a question on that.

3 CHAIRMAN RIVERA: Sure.

4 MEMBER KLEIN: So, in order to
5 participate, you're talking about the
6 Committee as a whole that would come to some
7 kind of consensus and how we would voice
8 ourselves within the context of the NPRM,
9 correct?

10 CHAIRMAN RIVERA: Correct.

11 MEMBER KLEIN: Will we be given a
12 chance, the Committee as a whole, ultimately
13 to vote or to talk about the positions,
14 because --

15 CHAIRMAN RIVERA: Absolutely.
16 Absolutely. The process would be exactly as
17 we do everything else.

18 MEMBER KLEIN: Okay. All right.
19 That would be fine. I just -- my sense is
20 that this is really a little bit out of the
21 scope of the Committee itself.

22 CHAIRMAN RIVERA: Yes.

23 MEMBER KLEIN: Because, you know,
24 necessarily the issues are relevant to each of

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1 us, but also there's probably going to be
2 different effects on different members of this
3 Committee and different perspectives from this
4 Committee.

5 So, you know, I can imagine that it
6 would be difficult for -- it may be difficult
7 to come to a consensus, and then what happens
8 for those people who may not take the
9 perspective of the majority of this Committee.

10 CHAIRMAN RIVERA: Well, that's
11 always a problem and a challenge and I'm not
12 sure it's beyond the scope of the Committee
13 when the Chairman has asked us to participate,
14 or invited our participation.

15 MEMBER KLEIN: Okay. I didn't
16 realize that he was tasking us to do that.

17 CHAIRMAN RIVERA: Yes. Well, we
18 hadn't been tasked to do anything. He said
19 "If you'd like to, I'd be happy to take your
20 points of view in the further notice."

21 MEMBER KLEIN: Okay.

22 CHAIRMAN RIVERA: So --

23 MEMBER KLEIN: Well, that's good to
24 know.

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1 CHAIRMAN RIVERA: Here's Michelle
2 Carey from the Chairman's Office.

3 MS. CAREY: In fact, your comments
4 actually reminded me of one thing. I know
5 Commissioner Adelstein just asked a few
6 members of the Committee what their views were
7 on our pending proceeding, and I wanted to
8 point out that, at least, from where I'm
9 sitting, I haven't heard from the rest of the
10 members, and from the Chairman's perspective
11 he, you know, to the extent this is an issue
12 that you want to be involved in, that's your
13 choice.

14 He would want to hear what all the
15 members think and not, you know, certainly he
16 takes all of your views into consideration,
17 but would want to know what, collectively, the
18 Committee thinks and hear from all of you and
19 not just a few of you.

20 So, that's important to him, as
21 well.

22 MEMBER KLEIN: Okay. Thanks,
23 Michelle.

24 MEMBER FOX: I can talk for a

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1 minute, too, because obviously I'm -- I work
2 for a large company and we're part of the
3 Committee, and there's been times when we've
4 decided not to take a role on an issue or I've
5 had personal views and sort of conveyed those
6 and then stepped out of the debate as
7 something that involves the company itself.

8 I think we can all deal with those
9 issues on an individual basis. And I'm sure
10 other members have had similar experiences.

11 CHAIRMAN RIVERA: Sure. I think
12 that's right. All right. Well then, without
13 objection, we'll proceed in that fashion and
14 follow the normal procedure with the
15 Committee, and maybe Becky's right, we won't
16 be able to come up with a Committee consensus
17 position, but maybe we will.

18 All right. Becky with that, I will
19 turn the mike over to you to report on your
20 committee's activities.

21 MEMBER KLEIN: Okay. Thank you.
22 And this will be relatively quick and
23 straightforward.

24 So, as of early October we have

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1 been focusing on the concept of developing a
2 brochure and the brochure would highlight and
3 itemize and list different resources, types of
4 resources that a small minority in women-owned
5 business can prevail upon for financial
6 matters, for legal matters, for engineering
7 consulting, other types of consulting, trade
8 associations that are pertinent to them,
9 acquisition opportunities within the
10 government, any pertinent websites and URL's
11 that might be helpful that would give rules
12 and regulations.

13 And, of course, you know, other
14 particular types of resources that I haven't
15 mentioned here, I invite discussion or input
16 on. So, ideally, the brochure would be a
17 wonderful tool to be able to promote and
18 distribute at events such as the conference
19 that Rodney is working on, and other such
20 conferences.

21 Also, Barbara, I think we indicated
22 or talked before about the potential of having
23 this, if it's approved, uploaded on the FCC
24 website, is that correct?

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1 MEMBER KREISMAN: Certainly.

2 CHAIRMAN RIVERA: She said
3 "Certainly."

4 MEMBER KLEIN: Okay. And so that
5 is what we're proposing, and the scope of the
6 brochure that's being visualized. I think
7 there's some outstanding issues that the
8 Committee would -- subcommittee would need to
9 discuss and input from the Committee as a
10 whole would be very beneficial, and that is,
11 as we gain these resources and we put them on
12 the brochure, what kind of references or
13 vetting process do we undertake, if any, do we
14 just put a general disclaimer at the bottom
15 and that would suffice?

16 If something -- we want this
17 brochure, obviously, to be credible to anybody
18 that wants to rely on it. So, you know, I
19 think we need some discussion on, you know,
20 what we think would be, A, a reasonable
21 standard in that regard.

22 And then the subcommittee will need
23 to decide to -- how often do we update this
24 since, of course, there will be ongoing

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1 resources out there that we either discover,
2 or new ones that come about.

3 CHAIRMAN RIVERA: Do you want to
4 speak to this a little?

5 MEMBER KREISMAN: I think it's
6 great. I think what we need is, probably, for
7 all the subcommittees, maybe some dates for
8 subcommittee meetings, starting the beginning
9 of next year where we can sit down and really
10 hammer out what should be involved, for
11 example, in the brochure.

12 CHAIRMAN RIVERA: Any questions for
13 Becky?

14 I think it's a fine initiative,
15 Becky. Thanks so much. What are the next
16 steps for your subcommittee, then?

17 MEMBER KLEIN: Well, I think that
18 the subcommittee needs to have a conference
19 call and maybe discuss a couple of those
20 issues, and then talk about maybe where to go
21 to find some of these resources, and
22 outreaching to these resources so that we can
23 start compiling the meat and potatoes of a
24 brochure and putting it together, because what

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1 we'd like to have at the next full Committee
2 meeting is an actual mock-up of a draft
3 brochure.

4 CHAIRMAN RIVERA: All right.

5 MEMBER KREISMAN: It might be great
6 if we could get ahold of whatever resources
7 you have, Jim, and you have, David, you have,
8 Andy, that, you know, we can put in one place.

9 It just basically references, you know,
10 hello, you can go to talk, you know, consult
11 this to get information about companies that
12 are lending money, you can go here to get this
13 -- and I know some of this is already in
14 existence, but it's sort of scattered.

15 What we'd like to do is not put
16 something -- not a multipage thing, but
17 something that's very simple, that you look
18 at, open up, and at least sends you to the
19 right spot. And we're not taking anyone's
20 glory, we're going to send them right back to
21 you, but something that can be a focal point.

22 So, it might be great if we can get
23 something -- you can send us an email or
24 something with respect to some of the things

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1 already in existence that we can just cross-
2 reference and send it back to you.

3 CHAIRMAN RIVERA: Yes, that would
4 be very helpful.

5 So, I don't think you need a vote
6 form us at this point. Do you, Becky?

7 MEMBER KLEIN: I don't think so. I
8 think once we have the mock-up's, that would
9 be the time to do that.

10 CHAIRMAN RIVERA: All right.
11 Great. Thanks very much. Great report.

12 Does anybody have any new business
13 to bring before the Committee?

14 Yes?

15 MEMBER HONIG: I have one quick
16 question. Do we need to appoint a
17 subcommittee to work on this, the full file
18 review and other issues?

19 CHAIRMAN RIVERA: Right. I'll do
20 that. And if anybody's interested in
21 participating in that, please let me know.
22 Send me an email. We'll send an email out to
23 the entire committee asking for folks who are
24 interested, and if I don't get enough

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1 volunteers, I'll make some.

2 Any other new business?

3 MEMBER HONIG: I also just wanted
4 to note that the minutes should reflect the
5 fact that the conference idea originated with
6 Commissioner Tate who's really pushed for
7 this--

8 CHAIRMAN RIVERA: Yes.

9 MEMBER HONIG: -- since last
10 January and coming to fruition. Her
11 initiative ought to be recognized.

12 CHAIRMAN RIVERA: We'll make sure
13 that's in the minutes. Yes. That's a good
14 point. Yes, it's her baby.

15 Anything else?

16 Listen, I want to thank --

17 Oh, I'm sorry. Go ahead.

18 MEMBER KREISMAN: This is being
19 transcribed and we will put the transcript on
20 the website.

21 CHAIRMAN RIVERA: Okay. Great.
22 I'm going to thank you all for coming and for
23 those of you on the phone for participating.
24 I want to wish you all a happy holidays, and

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1 thanks for you all your work.

2 I think we are going to have a
3 great year in 2008. We've got a lot of great
4 things in the pipeline. And next year at this
5 time we don't want to have Jim Winston ask us
6 that question that he asked. "What have we
7 got to show for it?" And I'm sure that we
8 won't be in that position.

9 So, again, thank you and season's
10 greetings to all of you. We adjourned.

11 (Whereupon, at 11:18 a.m., the
12 meeting was adjourned.)

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