

UNITED STATES OF AMERICA

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FEDERAL COMMUNICATIONS COMMISSION

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ADVISORY COMMITTEE ON
DIVERSITY FOR COMMUNICATIONS
IN A DIGITAL AGE

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The above entitled meeting was held pursuant to Notice at The James Room, 4th Floor, Barnard Hall, Barnard College, 3009 Broadway, New York, New York 10027, on Monday, July 28th at 4:00 p.m.

PRESENT:

HENRY RIVERA,
Chairman, Diversity Advisory Committee

BARBARA KREISMAN,
FCC Designated Federal Official

RODNEY HOOD, Chair, Access to Capital

RUSSELL FRISBY, Chair, New Technologies

DAVID HONIG, Chair,
Task Force on Eligible Entities

JAMES WINSTON

ANNE LUCEY

BOB MENDES

DIANE SUTTER

MARGARET LANCASTER

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

2 (4:00 p.m.)

3 MS. KREISMAN: This is the base
4 meeting of the Diversity Staffing Committee.
5 Thank you all for coming. We have a full
6 agenda and, with that, I'll turn it over to
7 Henry.

8 CHAIRMAN RIVERA: Welcome all.
9 We're very glad that you're all here. And
10 before we get into our agenda, I'd like to
11 recognize the fact that Commissioner Copps has
12 joined us.

13 And, Commissioner, would you be so
14 kind as to address the group, perhaps, and say
15 a few words of welcome?

16 COMMISSIONER COPPS: All right.
17 Can you all hear me?

18 I don't have any remarks, but I
19 wanted to come by and say thank you all for
20 coming here. You all know I'm a big believer
21 in Advisory Committees, especially this one
22 which has various venues for so long,

1 sometimes far from the -- far from recognition
2 as they should be.

3 So I wanted to thank you for your
4 efforts. I wanted to congratulate you for
5 pushing the issues along the way you have
6 pushed them along. And I really think the
7 fact that the Commissioners are all going to
8 be here tomorrow really gives you a little
9 force and a little momentum that's been
10 lacking for a while, not because of any lack
11 of efforts on your part, but lack of
12 recognition maybe on our part and at the
13 Commission.

14 So I'm delighted we're here. I
15 think this conference that's going to take
16 place tomorrow has some promise. It can be,
17 if we go through the question, it can be --
18 and everything remains the same, but I think
19 if we really grab hold of the blueprint plan
20 that FCC put out, a wonderfully comprehensive
21 document that's getting into all facets of
22 this, it's a real strategy. So now we need to

1 make sure that we can get a commitment from
2 the Commission that will allow us to implement
3 the strategies that you folks are talking
4 about.

5 To my mind, you know, that's what
6 kind of perks that commitment. And then I
7 think the strategy has to address the problems
8 that have got us into the woeful state of
9 minority ownership that we have in this
10 country right now and those are two-fold in my
11 mind.

12 Number one is media consolidation,
13 which I'm not a fan of. We can have media
14 consolidation rules in order to enhance
15 diversity, and I think that's the way to go.
16 I think we have to revisit the whole area of
17 media consolidation going forward, recognizing
18 that it is part and parcel of the problem that
19 accounts for the fact that here we are in a
20 country that's one-third minority people --

21 The second thing we really --

22 MS. KREISMAN: Commissioner,

1 could you grab the mike? The Reporter can't
2 hear you.

3 COMMISSIONER COPPS: I'm almost
4 finished.

5 MS. KREISMAN: Okay.

6 COMMISSIONER COPPS: The second
7 thing we really have to push that thing is the
8 development of a grace time amenity to get at
9 the stuff. I think the Commission took some
10 initiatives in December. Some of them were
11 pretty good. Some of mutual follow up --
12 (Inaudible - speaking from unmiced location) -
13 - businesses taking advantage of whatever
14 incentive programs we've got and that's not
15 satisfactory.

16 So we've got to get this
17 Commission facing up to the fact that if we're
18 really going to do something, it's not through
19 the councils and talking. Let's just build
20 the record, let's get the facts, let's get --
21 I think we can do some stuff this year. I
22 hope so. If nothing more, we can at least lay

1 the basis for what I think will be a better
2 opportunity in the not too distant future to
3 finally do something about minority ownership.

4 So for your role in getting us
5 this far, I applaud you and I beg all of you
6 to stay engaged to increase the level of
7 commitment. I know it's expensive. I know
8 it's inconvenient to come to meetings like
9 this and I think we're at a really critical
10 crossroads right now. So I'm looking forward
11 to working with you all to make some good
12 things happen.

13 CHAIRMAN RIVERA: Thank you.
14 Thank you, Commissioner.

15 (Applause.)

16 CHAIRMAN RIVERA: Thank you for
17 those words of encouragement, Commissioner.
18 We appreciate your being here very, very much.

19 I'd also like to introduce, from
20 the Commissioner's staff, Rick Chessen. Would
21 you stand up and say hello to everybody?

22 (Applause.)

1 CHAIRMAN RIVERA: From
2 Commissioner Alenstein's staff, we have Ria
3 Shay. Ria, welcome.

4 (Applause.)

5 CHAIRMAN RIVERA: Oh, Elizabeth,
6 so sorry. Nice to see you.

7 (Applause.)

8 CHAIRMAN RIVERA: Okay. We've
9 got, as Barbara mentioned, quite a full
10 agenda, but we're going to go through the
11 report of all the subcommittee work and then
12 we're going to deal with the Arbitron people
13 meter resolution, which we did wrong at our
14 last meeting, so we're going to try to rectify
15 that at this meeting.

16 And we have some folks from
17 Arbitron who want to address the Committee.
18 Welcome. We're glad you're here. Thanks for
19 coming. And we've got some people who want to
20 speak in favor of the resolution, so they're
21 going to divide the time up 20 minutes apiece
22 collectively and they'll use that as they want

1 to use that.

2 And then the Committee will have
3 deliberations for about 20 minutes, and then
4 we'll vote on that subject. So that's the
5 agenda for today.

6 Is there anyone else on the phone
7 besides Susan and Andy?

8 MS. LONG: Marie Long.

9 CHAIRMAN RIVERA: Hi, Marie.

10 MS. LONG: Hi. Sorry I couldn't
11 make it up.

12 CHAIRMAN RIVERA: Yeah, we are
13 too. We miss you.

14 MS. McCANN: Esther McCann.

15 CHAIRMAN RIVERA: Oh, Esther,
16 welcome.

17 MS. McCANN: Thank you.

18 CHAIRMAN RIVERA: Anybody else?

19 (No response.)

20 CHAIRMAN RIVERA: Okay. With
21 that, I'm going to ask our stalwart Chairman
22 of our Access to Capital Committee, Rodney

1 Hood, to give us a brief report.

2 MR. HOOD: All right. Well, good
3 afternoon and thank you, Mr. Chairman.

4 First and foremost, I just would
5 like to thank everyone for coming this
6 afternoon. So much of the Capital Access
7 Committee's intention lately has been to
8 bringing today's event to fruition, so we were
9 delighted to have such a wonderful turnout and
10 I'd like to remind everyone that they all are
11 cordially invited to a reception that will be
12 taking place downstairs here on the third
13 floor beginning at 6:00 p.m.

14 It will be a wonderful networking
15 opportunity for you to talk to the Commission
16 Staff, members of the Diversity Committee, and
17 we look forward to hearing from you. And I'd
18 also like to thank the Private Equity Council
19 for their wonderful support of tonight's
20 reception.

21 In addition to working behind the
22 scenes with our Committee to help today become

1 possible, it's our hope that we can work with
2 you all after the En Bank. We think that
3 there will be some great ideas generated
4 tomorrow and we think that upon listening to
5 those ideas, and reflecting on them, we'd like
6 to come back to the Committee to see which of
7 those ideas we can bring forth for discussion
8 and then for implementation at some point in
9 the future.

10 So again, we are delighted to be
11 here, but again looking for tomorrow to come
12 up with ideas we can later generate. So
13 that's my activity, Mr. Chairman.

14 Thank you.

15 CHAIRMAN RIVERA: And I think
16 that I agree with you. Tomorrow we should
17 hopefully get some terrific ideas, if we can
18 bring together as recommendations and then
19 bring those back to the full Committee. And
20 then also to the Commission with some solid
21 recommendations.

22 And on a personal note, thank you

1 very, very much for all the hard work you put
2 into the reception and this meeting and the En
3 Bank. We're all very, very grateful.

4 MR. HOOD: You're very welcome.

5 CHAIRMAN RIVERA: And now, I'll
6 turn it over to Russ Frisby, who's going to
7 talk about the New Technologies Committee.

8 Russ.

9 MR. FRISBY: Yes, thank you, Mr.
10 Chairman.

11 This is a follow up to our
12 previous report to the full Committee. The
13 Subcommittee on Emerging Technologies met to
14 consider whether Class A full powered TV
15 stations should be accorded must carry status.

16 After considering the issue, we
17 determined that we did not have sufficient
18 information to make a recommendation.
19 Therefore, we asked the various subject matter
20 experts and interested parties to respond to
21 a series of questions, including, for example,
22 under the FCC's current statutory authority

1 could a Class A station receive must carry
2 status without new legislation?

3 We sought further information with
4 regard to the number, ownership, diversity,
5 and language diversity of Class A stations.
6 We're also seeking further information with
7 regard to the extent, origin, diversity, and
8 diversity of locally originated programming
9 provided by Class A stations.

10 We asked the subject matter
11 experts to comment on how the Commission
12 establishes an LP TV station, as an eligible,
13 as well as what are the consequences to Class
14 A stations of non-carrier cable.

15 We asked the extent to which the
16 market has failed and in its failure prevented
17 meritorious Class A stations, prevented them
18 from having access to the expanded basic tour
19 -- tier -- sorry. We also inquired as to
20 whether industry practices such as tying
21 arrangements could inhibit channel
22 availability.

1 We asked whether FCC intervention
2 was necessary, or were State and local
3 franchise authorities able to cure the
4 problem. We asked whether public disclosure
5 of carriage arrangements would be desirable,
6 or would disclosure have unintended market
7 consequences.

8 We asked if a subset of Class A
9 stations were chosen for must carry, how
10 should that subset be defined. We finally
11 asked whether the impact of the DTV transition
12 would have an impact on the potential
13 implementation of a Class A must carry.

14 Responses are due from the
15 commenting experts on August 29th. We delayed
16 the comments until August 29th in light of the
17 fact that comments on the diversity third MPRM
18 are due on July 30th. And we, after reviewing
19 the comments, we plan to get back to the full
20 Committee with recommendations.

21 Mr. Chairman, that concludes our
22 report.

1 CHAIRMAN RIVERA: Terrific. Any
2 questions for Russ? Anyone?

3 (No response.)

4 CHAIRMAN RIVERA: Thank you very
5 much.

6 MR. FRISBY: Sure.

7 CHAIRMAN RIVERA: We look forward
8 to the recommendations.

9 MR. FRISBY: Thank you.

10 CHAIRMAN RIVERA: All right.

11 Moving on to the Task Force on Eligible
12 Entities, just to remind everybody, in
13 December the Commission voted on an eligible -
14 - well, to refer to the Diversity Committee
15 for some guidance the definition of eligible
16 entity because a lot of the initiatives that
17 the Commission adopted in the diversity order
18 are based on a definition of eligible entity.

19 And the Commission asked, as I
20 said earlier, the Diversity Committee to look
21 into that and give it some guidance. And so
22 we commissioned a Task Force. David Honig

1 chairs that Task Force. They've been working
2 quite hard at trying to come up with some
3 recommendations and David is going to give us
4 a summary of the interim report.

5 So, David, you have the floor.

6 MR. HONIG: Thank you very much.

7 We actually have a written interim
8 report and there are extra copies, if someone
9 would like to pass them around. And if
10 everyone here has them -- oh, thank you.

11 The Eligible Entities Subcommittee
12 -- first I'd like to acknowledge and recognize
13 and thank the members who worked very hard on
14 this.

15 Maria Brennan; Sylvia Strobel, who
16 represented her; Margaret Lancaster; Ann
17 Lucey, who also hosted our meetings and
18 provided us with nourishment to get the job
19 done; Ambassador McCann; Robert Mendez; Andy
20 Schwartzman; Diane Sutter; Tara Sweeney; and
21 Jim Winston.

22 Our rapporteur was Jocelyn James

1 of MMTC, without whose very copious notes we
2 couldn't have presented this report.

3 The Subcommittee was charged with
4 the task of developing a Constitutionally
5 defensible definition of an eligible entity,
6 which would also have the advantage, unlike
7 the small business definition in at least some
8 context, of being able to be applied to new
9 rules and policies in a manner which would
10 likely have a substantial positive impact on
11 minority, women, and new entrepreneurship.

12 The trigger for the group was
13 defining in diversity order of this past, or
14 when it was released this past December, that
15 for commercial full-power radio, 7.78 percent
16 according to Free Press statistics whose
17 admission statistics weren't useful, 7.78
18 percent of all of those stations were minority
19 owned.

20 However, only 8.5 percent of the subset of
21 those, which are small business owned were
22 minority owned.

1 What this means literally is that
2 in the very improbable event that every single
3 station owned by a large business was somehow,
4 overnight, sold to a small business, minority
5 ownership would go up all of seven-tenths of
6 one percent. The definition is almost
7 meaningless.

8 It is a place holder, at least
9 hopefully it's just a place holder, because we
10 can and have to do better. But the question
11 of crafting the right definition is not a
12 simple task. There have been a number of
13 efforts to do this.

14 After the Adarand decision in
15 1995, Chairman Kennard authorized the
16 undertaking of five studies colloquially
17 called the Adarand Studies, or the Section 257
18 Studies. Those were released in December
19 2000. And there on the shelf they have sat.

20 Those studies were necessary in
21 order to show disparity and to show the impact
22 of the Commission's policies on minority

1 ownership and female ownership specifically.
2 They probably, had the Commission tried to
3 follow up, that would have been about 80
4 percent of the task done right there.

5 Since the data was 1996 or 1997
6 date, much of it is now stale. The Commission
7 refreshed the record with a Notice of Inquiry
8 on 257, the Market Entry Barriers proceeding
9 in 2004. That data has sat there.

10 So now, really, it's going to be
11 necessary to almost start over if there was to
12 be a raised conscious definition, which I
13 think some of us who work with these issues
14 really feel is probably, ultimately going to
15 have to be at least considered if we're to
16 make a serious effort to do as Commission
17 Copps said in opening us today, to do
18 something substantial about this scandalous
19 level of under-representation in industries
20 that are affected with the public interest.

21 So what we started to do was to
22 interview subject matter experts who have used

1 these definitions in other context, or who
2 certainly know about the impediments to
3 getting them validated Constitutionally.

4 We had four meetings and
5 interviewed seven witnesses. They're
6 identified in the report. We interviewed two
7 Constitutional scholars, one being Matthew
8 Berry, who as we know, is the FCC's General
9 Counsel. The other was Tom Henderson, who is
10 the former Director of Litigation for the
11 Lawyers Committee for Civil Rights.

12 We also interviewed Kent Lollis,
13 of the law school Admissions Council; and
14 Camille de Jorna of the ABA. They helped us
15 work through how law schools and Universities
16 have addressed this question, particularly in
17 circumstances where resolutions and
18 initiatives at various States have banned
19 what's called affirmative action in some of
20 the States, and the Universities didn't want
21 to cause -- have this result in the re-
22 segregation of their student bodies and were

1 interested in promoting diversity of
2 backgrounds at close correlative course to
3 diversity of viewpoints in the mass media
4 context.

5 Then we focused on what would
6 happen if we came up with a definition and
7 then it becomes the Commission's job to
8 implement it, and we want to be sure that the
9 Commission does it in a manner which is
10 efficient, inexpensive, doesn't put too much
11 of a drag on the Commissioner's time, is
12 comprehensible to the users, user friendly,
13 and above all, fair.

14 And so we interviewed three long-
15 time FCC veterans who know how the industry
16 interacts with the agency and how the agency
17 works, Henry Geller, a former General
18 Counsel; Ken Robinson, a former Senior Policy
19 Advisor to Chairman Sykes; and Jane Mago, a
20 former General Counsel, who also was the DFO
21 for three years of this Committee.

22 So we concluded all the

1 interviews. We've collected a great amount of
2 data, and we're now drafting a final report.
3 We are at the stage where we felt we should
4 provide you with this interim report, setting
5 out in some detail what we preliminarily think
6 can be said.

7 There are some holes in it, of
8 course, and in the hope that the members, as
9 well as those in attendance, and those in the
10 line, would, in the next few weeks, provide us
11 with feedback and input as we move toward
12 developing a final report, which would
13 ultimately be filed with the Commission in the
14 Docket and presented to the Chair as our
15 Charter requires.

16 To just take you through it
17 briefly, the eligible energy definition is
18 really applicable to two situations. One of
19 those is where someone is applying for a
20 benefit and they're the only applicant.
21 They're trying to get a waiver of a rule;
22 there is no one else that wants to get that

1 waiver. It's not what we call an Ashbacker
2 situation.

3 The other one is where there are a
4 number of competing applicants playing, in
5 effect, musical chairs for scarce resources,
6 and the question becomes which one is going to
7 be preferred comparatively.

8 And among the 25 proposals that
9 were considered and either adopted or put out
10 for comment in the Diversity Notice of
11 Proposed Rulemaking that came out in December,
12 six of them are expressly premised on the
13 development of an eligible entity definition,
14 and presently the default is small business.

15 So that in some of the very large
16 ones, the incubator proposal, especially, is
17 dependent upon having an effective and non-
18 dilute definition. Otherwise, you get in
19 exactly the situation that Commissioner Copps
20 spoke to, which is that it could be -- an
21 incubator program could be used in a way that
22 doesn't do much for diversity of viewpoints,

1 but does do some harm to diversity of
2 ownership and consolidation, and no one wants
3 that.

4 The interest that we mostly
5 focused on is diversity of viewpoints. The
6 Commission, of course, doesn't get involved
7 directly in diversity of content. This means
8 that mostly we'll be, at this stage, really
9 focused on the mass media industry since
10 telecomm, of course, common carriers diversity
11 is not at interest.

12 There are other interests we're
13 going to be addressing, not in this report,
14 but we'll be talking about in the final one
15 that are potential compelling Government
16 interests within the meaning of Adaran, that
17 could apply to telecomm. One of those is
18 preventing discrimination which, of course,
19 across the board the Commission has found with
20 respect to EEO is a compelling Government
21 interest and the Courts agree.

22 The second is remedying the

1 present effects of past discrimination. To
2 the extent the Government was a passive
3 participant, that's the issue that came up, of
4 course, in the Adarand case itself, and
5 promoting competition, which in the
6 fascinating that Chairman Martin made when he
7 was a Commissioner voting in the EEO rules, he
8 thought that was the best justification for
9 having rules to promote equal opportunity was
10 that labor is an input to production for most
11 competition.

12 There are a number of ways to go
13 about this. One of them is the use of the
14 small business definition. We looked, of
15 course, at whether you could have an express
16 minority set aside. It's difficult because
17 there's only one Supreme Court case affirming
18 one in the last generation, and that was the
19 Alabama State Police Department, where the
20 only way you could ever desegregate it was to
21 impose a quota. That's hard to do.

22 A paradigm that has often been

1 used since, in the cases following Adaran the
2 Courts have approved this in some context, is
3 the so-called SDB, or socially and
4 economically disadvantaged business paradigm,
5 under which race is one factor of social
6 disadvantage if it's been proven up on a
7 record, on a research record, which we don't
8 yet have from the Commission, but we think we
9 could get if the Commission puts some
10 resources into updating the research.

11 Another approach we used is what
12 is sometimes called direct measures and is
13 commonly called full file review. This is
14 what's used by Universities when they are
15 subject to affirmative action prevention
16 initiatives, as a means of making sure that
17 the University isn't re-segregated.

18 And these measures basically take
19 into account not just the question of what was
20 your test score, what were your grades, did
21 your parents go here, how well can you play
22 sports, but they also take into account the

1 personal attributes of the individual that may
2 add diversity of viewpoints, recognizing fully
3 that viewpoints are not assumed to be equal
4 and this could be the same throughout one
5 group.

6 Rather, it's a determination going
7 to that individual. What efforts have they
8 made to overcome disadvantages that they have?
9 How have they succeeded in the face of
10 disadvantages which they have?

11 One of those disadvantages, among
12 many, many others that can be considered is
13 disadvantages that are the consequence of
14 racial discrimination.

15 And these rules are designed by
16 Universities to be very sure that they don't
17 inadvertently misapply this, so that really it
18 becomes a proxy just for race which, of
19 course, you can't do, but rather is surgically
20 focused as a couple of, as Justice Stephens
21 said, and we cite him here, on a way to really
22 look at the attributes of the individual that

1 are affected by discrimination, rather than
2 just a blanket assuming that everyone that
3 applies of one race has encountered it and
4 will have the viewpoints that one often
5 derives by being affected by it.

6 There are other types of full file
7 review factors that the FCC can take note of,
8 one of them being the applicant's intention to
9 meet unmet needs to provide service to
10 communities however defined, for instance, by
11 language, by geographic area, by social
12 characteristics, that are under-served.

13 And we're looking at all of those
14 factors to kind of see what's the right mix
15 and what would be most effective. A very
16 important point made to us by Mr. Berry was
17 that the Commission shouldn't assume that
18 one's tenacity and one's overcoming a
19 disadvantage automatically translates to
20 racial diversity, and that's something that
21 needs to be researched and nailed down so that
22 we don't think intuitively that we're

1 developing a good definition, turns out we're
2 not.

3 Finally, just to conclude,
4 attached to the report are a number of -- are
5 all of the questions that we're looking at in
6 granular detail. We suggested some ways in
7 which the Commission could implement this,
8 including interviews.

9 We certainly don't want any
10 program that has -- that benefit some more
11 than others for any reason to be accused of
12 being implemented in a way that can be gained
13 or exploited. This has sometimes happened.
14 It's horrible. We certainly don't want it to
15 happen here.

16 And there are ways to do that.
17 Basically, the primary one among several, but
18 I'll just mention one, is by having Commission
19 Staff, basically application examiners,
20 interview applicants in person to have them
21 substantiate and validate their claims,
22 observe their demeanor, and make sure that

1 they really are who they say they are, and
2 they're going to perform as they really say
3 they're going to perform.

4 And then follow that up with
5 audits and the constant review to be sure that
6 the program continues to be necessary and
7 serves its objectives.

8 So thanks for giving me all that
9 time, and thanks for hearing this out. It's
10 the product of a great deal of work by our
11 members, which we appreciate, and we look
12 forward to your input.

13 CHAIRMAN RIVERA: Anyone? Yes.

14 MR. FRISBY: David, first of all,
15 let me say job well done. This is a very
16 comprehensive analysis and I understand the
17 whole problem with regard to telecomm and the
18 FPC case.

19 But I would suggest that you may
20 want to reach out to NOROC, as well as the
21 California Commission and the Maryland
22 Commission, because they have a very -- both

1 of those Commissions have very active
2 reporting programs.

3 And I think some of the telecomm
4 companies actually report I know with regard
5 to minority contracting, and perhaps on some
6 other things to those Commissions. So the
7 States have figured out a way to at least get
8 into the date, so you might want to find out
9 exactly how they're doing it.

10 CHAIRMAN RIVERA: That's very
11 useful. Thanks. Anybody else have anything?

12 Yes, Commissioner.

13 COMMISSIONER COPPS: I'll just
14 ask David a question.

15 When you talk about full file --

16 MR. HONIG: That's absolutely
17 right. And just by way of illustration, in
18 California, for example, at some of the State
19 law schools, when race was considered as a
20 factor, representation and then it was taken
21 out as a factor, minority inclusion in
22 entering classes dropped virtually to almost

1 zero.

2 After full file review was put in
3 place, it recovered to about two-thirds of its
4 previous level. So we do view this as a place
5 holder while the Commission undertakes the
6 task, which could take a few years of coming
7 up with a better definition, if one can be
8 conceived. If it can't, then at least we have
9 this.

10 CHAIRMAN RIVERA: Thank you.

11 This is a terribly important initiative by the
12 Committee and if any of you have any input on
13 this interim report, please give it to David.
14 Ultimately, what we will do is submit comments
15 or report. I'm not quite sure how that's
16 going to play out into the record.

17 I think that's what the Commission
18 wanted us to do. So please, if you haven't
19 had a chance to look at this, do look at it
20 and give David some help on this. And I want
21 to add my thanks to the Task Force. You guys
22 have done a great job. Thanks so much.

1 Okay. We're going to make up some
2 time here because Vicki Klein is unable to
3 join us, so we're going to skip her report.
4 And I wanted to mention, call everybody's
5 attention to the fact that the Commission is
6 having an En Bank on access to capital
7 tomorrow. It will be held where?

8 MS. KREISMAN: At 1:00 o'clock at
9 the Chambourg Center at the Langston Mews
10 Auditorium. It's at 135th/Malcolm X Avenue.
11 It's 515 Malcolm X Boulevard at 135th Street,
12 New York. It's called the -- the formal title
13 is the Chambourg Center for Research and Black
14 Culture. It's the Langston Mews Auditorium.
15 You'll see some signs.

16 It starts at 1:00 o'clock and
17 should go to about 5:00 with panels, but
18 thereafter, and I don't know if anyone in the
19 room is affected, we're going to have a
20 networking session for potential entrepreneurs
21 to actually talk and meet and get some advice
22 and maybe make additional contacts with some

1 of the money providers.

2 CHAIRMAN RIVERA: The Commission
3 again, in its Diversity Order, formulated
4 plans for this, or made a recommendation that
5 it have this conference and asked the
6 Diversity Committee for help organizing that.
7 So we've been working very hard doing that.

8 But nobody's been working harder
9 than Barbara Kreisman and she has done a
10 magnificent job of pulling it together and
11 we're all very pleased with that because it's
12 a very important conference for the
13 Commission. So join me in thanking her.

14 (Applause.)

15 MS. KREISMAN: And I can tell
16 you, Henry has been fantastic, Diane Sutter,
17 David Honig, among others, have really, really
18 plunged in there, Rodney Hood, have tried to
19 make this event tomorrow a success.

20 The input of this Committee has
21 been invaluable identifying important money
22 players and important people in the minority

1 community who have been successful and who --
2 and some of them are in this room now. And we
3 thank you for taking your time to share your
4 experiences and advice with others tomorrow,
5 and also to be here today.

6 Thank you.

7 CHAIRMAN RIVERA: All right.
8 We're going to move into consideration of the
9 people meter resolution. And so I would ask
10 Grif if you want to have your first speaker
11 up. We're going to ask them to sit in this
12 chair because the Court Reporter can then get
13 their remarks.

14 MS. KREISMAN: What's important,
15 anyone from the audience, you have to grab a
16 mike because the Reporter just can't get it
17 and we're missing some really, really good
18 comments here.

19 CHAIRMAN RIVERA: So how much
20 time do you want to reserve, Grif?

21 MR. GRIF: Mr. Chairman, we will
22 have four speakers. Mr. Steve Morris, our

1 Chairman and CEO and President will speak
2 first. He'll be followed by Owen Charlebois,
3 who's our President for Technology, Research
4 and Development. After Owen, we will have
5 John Snyder, who is Vice President for PPM
6 Implementation, and then we'll finish with
7 Clara Carnera, who is Vice President for
8 Minority, for the Office of Minority.

9 CHAIRMAN RIVERA: And of your 20
10 minutes, how much do you want to reserve?

11 MR. GRIF: We think 17 would be
12 our opening and we'd like to reserve three for
13 our closing.

14 CHAIRMAN RIVERA: All right. Mr.
15 Morris, welcome, sir. You have the floor.

16 MR. MORRIS: Good afternoon. I
17 am Steve Morris, the Chairman, President, CEO
18 of Arbitron. Thank you, Chairman Rivera, for
19 inviting us to this meeting at the FCC's
20 Federal Advisory Committee on Diversity,
21 Communications, and the Digital Age.

22 I think I'm also very pleased that

1 Commissioner Copps is with us, along with the
2 other representatives of the FCC, and he will
3 be present at the affair tomorrow afternoon as
4 well.

5 I am pleased to appear before you
6 today along with several of our senior
7 executives to present Arbitron's views on why
8 the success of the portable people meter is
9 critical to the future of all radio
10 broadcasters, advertisers who use radio, and
11 listeners. We'll also respond to the concerns
12 that our critics have expressed regarding the
13 impact of adoption of the PPM and the minority
14 broadcasting community, and minority audience.

15 The PPM is a passive, completely
16 objective technology for audience surveys that
17 replaces the subjective, recollection
18 dependent diary method that's been used for
19 decades. Arbitron's mission is to provide
20 broadcasters and advertisers with the most
21 reliable data that the science in this field
22 can produce.

1 The PPM -- we are answering the
2 call from more granular, more timely, and more
3 accountable measurement. We spent enormous
4 human and tactical resources over a 16-year
5 period to develop, test, and refine PPM.
6 We're pleased that the PPM has been accredited
7 in Houston, and we are committed to earning
8 accreditation in all of our markets.

9 We're commercializing PPM in
10 careful compliance with the Media Rating
11 Council's minimum standards as laid out in
12 their voluntary code of conduct following an
13 accreditation path blazed by other ratings
14 companies in the history over the last 40
15 years.

16 Arbitron recognizes that the PPM,
17 like any new technology, is disruptive. We
18 believe that it's our responsibility to enable
19 a community that uses and is affected by this
20 new and vastly superior technology to make the
21 transition with as little disruption as
22 practicable, yet without sacrificing the

1 progress that PPM represents.

2 As we're an independent research
3 company that strives to serve the needs of all
4 stakeholders, including among others, the
5 advertising community and the radio broadcast
6 industry, we must be careful to maintain our
7 objectivity and our strict adherence to the
8 principles to neutral scientific measurement
9 of radio consumer behavior.

10 We've heard the concerns raised by
11 minority broadcasters regarding PPM and we are
12 sensitive to these issues, and we wish to
13 continue to work collaboratively with those
14 broadcasters to address those concerns.

15 After years of testing and third
16 party verification, we are confident that PPM
17 is designed to and does record exposure on the
18 part of PPM participants to radio signals in
19 a manner that is completely objective and non-
20 discriminatory. And that is what the industry
21 has asked us to do.

22 In just a few minutes, Own

1 Charlebois, President for Technology, Research
2 and Development will touch on some of the
3 salient aspects of the science of PPM. John
4 Snyder will follow Owen and describe how
5 minority formatted stations have successfully
6 used PPM data to succeed in the marketplace.
7 And finally, Clara Carnera will describe
8 initiatives Arbitron has undertaken to assist in
9 minority and ethnic broadcasters with the
10 transition to PPM.

11 We've been engaged in a dialogue
12 with minority broadcasters regarding their
13 concerns over various aspects surrounding the
14 introduction and operation of PPM. With good
15 will, continuing dialogue, and a commitment to
16 work together, we have successfully addressed
17 these concerns in the past.

18 For example, concerns were raised
19 recently regarding PPM sample size and last
20 week we announced our intention to increase
21 sample size at no cost to the industry. The
22 path to real progress lies through

1 cooperation, not confrontation and through
2 hard collaborative work, not Governmental
3 investigations.

4 This Committee is going to be
5 asked to vote on a resolution recommending
6 that the FCC launch an investigation into PPM.
7 We respectfully submit that that would be a
8 mistake. In the first instance, the FCC does
9 not have jurisdiction over our service.

10 Our voluntary cooperation and
11 forums, such as this one, to explain how PPM
12 works and to offer to work with our critics to
13 find solutions, should not be misinterpreted
14 as our submitting to the FCC's authority. In
15 addition, the FCC has no specific expertise in
16 the science of measuring consumer behavior.

17 Diverting the time and attention
18 of the interested parties to an investigatory
19 proceeding on the part of a Federal agency
20 that lacks both jurisdiction and specialized
21 knowledge, is not the best use of our
22 resources, which we believe should be directed

1 toward working constructively with our clients
2 in the radio industry to address specific
3 diary to PPM transition issues.

4 Thank you for your time and
5 attention. I'm going to pass the baton to
6 Owen.

7 CHAIRMAN RIVERA: Thank you, Mr.
8 Morris.

9 Mr. Charlebois, welcome.

10 MR. CHARLEBOIS: Good afternoon,
11 Mr. Chairman. Thank you.

12 My name is Owen Charlebois. I'm
13 President of Technology, Research and
14 Development at Arbitron. And thank you for
15 the opportunity to explain the PPM methodology
16 and to talk to you about how PPM is advancing
17 the science of radio audience measurement.

18 My first point is that minorities
19 are well represented in PPM samples. And some
20 have argued that PPM samples under-count
21 minorities, that the samples are not
22 representative of the community. The facts

1 simply don't bear that out. In our most
2 recent PPM survey of June 2008 across ten
3 markets, PPM panels are example Black sample
4 targets by 10 percent, Hispanic sample targets
5 by 17 percent, and dominant Hispanic targets
6 by 30 percent.

7 In terms of sample
8 proportionality, equality matrix that indexes
9 the percentage of sample against the percent
10 of the population, PPM panels are actually
11 delivering higher levels of representation of
12 minority audiences than the diary service to
13 these same markets.

14 Across ten PPM markets, Hispanic
15 proportionality in PPM averages 105 percent
16 versus 91 percent in the diary. Spanish
17 dominant proportionality in PPM, 119 percent
18 versus 100 percent in the dairy. In Black
19 proportionality is 97 percent versus 91
20 percent in the diary.

21 PPM is a superior measurement
22 instrument. Like the diary, PPM is designed

1 to collect fact-based information about a
2 person's actual exposure to radio, not simply
3 their opinions, preferences, and favorite
4 stations. But because PPM is electronic, it
5 does a much better job of objectively
6 measuring the radio stations that people are
7 actually exposed to.

8 The meter is passive. All panels
9 have to do is remember to wear or carry the
10 meter. The meter does the rest. PPM is the
11 most accountable radio measurement system in
12 the world. PPM employs motion detection
13 technology. It's built into the meter to
14 unambiguously determine whether a panelist is
15 carrying the meter the required number of
16 hours per day.

17 Our motion detection technology is
18 backed by a sophisticated panel management
19 software system that monitors the compliance
20 of every panelist in every market on every day
21 in order to determine whether they should be
22 included in tabulations. No other media

1 system in the world today provides such a
2 complete view of the daily compliance of its
3 respondents as PPM.

4 PPM sample sizes deliver reliable
5 data. The reliability of radio ratings is
6 primarily driven by two things, by the number
7 of different persons measured, and by the
8 number of days of data collected from each
9 person. While the diary samples include more
10 persons measures, PPM panels provide far more
11 days of measurement from each person. The net
12 of those two, PPM delivers equal or better
13 statistical reliability relative to the diary.

14 Incidental exposures in PPM do not
15 explain the drop in minority station shares.
16 We've heard the theory that incidental
17 exposures, exposures to stations that PPM
18 respondents do not choose, lead to a bias
19 against minority radio. If this theory is
20 true, it suggests that minority stations out
21 of home ratings will be more effective in PPM
22 than in home ratings where panelists have more

1 control over the stations they hear.

2 In fact, the actual data based on
3 listening locations does not support this
4 theory. Among African American and Hispanic
5 panelists, the decline in ratings from diary
6 to PPM is not occurring in out of home
7 situations.

8 In fact, the diary and PPM out of
9 home exposures are quite similar during the
10 day and on weekends. The most significant
11 decline in exposures, PPM versus the diary,
12 occurs at home where African American and
13 Hispanic panelists have the most control over
14 the radio station choices.

15 Finally, the Philadelphia
16 methodology produces high quality data at a
17 cost affordable to radio. Some of the radio
18 industry have expressed concern about the PPM
19 commercialization methodology deployed in
20 Philadelphia, New York, and other markets.

21 The reality is that the
22 methodologies in Houston and Philadelphia are

1 actually much more similar than they are
2 different. And in terms of research quality,
3 the Houston and Philadelphia methodologies
4 produce near identical levels of quality. In
5 fact, in some dimensions, the Philadelphia
6 matrices are better.

7 Introducing in person recruitment
8 into Philadelphia in the other radio
9 commercialization markets would come at great
10 added expense to the radio industry with
11 little, if any, added research quality. On
12 balance, it just doesn't make any sense.

13 Thank you.

14 CHAIRMAN RIVERA: Thank you.
15 John.

16 MR. SNYDER: Good afternoon. My
17 name is John Snyder. I've been asked to speak
18 on the data being produced by PPM. Let me
19 give you some facts regarding the PPM
20 estimates.

21 In four major markets that we
22 currently measure with a sizeable Hispanic

1 population, Los Angeles, Houston, New York,
2 and Chicago, Spanish speaking Hispanics have
3 the highest listening level in three of those
4 four markets. In New York and Philadelphia,
5 African American participants have the highest
6 listening levels.

7 In the smaller markets we
8 measured, Nassau, Suffolk, Riverside,
9 Middlesex, PPM shows that either African
10 Americans or Hispanic respondents have the
11 highest listening levels. In summary, in
12 every market we currently measure with PPM,
13 the highest listening levels were for African
14 Americans or Hispanics.

15 A measuring system that is
16 consistently producing the highest listening
17 estimates in top ranked positions among
18 Hispanics and African American respondents is
19 not inherently biased. The only way the data
20 produced by PPM could be considered biased
21 against minorities is to compare it to the
22 paper and pencil diary method that we

1 currently employ.

2 For example, Mr. Frank Flores, GM
3 at WSKQ in New York, asked Arbitron at the FCC
4 Offices last week, how can two different
5 methodologies produce such different results?
6 I believe I have the answer right here.

7 These are the actual diaries
8 filled out by WSKQ's heaviest listeners in the
9 latest Spring survey. They represent only 68
10 diaries of the 700 that were filled out for
11 WSKQ, but they represent over 40 percent of
12 the total listening. For all intents and
13 purposes, this is the difference between the
14 diary and the PPM estimate.

15 I invite the Committee to review
16 these diaries and ascertain for themselves the
17 limitations of recall and the potential for
18 overstating listening that is associated with
19 any self-reporting study.

20 So why is the difference between
21 diary and PPM the greatest for minority
22 stations? In an analysis that Nielson Media

1 Research did, comparing their local people
2 meter to diaries in New York, they concluded
3 that the high element of affinity for
4 programming that features minority talent was
5 one of the differences between the results of
6 the meter and their paper diary.

7 It would make sense at urban and
8 Spanish language radio stations that spend the
9 majority of their time serving their local
10 community would develop a special bond and
11 affinity with their listeners. And it's not
12 just urban and Spanish language stations that
13 are impacted by this affinity for a station or
14 personality.

15 KLFX, a top station in Los
16 Angeles, which features such talent as Adam
17 Corolla and Tom Leykis, has an audience which
18 is 76 percent others, meaning they're not
19 Black or Hispanic. The ratings of the station
20 decreased by 50 percent and now ranks 30th in
21 the PPM system.

22 Why? Because the station or

1 personalities that create a special bond with
2 their listeners are subject to a greater
3 degree of over-reporting in the diary system.
4 And declining ratings going from diary to PPM
5 is not about race or ethnicity, it's about a
6 connection between the stations and its
7 listeners.

8 Arbitron respects and supports the
9 role that urban and Spanish language stations
10 serve in the communities. We stand ready to
11 continue to work with minority broadcasters to
12 tell the story to advertisers. It's an
13 important story and one that needs to be told.

14 However, as an independent
15 research company, Arbitron's role is to
16 provide stations and advertisers with data
17 that measures actual exposure to radio. This
18 is what PPM accomplishes.

19 Thank you.

20 CHAIRMAN RIVERA: Thank you,
21 John.

22 Welcome.

1 MS. CARNERA: Thank you. Good
2 afternoon. My name is Clara Carnera. I'm
3 Vice President of the Office of Multi Cultural
4 Business Affairs at Arbitron. And today what
5 I would like to do is run quickly through the
6 programs that we have put in place to help
7 Hispanic and African American stations with
8 the transition to PPM.

9 Working to address client needs is
10 at the heart of Arbitron's goals. Often, this
11 is represented action on the part of -- on our
12 side from the product's perspective, when we
13 have modified deliverables. For instance,
14 currently we have a product underway for the
15 identification of country of origin and
16 Hispanic samples.

17 At the suggestion of a client, for
18 instance, we also engaged in outside
19 communications firm, Equal Communications,
20 which is a minority owned business
21 specializing in multi cultural messaging and
22 strategic targeting of younger populations.

1 And they're completing a review --
2 they have completed a review of all the
3 materials that are aimed at African American
4 and Hispanic households. They're sent through
5 our survey process. We expect and incorporate
6 many of their suggestions as part of our
7 ongoing process of the PPM improvement and
8 enhancement plan.

9 We have a dedicated team of
10 training resources that are tasked with
11 developing programs and materials that help in
12 the transition for it to be efficient and as
13 smooth as possible. The programs are varied
14 in form and in scope to accommodate the unique
15 needs of urban and Hispanic customers and to
16 highlight the vast accountability that PPM
17 offers over the diary service.

18 We commissioned a third party
19 study, The Power of Urban Radio in the PPM
20 World, which has been widely quoted in the
21 trade press and has been used extensively by
22 our customers. We also commissioned studies

1 by Arizona State University and Howard
2 University, addressing how to adapt PPM into
3 the Hispanic and African American communities.

4 We've also made specialized
5 seminars available, which offer a forum for
6 discussion and an exchange of ideas.

7 Facilitated by our Director of Urban Business
8 Affairs, the PPM Urban Programming Seminar was
9 successfully sponsored in our Columbia
10 facilities in Maryland this past Spring.

11 In addition, a PPM Urban Sales
12 Clinic is schedule for October, and parallel
13 Hispanic programs are in development at our
14 client's request, and with their input. There
15 are many items of feedback from our clients on
16 how the use of our training programs and their
17 deep dive into PPM data has produced positive
18 results for them.

19 Finally, for our communication
20 initiatives, we have interwoven the message
21 that the power of urban and Hispanic radio
22 represents in our communication programs.

1 Whether it's through the market launch press
2 releases, or on our monthly client briefing
3 calls, or at the pre-launch PPM breakfast we
4 conduct, PPM confirms the strength and the
5 unique value of Hispanic and urban radio in
6 serving the communities that they are
7 targeting, and we are committed to telling
8 that story.

9 We welcome continued dialogue and
10 ideas from our customers to continue to serve
11 them better in this transition process.

12 Thank you very much.

13 CHAIRMAN RIVERA: Thank you.

14 MS. CARNERA: We'll answer any
15 questions and answers, I think.

16 CHAIRMAN RIVERA: Yes, after we
17 complete all the remarks on the rebuttal.

18 Grif, I'm giving you back two
19 minutes, so you'll have five for rebuttal.

20 All right?

21 MR. GRIF: Thank you.

22 CHAIRMAN RIVERA: Thank you for

1 sticking to the time, gentlemen and Clara.

2 Okay. Now we'll hear from Mr.

3 Charles Warfield is here and Mr. Frank Flores

4 is here and Ceril Shagrin. Ceril is here?

5 Okay, good. Thanks.

6 And how do you want to divide your

7 time?

8 MR. WARFIELD: I will probably

9 not use more than the five to seven minutes.

10 CHAIRMAN RIVERA: Are you going

11 to save any time for rebuttal?

12 MR. WARFIELD: Yes, we will.

13 CHAIRMAN RIVERA: All right.

14 MR. WARFIELD: Mr. Chairman, I

15 appreciate the invitation here today. My name

16 is Charles Warfield and I'm the President and

17 Chief Operating Office for ICBC Broadcast

18 Holdings, Inc. We own 17 radio stations in

19 four markets, primarily serving the African

20 American communities in New York City, San

21 Francisco, Jackson, Mississippi, and Columbia,

22 South Carolina.

1 I've been involved in discussions
2 with Arbitron of concerns of minority
3 broadcasters with PPM methodology
4 approximately four years now. And I will
5 acknowledge, as I indicated, Arbitron, they
6 certainly have been willing to dialogue with
7 us.

8 We've had regular meetings with
9 them and yet I sit here today representing
10 those concerns for minority -- Black
11 broadcasters, primarily, because we are still
12 very much concerned. I've indicated to
13 Arbitron in the past many times that for our
14 company, for many of these broadcasters that
15 we represent, this is really -- it is really
16 a civil rights issue for us because this is
17 about survival.

18 It is about the ability of our
19 owners to service our debt, to repay our debt,
20 to employ our staffs, and the ability to
21 represent the audiences who we're licensed to
22 represent. It is very simply about survival.

1 We've had many conversations with
2 Arbitron and I want to use this term as they
3 use it, the preferred provider of this
4 research for our industry, it's a monopoly.
5 It is the only provider of this information
6 for our community, so either you utilize them,
7 or you do not have a report card about the
8 performance of your radio station in a market,
9 be it good or bad.

10 So we have been in communication
11 and dialogue with them, many of these
12 individuals in this room on a regular ongoing
13 basis. Some of our concerns, no MRC
14 accreditation. We have asked for this from
15 day one. They are accredited in Houston. We
16 simply want nothing less than that
17 accreditation in New York City, Philadelphia,
18 and any subsequent market that they intend to
19 commercialize PPM data.

20 We asked them repeatedly, over the
21 last two years, to delay the roll-out of PPM
22 methodology in any subsequent market outside

1 of Houston, where they do not have
2 accreditation and where the issues that have
3 been raised, not only by minority
4 broadcasters, but by general market
5 broadcasters, have been resolved.

6 We talk about and make the comment
7 about survival for our industry and I just
8 want to talk about a couple of markets very
9 quickly, Philadelphia and New York, in
10 particular the reality between diary data in
11 these markets, the last diary book, and PPM
12 data, the immediately following period for the
13 survey.

14 And I'm going to talk about what
15 has happened to some of the urban stations in
16 these markets. WDAS-FM, the number one radio
17 station in that market, had a 12 plus decline
18 of 44 percent in its PPM average quarter hour
19 ratings versus the same rating in the diary.

20 In a money demo, which we call a
21 25 to 54 with an urban adult contemporary
22 radio station, their audience decline was 57

1 percent between the Spring -- excuse me -- the
2 Fall Arbitron diary period and the release of
3 PPM data in March, a 57 percent decline in
4 audience.

5 Some of the other urban stations
6 in that market, PPZ, which is a gospel
7 station, had a decline of 50 percent. RNB,
8 another urban station, a decline of 50
9 percent. When we talk about some of the
10 general market radio stations, one, the market
11 leader, had a decline of 17 percent. So this
12 does effect all radio stations in the market.

13 But there was one particular radio
14 station, WMMR, which went up 22 percent at a
15 time that a competitor, WDAS, went down 57
16 percent.

17 Here in New York City, where
18 obviously we are most concerned as ICBC
19 Broadcast Holdings, WBLS, between -- had PPM
20 been commercialized in this market last
21 October, the radio station would have suffered
22 a decline of 62.5 percent in its audience, its

1 average quarter hour rating in that rating
2 period.

3 Arbitron made a decision to delay
4 the roll-out of PPM in this market. When that
5 happened, the rating were released based on
6 the diary. WBLS was the number one radio
7 station in this market 25 to 54. So we would
8 have gone from number one in the diary
9 methodology to number 17 or worse in PPM.

10 And yet, as we've just heard, and
11 as we go through with Arbitron every month
12 with a PPM report to the industry, if you read
13 this you would think that everything is fine
14 between minority broadcasters and what is
15 being reflected in PPM.

16 The reality of the -- the economic
17 reality of our industry is this is what
18 matters. This is the report card. These are
19 the ratings that we get to sell in this multi
20 billion dollar industry. A 62 and a half
21 percent decline, you can quantify that and say
22 that our revenues would have declined to that

1 degree.

2 And I would sit here today and say
3 to you, as a minority broadcaster for 31
4 years, had PPM been allowed to be
5 commercialized in New York City a year ago, I
6 would be sitting here, represent a totally
7 different company. And that's why I sit here
8 today before this group to support the
9 resolution because this is about survival for
10 many Black broadcasters.

11 And as I get up, the last -- when
12 last week one radio station owned by Stevie
13 Wonder in Los Angeles suffered an 84 percent
14 decline in its audience in the first release
15 of PPM data. If you don't get it right out of
16 the box, we're in the hole trying to climb out
17 from that point forward.

18 Because an industry looking
19 towards diversity as an issue that's been
20 stated here today, where we own three percent,
21 that number will decline precipitously if PPM
22 is allowed to just roll out in these

1 individual markets.

2 And I thank you for your time.

3 CHAIRMAN RIVERA: Thank you.

4 Mr. Flores.

5 MR. FLORES: Thank you for having

6 me here. My name is Frank Flores. I'm VP

7 SBS, New York market manager.

8 I'm going to echo a lot of the
9 things that Charles said with regard to what
10 I believe the ramifications that PPM shouldn't
11 roll out in the months ahead.

12 Average quarter hour rating is
13 something that generally Arbitron will not
14 talk about, it certainly has not talked about
15 in the meetings that we have had with them.
16 That is a function of a couple of different
17 things. And one of those things is a thing
18 called time spent listening.

19 When you look at time spent
20 listening, when you look at the diary versus
21 the PPM, time spent listening for the urban
22 and Hispanic stations are down anywhere from

1 70 to 80 to 90 percent, which basically says
2 that the time reported in the diary that was
3 listened to are Spanish language radio
4 stations have declined by that much, according
5 to the PPM.

6 PPM, again, measures exposure to a
7 radio station, not listening to a radio
8 station. We have the unusual peculiarity of
9 being one of the first broadcast station, or
10 companies should I say, to sign up for PPM.
11 And when I started going over the immediate
12 results of the pre-currency period in October
13 with my CEO, he looked at me and he said, we
14 made a mistake.

15 We're not talking about getting
16 better ratings. What we're talking about is
17 having a ratings company that is sensitive to
18 the broadcast community that we serve. We
19 don't believe that we're getting a fair share.

20 We believe that at the end of the
21 day, when you look at some of these numbers
22 there will be not five radio stations in the

1 New York marketplace that support the Hispanic
2 community, but you'll be looking at two. It's
3 a dollars and sense issue. It is a matter of
4 survival for us.

5 We had an agency that asked us,
6 and I'll tell you who the client is. The
7 client was New York State Broadcasting, New
8 York State Lottery. They asked us to look at
9 PPM in the fourth quarter, which they believe
10 will become a reality and measure it to the
11 ratings result that we had in the Spring
12 block.

13 The cost per point, which is our
14 report card, it's the way people buy the radio
15 station, increased from about \$680, which is
16 very much within the market norms, to about 13
17 or \$1,400. Two things would happen. Either
18 that agency would ask us to reduce our rates
19 accordingly, by about 40 or 60 percent, or we
20 wouldn't get the business. And that's going
21 to happen across the board.

22 And all we're asking for is for

1 Arbitron to give us the means, the wherefore
2 for us to fight that, and we're not getting
3 it. We've had a number of different
4 conversations with the people from Arbitron.
5 We have formed a Spanish radio association,
6 which is the people from Univision, Spanish
7 Broadcasting, Pantravision, and Border Media.

8 In these meetings, up until the
9 last couple of weeks, all of a sudden we're
10 starting to hear they're looking at country of
11 origin, they're looking at increasing sample
12 size, they're looking at the problems that
13 they might have with language waiting.

14 But every time, it's in 2009 we'll
15 do this. And I think we'll be able to get
16 this done because it takes so long to do these
17 things in 2010. And I -- we don't have that
18 time. And it's as simple as that. This comes
19 out in October 2008. The two radio stations
20 that I represent will probably lose four or \$5
21 million in revenue and that is real.

22 And I think what will happen is

1 that a few radio stations will just go dark.
2 And what you're going to end up happening is
3 that you're going to have a landscape of a lot
4 of radio stations that appeal to 18 to 54 year
5 old white males, which goes against everything
6 that we're trying to do in terms of minority
7 broadcasting and in terms of minority
8 representation.

9 That's why I believe that you
10 should go forward with the resolution. Thank
11 you.

12 CHAIRMAN RIVERA: Ceril. Your
13 colleagues have left you about four minutes.

14 MS. SHAGRIN: Okay. Then I'll
15 have to talk really fast.

16 CHAIRMAN RIVERA: Yes, ma'am.

17 MS. SHAGRIN: I'm Ceril Shagrin
18 and I'm with Univision Communications, but I'm
19 really representing the Spanish Radio
20 Association. And I want to start out by
21 saying that Spanish radio is incredibly
22 important to Hispanics.

1 It's not only entertainment, it's
2 information. And if this new measurement puts
3 us off the air, there are a whole lot of
4 Hispanics that will be disserved, and we
5 don't want to see that happen. We also don't
6 have a problem with the measurement tool. I
7 think electronic measurement is great.

8 We have a significant problem with
9 the sample, with the methodology, with the
10 maintenance of that sample. I'm a researcher.
11 I don't look at numbers, I look at sample.
12 When I see numbers change, I look at the
13 sample to see what's wrong. Cell phone homes
14 very much under represented in these markets.

15 Cell phone homes were the most
16 homes that are cell phone only. Young
17 households. What is the Hispanic universe and
18 the Black universe? More young households.
19 They're not being representative. They have
20 unique listening preferences.

21 You know, format's so important.
22 Country of origin is important because of the

1 format. I believe Arbitron set their goals
2 and their targets way too low. When Arbitron
3 says that for the first two years, 18 to 34,
4 if we get 60 percent of those in the sample to
5 provide us with usable data then we're meeting
6 our target.

7 That's not our target in terms of
8 meeting our needs of Hispanics who are
9 watching -- who are listening to radio and
10 deserve better. As was previously said, there
11 are a lot of initiatives underway, but we
12 can't wait two years for them. And if it's
13 going to take two years, then don't change the
14 currency until they're fixed.

15 If we don't get reliable data, we
16 will make decisions on programming based on
17 the numbers instead of what our audience
18 deserves to get and deserves to hear. So what
19 -- I applaud your efforts and I think that
20 whatever it takes to make sure that we
21 continue to provide what Hispanics and African
22 Americans need to get in terms of

1 entertainment and information, is made
2 available to them.

3 CHAIRMAN RIVERA: Thank you very
4 much.

5 Tony, I'm giving the group a
6 minute back, so you'll have six for rebuttal.

7 Grif, how do you want to handle
8 the rebuttal? You have five minutes?

9 MR. GRIF: Mr. Morris will speak
10 to that.

11 CHAIRMAN RIVERA: All right.

12 MR. MORRIS: There are a lot of
13 points that are up in the air and all of which
14 need to be discussed in a lot of depth and I'm
15 not going to try to do that in three minutes.
16 I just want to make a couple of kind of
17 overall comments.

18 I understand the intensity of this
19 issue and Arbitron is a company that very much
20 recognizes and respects the importance of
21 Black radio and Spanish language radio in the
22 industry and in the country, and we've had

1 these conversations with many of the people n
2 this room.

3 We really would see our mission as
4 helping those stations not just survive, but
5 triumph. Our role in life is to be an enabler
6 in the industry. We're not in the business of
7 trying to discriminate, or to hurt, or in any
8 way disadvantage anybody.

9 We're trying to do what it is that
10 we are charged by all of these constituents
11 that we have around us to do, which is to be
12 objective, and even handed, and neutral, and
13 science based. And, you know, you get the
14 kinds of comparisons between the diary numbers
15 and the PPM numbers, you have to say, as a
16 research person looking at that, is it the PPM
17 that's the issue, or is it the diary that's
18 the issue.

19 And I think, as we were trying to
20 point out before, it looks very much as though
21 it's the diary that's the issue. And for a
22 great many years, we have operated with this

1 fundamental over-statement in the diary that
2 has caused the kinds of disruption now as we
3 change methodologies.

4 There are issues that are all
5 around this and many of them need to be
6 explored thoroughly. Some of them are science
7 related and some of them are social related,
8 but our job is to serve all of our
9 stakeholders with reliable, usable data.

10 We are tremendously charged with
11 providing the industry with the accountability
12 that it has lacked. The radio industry now
13 I'm talking about in total. Money is flowing
14 away from radio to more accountable media.

15 One of the major things that
16 advertisers talk to us about is that the diary
17 is not an accountable device and they need to
18 move on to something that they believe in, and
19 they believe in the objectivity of electronic
20 measurement.

21 And so there's a tremendous amount
22 of urging us forward coming from the industry,

1 which sees this loss of revenue due to
2 accountability, and very much from the buyers
3 who are making this same kind of statement.

4 But we are as a company and
5 individually, I think, very much committed to
6 the success of minority radio. We believe in
7 its importance in the industry. We would love
8 to be helpful in that, but our first
9 responsibility as a company is to be that
10 impartial, neutral, evenhanded provider of
11 data.

12 Thank you.

13 CHAIRMAN RIVERA: Thank you.

14 Tony, how do you want to handle
15 rebuttal? You have six minutes.

16 MR. WARFIELD: It's never been
17 said by our group, and I've worked as part of
18 Inner City Broadcasting Corporation and also
19 as part of the Naybob Group, and at no point
20 did we indicate that the intent of Arbitron is
21 to discriminate.

22 However, as I shared with you, the

1 reality of the Arbitron change in methodology
2 would be the elimination of many minority
3 stations as we know it today. One week after
4 the introduction of PPM in Philadelphia, WDAS
5 AM, which had served the African American
6 community in that market, a radio station that
7 I managed for five years when I moved to
8 Philadelphia, switched formats, is no longer
9 serving the African American community. One
10 week after the introduction of PPM data.

11 We are very smart broadcasters,
12 and not all broadcasters are going to stand
13 here with us today and fight this issue. A
14 year ago though, when Arbitron decided and
15 stated that they were going to delay the roll-
16 out because of concerns of the competence
17 level of our industry was down.

18 General Market Broadcasters, in
19 looking at PPM, realized that their audiences
20 went down 30 percent on average, 30 percent.
21 And Arbitron came up with a nice catch phrase
22 to sell to the buying community, that under

1 PPM 70 equals 100. Where we had -- 100 was
2 what we had, the new methodology, 70 is now
3 equal to 100, and we can go on and we can sell
4 that to the buying community.

5 Well, as Frank indicated, there's
6 a cost per point requirement here that will
7 require us, in most cases, to reduce the value
8 of our inventory in a radio station. Except
9 General Market was down 30. We, as a group,
10 were down 50 percent or more.

11 As I indicated, a radio station in
12 LA went from a rating to no rating when this
13 data was released. GCI FM in Chicago went
14 from the number one radio station, or number
15 two radio station in Chicago, with the first
16 release of PPM a week ago, to Number 11 in the
17 market.

18 This is about economics. This is
19 not about what the intent may have been in a
20 room devising this methodology. And we're not
21 opposed to electronic measurement. We're not
22 trying to hold back progress here. We also,

1 though, would like to be around to be the
2 beneficiaries of it when they get it right.

3 And if this is allowed to roll out
4 the way that it is right now, unfortunately,
5 that will not be the reality. The reality
6 here is that this certainly will benefit the
7 stock price of Arbitron, as evidenced by how
8 it was impacted when the delay was announced
9 a year ago. Our industry can't afford that
10 though.

11 Our industry has nowhere -- not
12 much further to go down in this tough economic
13 times. And that is the reality that we're
14 here supporting this resolution as we are in
15 other debates with other groups about what is
16 going on here with our industry. Sample size
17 is a concern.

18 What Arbitron has established as
19 their benchmarks, as their targets, it's not
20 the industry targets, that's theirs. There's
21 an economic factor there. We understand that,
22 but that's theirs. We didn't debate with them

1 when they came to us and said it's going to
2 cost you 65 percent more for this methodology.

3 Cost of doing business? We get
4 that. But a 65 percent additional cost for
5 this service, when I'm going to lose 50, 65
6 percent of my audience, how do we overcome
7 that? You don't have to be an economics major
8 to understand this is about economics survival
9 for our industry, Black and Hispanic in
10 particular.

11 And I just sit here seeking your
12 support in this critical time for our format
13 and for the audiences that we represent.

14 Thank you.

15 CHAIRMAN RIVERA: Thank you.

16 I want to thank both sides for
17 discussing this as dispassionately and calmly
18 as you could. I think this is, obviously, a
19 very emotional issue for both sides and I
20 think you added to the discourse today, and
21 think the Committee appreciates that very
22 much.

1 So I now want to open it up to the
2 Committee to ask questions. And if those
3 responding could come again here so that the
4 Court Reporter can pick up your responses,
5 that would be very good.

6 MR. FRISBY: I'll kick it off,
7 Mr. Chairman. I was intrigued by, I think,
8 one of the comments you made and I'd like to
9 get a further response.

10 If you look at the recent
11 financial reports of both AT&T and Verizon,
12 there's been a dramatic decrease in wire line
13 subscribership, and a dramatic increase in
14 wireless subscribership. And if you talk to -
15 - in fact, I know very few young people who
16 are not living at home, who actually have wire
17 line phones.

18 And if you talk to polling
19 experts, there's some concerns now about
20 polling generally because of under-
21 representation of cell phones. So I would
22 like to get a response to -- I think you made

1 the point that one of the fundamental
2 problems, as you saw it, was that the sample
3 under-represented cell phones, so I'd like to
4 hear more about that from both sides.

5 MS. SHAGRIN: The Arbitron sample
6 in Houston is an addressed-based sample and
7 would include all types of homes, whether or
8 not they would have a land line or a cell
9 phone. All of the other markets are the radio
10 only markets, and they are based on a
11 telephone sample.

12 And Arbitron's sample includes --
13 they arbitrarily said we're going to add 7.6
14 percent, or seven percent cell phone only
15 homes in these markets.

16 Well, first of all, we know that
17 the penetration of cell phone only is
18 significantly higher than seven percent. We
19 also know, and the data's there, the Center
20 for Disease Control does the best job in terms
21 of providing us with cell phone only home
22 estimates.

1 We also know that the penetration
2 of cell phone only homes varies considerably
3 by age and by ethnic background, somewhat by
4 sex as well. So if you have seven percent,
5 right away it's understating. And then, on
6 top of that, it is grossly understating the
7 young Hispanics, the young African Americans,
8 most of whom are small household sizes, and
9 they have different needs in terms of radio
10 entertainment. They're absolutely not being
11 represented.

12 CHAIRMAN RIVERA: Thank you.

13 Arbitron, do you want to respond?

14 UNIDENTIFIED VOICE: Yes, Mr.

15 Chairman. We will respond through our Senior
16 Vice President and Chief Research Officer, Mr.
17 Bob Thatcher.

18 MR. THATCHER: Thank you, Mr.

19 Chairman.

20 The issue of cell phone only is a
21 very important issue. The reality is the
22 diary service today does not include cell

1 phone only at all. PPM, as Ceril noted, does
2 include cell phone only households.

3 Therefore, if we're comparing
4 diary estimates of audience to PPM estimates
5 of audience, the cell phone only factor is not
6 an explanation for those differences. It
7 doesn't exist today in the diary service.
8 Having said that, we agree that representation
9 of cell phone only sample in all surveys is
10 critical. Arbitron has been a leader in this
11 area.

12 We've done much more than most
13 other survey companies have done in this area,
14 and the introduction of cell phone only
15 samples into the PPM samples has definitely
16 improved the representation of the groups that
17 we're discussing here, particularly younger
18 ethnic households as compared to what we're
19 able to provide in the diary service today.

20 So on a net/net basis, PPM has a
21 net improvement in the representation of
22 people who live in cell phone only households.

1 CHAIRMAN RIVERA: Oh, yes.

2 MS. SUTTER: i'd like to, if I
3 could, just understand why it is given that
4 accreditation is such an important piece of
5 this puzzle, that Arbitron would want to move
6 ahead without accreditation, given the need
7 for accuracy, the clear importance to the
8 industry as well as to Arbitron, and what
9 they're doing to get that accreditation
10 without asking for proprietary details?

11 What is it that's preventing that
12 accreditation and what is Arbitron doing?

13 MR. THATCHER: The main point
14 about accreditation is in two parts. The
15 first is Arbitron did decide to not begin
16 commercialization until one market had been
17 accredited. That market was Houston. It took
18 over two years for Houston to be accredited.

19 And in that accreditation process,
20 everything about the system was scrutinized,
21 the hardware, the software, the meter itself,
22 the encoders, the edit walls, in addition to

1 the sample and the recruitment procedures, and
2 so forth. Everything about the system was
3 covered in that accreditation process.

4 Most of the methodology from
5 Houston is the same in Philadelphia and the
6 other markets. The only difference is that in
7 Houston, we used in person recruitment as a
8 final step for some households that we were
9 unable to reach by phone.

10 In Philadelphia -- in Houston, we
11 made three attempts to reach a household going
12 door-to-door. In Philadelphia, we made 25
13 attempts per household by telephone. We
14 believe that differential has more than offset
15 any of the change in the methodology.

16 Now, in terms of the MRC
17 accreditation process, it is a process. It's
18 something in which questions are raised,
19 questions are addressed. Those answers are
20 considered. There's another round of
21 questions and typically, another round of
22 questions. That's how the process works.

1 That's how it's always worked.

2 The reason we decided to go
3 forward with commercialization of the
4 remaining markets is that we follow the rules
5 that are set forth by the MRC itself, which
6 say that it's important to audit a new market
7 and have that audit submitted to the scrutiny
8 of the MRC prior to commercialization. It is
9 not necessary, under the MRC guidelines, to
10 wait for accreditation in order to
11 commercialize.

12 And we believe the rationale for
13 that is innovation needs to go forward.
14 Waiting for accreditation, if we're not
15 careful, could slow down that process. So the
16 audit sheds light on the markets that are
17 being commercialized.

18 Then the accreditation process
19 goes forward from there, but it's not
20 necessary to wait for accreditation before
21 commercializing.

22 MS. KREISMAN: I certainly

1 appreciate that, but I guess my question would
2 be isn't the fact that you have such disparity
3 between what the broadcasters are seeing and
4 the advertisers, and the importance of that
5 data if accreditation isn't going to be
6 something you're waiting for and if the
7 disparity exists, then how do we use those
8 numbers and know which is right and which
9 isn't?

10 Given that if the numbers were
11 right before and they are so dramatically
12 different now, it begs the question of how can
13 one be right and not the other. I mean they
14 can't both be right.

15 So if they're not getting
16 accreditation, and the Commission uses, FCC
17 uses numbers that are on radio and sample
18 sizes for different stations when they're
19 deciding about approving licenses, when we're
20 talking about clusters, and who can own what,
21 this is important data for the broadcasters,
22 as well as the Commission, as well as the

1 community we all serve.

2 And I guess I'm unsure why
3 accreditation wouldn't be a critical factor,
4 given that we have such disparity in these
5 numbers. It has to raise questions for all of
6 us about the accuracy of them.

7 MS. SCHWARTZMAN: This is Andy
8 Schwartzman. Can I make a comment?

9 CHAIRMAN RIVERA: Just a minute,
10 Andy. I want to let Arbitron respond to that
11 and then I'll come back to you. Okay?

12 UNIDENTIFIED SPEAKER: I think
13 your question had a couple of different parts
14 to it, but let me try to answer it as
15 succinctly as I can.

16 If you look at the difference
17 between PPM and diary ratings in Houston and
18 Philadelphia and New York, what you'll see is
19 a very consistent pattern. I'm not suggesting
20 that the differences are exactly the same in
21 every market, but the direction and the order
22 of magnitude of those differences are very

1 consistent. Houston is accredited.
2 Philadelphia isn't, but we're in the process
3 of seeking accreditation.

4 The other thing I would point you
5 to is that if you look at the research quality
6 matrices, as a research organization we try
7 not to look at the ratings that come out of
8 the system. We are focused on the integrity
9 and the science of the measurement process.

10 And so our evaluation, going
11 forward with Philadelphia, is based on a
12 belief, strong belief in the quality of the
13 sample. And if you look at the sample
14 matrices that I talked about in my remarks,
15 and you go down the list, you will see that we
16 are delivering a lot of research quality in
17 Philadelphia that is consistent with Houston.

18

19 Thank you.

20 CHAIRMAN RIVERA: Andy.

21 MS. SCHWARTZMAN: Yeah, thank
22 you, Henry.

1 I would make the observation that
2 the question before the Advisory Committee is
3 whether the FCC -- whether to recommend that
4 the FCC conduct an investigation. First
5 point.

6 I believe the matrix discussion
7 today has created enough doubt and uncertainty
8 to justify saying this bears looking into. We
9 don't need to answer these questions and
10 decide today who's right and who's wrong, but
11 certainly what I've heard bears further
12 investigation.

13 Second, with respect to Arbitron's
14 assertions that the FCC lacks jurisdiction.
15 The FCC does not need -- first of all, I
16 believe it has jurisdiction over Arbitron.
17 Second, the FCC does not need jurisdiction
18 over Arbitron to investigate. As has just
19 been explained, Arbitron ratings, over my
20 objection, I might point out, are integrated
21 into the FCC's regulations.

22 They're used for defining markets

1 and for various measures, in terms of how the
2 FCC implements its ownership rules. And for
3 that reason alone, where questions are being
4 raised, that will go to the integrity of the
5 FCC's implementation of its ownership rules,
6 it is extremely important that the FCC
7 investigate.

8 If Arbitron chooses not to
9 cooperate, people can draw their own
10 conclusions. So this ought not to be viewed
11 in terms of jurisdiction over Arbitron, this
12 ought to be viewed as a threat to the FCC's
13 integrity or the FCC's regulatory policies.

14 Thank you.

15 CHAIRMAN RIVERA: Thank you.

16 Any other questions? Yes, David.

17 MR. HONIG: I'd like to first
18 associate myself with the remarks that Andy
19 Schwartzman has just made. What's being
20 proposed here needs to be put in the context
21 of the way the FCC looks at science. I
22 seconded this resolution, and so I'm, but

1 -- so I'm just going to speak for myself as a
2 member.

3 I did that because I believed that
4 what was being asked was what Congress had in
5 mind when it adopted Section 403 was to
6 conduct an inquiry, not an inquisition, but a
7 neutral and impartial and protective way to
8 get the facts and assist the Commissioners in
9 doing their jobs and standing on the mountain
10 and looking at very big issues.

11 And the issue that has been put on
12 the table is the survival of ownership
13 diversity, the subject with which we have been
14 convened. You know all of the members of this
15 body, and you know that we strive very hard to
16 be fair.

17 And the type of proceeding which
18 the resolution proposes is one that would be
19 designed to make sure that any due process
20 rights that a party -- into which inquiry of
21 its scientific methods is being made would be
22 protected. And I'd hope that if this

1 resolution passes, Arbitron would embrace it.

2 The reason is that -- and there
3 are two Administrative Law Judges at the
4 Commission. I've lost cases before both of
5 them. They are very sharp. They understand
6 science. They have great expertise. They're
7 unpredictable and they're very sensitive to
8 the need to protect sensitive information.

9 They're going to be very aware of
10 the need to issue protective orders, to review
11 documents in camera, and not to have, in
12 effect, something that would be misconstrued
13 as a public trial, because that's not the
14 spirit in which any of us offered this. I
15 felt that needed to be said just so that it
16 could be understood that what is being
17 proposed is neutral fact finding.

18 Now, this is a scenario further
19 where if Arbitron's set of facts is correct,
20 no harm is done. In fact, greater confidence
21 would come from the report of a finder of fact
22 because then someone with no axe to grind will

1 have looked at it and found that it's the
2 case. That would be to your benefit and to
3 everyone's benefit.

4 If, however, it should turn out
5 that on at least some of these several
6 material issues that have been addressed,
7 you're wrong and the minority broadcasters
8 that have appeared before us are right, first,
9 that could prevent something which no one
10 wants, and I know you don't want it either,
11 which is a disaster from which it would be
12 very difficult to recover.

13 Some of us are old enough to
14 basically be institutional people. We love
15 the FCC and we've been around it for 30, 40
16 years, and we know that sometimes a big hit is
17 taken and it takes years to back out of it.
18 Many of us were here and worked on getting the
19 tax certificate adopted, and saw what happened
20 to the industry when we lost it, and we're
21 still digging out.

22 A back of the envelope calculation

1 that I did seemed to suggest that if the facts
2 described just as to Philadelphia were
3 extrapolated to minority broadcasters
4 generally, the impact of that would be more
5 than twice the potential impositive impact of
6 all 12 of the new proactive policies that the
7 FCC just adopted.

8 And, therefore, in that spirit,
9 and without turning to -- because unless the
10 Chair would like me to go into some of the
11 scientific questions, I think that just the
12 fact that the substantial questions of fact
13 have been raised, that these allegations have
14 been made responsibly by people of great
15 integrity and great research skill, that the
16 way to get at whatever the truth is, is to
17 approve the resolution and have the
18 Commission, in a dignified and expeditious
19 way, go about this inquiry and then look at
20 what it finds.

21 CHAIRMAN RIVERA: Thank you,
22 David.

1 Any other questions, remarks from
2 the members of the Committee?

3 MS. LUCEY: I just want to say I
4 don't think it's about impugning anyone's
5 integrity from our point of view. It's we
6 have problems with Arbitron's sample size in
7 the old diary method and the electronic
8 method. To us, this is just a jurisdictional
9 problem.

10 First, a subcommittee, probably,
11 should have explored this a while ago, or now,
12 or something, and I know time is of the
13 essence. But to have the FCC investigate,
14 inquire, whatever the word is, this service
15 just -- an entity that is not regulated by the
16 FCC even though it may be used by the FCC, I
17 guess there are other ways, maybe, of
18 overcoming that by presumptions, or something
19 the FCC's built into its rules before in these
20 kinds of data, it's just -- it's
21 inappropriate.

22 MR. FRISBY: Now, with regard to

1 the jurisdiction issue, first of all I'd like
2 to associate myself with Andy's remarks, but
3 two thoughts with regard to jurisdiction.

4 First of all, there appears to be
5 a significant question and that's one of the
6 reasons you do have investigations. Also, in
7 the past, in other matters where the FCC felt
8 it needed jurisdiction, but didn't have
9 jurisdiction, it's reached out to Congress
10 most recently with regard to 911 and Congress
11 granted the FCC jurisdiction.

12 So I'm less persuaded by the
13 jurisdictional issue, given that we're only
14 talking about an investigation.

15 CHAIRMAN RIVERA: James.

16 MR. WINSTON: Going to the
17 jurisdictional issue, the Commission routinely
18 asks organizations for information that are
19 not regulated entities. Most notably in the
20 investigation of the potential migration of
21 sports programming from free television to pay
22 television, the FCC contacted the NFL, the

1 NBA, NCAA, professional hockey, professional
2 baseball.

3 Got information from them on their
4 contracts with television networks and paid
5 programmers. So -- and the FCC never
6 suggested that it had regulatory authority
7 over any of them. None of them was harmed by
8 being asked that information, or providing it.

9 So I don't think that, you know,
10 asking an entity that's not regulated for
11 information is any usurpation of the
12 jurisdiction the Commission doesn't have. It
13 simply requested information.

14 And as Andy pointed out, if
15 Arbitron chooses not to participate in
16 delivering that information, people can draw
17 their own conclusions about that as well, and
18 the Commission can decide whether or not it
19 wants to take any special measures to obtain
20 that information.

21 Second, I was just struck in our
22 exchange here, Diane asked about why not wait

1 for accreditation. And I was surprised that
2 in answering, Arbitron didn't point out that
3 they had been denied accreditation in
4 Philadelphia and New York for this new
5 methodology that's different from what they've
6 done with Houston.

7 So, you know, and I only put that
8 on the table because I think it says something
9 about the need for information. And, you
10 know, I hope that, obviously, having
11 propounded the resolution, that people will
12 consider that as they vote upon it.

13 CHAIRMAN RIVERA: Any other? I
14 see the Chair of our Outreach Committee has
15 been able to join us. Becky, would you come
16 and join us here at the table? Thank you for
17 making it.

18 All right, then, I think we're
19 going to go ahead, Jim and ask you to move the
20 resolution again, just so we do this all
21 according to Hoyle.

22 MR. WATSON: So moved.

1 CHAIRMAN RIVERA: Is there a
2 second?

3 MR. HONIG: Second.

4 CHAIRMAN RIVERA: All right.
5 It's on the table.

6 Are you ready for the question,
7 Committee?

8 How do you want to vote? Do you
9 want to vote by voice or a roll call vote?
10 Roll call vote? It's a roll call vote.

11 MS. KREISMAN: Okay. We'll call
12 the names on the Committee.

13 Mr. Klein or Lucey?

14 MS. LUCEY: No, for the
15 jurisdictional reasons stated in the
16 accompanying statement.

17 MS. KREISMAN: Brennan or Locks?
18 Is anybody here?

19 (No response.)

20 MS. KREISMAN: Amy? Okay, no.
21 Why don't you go through them.

22 CHAIRMAN RIVERA: Lugera? Not

1 here.

2 Guzman?

3 (No response.)

4 CHAIRMAN RIVERA: David?

5 MR. HONIG: Yes.

6 CHAIRMAN RIVERA: Robin?

7 ROBIN: No for the jurisdiction

8 issues that were raised.

9 CHAIRMAN RIVERA: Paul Jones?

10 Becky?

11 MS. KLEIN: No for the

12 jurisdictional issues.

13 CHAIRMAN RIVERA: Art Lampkin?

14 Marie Long?

15 MS. LONG: No.

16 CHAIRMAN RIVERA: Ambassador

17 McCann?

18 AMBASSADOR McCANN: Yes.

19 MS. LONG: Was that a vote, or

20 was that --

21 CHAIRMAN RIVERA: Yeah, that's a

22 vote.

1 MS. LONG: Oh, I'm sorry. I'm
2 sorry, I thought it was a question.

3 CHAIRMAN RIVERA: Okay. So that
4 was Marie?

5 MS. LONG: Yes.

6 MR. HONIG: How did Marie vote?

7 CHAIRMAN RIVERA: Marie voted no.

8 MS. LONG: No, no, that's what I
9 was saying. I thought it was no further
10 questions I was saying no to.

11 CHAIRMAN RIVERA: All right. No,
12 we past that. We're now voting on the
13 resolution.

14 MS. LONG: And that's a yes.

15 CHAIRMAN RIVERA: So Marie is
16 voting yes.

17 And Ambassador McCann has voted
18 yes.

19 AMBASSADOR McCANN: Correct.

20 CHAIRMAN RIVERA: Okay. Rob
21 Mendes.

22 MR. MENDES: Abstain.

1 CHAIRMAN RIVERA: Abstains.
2 Max Navarro is not here.
3 Andy?
4 MS. SCHWARTZMAN: Yes.
5 CHAIRMAN RIVERA: Tara Sweeney is
6 not here.
7 Kay Twist? Not here.
8 Margaret Wilder? Not here.
9 Jim?
10 MR. WINSTON: Yes.
11 CHAIRMAN RIVERA: Margaret
12 Lancaster?
13 MS. LANCASTER: Yes.
14 CHAIRMAN RIVERA: Diane?
15 MS. SUTTER: Abstain.
16 CHAIRMAN RIVERA: Abstain.
17 Russ?
18 MR. FRISBY: Yes.
19 CHAIRMAN RIVERA: Chairman votes
20 yes.
21 Barbara, you need to count the
22 votes.

1 MS. KREISMAN: One, two, three,
2 four, five, six, seven, eight yes', and one,
3 two, three, four no's and two abstentions.

4 CHAIRMAN RIVERA: Grif, Tony, did
5 you have a different count?

6 MR. GRIF: I had eight/three.

7 MR. HONIG: I had eight/three
8 also. I had eight/three/two.

9 CHAIRMAN RIVERA: Eight/three/
10 two?

11 MS. KREISMAN: Eight/three?

12 One, two -- go ahead.

13 MR. GRIF: Honig, Long, McCann,
14 Schwartzman, Winston, Lancaster, Frisby and
15 Rivera.

16 MS. KREISMAN: Okay.

17 MR. GRIF: The no's, Lucey voting
18 Klein. The abstains Mendes and Sutter.

19 MS. KREISMAN: Okay, fine.

20 CHAIRMAN RIVERA: The motion
21 carries. Thank you, Committee.

22 Is there any new business to come

1 before the Committee?

2 (No response.)

3 CHAIRMAN RIVERA: No? If not,
4 then Rodney, you want to repeat your
5 invitation?

6 MR. HOOD: Yes. All of our
7 guests this afternoon, please know that there
8 is a reception taking place downstairs
9 beginning at 6:00 p.m. in the Sulzberger
10 Parlor.

11 You all are cordially invited. We
12 look forward to seeing you.

13 CHAIRMAN RIVERA: Thanks everyone
14 for coming to the meeting.

15 (Whereupon, the meeting was
16 concluded.)

17

18

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21

22

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