

FEDERAL COMMUNICATIONS COMMISSION

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ADVISORY COMMITTEE ON DIVERSITY FOR
COMMUNICATIONS IN THE DIGITAL AGE

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COUNCIL MEETING

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MONDAY,

MARCH 10, 2008

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The Committee convened at 10:00 a.m. in the Federal Communications Commission, 445 12th Street, S.W., FCC Meeting Room, Washington, D.C., Henry Rivera, Chairman, presiding.

PRESENT:

HENRY RIVERA, Chairman
 BARBARA KREISMAN, FCC Designated Federal
 Official
 SALVADOR GUZMAN, WHEW Radio
 DAVID HONIG, Minority Media &
 Telecommunications Council
 RODNEY HOOD, National Credit Union
 Administration
 CARLTON HOSKINS, National Credit Union
 Administration
 REBECCA KLEIN, Loeffler Tuggey Pauerstein
 Rosenthal, LLP
 ANNE LUCEY, CBS
 ANDREW SCWARTZMAN, Media Access Project
 JAMES WINSTON, National Association of
 Black Owned Broadcasters

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10:03 a.m.

1
2 MS. KREISMAN: Today is largely an
3 informational meeting regarding the status of
4 several projects. And with that, I turn the
5 mic over to Chairman Rivera.

6 CHAIRMAN RIVERA: Thank you,
7 Barbara. And thanks all for coming. We're
8 very pleased that you're with us this morning.

9 We've got several people here at
10 the commission. With us we've got Jim Winston
11 from NABOB, Salvador Guzman, Becky Klein,
12 David Honig, Anne Lucey, Andy Schwartzman,
13 Rodney Hood, and his assistant, Carlton.

14 So welcome to all of you. And
15 again, thanks for coming.

16 As Barbara said, we're going to do
17 primarily informational stuff this morning.
18 But we've got some very interesting things
19 going on. And I'm sure that you will be
20 interested to know what's going on. Those of
21 you who are participating your own little
22 committee work.

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1 So, with that, I'm going to start
2 things off by asking Rodney Hood, who's
3 chairing our Access to Capital subcommittee,
4 to give us a report on the status of our
5 conference.

6 MR. HOOD: Okay, the status of the
7 conference is the following.

8 Good morning, we have secured
9 Barnard College for the venue for the
10 conference. Scheduled now to take place on
11 July the 30th, there in New York City.

12 We are also still continuing to
13 work with potential funders. Right now the
14 main thing that I'm hoping to work with you
15 all on, is determining if we are in fact,
16 going to go with a conference versus an *en*
17 *banc*.

18 So those are one of the things that
19 I think we hopefully can decide upon soon.
20 Just so we can merely get our speakers invited
21 and some of the other logistical things. But
22 the important thing that was an outstanding

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1 issue from our last meeting was getting the
2 date and all that confirmed.

3 So, the college president has
4 indeed given her imprimatur to the event. The
5 college is looking forward to making some of
6 the students available. And, other than that,
7 that's it as of right now.

8 CHAIRMAN RIVERA: All right. Could
9 you give a little details in terms of what we
10 were thinking about in terms of a reception
11 prior, and all that?

12 MR. HOOD: Yes -- yes, also ladies
13 and gentlemen, we are also looking at the
14 opportunity of doing a reception the evening
15 before the conference. And that would afford
16 opportunities for the funders and participants
17 to all have a chance to meet and discuss
18 things informally. It would be a networking
19 reception, if you will.

20 We're hoping to do that with one of
21 the either venture capitalists or with one of
22 the investment banks, that would be

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1 participating in the program.

2 So we're looking to do that in New
3 York. And that again, would be on the evening
4 prior to the conference.

5 CHAIRMAN RIVERA: And I'm thinking
6 about -- assuming we go this route, of holding
7 a Diversity Committee meeting in New York,
8 that would be just prior to this reception
9 that Rodney was just talking about.

10 So we'd have the Diversity
11 Committee meeting, we'd go to the reception,
12 and then the next morning we would have --
13 we'd move into the conference.

14 MALE: And that would be July 29th.

15 MR. HOOD: Yes, that would be the
16 29th, yes. And the event as we're looking at
17 now, will begin around nine that morning with
18 a continental breakfast. And then we would
19 begin the sessions. We have given some work
20 or attention, to speakers. But the main thing
21 is just knowing that we would hopefully begin
22 at nine and I think we would be breaking up

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1 around three o'clock.

2 And then for those who wanted to
3 stick around, they could still maybe meet in
4 informally.

5 CHAIRMAN RIVERA: Well, what we've
6 got going on here, as Rodney mentioned, is
7 once we had settled on a conference, then
8 someone raised the notion of having a
9 commission *en banc* in New York.

10 Basically to hear from the
11 investment community about how capital ought
12 to be raised. What the problems are with the
13 capital markets, now in particular. The
14 problems that minorities and females have
15 raising capital. And the issue now, is
16 whether we're going to go with an *en banc*,
17 which we thought was a really good idea. Or,
18 whether we're going to go with a conference.

19 And, we have been trying to get
20 some guidance from the Chairman's Office, in
21 terms of to see what they prefer.

22 And, we are still seeking that

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1 guidance. So, at some point, we're going to
2 have to make a go/no-go decision because we're
3 running out of time. If we're going to
4 organize the *en banc*.

5 MR. WINSTON: Chairman, can I ask,
6 if it's not *en banc*, does that mean that we
7 won't have a good number of the commissioners
8 there?

9 CHAIRMAN RIVERA: No, the
10 commissioners seem to be very excited about
11 this. The notion of the conference was
12 actually Commissioner Tate's idea. We're
13 pretty sure we can count on her at least. But
14 we've talked to the others, and they are
15 interested in coming.

16 In fact, our tentative agenda for
17 the conference had a commissioners panel. So
18 we're -- we're certainly anticipating that
19 they will come in either event.

20 MR. WINSTON: Okay, and the
21 difference would be, that if it's an *en banc*,
22 they will -- they'll listen to all day long's

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1 as opposed to just being one panel?

2 CHAIRMAN RIVERA: Yes, and we'll
3 have testimony scheduled, and it would be --
4 it will be a full-blown *en banc*.

5 MR. WINSTON: Okay.

6 MS. LUCEY: Either way is it an FCC
7 or a Diversity Committee?

8 MS. KREISMAN: It is an FCC event.

9 MS. LUCEY: It is.

10 CHAIRMAN RIVERA: Either way.

11 MS. KREISMAN: Either way it would
12 be an FCC event. Understanding that a lot of
13 the planning, is by Mr. Hood, actually.

14 MR. HOOD: With your help, yes.

15 MS. KREISMAN: And in fact --

16 (Off record comments.)

17 MS. KREISMAN: -- the Chairman is
18 in fact giving this consider now, I'm told.
19 And hopefully, if you have a conversation with
20 him, Rodney, you could maybe bring a deal to
21 closure.

22 MR. HOOD: Oh, yes.

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1 MR. WINSTON: So is it fair to say
2 that the distinction between the a conference
3 and an *en banc* would be the length of time the
4 commissioners are in attendance?

5 MS. KREISMAN: No, I think if you
6 look at all our other *en banc's*, I mean,
7 basically if it's an FCC *en banc*, I think the
8 presentations are directed to influencing what
9 the commissions policy should be. I think
10 it's a little different.

11 I think maybe there's some elements
12 that could be combined. But, the *en banc*,
13 basically the commissioners are up here, as
14 are traditional ones. And people are making
15 presentations to them, we can direct what we
16 want them to be.

17 I mean, the financial community
18 maybe could bring in to their attention, what
19 really are the issues that this commission has
20 to address, in order to get appropriate
21 investment into more diverse entities.

22 I think -- I think our conference

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1 was more of an educational, how to do it
2 approach, versus I look at the *en banc*, maybe
3 incorrectly, as more of a policy. You all can
4 speak to that if I have it wrong.

5 CHAIRMAN RIVERA: Yes, and there
6 will be the materials differences in terms of
7 actual event. But you're right, if it's an *en*
8 *banc*, obviously the commissioners will be
9 there a longer period of time. We don't know
10 how long if it's an *en banc*. The Chairman
11 will want to take testimony. That's another
12 we don't know.

13 But if it's a conference, they will
14 be primarily affiliated with the -- with this
15 commissioners panel.

16 Hopefully, they'll be there longer,
17 but they certainly wouldn't be there as long
18 as -- we couldn't count on them being there as
19 long, as we could if there was an *en banc*.

20 MR. WINSTON: So, our request then
21 is for an *en banc*, is what we're asking for?

22 CHAIRMAN RIVERA: No, what we're

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1 asking for is what -- what would the Chairman
2 like to do. He's -- the commission has
3 incorporated this notion of a conference in
4 the latest diversity order. It's there and it
5 says we're going to put it on.

6 So, they've -- we're under a
7 mandate to do that.

8 MS. KREISMAN: It's really at our
9 request. At this Diversity Committees request
10 of -- Henry circulated a suggestion by, I
11 guess it was a columnist, that the commission
12 hold an *en banc* hearing on this issue.

13 And basically, it's at our request,
14 that the commission consider having a full *en*
15 *banc* versus a conference.

16 So, it's really us.

17 CHAIRMAN RIVERA: Yes. So we're
18 asking -- so we're asking him what he wants to
19 do. What the commissioners want to do at this
20 point.

21 MR. HONIG: There's a practical and
22 a policy reason why it might be more desirable

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1 to have an *en banc* now. The policy reasons,
2 we haven't had an *en banc* on this subject
3 since December 2000. And before that, the
4 previous one was July 1984.

5 It's just a subject that the
6 commissioners haven't had an opportunity to
7 hear testimony on in a long time. And to have
8 their understanding of it refreshed.

9 The practical question derives from
10 the fact that, on July 21st and 22nd, dates
11 that have been locked in for months, MMTC has
12 its annual conference on almost exactly the
13 same subject as the contemplated conference
14 here.

15 The only difference being that the
16 pool of capital funds would be somewhat
17 different, in that the larger New York funds
18 would be taking the lead. But, will we
19 address that question? Before, I think we
20 were contemplating that there wouldn't be a
21 conflict if it were being held in say April or
22 May, or September or October as a conference.

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1 An *en banc* though, would present no
2 conflict. And I think it's a higher priority.

3 CHAIRMAN RIVERA: Yes, we'll work
4 through that. And a smaller task force is
5 working on this. But we're very aware of the
6 conflict.

7 Becky?

8 MS. KLEIN: Just wondered if it was
9 your perception that the Commissioner and the
10 Chairmans Office was looking at this an indoor
11 option, or might it be possible to do both of
12 them over a course of time?

13 MS. KREISMAN: We presented it as
14 an and/or. Basically, you know, we -- the
15 commission basically indicated in the item,
16 and an order, that it wanted to do a
17 conference. Basically taking a suggestion
18 from us. And basically when Henry circulated
19 the idea to the committee here, it was
20 basically an and/or.

21 I think it's a practical matter. I
22 don't see how we can pull them both off at the

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1 same time. Just a matter of location in New
2 York. It's not so easy to get a place in New
3 York, as Rodney can tell you.

4 So, I think as a practical matter,
5 right now, I think it's one or the other.
6 There are other years and other days and other
7 time. But now it's presented as an and/or.

8 MS. KLEIN: Yes, I can't imagine
9 doing both at the same time either.

10 MS. KREISMAN: No.

11 MS. KLEIN: I just wondered if it
12 was feasible to do one at the end of July, and
13 then save whichever other for another date?

14 MS. KREISMAN: I think that's a
15 very good suggestion.

16 CHAIRMAN RIVERA: That's a
17 possibility.

18 MS. KREISMAN: Yes.

19 CHAIRMAN RIVERA: We'll have to see
20 how the -- and the Chairman may decide that's
21 what he wants to do.

22 MR. HOOD: And also, Mr. Chairman,

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1 I would just like for the committee to note
2 that, when we decide whether to go *en banc*
3 versus conference, as soon as we make that
4 determination, that's going to then change the
5 level and scope of the funding sources that
6 I'll be searching for from the venture capital
7 community.

8 CHAIRMAN RIVERA: Right.

9 MR. HOOD: So, that's one of the
10 things that's really pressing, is determine
11 what would be our needs then. Will we still
12 wish to go with the reception the night
13 before, and things of that nature.

14 CHAIRMAN RIVERA: Right. Well, and
15 that brings me back to what I briefly
16 mentioned earlier. We're going to have to
17 make a go/no-go here pretty quick. And I
18 think we're -- as Barbara mentioned, you know,
19 if you have your conversation with the
20 Chairman, maybe you can close the deal one way
21 or the other for us.

22 Meanwhile, we'll continue to press

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1 with the staff to ask them for guidance, to
2 get us a decision. But we're going to have to
3 make a decision pretty soon here.

4 Any other questions on this? I --

5 MS. LUCEY: And the topic will be
6 access to capital?

7 CHAIRMAN RIVERA: Yes, indeed.

8 MS. LUCEY: Okay.

9 CHAIRMAN RIVERA: We -- I just have
10 to thank Rodney for all the work that he's put
11 in on this thing. He's really owned this
12 conference. He's worked very hard to get us a
13 place. He's set to go with the -- trying to
14 help find the funding. All of us will have to
15 be engaged in that process as well.

16 And David has been working hard on
17 a draft to format for the conference, if we go
18 that route. So, we've had a lot of people
19 working on this.

20 Becky, as well, has been helping us
21 to try and -- with this conference.

22 So, I thank all of you for your

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1 very hard on work on this. I think it's going
2 to pay big dividends when we get this thing
3 off the ground.

4 MR. HOOD: I agree.

5 MS. KREISMAN: Thank you.

6 CHAIRMAN RIVERA: Okay, David --
7 I've asked David to report on what's going on
8 with this task force on eligible entities.
9 Again, this is an item that has been thrown to
10 us by the commission in the recent diversity
11 order. And they're expecting a recommendation
12 from us on this very difficult question.

13 And I've asked David to chair this
14 task force that's addressing this -- this very
15 difficult issue and challenging issue.

16 So David, would you please tell us
17 what's going on with that?

18 MR. HONIG: We were created as a
19 subcommittee of the Diversity Committee a
20 couple months ago, to examine what might be
21 some alternative paradigms for eligible
22 entities, under various FCC rules and

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1 policies, including some of those just
2 announced.

3 It might be less dilute, but
4 nonetheless, constitutionally sustainable than
5 the small business paradigm that figures in
6 the order.

7 To give you a sense for the urgency
8 of the task, in the order that came up this
9 past Tuesday, the commission presented
10 statistics which we understand actually were
11 developed the night before they voted.
12 Showing that for instance, for radio,
13 minorities comprise 7.78% of all radio
14 stations. However, only 8.5% of radio
15 stations owned by small businesses.

16 That means as a practical matter,
17 that in the very unlikely event that all radio
18 stations owned by non-small businesses were
19 sold to small businesses, minority ownership
20 would increase all the way up to 8.5%.

21 And in fact, the direction of
22 transactions is occurring the other direction,

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1 as the industry consolidates. So, actually,
2 it could be said that this would have a very
3 dilute, or possibly no effect on diversity.

4 Certainly therefore, we have to
5 think to think of what are some other
6 paradigms. In the outline there, circulated
7 around today, and for those on the call, I
8 guess I can e-mail it around.

9 This is version four of the work
10 plan, of the subcommittee. And we also
11 mention the subcommittee members are Andy
12 Schwartzman, Jim Winston, Anne Lucey, Tara
13 Sweeney, Vonya McCann, Susan Fox, Sylvia
14 Strobel, and myself.

15 We have met once, to just develop a
16 work plan. And are now in the phase of our
17 work, which involves interviewing subject
18 matter experts.

19 The first subject matter expert
20 that we'll be interviewing on the
21 constitutional questions, 1st, 14th, and 5th
22 Amendment issues, is Matthew Berry, who is

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1 general counsel of the commission. That
2 interview is here at the Agency March 19th.

3 The second interview, we're trying
4 to find a date for, about two or three weeks
5 after that, is with Tom Henderson. Who is a
6 partner at Springer and Lane, and was most
7 recently the Director of Litigation for the
8 Lawyers Committee for Civil Rights.

9 We'll then be interviewing
10 representatives of the state higher education
11 departments in Michigan, California,
12 Washington state, and/or Texas. All of which
13 have had some experience with full file
14 review.

15 And then we'll be interviewing
16 experts on the administration of policies
17 before the commission -- former commission
18 officials and maybe some current ones, on some
19 of the issues related to implementation.

20 In the commission's order this past
21 Tuesday, that order, Paragraph 85, sets out 11
22 specific questions, that the commission wants

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1 the public to comment on. The majority of
2 those questions weren't included in our
3 regional outline. That's why you have this
4 draft that now incorporates them.

5 In a nutshell, what we're going to
6 try to do, is to present a report. Which
7 ideally, would be done in June. I think that
8 may slip a bit going to the greater complexity
9 of the task. That would discuss each of the
10 five potential paradigms.

11 One being small businesses. One
12 being designated entities as we understand
13 that term to be used in the wireless context.

14 One being new entrants, which happens to be
15 the criteria used for broadcast auctions. One
16 being socially and economically disadvantaged
17 businesses, SDBs. And the other being full
18 file review, which is known in the educational
19 context sometimes under the name of
20 comprehensive review.

21 This full file review is the
22 paradigm that we'll be most focused on. Not

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1 because it's the ideal, but because there is a
2 much more glandular and detailed process that
3 would be needed to develop an SDB model, which
4 is beyond the ability of our community, given
5 the need to refresh the record, that was
6 developed in 2000.

7 Full file review, in a nutshell, is
8 a procedure developed in higher education
9 under which individuals present their
10 credentials based on grades and test scores --
11 I'm sorry, and also show that they have
12 personally overcome disadvantages, which may
13 of may not be disadvantage related to race or
14 gender discrimination. It could be
15 disadvantage of other types.

16 Where the overcoming of those
17 disadvantages is predictive of their success
18 in a challenging environment.

19 That seemed, in at least some
20 respects, to be a good model to try and import
21 if it can be imported into our space.

22 The report would focus then on how

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1 this works constitutionally. How it can be
2 administered in a way which, both in theory
3 and in practice would be race neutral. How we
4 would avoid any potential for First Amendment
5 issues to arise.

6 And then, the questions of
7 administration with any new program. Some of
8 which Commissioner McDowell raised with us
9 when we met with him.

10 When there is a new program that
11 unavoidable involves some subjectivity, who
12 makes the decisions as to who's qualified.
13 How do you make sure that the decisions are
14 made consistently among applications?

15 How do you make sure that in
16 rendering those decisions, they're done in a
17 way that's fair, that doesn't interject
18 attributes into the decision making process
19 that are unintended. How do you avoid the
20 possibility of fraud or abuse, as sometimes
21 happens in the administration or commission
22 programs that involve conferring of advantage

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1 on one group as opposed to another. However
2 that's defined.

3 And how you deal with the question
4 of just, the mechanics of certifying a group -
5 - a company as compliant, and thus giving them
6 in effect a coin they can use to raise access
7 to capital. Because they'll already have been
8 certified.

9 So, that's kind of a nutshell of
10 what we hope to achieve.

11 The writing of this report, we've
12 had some discussions with Skadden Arps about
13 whether they, or a center at the Berkman
14 Center at Harvard University, that they work
15 with, might be in the position to help us take
16 the fruits of the expert witness interviews
17 that we'll develop, and cobble them together
18 into a report.

19 It'd be great if they could do that
20 and could do it pro bono. If they can't, then
21 it will probably be viable upon us to write
22 the report. That will take more time.

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1 Probably won't be done as well. But we could
2 get it done if we had to. It would just take
3 considerably more time.

4 CHAIRMAN RIVERA: All right.
5 Thanks David. The object of the -- or the
6 goal of the task force will be to produce, as
7 David said, this report. Which will contain a
8 recommendation.

9 That recommendation will come to
10 this -- to the Full Committee for a vote and
11 discussion. And any modifications we want of
12 that committee -- of that report, hopefully
13 the report as edited by the Full Committee
14 would then be put into the record and sent to
15 the commission, pursuant to the commissions
16 request for information from the committee.

17 So, are there any questions about
18 the process and/or what the task force is
19 doing, from anyone?

20 MALE PARTICIPANT: No.

21 CHAIRMAN RIVERA: No. Okay, well
22 David, thanks for all your work on this. And

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1 for all the work that is yet to come. We
2 appreciate your leadership as well in
3 galvanizing the task force and moving --
4 moving things forward.

5 With that, Becky, do you have any
6 report for us today on the Outreach Committee?

7 MS. KLEIN: Not really, only that I
8 have reached out to Clear Channel, to discuss
9 their conference previously held. And they're
10 going to be able to refer me to a couple of
11 people to help assist in getting names and
12 collecting entities that we may want to
13 include in our list -- in our clearinghouse.

14 So, I think what is especially
15 relevant is now having a date that we're
16 working towards. Whether conference or *en*
17 *banc*, to work towards that as the debut of
18 this clearinghouse brochure.

19 And so that -- this is --

20 CHAIRMAN RIVERA: All right.

21 MS. KLEIN: This is our trigger I
22 think, to -- to be able to move forward --

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1 CHAIRMAN RIVERA: That's right.

2 MS. KLEIN: -- more actively

3 CHAIRMAN RIVERA: Right, wonderful.

4 The New Technologies task -- subcommittee is
5 not on our agenda today. And the news from
6 that subcommittee is that our chairman, Max
7 Navarro, has decided that he -- his business
8 demands just can't, won't allow him to
9 continue in that -- in the capacity as
10 chairman.

11 So, he is -- however, he is going
12 to stay with us on the Diversity Committee.
13 And I'm looking for a new subcommittee chair.

14 And again, I'm looking to the Chairman's
15 Office for some guidance on that. And I will
16 -- I should have an answer and a person soon I
17 hope.

18 So, stay tuned on that.

19 Does anyone have anything else to
20 bring before the committee?

21 Yes, Jim?

22 MR. WINSTON: Yes, I'd like to --

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1 this is Jim Winston for those folks on the
2 phone. I'd like to bring to the committees
3 attention, a new matter of concern to minority
4 broadcasters. For both black and Hispanic
5 broadcasters in particular.

6 For those of your who are not that
7 familiar with the broadcast industry, there's
8 a company called Arbitron, that measures radio
9 audiences for the radio industry. They have a
10 monopoly in that business.

11 And, for years, they have used
12 something called a diary. Where they send out
13 a report to a select number of people in a
14 market. Those people fill out each day what
15 they've listened to on the radio that day.

16 And in recent years, it was thought
17 that electronic -- some sort of electronic
18 measurement would be more reliable. And
19 industry has been asking for that.
20 Advertisers have been asking for that.

21 And Arbitron has come up with
22 something they call the Personal People Meter.

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1 Which is a device that looks like a pager.
2 And you wear it on your person all day long.
3 And the radio stations send out a signal with
4 their broadcast, that identifies that station.

5 The Personal People Meter picks up
6 that signal and then reports what you're --
7 you have exposed to each day. Because it --
8 part of the problem with the Personal People
9 Meter, is it picks up radio stations whether
10 or not you've turned them on.

11 So if you're at work, and your boss
12 is listening to a particular radio station,
13 you're identified as listening to that
14 station.

15 If you're in a store, and it's
16 playing -- and the station's playing as
17 background music, you're identified as a
18 listener to that station.

19 So conceptually, there's a concern
20 about what exactly the Personal People Meter
21 is measuring. Because it's measuring expose,
22 as opposed engagement, as opposed to what I've

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1 actually chosen to listen to.

2 But, the problem that we found with
3 the Personal People Meter, actually goes much
4 deeper than that. Because what's happening is
5 that in the initial -- additional report --
6 the initial reports found the Personal People
7 Meter, the listening ascribed to African
8 American, Hispanic stations has fallen
9 dramatically.

10 And the principle reason, although
11 I don't think it's the exclusive reason that,
12 that has happened, is that Arbitron has not
13 been measuring African American, Hispanic
14 audiences at the level that Arbitron says it
15 should.

16 So, they have done statistical
17 studies that say, we should have this number
18 of people in the study for each reporting
19 period. And they're coming in at numbers well
20 below that.

21 So, that if their target is 100% in
22 each demographic segment, they started off

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1 measuring blacks and Hispanics at the 30%
2 level.

3 You know recently, they've been
4 getting up to the 50 and 60%. But there's
5 still a lot where they need to be.

6 And what we -- the problem appears
7 to be, that Arbitron's not been willing to
8 commit the time and money needed to get a
9 decent sample.

10 Arbitron and NABOB have been
11 meeting on this issue for about a year. And
12 it's still -- we're still continuing to meet.

13 Overlaying this process is
14 something called the Media Ratings Council.
15 The Media Ratings Council was created at the
16 request of Congress, by the advertising and
17 broadcast industries some time ago. I think a
18 couple decades ago. Because of concerns about
19 rating inaccuracies at that time.

20 And Congress said to the industry,
21 we really appreciate you doing a voluntary
22 watchdog organization, so that we don't have

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1 to legislate in this area. And as a result of
2 that, the Media Ratings Council was combined -
3 - was created, consisting of members from the
4 advertising agency community, national
5 advertisers, and the broadcast industry, both
6 radio and television.

7 And the MRC accredits research to
8 avoid the kinds of issues we have here with
9 the Personal People Meter.

10 The MRCs chiefs always divert
11 deliberations quiet, private. So that you
12 only know if the MRC publicly announces that
13 it's accredited somebody.

14 And what has happened, is that
15 Arbitron had been pending accreditation in
16 Philadelphia and New York. It has three
17 markets. It has Houston, which was accredited
18 with -- in a joint program with Nielson.
19 There was a time when Arbitron and Nielson
20 were planning to do this -- the Personal
21 People Meter as a joint activity.

22 That -- that accreditation wasn't

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1 received. In Philadelphia and New York,
2 Nielsen pulled out. They said we'll do a
3 separate program. Arbitron went along.

4 As I said, Arbitron had been
5 pending accreditation for about a year in
6 Philadelphia and for about six months in New
7 York. It was just reported in the trade press
8 last week, that Arbitron submitted a statement
9 in its most recent Securities and Exchange
10 Commission filing, advising the SEC that it
11 had been accreditation by the MRC in both
12 Philadelphia and New York.

13 That information became public,
14 Arbitron has since confirmed that is the case.

15 In spite of that and -- missing one
16 little piece. Because of industry concern
17 about the inaccuracy that seem to exist with
18 the Personal People Meter, Arbitron agreed to
19 delay further deployment of the Personal
20 People Meter for nine months. They did that
21 back in December, I guess. So the nine months
22 end like September 1st.

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1 And that was still while PPM was
2 awaiting accreditation results in Philadelphia
3 and New York.

4 After it was denied accreditation
5 in Philadelphia and New York, we went back to
6 Arbitron and said, well obviously you can't
7 begin deployment again until you get
8 accredited.

9 Arbitron advised us that they had
10 no intention of delaying the rollout any
11 further. They will again begin deploying the
12 Personal People Meter, in additional markets,
13 starting in September.

14 So, where we are with Arbitron is,
15 we think that -- and, there's no legal
16 impediment of course, because MRC is a
17 voluntary activity. Getting accreditation is
18 a volunteer activity.

19 There's no legal impediment to
20 Arbitron moving forward with accreditation. I
21 mean, with deployment, in spite of having no
22 accreditation -- having been denied

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1 accreditation.

2 And our view of course is, there's
3 a distinction between awaiting accreditation,
4 while you rolling out, and actually having
5 been denied accreditation and still moving
6 forward anyway.

7 And so, we believe this is an issue
8 for consideration. We're not exactly sure
9 what the commissions role might be in this.
10 But, our view is that, PPM has the potential,
11 if not corrected, to do serious damage to
12 minority ownership in the broadcast industry
13 for blacks and Hispanics.

14 And so, it's an issue that we know
15 the commission needs to be made aware of, as
16 we work through what role the commission might
17 have in trying to address this issue.

18 CHAIRMAN RIVERA: Yes, David.

19 MR. HONIG: In the order that the
20 commission issued last Tuesday on diversity,
21 right in the second paragraph, they start
22 right out quoting Associated Press, and

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1 talking about the widest dissemination of
2 diverse and antagonistic sources. And the
3 importance of minority and women-owned --
4 ownership, to -- to achieve that objective.

5 More than any other factor that I'm
6 aware of, this problem that Jim has
7 identified, poses the greatest risk of
8 frustrating the commission's diversity
9 objectives.

10 Just to give you a sense of the
11 math. The commission also in this order,
12 undertook to ban discrimination in advertising
13 -- in broadcast advertising. A practice which
14 MMTC estimated cost black and Spanish radio
15 about \$200 million a year.

16 If you look at the initial PPM
17 results, and you extrapolate. I was just
18 curious and did the math. The impact of this
19 technology, if it were rolled out fully on
20 black and Spanish radio, is about two-and-a-
21 half times the impact of all of the advertiser
22 discrimination put together. About half-a-

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1 million -- half-a-billion-dollars a year.

2 That is an extraordinary burden on
3 the ability to raise capital to deploy assets,
4 and to serve the public.

5 And, I therefore think it squarely
6 falls within our jurisdiction. Either in the
7 access to capital sphere, or the new
8 technology sphere, or both.

9 CHAIRMAN RIVERA: Thank you.
10 Anybody else?

11 I appreciate you bringing that to
12 our attention, Jim. And David, I appreciate
13 your remarks.

14 I think that maybe we ought to talk
15 offline, maybe the three of us, to see if
16 there's some -- some hook here for the
17 Diversity Committee, in some way to move
18 forward specifically and assign this to some -
19 - one of our existing subcommittees, or create
20 a task force to try to deal with it. Because
21 I agree with you. It seems to be a serious
22 problem for the folks that we're supposed to

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1 be looking out for.

2 So, we ought to take this in hand
3 and try to do something about it.

4 MR. WINSTON: And just to try to
5 put it in perspective, for folks who may not
6 be that involved in the broadcast industry.
7 The way this will manifest itself in a day-to-
8 day world, is if a broadcast station has an
9 advertiser, let's say a car company, that
10 advertises on its radio station.

11 The effects are going to have one
12 of two results. One possibility is that they
13 go back into the advertiser, which is a
14 regular advertiser on a station, and say it's
15 time to renew your contract. Let's do another
16 whatever, 26-week, 30, 52-week contract.

17 And the advertisers going to say,
18 well, I see your ratings have fallen from
19 number two to 12 in the market. We can
20 certainly talk about renewing a contract, but
21 not at the rate you were talking about before.

22 At these numbers, we're talking about giving

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1 you half the advertising rate that we gave you
2 before.

3 So, you know, if you're a radio
4 station, and you see your revenues drop by
5 that kind of margin, you know, nobody's
6 offering at those kinds of margins anymore.
7 So, you're immediately in the rid.

8 The other possibility is the
9 advertiser says, well it's nice, but you
10 dropped from two to 12. You know, we only
11 advertise on the top five stations in the
12 market, period. You're offer's bye
13 completely.

14 So, you know, these -- these are
15 the kinds of real world impacts that we're
16 talking about for -- for radio stations.

17 So it's not theoretical, it's
18 actually real. And a very serious threat.

19 CHAIRMAN RIVERA: Right.

20 MS. KREISMAN: I'm just thinking
21 out loud. I wonder if maybe, you could draft
22 a resolution by -- for our committee.

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1 Basically supporting the failure to award
2 accreditation. Indicating in a very public
3 way, the negative impact on minority
4 broadcasters. And at least make sure that
5 there's good publicity.

6 I know many of us have been working
7 on it. And that we make it -- information
8 available to the commission. And then I could
9 forward the e-mail or the resolution, if it's
10 adopted to the commissioners offices. So, we
11 would start getting some good publicity on
12 this issue.

13 MR. WINSTON: Fine, thank you.

14 MS. KREISMAN: Something like that

15 --

16 (Simultaneous speakers.)

17 MR. WINSTON: I think -- at some
18 point in time, we do need to bring it to the
19 commissioner in a -- in some sort of action
20 item. But I think right now, resolutions are
21 a good way to start.

22 CHAIRMAN RIVERA: Great. Good

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1 idea. All right, anybody else have anything
2 to bring before the committee?

3 Well, then I think we -- we can go
4 ahead and adjourn. You see can see there's a
5 lot of work going on. A lot of substantive
6 stuff that's going to be made public here, and
7 we're going to be able to take action on in
8 the very near future.

9 And I thank everyone for all of
10 their hard work. And we'll see you at the
11 next meeting.

12 Thank you.

13 (Whereupon, the above-entitled
14 matter was concluded at 10:40 a.m.)

15

16

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