

**Remarks of Commissioner Robert M. McDowell
Advisory Committee on Diversity in Communications for the Digital Age
Federal Communications Commission**

**Thursday, Dec. 2, 2010
Commission Meeting Room, Washington, D.C.**

Thank you, Henry – and thanks also to all of you who have served during the current term of the Commission’s Diversity Committee. As many of you know, I am sincerely interested in promoting greater diversity in the communications field, whether it be among the owners of licensed or regulated entities, the employees who make the technologies work, or the consumers who use them. I have been actively monitoring this Committee’s work over the course of the last two years, and so I’m well aware that you’ve made several interesting recommendations for potential rulemaking action – such as the concept of a new preference program in the context of FCC auctions for entities that have overcome disadvantages. I look forward to hearing what commenters say in response to the new Public Notice concerning the “Overcoming Disadvantages” proposal.

I also want to applaud the Chairman for rechartering the Committee for another two-year term. And I thank Henry for agreeing to serve again as chairman of the body. Continuity at the top is so helpful, and we are grateful that you will remain to shepherd the Committee’s difficult and often unheralded work.

The value of diversity is not limited to the *fields* that the FCC regulates, of course. Advantages that come from a mix of diverse viewpoints apply to our *own* internal operations and those of advisory committees like this one. For that reason, I hope to see a mix of new and experienced members on the reconstituted Committee which will begin operating next year. Diversity of viewpoint is important everywhere. Should anyone be interested in joining the Committee as a new member and not yet have been approached by our staff, please contact me or my legal advisor Rosemary Harold. We would be happy to assist you in putting your name forward.

It is important that we pour new energy into this Committee because it labors on legally complex issues that may require more than just one term to resolve. Still, though perseverance may be an especially useful trait among those who advocate for greater diversity, I do not mean to imply that the Commission never takes action in this area. On the contrary, I would like to take a moment to recognize that this month marks the third anniversary of a significant milestone: the Commission’s adoption of the 2007 Diversity Order. Reviewing a few of the 13 different actions that we adopted in that Order serves as a reminder of the progress we’ve made – thanks in large measure to hard work of many of the people who serve as members of this Committee. For example:

- Adopting the advertising nondiscrimination rule, more popularly known as the ban on “no urban/no Hispanic” dictates. It was the first new federal antidiscrimination

requirement to be adopted in more than 30 years, according to David Honig of the Minority Media and Telecommunications Council. I have spoken to Madison Avenue executives about this rule on several occasions, and it has led to considerable coverage of at least one high-profile incident, the BMW-Mini Cooper “no urban” incident in the summer of 2009;

- Amending the FCC’s broadcast ownership report, which will allow us to more precisely gather data for our next media ownership decision;
- Easing construction deadlines for new broadcast facilities owned by “eligible entities,” a class defined by the Small Business Administration’s standards for small business;
- Revising our attribution rules to encourage investment in eligible entities;
- Reviving our “distress sale policy” to encourage sales to eligible entities;
- Banning discrimination in broadcast transactions;
- Prioritizing approval of TV so-called duopolies for companies that invest in or incubate an eligible entity;
- Extending deadlines for divesting stations after transactions if the newly enlarged owner spins off the excess stations to eligible entities, and
- many others.

We cannot and should not stop there, however. As the Diversity Order recognized, we still have a lot of unfinished business. This includes consideration of a stronger incubator program with more significant incentives, such as the concept on the Committee’s agenda today.

Another substantial step ahead for the Commission would be the potential replacement of the “eligible entities” definition with a new concept that more directly addresses race and gender classifications. As I have said before, I am interested in exploring what actions the Commission may take in this area on a legally sustainable basis. Of course, any new race- or gender-conscious rules must satisfy the rigorous demands of the Equal Protection Clause, as interpreted under the Supreme Court’s *Adarand* line of cases. That, in turn, will require that we conduct studies to produce sufficient evidence to support new regulations. I favor the commissioning of such studies and believe that we should launch the research effort soon.

I will close here by reiterating my thanks for your service. It has borne fruit, and I look forward to the new ideas and energy that the Committee will bring to us in the weeks and months to come.