

# Civil Rights Organizations' Objectives for the FCC

Meeting with Commissioner Mignon Clyburn, September 9, 2009

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## I. Opening Statements by Participants

- Sylvia Aguilera, Hispanic Technology and Telecommunications Partnership
- Vincent Eng, Asian American Justice Center
- Jon Greenbaum, Lawyers Committee for Civil Rights
- David Honig, Minority Media and Telecommunications Council
- Wanda Janes, United South Eastern Tribes
- Kimberly Marcus, Rainbow PUSH Coalition
- Francisco Montero, Spanish Radio Association
- Hilary Shelton, National Association for the Advancement of Colored People
- Loris Ann Taylor, Native Public Media
- Brent Wilkes, League of United Latin American Citizens
- James Winston, National Association of Black Owned Broadcasters

## II. Commission Organization and Operations

- A. Inputs to FCC Decisionmaking (Presentation led by James Winston and Hilary Shelton): To ensure that aspects of every major Commission decision that affects consumers and minority and women entrepreneurs are always considered on a strong record, the Commission should:
1. Include a minority impact and digital divide (race, language, income and geography) review as part of each major rulemaking and merger decision
  2. Make accurate longitudinal data the touchstone for policymaking
  3. Consider and vote promptly on the recommendations of advisory committees.
- B. Adjudication Reform (Presentation led by James Winston and David Honig: To restore public confidence in the adjudicative process and apply specific and general deterrence to wrongdoing, the Commission should:
1. Conduct ethics and genuineness reviews of major mergers to prevent WorldCom or Gabelli-type cases and protect diversity policies
  2. Repair the broken engineering rule enforcement system that allows radio pirates to operate openly and with impunity
  3. Designate evidentiary hearings promptly when required by Section 309 and Jefferson Radio.

- C. Rulemaking Reform (Presentation led by Francisco Montero): To make the rulemaking process more accessible to consumers and small businesses, the Commission should adopt these reforms of the rulemaking process:
1. Include, in major proceedings, multilateral negotiations among the stakeholders, including minority and consumer organizations
  2. Commit to a regular schedule of field hearings to elicit scholarly and public testimony
  3. Perform a line-by-line Section 257 examination of all rules and policies, and submit to Congress a thorough 2009 Section 257 Triennial Report
  4. Require fact-finding before ALJs in major rulemaking dockets
  5. Expand the use of Section 403
  6. Use sophisticated data gathering and dynamic scoring to ascertain the macroeconomic impact of new rules, e.g. where a rule would unlock and monetize minorities' or new entrants' entrepreneurial, managerial and creative potential.

### III. Substantive Priorities

- A. Civil Rights: To restore industry compliance with civil rights mandates and remedy the effects of years of Commission abdication of its civil rights enforcement responsibilities, the new commission should:
1. EEO (Presentation led by David Honig):
    - i. Replace the failed audit system with meaningful EEO enforcement applicable to every regulatee and every renewal, assignment and transfer application
    - ii. Consider whether there is excessive word-of-mouth recruitment from homogeneous workplaces
    - iii. Adopt the Diversity Committee's 2004 recommendation for a greater focus on mentoring, advancement and retention
    - iv. Provide full funding and adequate staffing for EEO enforcement.
  2. Advertising Nondiscrimination (Presentation led by James Winston, Francisco Montero and David Honig): Designate a Compliance Officer immediately to enforce the Advertising Nondiscrimination Rule.
  3. Language Barriers to Public Safety (Presentation led by Vincent Eng and Francisco Montero): Require a multilingual EAS plan for each radio market.

4. Civil Rights in the Organizational Chart (Presentation led by Hilary Shelton):
  - i. Place EEO and other civil rights enforcement functions in the Enforcement Bureau and codify these offices in Part 0 of the Rules.
  - ii. Applying platform neutrality, consider whether the EEO Rule, Advertising Nondiscrimination Rule and Transactional Nondiscrimination Rule should apply all FCC-regulated industries.
  
- B. Eligible Entities (Presentation led by Jon Greenbaum and Wanda Janes):
  1. Reinitiate and update the 2000 Adarand studies in order to produce a constitutionally sustainable SDB definition
  2. Adopt a system of Full File Review (FFR) until the Adarand studies are updated
  3. Declare Tribal Entities to be eligible entities because they are a political rather than a racial classification
  
- C. Ownership Diversity: The Commission should promptly schedule consideration of these and other major pending diversity items:
  1. Expand Entrepreneurs' Access to Capital and Ownership Opportunities (Presentation led by Sylvia Aguilera, James Winston and Francisco Montero):
    - i. Designate a Section 403 hearing on PPM audience ratings
    - ii. Authorize, within limits, share-time ownership for HD and DTV sub-channels
    - iii. Authorize must-carry for hyper-local and multilingual Class A LPTVs
    - iv. Complete the broadcast diversity proceeding by considering the thirteen outstanding proposals, including structural rule waivers for incubator programs, AM expanded band relief, and relaxation of restrictions on foreign investments in broadcast stations
  
  2. Expand Minority Radio Entrepreneurs' Access to Spectrum (Presentation led by David Honig and Francisco Montero):
    - i. Create a federal advisory committee to plan the migration of AM stations, and their conversion into FM stations, on the spectrum now occupied by TV Channels 5-6
    - ii. Assign an RM Number to the MMTTC Radio Rescue Petition, thereby putting it out for public comment

3. Expand Minority Telecom Entrepreneurs' Access to Spectrum by Reforming the Designated Entity (DE) Program (Presentation led by David Honig):
  - i. Relax spectrum use restrictions
  - ii. Reduce exit limitations
  - iii. Develop new incentives to advance minority ownership of wireless networks and services.
  
- D. Broadband: Ensure that the National Broadband Plan Is Designed to Close the Digital Divide (Presentation led by Sylvia Aguilera and David Honig):
  1. Choose field hearing sites, participants, and commissioner activities and visits that will expose the commissioners to the communications needs and priorities of minority, multilingual, tribal and low income populations
  2. Declare universal broadband adoption to be the #1 priority of the National Broadband Plan
  3. Define "underserved" and "unserved" so that in each category the top priorities for deployment and adoption are communities whose poverty is entrenched and cross-generational because it is tied to race, language or tribal origin
  4. Ensure that broadband regulations, including each element of network neutrality, is supported by documentation that it will not depress adoption or increase costs to minority, multilingual, tribal and low income populations
  
- E. Universal Service (Presentation led by Brent Wilkes and David Honig):
  1. Authorize sufficient Lifeline/Linkup and Rural Telemedicine USF support
  2. Authorize a percentage of e-rate funding to increase availability and awareness of broadband in low-income communities.
  3. Consider overhaul of USF funding mechanisms, including directing funds to communities (e.g. through bloc grants) and consumers (e.g. through vouchers) rather than companies

- F. Recommendations to the Legislative and Executive Branches: The new Commission should provide wide-ranging diversity recommendations to Congress and the President, including:
1. Expand Entrepreneurs' Access to Capital and Ownership Opportunities (Presentation led by James Winston, Francisco Montero and David Honig):
    - i. Restore the Tax Certificate Policy
    - ii. Underwrite a nonprofit capital expense fund for endangered media outlets
    - iii. Expand FCC authority to use Sections 307(b), 309(j) and 310(b)(4) to promote minority ownership
    - iv. Reauthorize the Telecommunications Development Fund with auction proceeds
    - v. Authorize the use of TARP funds for loans to minority radio
    - vi. Authorize an annual media and telecom diversity and digital divide census.
  2. Enhance Protections Against Discrimination (Presentation led by David Honig):
    - i. Strengthen and expand the EEO protections in Sections 334 and 634
    - ii. Amend the FTC Act to prohibit racial discrimination in advertising placement and terms
    - iii. Restore enforcement of the Federal Advertising Diversity Executive Order.
  3. Close the Digital Divide (Presentation led by Kimberly Marcus):
    - i. Provide universal K-12 education in media, telecom, and internet literacy, including skills, proficiency and policy
    - ii. Enhance SDB goals and eliminate entry barriers to MBE participation in Rounds 2 and 3 of the BTOP and BIP program.
  4. Eliminate Language Barriers to Public Safety (Presentation led by Vincent Eng and Francisco Montero):
    - i. Underwrite broadcasters' multilingual emergency information services and direct FEMA, NWS and NOAA to cooperate.

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