

FEDERAL COMMUNICATIONS COMMISSION

ADVISORY COMMITTEE ON
DIVERSITY FOR COMMUNICATION
IN A DIGITAL AGE

Tuesday,
June 10, 2008

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

MEMBERS PRESENT:

HENRY RIVERA, Chairman
JONATHAN ADELSTEIN
DAVID HONIG
BARBARA KREISMAN
ANNE LUCEY
ANDREW SCHWARTZMAN
DIANE SUTTER
JAMES WINSTON
RUSSELL FRISBY (via telephone)
ABEL GUERRA (via telephone)
RAYMOND GUTIERREZ (via telephone)
MARGARET LANCASTER (via telephone)
MARIE LONG (via telephone)
BOB MENDEZ (via telephone)
SCOTT NAVARRO (via telephone)
TARA SWEENEY (via telephone)
MARGARITA WILDER (via telephone)

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

2 (10:02 a.m.)

3 MEMBER KREISMAN: Everybody on the
4 phone, I'm sorry to do this to you. We have
5 some audio problems that we have just gotten
6 resolved. We have to start all over, because
7 the Reporter just didn't get anything, and we
8 could barely hear you.

9 So could you start identifying
10 yourself on the phone, and then the Reporter
11 can get your name. If you could spell out
12 your name, and indicate your organization.

13 MEMBER GUTIERREZ: Sure.

14 MEMBER KREISMAN: Go ahead, Ray.
15 Go ahead.

16 MEMBER GUTIERREZ: My name is Ray,
17 R-A-Y-M-O-N-D, Raymond, last name is
18 Gutierrez, and that's G-U-T-I-E-R-R-E-Z. And
19 I'm representing Showtime Networks on behalf
20 of Matt Blank.

21 MEMBER KREISMAN: Thanks. We got
22 that really well. Next?

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1 MR. NAVARRO: This is Scott
2 Navarro, S-C-O-T-T, N-A-V-A-R-R-O,
3 representing Max Navarro with Operational
4 Technologies.

5 MEMBER KREISMAN: Next? From
6 EntraVision?

7 MEMBER FRISBY: Russell Frisby, R-
8 U-S-S-E-L-L, F-R-I-S-B-Y, with Fleischmand and
9 Harding, F-L-E-I-S-C-H-M-A-N-D, and Harding,
10 H-A-R-D-I-N-G.

11 MEMBER KREISMAN: Anyone else? I
12 think we still have EntraVision out there.

13 MEMBER LONG: Yes. This is Marie
14 Long with AT&T, M-A-R-I-E, L-O-N-G.

15 MEMBER LANCASTER: This is Margaret
16 Lancaster with Skadden Arps, S-K-A-D-D-E-N.

17 MEMBER SWEENEY: This is Tara
18 Sweeney with Arctic Slope Regional
19 Corporation.

20 MEMBER WILDER: This is Margarita
21 Wilder with EntraVision, M-A-R-G-A-R-I-T-A, W-
22 I-L-D-E-R, with EntraVision.

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1 MEMBER GUERRA: And Abel Guerra,
2 Abel, A-B-E-L, G-U-E-R-R-A, with the Latino
3 Coalition.

4 MEMBER KREISMAN: Is that
5 everybody?

6 (No response.)

7 Okay. I'm going to -- good
8 morning, everybody. This is the sixth meeting
9 of the Advisory Committee on Diversity for
10 Communications in the Digital Age under our
11 Charter Number 2.

12 Today we have some recent
13 developments to discuss with respect to the
14 preparation of informational guides, there are
15 a number of recommendations from the
16 Technologies -- New Technologies Group. We
17 also have a lot to talk about with respect to
18 the upcoming Access to Capital -- I'll call it
19 an event -- planned for New York City on
20 July 28th and 29th, with the Commission
21 meeting being on July 29th.

22 And with that, I turn it over to

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1 Henry.

2 CHAIRMAN RIVERA: Thank you,
3 Barbara.

4 Welcome, everyone.

5 MEMBER KREISMAN: I forgot to go
6 around the room here.

7 CHAIRMAN RIVERA: Yes. Why don't
8 you do that.

9 MEMBER KREISMAN: Okay. We didn't
10 tell the people on the phone who is here at
11 the table, so why don't we go around the room
12 here, starting with Andy.

13 MEMBER SCHWARTZMAN: This is Andy
14 Schwartzman from Media Access Project.

15 MEMBER HONIG: David Honig from
16 MMTC.

17 MEMBER SUTTER: Diane Sutter,
18 ShootingStar Broadcasting.

19 CHAIRMAN RIVERA: And Henry and
20 Barbara. So as others come, we will let you
21 know.

22 I'd like to welcome Diane to the

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1 Committee. Welcome, Diane. She was appointed
2 in April by the Chairman. Diane, as many of
3 you may know, leads the training effort at the
4 NAB, and does a wonderful job there, and has a
5 long and broad history in broadcasting. So
6 she is an operations person, hands-on person
7 in the broadcast industry, very well regarded
8 in the broadcast industry, so we are very
9 happy to have her.

10 And also, I'd like to welcome
11 Russell Frisby, who is on the phone with us.
12 Russell was a legal assistant with
13 Commissioner Joe Fogerty when I was at the
14 Commission in the early '80s. Then, he went
15 on to chair the Maryland Public Service
16 Commission, and he is now practicing law. And
17 we are very, very happy to have him, not only
18 on the Committee but chairing the new
19 Technologies Committee. I am very grateful
20 for that, Russell. So welcome to you also.

21 MEMBER FRISBY: Thank you.

22 CHAIRMAN RIVERA: As Barbara

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1 suggested, we've got a -- we've had a lot
2 going on at the Committee. I'm sure some of
3 you -- I'm telling you anything you don't
4 know, because you've been involved in the
5 Committee work. But we really do have a lot
6 of things that have been happening here, and I
7 think we're going to get right to it and start
8 with David Honig, who is going to give us a
9 report on the Access to Capital Subcommittee
10 on behalf of Rodney Hood, who is in Portugal,
11 unable to be with us at the moment, but who
12 has been working very hard on this.

13 Anne Lucy has just joined us from
14 CBS. Welcome, dear. Nice to see you.

15 So, David, you've got the floor,
16 sir.

17 MEMBER HONIG: Thank you. The
18 Access to Capital Subcommittee has met a
19 couple of times for the purpose of considering
20 the right timing, format, and content of a
21 hearing that we recommended originally to --
22 that the Commission hold on the subject of

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1 access to capital in both the media and
2 telecom space, and particularly the potential
3 involvement of large private equity houses in
4 providing equity as well as debt capital for
5 new entrants and minorities and women.

6 This proposal of such a conference
7 originated with Commissioner Tate in January
8 2007. Her idea was specifically to hold it in
9 New York where the money center banks and the
10 private equity firms predominate.

11 And when the Subcommittee took this
12 up, we thought that it was best done, although
13 it could be done as a conference with
14 mentoring, and so on, that it might be best
15 done as an en banc hearing, to enable the
16 Commissioners to get a very granular picture
17 of how capital is raised; what are the
18 impediments that small firms, designated
19 entities, minorities, and women, face in
20 securing capital in the current environment.

21 And what potentially could evolve
22 from this is a clear sense of what the

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1 Commission could do, either through regulation
2 or through other means, or what Congress could
3 do to facilitate access to capital in this
4 field.

5 Last week we heard from Dan
6 Gonzalez on behalf of the Chairman that the
7 Chairman had agreed to participate in an en
8 banc public hearing, and that the Diversity
9 Committee would organize in New York with the
10 date to be July 29th. Anticipating that there
11 might be such an event, Barbara Kreisman had
12 reserved the facilities of Barnard College for
13 that event. The evening before the Diversity
14 Committee would meet and hold its next regular
15 meeting.

16 Evidently, what the Chairman wants
17 to do is have the July regular meeting of the
18 Commission occur right there. And, therefore,
19 I have taken the liberty of preparing just
20 kind of a first draft, just some informal
21 ideas, of how such a hearing might be
22 structured, if it were done as a straight-

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1 through 9:00 to 5:00 event that after, of
2 course, having the usual calendar items that
3 the Commission would take up the Commission
4 would then receive an overview of capital
5 markets, it would hear from representatives of
6 some of the large equity and debt funds and
7 their experiences in advancing ownership
8 diversity, then hear from smaller and
9 specialized funds, including what used to be
10 called MESBKS, on that same subject. Break
11 for lunch, then consider the experiences of
12 some of the broadcast, cable, and telecom
13 executives, particularly those that are
14 minority, women-owned, or work with them, or
15 invest in them, or mentor them, as well as
16 brokers, on how the equity and debt landscape
17 that we face right now affects minority, women
18 licensees, and entrepreneurs.

19 And conclude with a discussion of
20 access to capital barriers that are present in
21 the Act, the rules, and in application
22 processing, then open it up with a full hour

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1 of brainstorming, discussion among the
2 Commissioners, and questions from the public.

3 It's designed this way so that,
4 unlike some en bancs that the Commission
5 occasionally has, this would really develop a
6 good record with the Court Reporter, with an
7 exchange from some of the best people in the
8 field, the most active people in the field,
9 that the Commission could really use in the
10 future to develop policy and to develop
11 legislative recommendations.

12 CHAIRMAN RIVERA: Thank you, David.

13 I would just like to take the
14 Committee back a little bit. The genesis of
15 this conference really was with Commissioner
16 Tate. She was very interested in having this
17 conference. The full Commission voted on it
18 in its diversity item. When was that item?
19 In June -- I mean, April?

20 MEMBER HONIG: December.

21 CHAIRMAN RIVERA: Oh, December.

22 MEMBER HONIG: We voted out

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1 December 18, '07, published in the Federal
2 Register in March, and takes effect July 15th.

3 CHAIRMAN RIVERA: Okay. Anyway,
4 the full Commission voted to have this
5 conference, and so we have been working with
6 the Chairman's office in an attempt to put it
7 together. So I -- the reason I gave you that
8 little bit of history is because I wanted to
9 make the point that this is not a Diversity
10 Committee hearing. This is an FCC event.
11 It's an FCC hearing.

12 And what I have asked David and
13 Rodney to do is to think about the format of
14 this conference, and that is what David has
15 done, and that is what he was just reading
16 you.

17 Nevertheless, the Chairman's office
18 obviously will have the last word in terms of
19 what this thing is going to look like. We
20 will get you copies, if we haven't already
21 done that, of what David has put together
22 here. And we're looking to hear from all of

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1 you in terms of potential speakers and the
2 format, indeed the agenda.

3 So what David has done for us is
4 not the end of the process. Indeed, it is
5 just the very, very beginnings of that
6 process. And, again, we'll have to work with
7 the Chairman's office, and they will have the
8 last word on this.

9 The second thing I want to mention
10 to you is that on -- please save July 28 in
11 the afternoon, late afternoon probably, for
12 our next meeting. That would be followed,
13 hopefully, by a reception for the participants
14 in the conference and for the Commissioners
15 who would be coming in for their meeting in
16 the en banc. And at a place yet to be
17 determined, as soon as we work those logistics
18 out, we will get that information to you.

19 Obviously, we don't expect that
20 everyone is going to be able to make it to New
21 York for the meeting or for the conference,
22 although I certainly would encourage all of

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1 you to be there, if you can possibly make it.

2 But if you can't, we will have a call-in
3 number for you.

4 So I think those are the two points
5 I wanted to make. I wanted to note Jim
6 Winston has just joined us from NABOB. Jim,
7 welcome. Nice to see you.

8 MEMBER WINSTON: Good morning.
9 Sorry I was late.

10 CHAIRMAN RIVERA: Oh, no problem.

11 Now, are there any questions about
12 the conference or about the proposed agenda
13 that David has just put out, or anything else
14 surrounding this particular initiative?

15 MEMBER FRISBY: This is Russell. I
16 just want to congratulate you. This is very
17 important, extremely important.

18 MEMBER KREISMAN: I would like to
19 piggyback if I could. What's really I think
20 important from the Committee's viewpoint is
21 when you look at -- you all have this
22 document. It was e-mailed to you. Forget the

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1 format at the moment. What I'd like to really
2 concentrate on is the panel, the subject of
3 the panels, if you agree or if you have any
4 other suggestions.

5 I know last night I happened to sit
6 next to Commissioner Cobbs. I know he made
7 some comments to you, Jim, about your input.
8 I'd like you to look at that. This hasn't
9 gone any place. And also, as Henry said, the
10 speakers.

11 What I would like to do -- and we
12 were going to meet informally afterward -- is
13 actually I'd like to give the Commissioner --
14 Commissioners two options, and the Chairman
15 two options. One would be an option for them
16 to have the -- be able to get in and out.
17 That would mean the meeting would start later.

18 We cannot provide any food for the SGC part
19 of this. I have already talked to the head of
20 the Ethics Office.

21 I'm working on the reception, which
22 should be a diversity event. That looks like

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1 it's okay, depending on who the sponsor is.
2 But for the part -- even if I wanted to go out
3 and buy food, I'm told, so you could come in
4 and have something to eat, that can't happen.

5 So I don't know if that affects -- you know,
6 it's hard to have a break, an established
7 break, if you don't have, you know,
8 coffee/tea.

9 MEMBER LUCEY: Unless there's a
10 cafeteria or something, right?

11 MEMBER KREISMAN: Well, it is a
12 school, but I don't think they are
13 particularly convenient to that particular
14 room. And I'm not sure exactly what's open in
15 July when the majority of the students aren't
16 there. It's New York City, so, yes, there are
17 things right within close proximity.

18 So I just wanted to -- I thought
19 maybe we should give them two options. One,
20 if they wanted to come in that day, things
21 would start later, we'd have less breaks. But
22 I know Commissioner Cox, for example, seemed

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1 very interested in being at a reception the
2 night before and having an all-day event. But
3 I just thought -- when I asked, actually, a
4 representative of the Chairman's office, they
5 said options are always a good thing.

6 CHAIRMAN RIVERA: All right.

7 MEMBER KREISMAN: But what would be
8 really good from this Committee is to pick
9 everyone's brain as to the substance of the
10 panels, because that's really the heart of
11 this.

12 Andy, weigh in on this. This is --
13 David has done a great job for us to all shoot
14 at, but really look at the substance to make
15 sure that you agree with it. And that's how
16 you get a really good project going is
17 everybody to weigh in.

18 MEMBER WINSTON: Well, later on in
19 the new business area I'm going to want to
20 talk about PPM Arbitron Rating Service. And I
21 appreciate -- you all were on the ball getting
22 that out.

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1 But I was thinking that, in terms
2 of the agenda, something that addressed some
3 of the current challenges in the industry,
4 maybe not one directed strictly at PPM, but to
5 get Congressional consideration of performance
6 royalties being paid by radio stations, which
7 would be an additional cost to all radio
8 stations in the country on top of the cost
9 they are currently bearing. And, you know,
10 there are many radio stations that are
11 suffering -- having financial challenges right
12 now.

13 So I think -- and from some of the
14 conferences we have had at NABOB, we have
15 heard some of the capital sources saying that
16 these challenges the industry is facing would
17 influence their willingness to invest in the
18 industry. So I thought something that talked
19 about the challenges the industry is facing
20 might be appropriate for the agenda.

21 CHAIRMAN RIVERA: Okay.

22 MEMBER KREISMAN: Would you mind

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1 floating an e-mail? I think anyone who has a
2 suggestion like that, which is an excellent
3 one, if you wouldn't mind just replying to the
4 e-mail I sent around with everyone's name on
5 it, and then we could have, you know, everyone
6 voice their opinion and sort of -- we can
7 bring it back all together, if you wouldn't
8 mind.

9 CHAIRMAN RIVERA: Thank you. Those
10 are fabulous suggestions, Barbara. I really
11 appreciate it. I think it's important for all
12 of us just to take a step back and think
13 about, you know, why we're here and what we're
14 doing in terms of this conference.

15 This is an excellent opportunity
16 for us to educate the Commissioners about this
17 problem, and this is a significant problem in
18 terms of increasing minority ownership. And
19 it has been since the early '80s when I was a
20 supervising Commissioner on a Committee that
21 dealt exactly with this issue. Jim knows and
22 David knows, so -- and Andy knows. We worked

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1 very hard on this particular issue. It's
2 still around, it's still with us, and I think
3 we need to take this opportunity to educate
4 the sitting Commissioners about this.

5 So please take to heart Barbara's
6 requests for input on this. It's terribly
7 important, and we'll look for your e-mails.
8 Any other questions or comments on this?

9 (No response.)

10 All right. We're going to go ahead
11 and move on. Russ, would you talk to us about
12 your Subcommittee's recommendation? I think
13 everybody has been e-mailed a copy of it.

14 MEMBER FRISBY: Yes. What I
15 thought I'd do is, given that I'm on the
16 phone, give an overview, and then David could
17 walk through the two reports.

18 CHAIRMAN RIVERA: All right.

19 MEMBER FRISBY: Yesterday we looked
20 at two issues. The first issue being whether
21 Class A low-power -- and I apologize, I hear
22 the feedback -- stations should be afforded

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1 must carry status. And the second issue we
2 looked at was a more general issue with regard
3 to the question of procurement in the
4 communications area, and what companies are
5 doing in light of the billions of dollars
6 which are being currently invested in various
7 infrastructure builds and potential of
8 procurement really being a pathway to industry
9 ownership and employment.

10 Now, with regard to the first
11 question, whether or not Class A LPTV stations
12 should be afforded must carry status, we spent
13 a lot of time discussing this issue, and came
14 up -- we didn't reach any conclusions. We --
15 I think we all recognize this was a very
16 important issue, but it was a very complex
17 issue. It was an issue about which we needed
18 more information, and David will walk through
19 that.

20 With regard to the procurement --

21 CHAIRMAN RIVERA: Hey, Russ?

22 MEMBER FRISBY: -- issue, we

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1 thought --

2 CHAIRMAN RIVERA: Russ?

3 MEMBER FRISBY: -- that --

4 CHAIRMAN RIVERA: Russell?

5 MEMBER FRISBY: Yes.

6 CHAIRMAN RIVERA: It's Henry. Can
7 I interrupt you? I'm terribly sorry to do
8 this to you, but Commissioner Adelstein has
9 just walked in the room, and he has got to go
10 give a speech very shortly. And he wants to
11 talk to the Committee. I hope you don't mind.

12 MEMBER FRISBY: I'm always
13 deferential to Commissioners.

14 CHAIRMAN RIVERA: Atta boy. Hey,
15 thanks very much.

16 Commissioner Adelstein?

17 MEMBER ADELSTEIN: Sorry about
18 that, Russ.

19 MEMBER FRISBY: No problem.

20 MEMBER ADELSTEIN: It's just a
21 crazy day here today, and I want to -- you all
22 know how I feel about this and how important

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1 your work is. So I don't want to go on at
2 length about any of that, and I only have a
3 minute. There's one topic I wanted to talk
4 about real quick, and I know it's on your
5 agenda today, which is the personal people
6 meters.

7 I see you have a -- you have a
8 resolution here that you're considering, and I
9 wanted to underscore my view that it's very
10 important that we look into this. I am very
11 concerned about the impact of these on
12 broadcasters today. I'm afraid it's a clear
13 and present danger.

14 We talk about these long-term
15 solutions, but if we lose what little toe-hold
16 minorities and women have on ownership, then
17 it's going to be that much harder to recover
18 and to improve the situation which is already
19 I think abysmal. So I'm deeply concerned
20 about what I'm hearing about this.

21 I'm going out to visit Arbitron
22 this week. I think I'll ask them the hard

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1 questions. I'll ask you the hard questions.
2 I think the Commission needs to do that as
3 well, and we certainly need the input from
4 this Diversity Committee as well on this
5 issue.

6 I'm not going to tell you how to
7 vote or what to do about this resolution. I'm
8 just going to tell you I think it's an
9 important resolution. I think it's an
10 important issue, and I want to thank you, Jim,
11 for putting this on our radar screen here, and
12 David and everybody else who has done that.
13 I'm very concerned about it.

14 So thank you for at least thinking
15 about that, thinking about what we can do, and
16 just as importantly thinking about what you
17 can do to help us understand what's really
18 going on in the marketplace with regard to
19 these PPMs, and whether they're really
20 working, whether they're accurate. All we
21 want is accuracy. And if they're not being
22 accurate, we're getting undercounted and

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1 losing revenue. This is a potential real
2 crisis.

3 CHAIRMAN RIVERA: Thank you very
4 much.

5 MEMBER ADELSTEIN: That's all I
6 wanted to say. Thank you all for considering
7 that today.

8 CHAIRMAN RIVERA: Thanks for
9 coming, Commissioner. We appreciate it, and
10 we appreciate your words of wisdom. And we're
11 certainly going to take that up later.

12 Russell? Okay. Russell, would you
13 mind starting over?

14 MEMBER FRISBY: Well, I think at
15 this point, why don't I turn it over to David,
16 who can walk through the different reports,
17 one being -- and go through our proposals.

18 CHAIRMAN RIVERA: All right.
19 That's a good plan. Go ahead, David.

20 MEMBER HONIG: Thanks, Russell.

21 Let's start, I guess, with the one
22 on procurement. This one actually takes the

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1 form of a recommendation that the Subcommittee
2 wants the full Committee to vote on. There is
3 statutory authority from the '92 Cable Act for
4 cable systems to -- and the language says --
5 encourage minority and female entrepreneurs to
6 conduct business with all parts of its
7 operation.

8 The cable system should do this,
9 and cable systems should analyze the results
10 of its efforts to recruit, hire, promote, and
11 use the services of minorities and women, and
12 explain any difficulties encountered in
13 implementing its equal employment opportunity
14 program.

15 So this provision, although it is
16 basically phrased as ancillary to equal
17 employment, really relates to procurement.
18 The relationship is more than just a pigeon
19 hole in the statute, because of course when a
20 company is able to get a foothold in the
21 industry as a supplier, that enhances its
22 ability to, first, raise capital and develop

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1 expertise to ultimately become an FCC
2 regulatee or licensee, to incubate others who
3 will become entrepreneurs and follow that
4 path, and to train executives and
5 professionals who will ultimately work in
6 these regulated industries.

7 This provision is implemented on
8 the cable side by a regulation, Section
9 76.75(e), which unfortunately appears to be
10 essentially dormant. The Committee, in the
11 Subcommittee meeting yesterday, felt that
12 because this provision -- the authority is so
13 clear with respect to cable, and there are
14 other provisions of the -- in the statute --
15 151, 257, 309(j) -- in which Congress has
16 spoken about the importance of preventing
17 discrimination, lifting market entry barriers,
18 and promoting minority ownership, that the
19 Commission most likely already has statutory
20 authority, if it chose to do so, to expand
21 this initiative into other industries,
22 including wire line, wireless, broadcast, and

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1 satellite.

2 In order to do that, of course, as
3 well as develop a more thorough means of
4 implementing and promoting compliance with the
5 provision it already has, the Commission would
6 need to undertake a rulemaking proceeding.

7 And, therefore, the Subcommittee
8 recommends that the full Committee recommend
9 to the Commission that it issue an NPRM that
10 would examine the question of statutory
11 authority, the extent and nature of potential
12 contracting opportunities, barriers to entry
13 and inclusion faced by minority and women
14 contractors, how the agency can encourage and
15 ensure compliance with its procurement rules,
16 and implementation of the clause that says
17 "analyze the results of its efforts."
18 Basically, the information provision and
19 disclosure provision relating to knowing
20 whether procurement opportunities have been
21 provided.

22 Those are all questions, among

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1 others, that the Commission could choose to
2 ask in an NPRM. And if the Chair would
3 entertain one, I would like to move that this
4 recommendation be adopted.

5 CHAIRMAN RIVERA: All right. Is
6 there a second?

7 MEMBER SCHWARTZMAN: Second.

8 CHAIRMAN RIVERA: All right. Andy,
9 I see you're on the Subcommittee. Do you have
10 anything to add to David's and Russell's
11 explanations?

12 MEMBER SCHWARTZMAN: No. I think
13 it has been fully covered.

14 CHAIRMAN RIVERA: All right. Marie
15 Long, I know you're on the phone, and you're
16 on this Subcommittee. Do you have any
17 comments to share?

18 MEMBER LONG: No, I don't.

19 CHAIRMAN RIVERA: Okay. Are there
20 any questions of David or Russell on this
21 recommendation?

22 MEMBER FRISBY: This is Russell. I

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1 will say that to some extent the FCC would be
2 following the lead of the states. California,
3 as well as NARAC, has been particularly active
4 on these issues. And I know that -- I think,
5 Marie, as I recall, AT&T participates in the
6 NARAC effort.

7 MEMBER LONG: Yes, we do.

8 CHAIRMAN RIVERA: All right. Thank
9 you.

10 Anything else?

11 (No response.)

12 Are you ready for the question?
13 All in favor of this recommendation please say
14 aye.

15 (Chorus of ayes.)

16 Any opposed?

17 (No response.)

18 Motion carries. Thank you.

19 David, the next recommendation,
20 please?

21 MEMBER HONIG: We had a very lively
22 discussion about the report, and this

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1 addresses the question of Class A LPTV must
2 carry. We had a very lively discussion
3 yesterday at the Subcommittee with subject
4 matter experts from the LPTV community and
5 from the cable community, and realized that,
6 as a Subcommittee, we don't yet have
7 sufficient information on a number of critical
8 points to be able to make a recommendation to
9 the full Committee.

10 What we, therefore, determined to
11 do was to follow up with the subject matter
12 experts, as well as other parties, with a
13 series of questions that we would ask them to
14 respond to to the Subcommittee. Those
15 questions are set out in this report. They
16 basically relate to the questions of statutory
17 authority, the number and type and service
18 provided by these Class A stations, how it
19 comes to pass that there are barriers to
20 participation in these stations and on cable,
21 and whether there are other factors which may
22 be inhibiting the availability of channels for

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1 them, whether and in what form FCC
2 intervention may be necessary, and the impact
3 of the DTV transition, of course, this
4 elephant in the room on all of this.

5 We are expecting to sharpen, of
6 course, this list of questions and get it out
7 to the affected parties and the experts soon,
8 so that by the next meeting we may be in the
9 position to have either a further report or a
10 recommendation.

11 CHAIRMAN RIVERA: Thank you, David.

12 Any comments from anyone on this -- on the
13 status of this recommendation?

14 (No response.)

15 Okay. All right. Let's move on,
16 then, to the Task Force on Eligible Entities,
17 David, which you chair.

18 MEMBER HONIG: Do you want to take
19 up the PPM resolution, which I guess really
20 flows from the -- from new technologies at
21 this time, or take it up later?

22 CHAIRMAN RIVERA: I was actually

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1 going to put it in the New Business. But if
2 you think it's more appropriate to deal with
3 it here, we can do that. What do you want to
4 do, Jim?

5 MEMBER WINSTON: I don't want to
6 cut the line. I'm quite happy to address it
7 now or later. You set an agenda. I'm happy
8 to live with your agenda.

9 CHAIRMAN RIVERA: All right. Why
10 don't we take it up in New Business, then.

11 MEMBER WINSTON: Okay.

12 CHAIRMAN RIVERA: All right?

13 MEMBER WINSTON: Okay.

14 CHAIRMAN RIVERA: Okay. Eligible
15 entities?

16 MEMBER HONIG: The Eligible
17 Entities Subcommittee is really looking at two
18 different paradigms that we feel could prove
19 -- could be promising as a less dilute means
20 of advancing minority and women ownership that
21 would still be constitutionally satisfactory.
22 The means used now is that an eligible entity

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1 is defined by the Commission as a small
2 business, but that is very dilute, as it turns
3 out, especially in commercial radio.

4 So we prepared this agenda of
5 questions, version four of which is the one we
6 are working from now -- that's attached to the
7 materials -- and thus far have had interviews
8 at some length with four subject matter
9 experts -- Matthew Berry, who is of course the
10 Commission's General Counsel; Tom Henderson,
11 who is one of the leading civil rights
12 lawyers, formerly Director of Litigation for
13 the Lawyers Committee; Kent Lawless from the
14 LSAC; and Camille Dejana of the ABA; the
15 latter two of whom are experts on the subject
16 of how law schools in particular have
17 considered factors that -- under a paradigm
18 that we're calling "full final review" under
19 which the Commission could conceivably take
20 into account the extent to which an applicant
21 for Commission authorization has overcome
22 barriers and overcome disadvantages.

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1 At our last gathering that we held
2 last week, June 4th, we decided that we would
3 have one final round of subject matter expert
4 interviews. That would be June 25th. We have
5 invited Henry Geller, Ken Robinson, and Jane
6 Mago to meet with us. Ken is already
7 confirmed.

8 And our hope is that by,
9 realistically, September, the Subcommittee
10 will be in a position to present a report and
11 recommendations to the full Committee.

12 CHAIRMAN RIVERA: Thank you, David.

13 I know the Committee has been working very
14 hard, and meeting often, and I want to
15 particularly thank Anne Lucey for hosting
16 these meetings. It's very kind of you and
17 your company to do that. We appreciate it.

18 So thank you. Keep up the good
19 work. And we're looking for good things from
20 you. I know this is a thicket, and a
21 difficult issue to deal with. But it seems to
22 me that you're getting the best and the

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1 brightest in front of that Subcommittee, and
2 we're looking for a terrific report from you
3 when you get it done.

4 Okay. Outreach.

5 MEMBER HONIG: Okay. The Outreach
6 Subcommittee has meet on a couple of occasions
7 and considered the question of whether
8 information should be provided broadly to the
9 general public, and to particular subsets of
10 the public, on how diversity in our industries
11 is advanced and can be more readily advanced
12 at the voluntary initiative of interested
13 parties.

14 There are really two key audiences
15 that we've identified. One is corporations
16 and trade associations in the field who might
17 benefit from having before them a set of well
18 thought out best practices along the lines of
19 what was done in the -- in a more elaborate
20 way in the equal employment field in 2004 when
21 our best practices guide was developed. That
22 was also aimed primarily at companies.

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1 The other document, which would
2 need to be much more granular because it's
3 really aimed at entrepreneurs who need a vast
4 amount of information about these sometimes
5 esoteric industries and the Commission and how
6 one successfully negotiates the transactional
7 and capital-raising process, this would be a
8 guide that would have the depth and
9 granularity actually of the best practices
10 guide for employment that was developed in
11 2004, because of the depth that it would have
12 and what it would cover, which is how to raise
13 capital, negotiate joint ventures, negotiate
14 acquisitions, develop a new media strategy,
15 FCC policies and procurement opportunities.
16 That's a lot.

17 We felt that it would be necessary
18 to have that contracted outside, much as the
19 workplace diversity guide was in 2004. That
20 guide was done by the Commission at a cost of
21 \$25,000. That I think is probably about what
22 it would cost to develop this kind of guide.

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1 This, again, is a subject which,
2 while not committing the funds, the Commission
3 did vote to undertake in one of the -- in
4 granting one of the proposals in the diversity
5 order it voted out in December.

6 So the recommendation that the
7 Subcommittee on Outreach wanted to present to
8 the full Committee for its consideration and
9 vote today is to recommend to the Commission
10 that it first have OCBO develop this company
11 guide, and that it undertake to find the funds
12 -- obviously, we can't commit the Commission
13 to spend money, but the Commission can
14 consider whether it might somewhere find the
15 money to underwrite the cost of producing this
16 entrepreneur's guide in approximately this
17 form.

18 And if the Chair would entertain
19 one, I'd like to make that as a motion.

20 CHAIRMAN RIVERA: All right. Is
21 there a second?

22 MEMBER FRISBY: Second.

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1 CHAIRMAN RIVERA: Thank you. Any
2 conversation about the company guide that
3 would be prepared by the OCBO?

4 (No response.)

5 David, that -- what is the status
6 of that guide at this time? I understand that
7 it is in some --

8 MEMBER HONIG: It's just a concept.
9 There was some early material developed by
10 OCBO really aimed more at entrepreneurs, and
11 the material that OCBO developed is Commission
12 rule and procedure specific, and would be
13 probably best suited as exhibits to the other
14 one, to the entrepreneur's guide.

15 CHAIRMAN RIVERA: Has OCBO
16 committed to going forward with the company
17 guide?

18 MEMBER HONIG: No, they would have
19 to take direction from the Commission. But I
20 think they've got the capacity to do it if the
21 Commission chose to assign it to them.

22 CHAIRMAN RIVERA: Has the

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1 Subcommittee talked to them about it?

2 MEMBER HONIG: Yes. They were on
3 the call that we had, and they are willing and
4 able, but of course they have to -- just
5 subject to being authorized.

6 CHAIRMAN RIVERA: Okay.

7 MEMBER HONIG: And they have -- by
8 the way, they don't have any discretionary
9 funds of their own to hire an outside
10 contractor. That would have to be a
11 Commission decision.

12 CHAIRMAN RIVERA: Right. All
13 right. Is there any further conversation
14 anyone wants to have about this guide, or this
15 recommendation?

16 (No response.)

17 All right. Hearing none, all in
18 favor say aye.

19 (Chorus of ayes.)

20 Any opposed?

21 (No response.)

22 Motion carries.

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1 You have another? Okay.

2 MEMBER HONIG: No, that's it.

3 CHAIRMAN RIVERA: All right. I
4 just wanted to mention that Becky Klein chairs
5 this Subcommittee, but she is unable to be
6 with us either on the phone or in person
7 today, so that is why David is making this
8 report.

9 Okay. Now we're moving into New
10 Business, and the first item of New Business
11 that I know of is the People Meter issue that
12 we asked Jim Winston to -- at our last meeting
13 to draft a resolution about, and he has done
14 that. So the floor is yours, Jim.

15 MEMBER WINSTON: Okay. Thank you,
16 Henry. Just to refresh, and perhaps for some
17 people who may not have been on the call or at
18 the last meeting, Arbitron is a ratings
19 service that rates the audience of radio
20 stations around the country. And they are the
21 only company that does that.

22 For about 40 years, they have done

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1 that through a technique called a "diary,"
2 where they send out a written diary to a set
3 group of households in each market, and got
4 written reports back from them, which they
5 used to measure the amount of audience of each
6 radio station in that market.

7 In the last couple of years, they
8 have decided to upgrade that service to an
9 electronic service -- a move that everyone in
10 the industry supports. We all recognize that
11 in 2008 electronic measurement is the way to
12 go for the radio industry, as other industries
13 have done.

14 However, in implementing the PPM
15 methodology, a number of questions have been
16 raised about the results that the methodology
17 is producing. In Houston, when it first came
18 out, the stations targeting African-Americans
19 in -- African-Americans and Hispanics in
20 Houston fell dramatically in their ratings.

21 In Philadelphia, the same thing
22 happened. In Houston, the -- and the culprit

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1 appeared to be that Arbitron was not reaching
2 the number of Hispanics and African-Americans
3 that Arbitron's methodology said they should
4 reach. It wasn't outside persons trying to
5 change the number of persons they should
6 reach. It was their methodology that said,
7 "We need X number of African-Americans and
8 Hispanics in the sample," which is called "in
9 tab," meaning in the tabulation.

10 And their early results were
11 showing results with various segments of the
12 minority community, because once they do their
13 tabulation they break it down by age and
14 ethnicity. And for young African-Americans,
15 young Hispanics, they were getting 30 percent
16 of the number of people that they targeted --
17 that they said they needed to have, and that
18 seemed to be the problem with the methodology
19 that was producing these very negative --
20 these very unsatisfactory results.

21 NABOB began meeting with Arbitron
22 over a year ago to address this issue, and in

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1 spite of many meetings and many assurances
2 that in the next month or two the numbers will
3 be where we want them to be, Arbitron has
4 still been unable to achieve the results that
5 they said they need to have.

6 Simultaneously, Arbitron went to
7 the Media Ratings Council, which is a
8 voluntary trade organization that the
9 advertising industry, not just radio,
10 television, anybody who does media measurement
11 goes there for accreditation of their
12 measurement services. And Arbitron had gone
13 to the Media Ratings Council for
14 accreditation.

15 They were granted accreditation in
16 Houston, but the methodology that Arbitron
17 uses in Philadelphia, and is proposing to use
18 in subsequent markets, is different from the
19 methodology they used in Houston. In Houston,
20 Arbitron joined with Nielsen, the two of them
21 joining together to do an electronic
22 measurement service.

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1 After the Houston experiment,
2 Nielsen and Arbitron went their separate ways,
3 and Arbitron continues to use in Houston the
4 methodology they created with Nielsen there,
5 which, as I said, has been accredited by the
6 Media Ratings Council.

7 When they did their new
8 methodology, and particularly with
9 Philadelphia and New York, the Media Ratings
10 Council denied accreditation in both
11 instances, because the results that were being
12 produced by their new methodology were not
13 meeting the standards that the Media Ratings
14 Council said they needed to be meeting to
15 measure the audience they were purporting to
16 measure.

17 In spite of being denied
18 accreditation in Philadelphia and New York,
19 Arbitron continues in Philadelphia to use the
20 PPM methodology as the actual method for
21 buying and selling radio advertising time in
22 that market -- a status that's called "going

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1 to currency," meaning that it's used to -- for
2 the exchange of money.

3 In New York, they delayed the
4 rollout of PPM in New York because of concern
5 about the methodology, and they said they
6 would delay New York and several other markets
7 until September of 2008. This was in late
8 November 2007 they made this statement.

9 And apparently they knew at the
10 time that they were about to be denied
11 accreditation in New York and Philadelphia,
12 although they did not make that public until
13 they filed an SEC report sometime later.

14 So where we are now is that
15 Arbitron is continuing to move forward with
16 this September 2008 date for rolling out PPM
17 in New York, Los Angeles, San Francisco, and
18 some adjacent markets to those markets, with
19 the rest of the top 50 markets being scheduled
20 for rollout in roughly monthly increments from
21 now until 2010.

22 However, the results for the PPM

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1 methodology have gotten no better in
2 Philadelphia and New York, where they are
3 doing -- they are still doing test data, and
4 they are about to release test data, we
5 understand, in Los Angeles and San Francisco.

6 And our concern, of course, is that the test
7 data there will be very similar to the test
8 data they are experiencing in New York, and
9 the actual data they are still experiencing in
10 Philadelphia.

11 The financial implications for
12 minority broadcasters could be devastating if
13 the PPM data comes out in the manner that we
14 expect. In Philadelphia, the station
15 targeting the -- the number one station
16 targeting African-Americans, which was number
17 two in the market, when PPM data came out it
18 went from two to number 14. The Hispanic
19 station went from four to 17.

20 So we're looking at impacts that
21 can be very devastating for these stations.
22 Just to put it in simple financial terms, in

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1 many markets, advertisers will only advertise
2 on the top five stations. So that if you fall
3 from two to 14, it's not -- it's not a
4 fractional difference, it's actually going
5 from revenue to zero with respect to some
6 advertisers.

7 So, you know, and that of course is
8 one scenario. The other scenario is that
9 advertisers will say, "Yes, we'll advertise
10 with you now that you're number 14, but we
11 want a 75 percent discount in the rate you're
12 charging us."

13 And, obviously, your overhead costs
14 don't change because your Arbitron numbers
15 change. Your debt service doesn't change
16 because your Arbitron numbers change. So we
17 have a clear and present danger, as
18 Commissioner Adelstein described it, with
19 respect to minority broadcasters that could
20 have severe consequences as early as September
21 of this year.

22 And so it's the -- basically, the

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1 only thing that stations in those markets are
2 talking about, and it's a matter that we
3 believe could undermine everything that the
4 Diversity Committee is trying to do, because
5 it would take us backwards and erode any
6 opportunity for going forward.

7 I hope I didn't speak too long.

8 CHAIRMAN RIVERA: Oh, no, not at
9 all. Now can you walk us through the
10 recommendation? What is it that you want the
11 Committee to do?

12 MEMBER WINSTON: Sure. The
13 recommendation is to request that the
14 Commission investigate this situation. We
15 think that whether the Commission has
16 statutory authority to actually take action
17 with respect to this is a matter that needs to
18 be investigated.

19 And if the Commission determines
20 that it doesn't have statutory authority to
21 actually take action with respect to Arbitron,
22 then we would encourage the Commission to take

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1 the results of any investigation it does do
2 and share those with Congress, which may need
3 to take action to step in to do something
4 about this monopoly situation.

5 CHAIRMAN RIVERA: All right. Thank
6 you.

7 David, did you want to speak to
8 this?

9 MEMBER HONIG: Sure. This is
10 profoundly important, and I think that the
11 facts that are set out in the whereas clause
12 are entirely accurate. We had -- MMTC had one
13 of its fellows -- Joe Miller -- look at this
14 question of the Commission's jurisdiction in
15 the area, and he has provided a draft report
16 that I wanted to just summarize very briefly.

17 First, the Commission has subject
18 matter jurisdiction to conduct -- to find
19 facts and to do the kind of investigation that
20 is contemplated here under at least four
21 provisions -- 151, 257, 303(g), and 309(j) --
22 which advance non-discrimination, the lifting

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1 of market entry barriers, new uses for radio,
2 and minority and women ownership.

3 The statutory provision that
4 affords the Commission procedural authority to
5 do these investigations is 403 of the Act,
6 implemented by Section 1 of the Commission's
7 rules. I brought those, if anyone wants to go
8 through them. But basically what this -- what
9 is important about 403 is that these
10 investigations are done typically by an ALJ.
11 They are fact-finding.

12 The full range of tools available
13 in any other Commission fact-finding
14 proceeding, such as those under 309(e), are
15 available to the Judge and to the staff,
16 including the ability to conduct discovery,
17 take depositions, call witnesses, and question
18 them.

19 These are -- however, unlike a
20 309(e) or a 312 hearing, these are non-
21 adversarial proceedings. They are fact-
22 finding proceedings, and the advantage of this

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1 kind of investigation is that, subject to
2 reasonable protective orders, facts which are
3 not able to be elicited and examined in any
4 other way, including sensitive information
5 that may be privileged, can be examined in
6 camera by the Judge and the parties.

7 The witnesses can testify, and a
8 Judge would normally look at their demeanor,
9 and thus be able to come up with a report
10 which would have far more credibility and
11 moral authority than anything that interested
12 parties could possibly derive.

13 Now, the final question that we
14 looked at was whether the Commission -- the
15 extent of the Commission's discretion in
16 looking at an issue involving a non-regulated
17 entity. And the answer is that when the
18 Commission finds, or it appears, that a non-
19 regulated entity's behavior frustrates the
20 Commission's ability to do what Congress has
21 required it to do in other areas, in this case
22 151, 257, and so forth, then the Commission

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1 has very broad discretion, and it can even be
2 argued it has very limited discretion not, to
3 undertake an investigation.

4 The leading case of course is that
5 involving Payola, in 1978, 42 R.2d 847. In
6 this instance, just to give a sense of the
7 magnitude of this problem and its time
8 urgency, the Commission recently adopted some
9 13 steps intended to advance minority and
10 women ownership.

11 The most significant of those in
12 terms of its economic impact, if it were fully
13 implemented tomorrow, is the ban on
14 advertising discrimination, which would, if
15 fully implemented with full compliance
16 tomorrow, add about \$200 million in revenue to
17 minority broadcasters.

18 This one issue of PPM has the
19 potential, just conservatively, back of the
20 envelope, appears to have the potential to
21 cost minority broadcasters more than twice
22 that a year, about half a billion dollars a

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1 year, and would wipe out immediately all of
2 the gains that the Commission will have caused
3 to come into being through its diversity
4 policies, and would potentially be the single
5 greatest cause -- the single greatest loss in
6 asset value of minority broadcasters in
7 history.

8 That's so serious and so immediate
9 that, really, only through Commission
10 investigation can the problem be addressed.

11 CHAIRMAN RIVERA: Thank you, David.

12 Anyone have any comments or questions about
13 this?

14 MEMBER KREISMAN: Can I ask a
15 question?

16 CHAIRMAN RIVERA: Yes.

17 MEMBER KREISMAN: I understand how
18 serious this issue is and the impact. But
19 what I'm sort of curious as to -- I don't have
20 any background in it -- is basically you're
21 saying that the present methodology, the
22 diary, is the preferred that has been

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1 accurate. Why doesn't this work? I mean,
2 what was the basis for the Media Ratings
3 Council's failure to accredit?

4 MEMBER WINSTON: The Media Ratings
5 Council is -- all of its activities are
6 confidential. They do not make public
7 statements about the reasons for denial of
8 accreditation. And, in fact, what they do is
9 go to their -- if they deny accreditation,
10 they encourage the company to reapply. And we
11 are advised that Arbitron has reapplied, but
12 they keep all that confidential.

13 And what I know from investigating
14 this matter is that there was a similar
15 problem when Nielsen went to the local People
16 Meter in 2003/2004, and there was a public
17 outcry that it was not adequately measuring
18 minority television audiences.

19 Congress held a hearing and
20 investigated this matter, and brought the
21 Media Ratings Council in to present to
22 Congress its confidential information. Media

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1 Ratings Council made all of its information
2 available to Congress at the time.

3 They have advised me that that is
4 their policy and, if called in to respond to a
5 Congressional inquiry, they would do the same
6 again this time, which is, of course, one of
7 the reasons why we are also talking to
8 Congress about initiating an investigation.
9 But we think that it needs to be looked at
10 from every conceivable angle as soon as
11 possible because of the time sensitivity of
12 the problem.

13 MEMBER KREISMAN: Have the minority
14 broadcasters -- do they have any speculation
15 as to why the reason for the disparity? I
16 mean, I'm -- just a matter of curiosity as to
17 --

18 MEMBER SUTTER: It's a difference
19 in methodology in terms of how the work is
20 actually done. So that change in methodology
21 has resulted in a very different result in
22 terms of what they're measuring now. They're

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1 actually measuring different things now,
2 trying to get to the same result.

3 MEMBER KREISMAN: I see.

4 CHAIRMAN RIVERA: Andy?

5 MEMBER SCHWARTZMAN: I'm very
6 comfortable with the recommendation and the
7 proposed resolution at the bottom of the page.

8 I do have some problems with the drafting of
9 the resolution. It is not as neutral as I
10 think it could be, and I don't think it is
11 necessary or appropriate to be conclusory in
12 the resolution. I think it impairs the
13 independence of the investigation if it
14 appears to be conclusory.

15 I also have a long-standing concern
16 with excessive reliance on the part of the
17 Commission and policy-making for private,
18 unaccountable bodies. And I do think that it
19 is, therefore, surplusage to include explicit
20 reference for policymaking purposes as opposed
21 to investigatory purposes to include a
22 paragraph about the denial of accreditation.

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1 I certainly understand the mandate
2 in the final paragraph to include what Jim was
3 talking about in terms of investigating, you
4 know, the facts, to the extent they are
5 ascertainable, or getting Congress to
6 investigate the facts about the accreditation.

7 I just don't think it should be a whereas
8 clause.

9 So in light of that, I make the
10 following recommendations. First, is that the
11 whereas clause about the Ratings Council be
12 deleted or, alternatively, if it's not
13 deleted, for clarification I would change the
14 word "in" on the first line to "for."

15 CHAIRMAN RIVERA: All right. Just
16 procedurally, the Chair is recognizing Jim's
17 request here as a motion, so can we get it on
18 the floor as a second? Can we get just a
19 second, just to get it on the floor?

20 MEMBER HONIG: Second.

21 CHAIRMAN RIVERA: Okay. So we --

22 MEMBER LUCEY: I guess I don't --

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1 this seems like a new issue. I know Jim had
2 raised it last time, but are we being asked to
3 vote on something today?

4 MEMBER WINSTON: It's just a motion
5 at this point. You can vote against the
6 motion.

7 MEMBER LUCEY: Motion to do what?

8 MEMBER WINSTON: Motion to adopt
9 this.

10 MEMBER LUCEY: Adopt this entire --

11 CHAIRMAN RIVERA: Point well taken.

12 I was trying to get the thing on the floor,
13 and we've got it on the floor now. And Andy
14 is suggesting an amendment, and I'm going to
15 ask Jim if he would accept that as a friendly
16 amendment.

17 MEMBER WINSTON: Okay. And, I'm
18 sorry, give me again your proposed amendment?

19 MEMBER SCHWARTZMAN: My first
20 amendment would be to delete the whereas
21 clause referring to the Media Ratings Council
22 in its entirety. My second degree, I guess it

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1 would be, would be, if that were not adopted,
2 that -- to change the word "in" to "for," just
3 for clarity.

4 CHAIRMAN RIVERA: Okay.

5 MEMBER WINSTON: My view -- if the
6 resolution seems adversarial, it was not my
7 intention for it to do so, but I probably am
8 not capable of writing totally objectively
9 about this subject. So if deleting that
10 whereas clause would make it seem less
11 adversarial, I'm quite happy to make that
12 amendment.

13 CHAIRMAN RIVERA: Okay. We'll take
14 that as a friendly amendment. Now --

15 MEMBER SCHWARTZMAN: I have two
16 other minor amendments to propose. In the
17 whereas clause, which begins, "PPM results
18 have been objected to as accurate and
19 reliable," again, to avoid being excessively
20 conclusory, I would change the word "numerous"
21 at the end of the first page, top line I mean,
22 to "some."

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1 CHAIRMAN RIVERA: Okay.

2 MEMBER SCHWARTZMAN: And I would
3 delete the word "numerous," a surplusage on
4 the second line.

5 CHAIRMAN RIVERA: Okay. So those
6 are all friendly amendments from your
7 perspective?

8 MEMBER WINSTON: I can accept both
9 of those.

10 CHAIRMAN RIVERA: Okay. Anything
11 else?

12 MEMBER SCHWARTZMAN: Yes. In the
13 next paragraph, I would -- just to avoid being
14 conclusory, I would change on the second line
15 the word "does" to "may."

16 CHAIRMAN RIVERA: Okay.

17 MEMBER SCHWARTZMAN: And then, I
18 have one other observation.

19 CHAIRMAN RIVERA: Please, go ahead.

20 MEMBER SCHWARTZMAN: This reads as
21 if the Commission's job is to protect and
22 promote minority broadcasters or companies

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1 which promote broadcasting to minorities.
2 That is part of the Commission's job.

3 However, it seems to me that the
4 problem that is being identified here, if it
5 is borne out through investigation, is
6 something that adversely affects advertisers,
7 adversely affects all broadcasters, because
8 inaccurate information is bad for all
9 broadcasters, and it adversely affects the
10 public.

11 And I would recommend that a
12 paragraph be added that relates to the
13 potential adverse effects to those parties as
14 well as to broadcasters or companies relating
15 to minority broadcasters. I think our mission
16 is for all of the American people.

17 CHAIRMAN RIVERA: I think that's an
18 excellent point. Again, would you accept that
19 as a friendly amendment? At least
20 conceptually.

21 MEMBER WINSTON: Conceptually, I
22 guess the question is: can we vote without it

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1 being drafted?

2 CHAIRMAN RIVERA: No. And that's
3 to Anne's point, and I think that, since
4 everybody just got this, and we're sort of
5 editing this on the fly, I thought what we
6 would do is to take it back. Perhaps you
7 would be good enough -- you working with David
8 -- to incorporate Andy's edits, and then we
9 can bring it back to the Committee and
10 hopefully vote in our -- either by
11 circulation, an e-mail vote, or we can do it
12 -- we can take it up again in July at our
13 meeting in New York.

14 MEMBER SCHWARTZMAN: I would -- I
15 think this can be done quickly, and I would
16 urge that it be done by circulation, so that
17 things can move on.

18 CHAIRMAN RIVERA: All right.

19 MEMBER MENDEZ: Bob Mendez on the
20 line, by the way.

21 CHAIRMAN RIVERA: Hey, Bob. Great.

22 MEMBER KREISMAN: When you all

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1 agree on the language, I'll just send you an
2 e-mail and you can respond back. That seems
3 like the best way to -- the Committee can
4 actually do it that way. We'll do it on the
5 spot.

6 CHAIRMAN RIVERA: Is that okay with
7 you?

8 MEMBER WINSTON: Yes.

9 CHAIRMAN RIVERA: All right. What
10 we're going to do, for those of you who did
11 not hear Barbara, we're going to rewrite this
12 pursuant to Andy's suggestions, and we're
13 going to circulate it, and we're going to vote
14 by e-mail on this.

15 Anne, do you have something else to
16 add?

17 MEMBER LUCEY: No.

18 CHAIRMAN RIVERA: No. Okay.

19 All right. Anybody else have
20 anything to add?

21 (No response.)

22 All right. I think that was a

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1 great discussion. Appreciate everybody
2 pitching in on it. And just for --

3 MEMBER LUCEY: I just have a
4 question about some of the process. An issue
5 like this, I just -- or any issue, I mean, all
6 of the issues, we seem to have task forces or
7 some committee/subcommittee discussion --

8 CHAIRMAN RIVERA: Right.

9 MEMBER LUCEY: -- and this one
10 just, I don't know. You had mentioned it last
11 time, and now I see a resolution, boom, we're
12 asked to do something.

13 CHAIRMAN RIVERA: Right.

14 MEMBER LUCEY: When, you know, I'm
15 not sure we have the --

16 CHAIRMAN RIVERA: Would you feel
17 more comfortable if it went through a
18 subcommittee?

19 MEMBER LUCEY: Well, I don't know.
20 I'm just asking about the process and
21 procedure.

22 CHAIRMAN RIVERA: Oh, no. It's a

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1 point well taken, and you're absolutely --
2 your observation is accurate.

3 MEMBER LUCEY: Because all of a
4 sudden, this one comes up, and we've got these
5 others that have been studied. And I'm just
6 -- I'm not sure of how we pushed --

7 CHAIRMAN RIVERA: Your observation
8 is accurate. I mean, I had the same thought.

9 MEMBER LUCEY: Okay.

10 CHAIRMAN RIVERA: David, just the
11 -- Russell's Subcommittee didn't take this up?

12 MEMBER HONIG: No. It came
13 directly out of the charge from the last
14 meeting. Although there is no rule of the --
15 procedural rule of the Diversity Committee
16 that says things you have to go through at
17 Subcommittee, usually they do. There has been
18 one resolution that was passed because of time
19 urgency on '05 that came directly.

20 CHAIRMAN RIVERA: Right.

21 MEMBER HONIG: So we have the
22 authority to do it this way, present it

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1 directly.

2 CHAIRMAN RIVERA: But I -- I mean,
3 I think Anne raises a good point, and I don't
4 know why the Subcommittee couldn't take this
5 up on circulation and then make a
6 recommendation.

7 Russ, would you be able to -- would
8 your Subcommittee be able to do that, once we
9 got you a revised copy? Are you still there,
10 Russ?

11 (No response.)

12 We'll correspond with Russ on that,
13 and then -- and we should be able to get this
14 -- move this pretty rapidly and get a
15 Subcommittee --

16 MEMBER LUCEY: I'm not trying to
17 slow anything down. I'm just kind of --
18 because it's like Class A low power must
19 carry, for example. I mean, that's an issue,
20 I mean, I've heard churn for years, you know,
21 on various, you know -- but this one, I don't
22 know if the Subcommittee could -- does it make

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1 sense for them to talk to Arbitron? Is that
2 at all within the charge?

3 I don't know, I'm just asking if
4 there's a procedure that might -- I don't know
5 -- bring more discussion or pressure, I don't
6 know, or whatever it is you're looking for.
7 I'm not sure.

8 MEMBER WINSTON: Well, you know, I
9 would like something to happen sooner rather
10 than later. But I certainly don't want to
11 engage in any procedural shortcuts. So
12 whatever the Committee feels is -- makes it
13 comfortable in terms of referring it to the
14 Subcommittee is fine. I think a meeting with
15 Arbitron might be a time constraint problem,
16 but certainly, you know, I think if the
17 Committee wants to talk with Arbitron, they
18 certainly should.

19 MEMBER KREISMAN: You could also
20 give them a little bit more background. I
21 mean, you started to go there as to -- because
22 I still -- you've made it very clear the

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1 impact. That is really clear, and I
2 understand the urgency and the -- but I still
3 don't understand why -- it's unfortunate we
4 can't get our hands on the basis for the
5 failure of the Council to accredit it, because
6 that probably would answer all of the
7 questions.

8 And probably you guys know the
9 answers, but, I mean, why doesn't it work?
10 And you started to explain that it measures
11 different things. That's the kind of thing
12 that would be helpful, if it could be included
13 in a report, because at least you know what
14 you're focusing on. I mean --

15 MEMBER LANCASTER: Is that -- I'm
16 sorry. This is Margaret Lancaster.

17 MEMBER KREISMAN: Yes.

18 MEMBER LANCASTER: The main issue
19 here is that Arbitron's, you know, methodology
20 with respect to its sampling panel is
21 proprietary, and MRC won't release the
22 information. That's why we're pursuing the

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1 Congressional angle, because the MRC has a
2 precedent established where the MRC will talk
3 to Congress. So we are pursuing that angle.

4 The other -- and the other angle
5 and the other prong we're coming at is, again,
6 to have the FCC investigate Arbitron as this
7 potential, you know, new advertising, you
8 know, method has the potential to seriously
9 impact minority broadcasters.

10 And, again, the urgency is coming
11 from the fact that they are planning to roll
12 this out in the fall. And if nothing is done,
13 or if no one stands up to ask, you know, the
14 appropriate questions of Arbitron, and to get
15 more information out of them, because they are
16 being very tight-lipped --

17 CHAIRMAN RIVERA: I think what
18 we're trying to do here is, is we're asking
19 the Commission to take a look.

20 MEMBER LANCASTER: Right. To ask
21 the questions.

22 CHAIRMAN RIVERA: To ask the

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1 questions. So, I mean, maybe as Ms. Lancaster
2 just pointed out, we couldn't -- we can't get
3 at some of the stuff that you're talking
4 about. Maybe Congress can or the Commission
5 can.

6 MEMBER SCHWARTZMAN: I think it's
7 -- to the Committee what this resolution does,
8 which is to identify a perceived problem and
9 ask the Commission to investigate it. I don't
10 think this Subcommittee has the capability, or
11 probably even the authority, to really delve
12 deeply into that.

13 It's enough to recognize that
14 there's a potential problem, and I hope my
15 changes reflect what is a potential problem
16 rather than making the conclusion that there
17 is a problem, which is I think something for
18 the Commission to do.

19 MEMBER SUTTER: If this is
20 something that is referred to a subcommittee,
21 the opportunity is that there are several
22 major groups who have very vocally looked into

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1 this themselves. I'm speaking broadcast
2 groups now -- those who are impacted by it.

3 And have stations that have been
4 impacted by it, and there is a great deal of
5 discussion going on within the broadcasters
6 themselves. And certainly it might be
7 advantageous to have one or two of those
8 particular broadcast companies to share their
9 findings as they have been delving into this
10 in great detail, and have been working with
11 Arbitron on it.

12 There are several companies that
13 come to mind that have been very vocal.
14 Certainly, Cox has been with Bob Neil. You
15 have Inner City Broadcasting. You have
16 several companies that are actively working on
17 this who might be able to supply the
18 Subcommittee with sufficient information that
19 it might make everyone more comfortable about
20 a discussion about this issue.

21 We also are going to be in New York
22 in a month, and both Arbitron and several of

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1 these companies have headquarters in New York.

2 And if it was something the Committee wanted
3 to do, you would have the opportunity perhaps
4 to have a conversation. That might be more
5 illustrative.

6 MEMBER KREISMAN: That's why that's
7 written as to the panels. This certainly --
8 it seems to me it will affect, as you pointed
9 out, access to capital. I'm just --

10 MEMBER HONIG: The problem is that
11 there is -- we don't have a month. This --
12 the company plans to roll this out in the
13 largest markets in September. So that if the
14 Commission were -- even if it were to decide
15 next week to initiate a 403 investigation, a
16 judge would really have to work hard to get a
17 report done in August. It could be done.

18 Certainly, at least a paragraph
19 could be added to identify, in a crisp way,
20 trying to keep this just to a page, some of
21 the procedural issues, or some of the
22 substantive issues relating the methodology

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1 that have been raised and vetted already.
2 There are seven or eight -- there are at least
3 three that probably the Commission could -- if
4 it saw that, could just say, okay, this is
5 what this is about.

6 MEMBER SCHWARTZMAN: Yes. I
7 strongly urge that we vote to send this matter
8 to the Commission, so that the Commission can
9 act expeditiously on it. This Subcommittee
10 doesn't have the staff, the capability, the
11 power. Statements to it are not subject to 18
12 USC 1001. It doesn't have process. We are
13 not an investigatory body.

14 But we certainly are capable of
15 identifying a potential problem that adversely
16 affects large numbers of people, which I think
17 this resolution does.

18 CHAIRMAN RIVERA: I think that's
19 very well stated. And the Chair is inclined
20 to agree with you. I think what we will do is
21 clean this up, then, and I certainly
22 understand your point and I share it. I was

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1 --

2 MEMBER LUCEY: It's an attempt at
3 delay. I'm not --

4 CHAIRMAN RIVERA: No.

5 MEMBER LUCEY: To me, it was jus ta
6 new issue, and I'm just wondering --

7 CHAIRMAN RIVERA: Right.

8 MEMBER LUCEY: -- what the process
9 and procedure is for any issue.

10 CHAIRMAN RIVERA: I was troubled by
11 it as well. But given the -- well, two things
12 -- first, the urgency. We just don't have the
13 time. And the second thing is that all we're
14 asking the Commission to do is to look into
15 it.

16 So, and as Andy correctly points
17 out, we are not an investigative body, but we
18 are capable of identifying a problem that's
19 going to affect a lot of people, we think. So
20 take a look at it, Commission, and I think
21 we're capable of doing that. So we'll
22 circulate this clean copy, and we'll vote on

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1 circulation.

2 MEMBER LUCEY: Can I add something
3 to that?

4 CHAIRMAN RIVERA: Sure.

5 MEMBER LUCEY: You had mentioned
6 something -- that the SEC has jurisdiction. I
7 mean, does that need to be listed here
8 somewhere also?

9 MEMBER WINSTON: It could be, and
10 that's a good idea. I think we should add a
11 paragraph specifying that. Sure.

12 CHAIRMAN RIVERA: And that will be
13 -- if the Commission decides to take this up,
14 we will have the -- the Commission would have
15 the opportunity, for example, to attempt to
16 have a conversation in New York in the -- at
17 the en banc with these folks. We would have
18 an opportunity to submit other data that has
19 been gathered. So there will be other
20 opportunities.

21 Again, all we're doing is saying,
22 "Hey, we think there's a problem here. You

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1 really ought to look into it."

2 Okay. So all in favor of
3 proceeding that way say aye.

4 (Chorus of ayes.)

5 And then, we will vote on
6 circulation on the substance.

7 Is there any other new business to
8 come before the Committee?

9 MEMBER SUTTER: Has the Committee
10 previously, or is it on an agenda to consider
11 a discussion having to do with tax
12 certificates, and whether or not that is
13 something that is being looked at, or is that
14 something we have had discussion about
15 previously?

16 CHAIRMAN RIVERA: David, do you
17 want to address where we are with tax
18 certificates?

19 MEMBER HONIG: Margaret, are you on
20 the line?

21 MEMBER LANCASTER: I am.

22 MEMBER HONIG: Margaret has been

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1 staffing the Committee for -- on tax
2 certificate restoration, which consists of
3 about 20 companies and a number of public
4 interest and trade organizations focused on
5 this, and I think has the most immediate
6 information on where it stands in the House
7 and Senate.

8 MEMBER LANCASTER: I,
9 unfortunately, don't have positive news to
10 report. We have not heard back from Chairman
11 Rangel's office. But on the Senate side,
12 Senator Menendez is ready to drop his -- is
13 quite excited about it. He is actually
14 planning a publicity push -- is trying to put
15 together for it now.

16 And we will do everything we can to
17 help, you know, shed some light on these
18 important initiatives. So I think we're in
19 good stead. We're definitely getting more
20 people -- more and more people on board as we
21 go forward. And while we are, you know,
22 realistic that we may not be able to

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1 accomplish very much this session, I think
2 we're in good stead to hit the ground running
3 here.

4 CHAIRMAN RIVERA: I hope that's
5 responsive.

6 Okay. Any other new business to
7 come before the Committee?

8 (No response.)

9 All right. I want to thank you all
10 for coming and for participating, and would
11 ask you, again, to hold July 28th in the
12 evening for our next meeting in New York. And
13 we'll get those details out to you as soon as
14 we have them.

15 So thanks, everybody. We're
16 adjourned.

17 MEMBER KREISMAN: Thanks, a lot,
18 David, for your extraordinarily hard work.
19 Just want to say thanks. And also, he is not
20 here, but Rodney Hood has really done a great
21 job on access to capital. He is really the
22 one who made all of the arrangements at

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1 Barnard. And he is in Portugal now, but
2 thanks.

3 (Whereupon, at 11:15 a.m., the proceedings in
4 the foregoing matter were
5 adjourned.)
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