

steps to enforce its common carrier EEO regulations. The Commission does not review the accuracy of the annual reports or compile them in order to monitor industry-wide employment trends. They are simply stored in filing cabinets. The administration of the EEO rules for the entire common carrier industry is the part-time responsibility of one individual in the Industry Analysis Division of the Common Carrier Bureau.

In contrast with the 1992 Cable Act, the common carrier EEO regulations have 9 instead of 15 job categories and cannot accurately measure the number of women and minorities in decision-making positions. The regulations do not require on-site audits of EEO programs, nor do they specify financial forfeitures for violations of the law. Suffice to say the common carrier regulations are inadequate for achieving Congress's goal of increased numbers of women and minorities in the "new, emerging, and alternative technologies."

Secondly, the Commission must consider the monopoly status and leased access characteristics that video dialtone shares with cable TV and common carriers - services that are already subject to EEO regulation. Video dialtone will be offered on an exclusive basis throughout each telephone company's service area. Video dialtone is expected to be integrated with the telephone company's present voice/data communications infrastructure. The monopoly status of video dialtone service will inhibit choice on the part of program suppliers in their efforts to deliver information to subscribers. Similarly, subscribers will have no recourse to an alternative video

dialtone service.

As a prerequisite for providing video dialtone service, telephone companies must construct a common carrier platform that will parallel their monopoly local exchange infrastructure.<sup>21</sup> The Commission's video dialtone policy envisions program suppliers sharing a single common carrier platform. This platform will be the only available means for distributing signals throughout the telephone company's service area. It is the transport function and the exclusivity of that transport function that necessitates EEO oversight.

The Commission has previously stated that the free and leased access obligation of a cable operator constitutes a need for EEO regulation.

Like a common carrier, the local cable system either is, or will soon become, a contractor for delivery of communications (cablecast, etc.) by others on its leased, or free-of-charge, "access" channels....[A] multi-channel capacity...company which is not an equal employment employer is less likely, than it otherwise would be, to recognize and respond to...the special programming and other communication needs of discriminated-against minority groups.

Cable TV Report and Order at 190-191 (emphasis provided).

The monopoly status that video dialtone shares with common carriers and cable TV further adds to the need to comply with the Cable Act's EEO requirements.

[T]elephone or telegraph service occupy a privileged status by virtue of their monopoly position in their particular areas, and the public is required to do business with them. This unique public interest role makes it particularly important that they not engage in discriminatory employment practices.

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<sup>21</sup>. Second Report and Order., para. 29.

Common Carrier Report and Order, at 726. (emphasis provided)<sup>22</sup>

Even in instances of semi-monopolies, such as cable TV, the Commission has exercised its EEO jurisdiction.

Like a common carrier, [cable operators are] almost certain, in any given service area, to be a monopoly (or, at best, a semi-monopoly) whose customers have no recourse to the normal operation of the market place.

Cable Report and Order, at 190.

The Commission may find guidance in the rationale of earlier policy decisions. In earlier proceedings the Commission has found that the public interest is best served by exercising EEO regulation over services with monopoly and leased access characteristics similar to video dialtone. The rigorous scrutiny called for by the 1992 Cable Act is the most appropriate method for achieving the EEO goals of Congress.

As a final matter the Commission must consider the substantial programming privileges that have been granted to the telephone industry by the video dialtone decision. The Commission's Second Report and Order specifically says that two types of programming fall outside of the statutory ban on video programming:<sup>23</sup> 1) any programming that is not "severable" from the underlying service (e.g. interactive shopping or "video catalogue" services, programming involving

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<sup>22</sup>. The Communications Act of 1934 precludes the Commission from issuing a license except "when it is shown to be in the public interest, convenience and necessity". Given the national policy prohibiting discrimination the Commission has previously concluded, that discriminatory employment practices by a common carrier licensee or permittee are not compatible with the public interest.

Common Carrier Report and Order, at 729.

<sup>23</sup>. Second Report and Order, paras. 74 - 77.

multimedia graphics and information, other programs that entail two-way viewer interaction, manipulation or customization; and 2) one-way and two-way non-video programming (eg. news and stock market videotext, video games and computer software, and on-line airline guides).

Information is never neutral in terms of how it effects social norms and values. The programming privileges of the video dialtone provider will go a long way towards legitimatizing the images that it conveys. The race and gender of individuals selected to appear in sales promotions, news programming, and video games must reflect the diversity of the American populace.

As providers of videotext news service the telephone companies will be in a position to exercise editorial control over a vast array of stories. The hiring policies of the telephone companies will greatly determine whether coverage will be balanced with regard to race and gender. The slant given to racial conflict and other politically sensitive stories (e.g. the right to an abortion) will in most instances reflect the race and gender of those in decision-making positions.

Commenting on the Commission's EEO jurisdiction with regards to common carrier and broadcast licensees, the U.S. Supreme Court has said that,

These regulations can be justified as necessary to enable the FCC to satisfy its obligation under the Communication Act of 1934...to ensure that its licensee's programming fairly reflects the tastes and viewpoints of minority groups.  
NAACP v. Federal Power Commission, 425 U.S. 662 (1975) note 7.

Video dialtone's programming privileges taken together with rules permitting expanded relationships with video programmers (i.e.

carrier-user<sup>24</sup> and non-cognizable ownership<sup>25</sup> relationships) will afford video dialtone a significant amount of influence over programming. Hence, the need to be included in Section 22(e)'s definition of a "multichannel video programming distributor".

**VII. THE MID-TERM REVIEW OF BROADCAST LICENSEES SHOULD CONSIST OF A FULL EXAMINATION OF EEO EFFORTS. LICENSEES FOUND NOT TO COMPLY WITH MID-TERM RECOMMENDATIONS SHOULD BE ASSESSED HIGHER FINANCIAL FORFEITURES OR DENIED THEIR RENEWAL APPLICATION.**

The NPRM requests comment on how to conduct the mid-term review that the Cable Act requires of broadcast licensees. At paragraph 5, the NPRM notes that the Conference Report requires the Commission to apply the EEO processing guidelines in effect on September 1, 1992.<sup>26</sup> The Commission has interpreted this to mean that the mid-term review shall be limited to an analysis of a station's employment profile. NPRM para. 7

OC/UCC disagrees with this interpretation. The language of the legislation and the legislative history need not be read as limiting the scope of the mid-term review. At the time of license renewal the Commission exams a broadcaster's overall EEO efforts. NPRM para. 3. By requiring a review of "employment practices", the

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<sup>24</sup>. Examples of permitted carrier-user relationships are, "the offering of enhanced services related to video programming; joint ventures to permit sharing and joint construction and operation of facilities; [and] consultant-client relationships." Second Report and Order, para. 31.

<sup>25</sup>. Telephone companies are permitted to establish a 5 percent ownership interest in video programmers. Second Report and Order, para. 70.

<sup>26</sup>. Congressional Record, September 14, (1992), ("Conference Report") at H8334.

Cable Act intended a review of similar scope. Section 334(b) of the Cable Act of 1992. The "specific guidance" provided by the Conference Report was merely intended to freeze the percentiles used to measure female and minority representation (e.g. 50% of the local labor force).<sup>27</sup>

Furthermore, the Act requires the Commission to inform "licensees of necessary improvements in recruitment practices as a consequence of [the mid-term] review." id. It is not feasible for the Commission to make an intelligent determination of what areas of its EEO program a licensee needs to improve, unless the Commission has conducted a review of the station's overall efforts.<sup>28</sup> Advisory letters are presently based upon an investigation of more than a station's employment profile. It was not the intent of Congress that the Commission discontinue this practice.

With respect to the effect of the mid-term review on license renewal, OC/UCC maintains that it should have a direct bearing on the amount of the financial forfeiture and type of sanction. If, as a consequence of a mid-term review, the Commission notifies a licensee of the need to improve its EEO efforts in specific areas and finds that the licensee has failed to comply at the time of license renewal, there should be a presumption of intent not to comply. Historically, the intent of the licensee has been a factor when

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<sup>27</sup>. id. at H8333 - H8334.

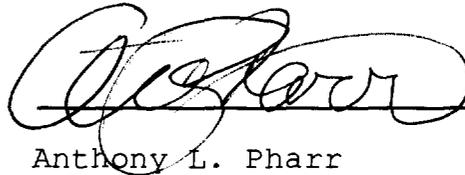
<sup>28</sup>. In the NPRM at para. 9, the Commission contemplates informing licensees of the need to improve their recruitment or self-assessment efforts in order to comply with processing guidelines.

determining the appropriate penalty. Financial forfeiture in the higher range or denial of the renewal application should be ordered depending upon the seriousness of the violation.

**VIII. CONCLUSION.**

OC/UCC urges the Commission to expand this proceeding to consider the many recommendations contained in these Comments. Most importantly, OC/UCC urges the Commission to interpret the Cable Act of 1992 as requiring video dialtone to be subject to its EEO provisions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "A. Pharr", written over a horizontal line.

Anthony L. Pharr

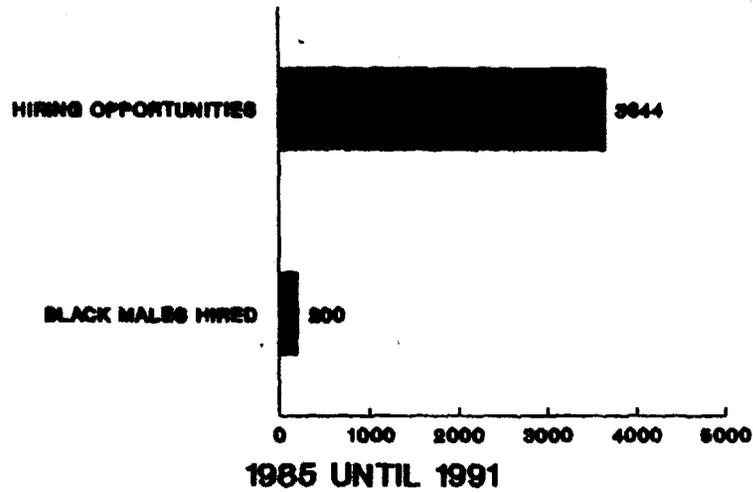
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Office of Communication  
of the United Church of Christ  
2000 M Street, N.W. suite 400  
Washington, D.C. 20036  
(202) 331-4265

February 16, 1993

**IX. EXHIBITS.**

EXHIBIT I

**TOTAL HIRING OPPORTUNITIES VERSUS BLACK MALES HIRED: OFFICIALS AND MANAGERS**



**BLACK MALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91**

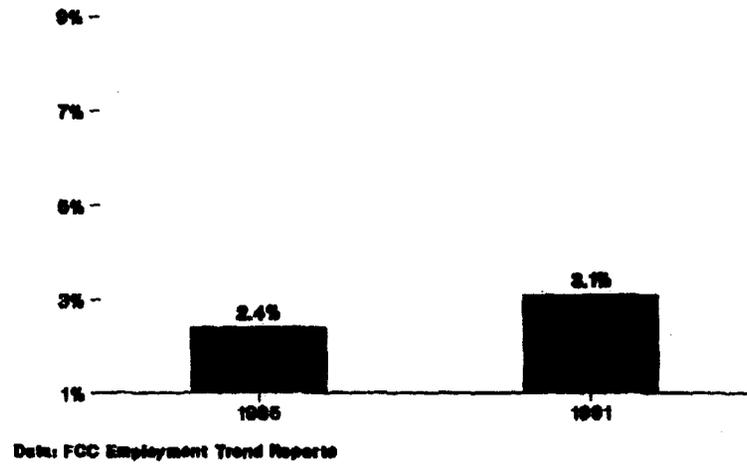
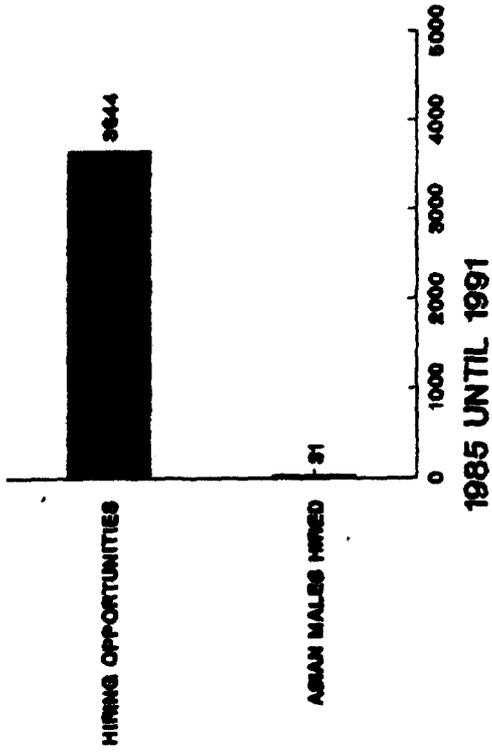
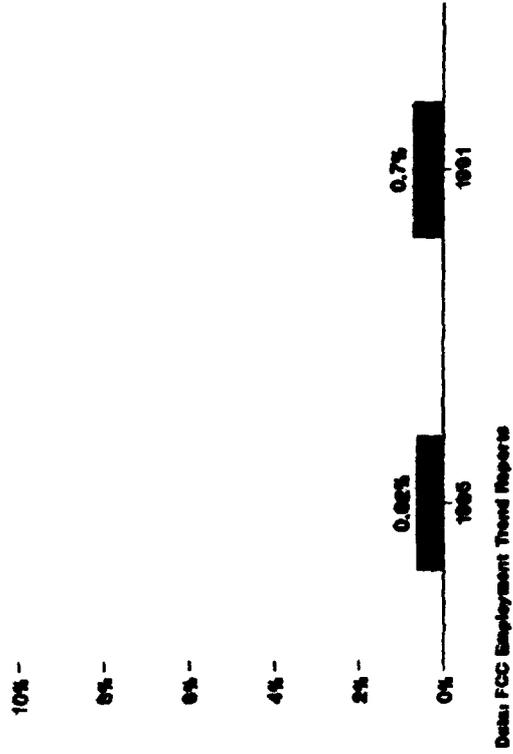


EXHIBIT II

TOTAL HIRING OPPORTUNITIES VERSUS ASIAN MALES HIRED: OFFICIALS AND MANAGERS



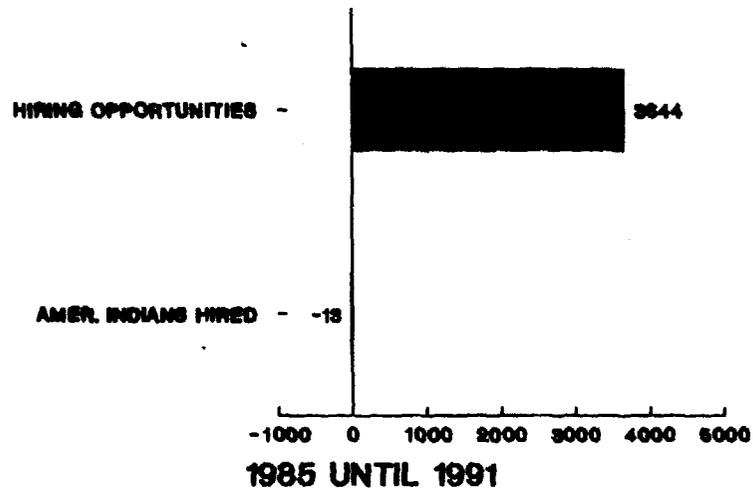
ASIAN MALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91



Data: FCC Employment Trend Reports

EXHIBIT III

**TOTAL HIRING OPPORTUNITIES VERSUS AMER. INDIAN MALES HIRED: OFFICIALS & MANAGERS**



**AMER. INDIAN MALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91**

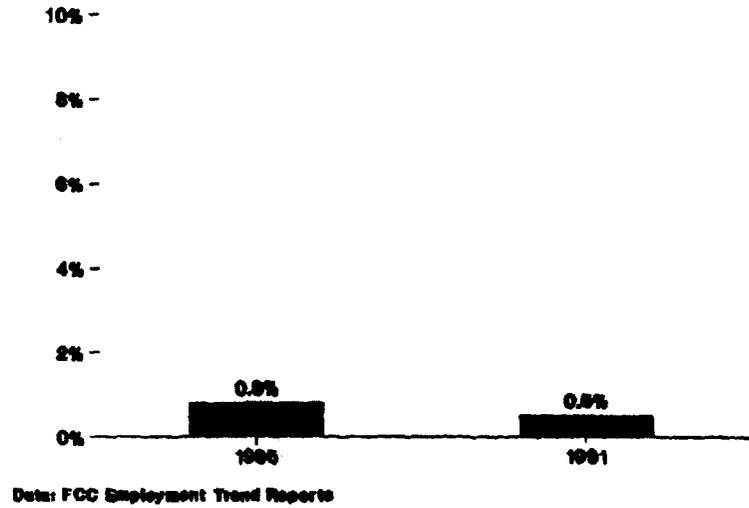
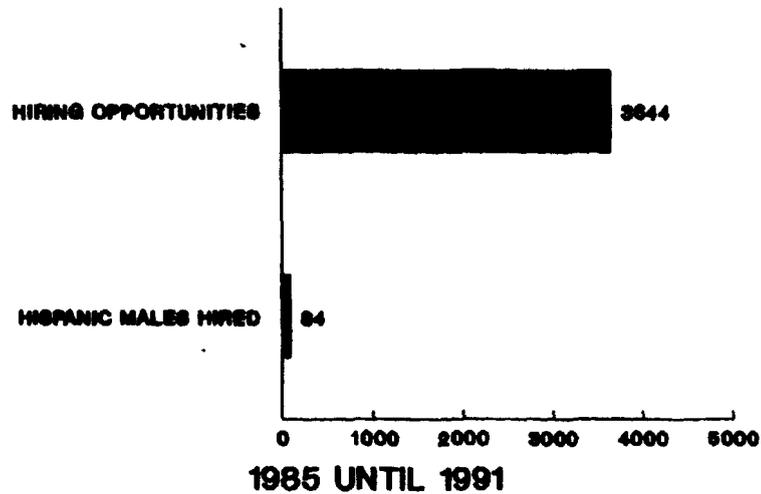


EXHIBIT IV.

**TOTAL HIRING OPPORTUNITIES VERSUS HISPANIC MALES HIRED: OFFICIALS AND MANAGERS**



**HISPANIC MALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91**

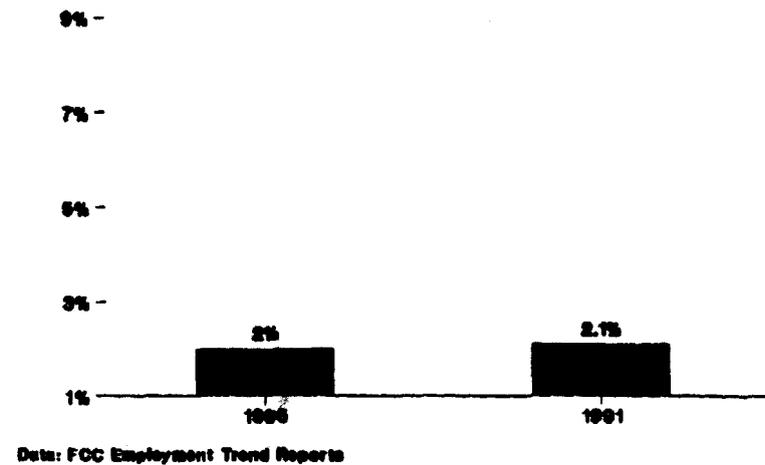
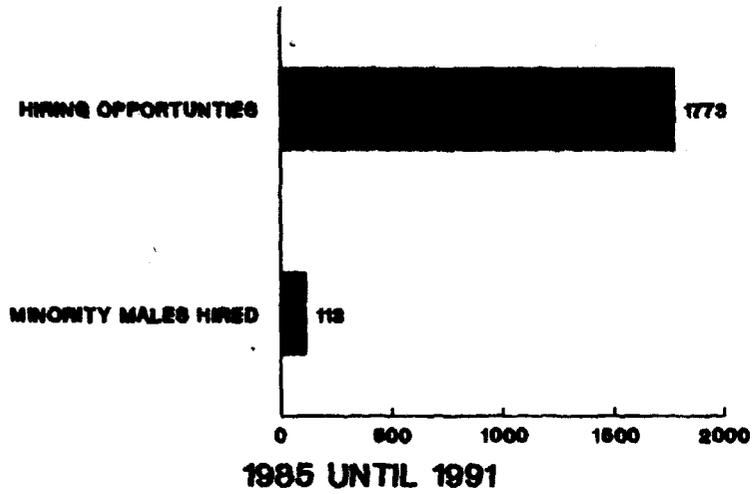


EXHIBIT V.

**TOTAL HIRING OPPORTUNITIES VERSUS  
MINORITY MALES HIRED: PROFESSIONALS**



**MINORITY MALES AS A PERCENTAGE OF  
PROFESSIONAL EMPLOYEES: '85 vs '91**

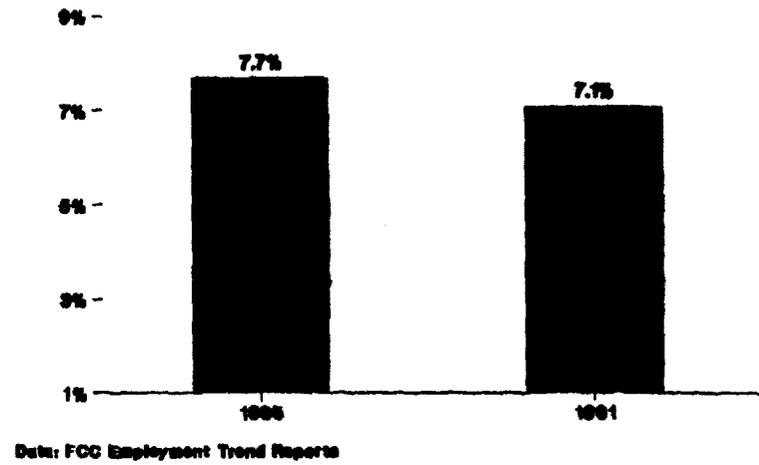
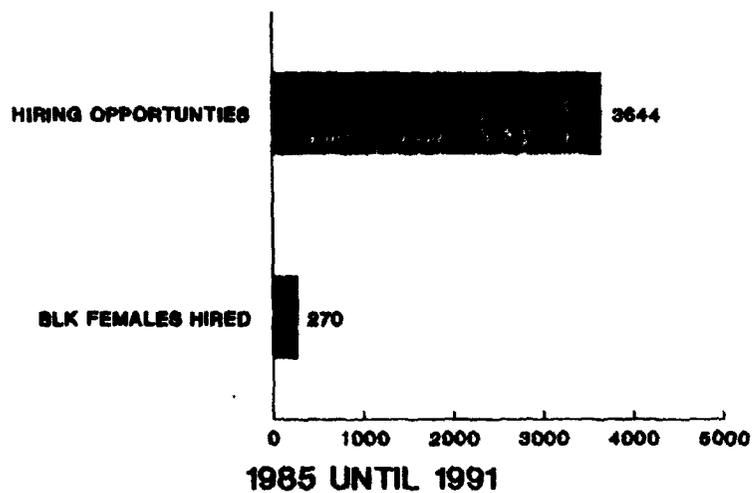


EXHIBIT VI

TOTAL HIRING OPPORTUNITIES VERSUS BLACK FEMALES HIRED: OFFICIALS AND MANAGERS



BLACK FEMALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91

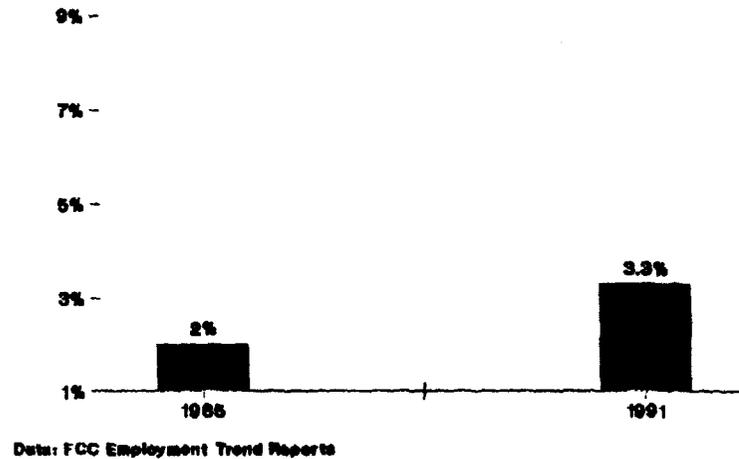
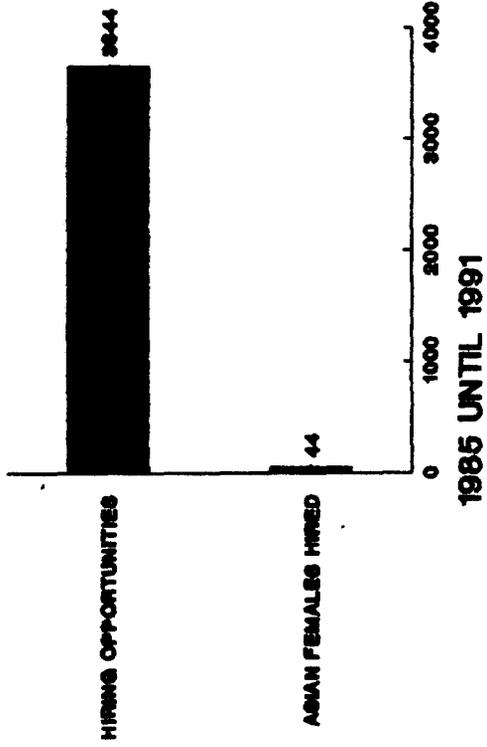


EXHIBIT VII.

**TOTAL HIRING OPPORTUNITIES VERSUS ASIAN FEMALES HIRED: OFFICIALS AND MANAGERS**



**ASIAN FEMALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91**

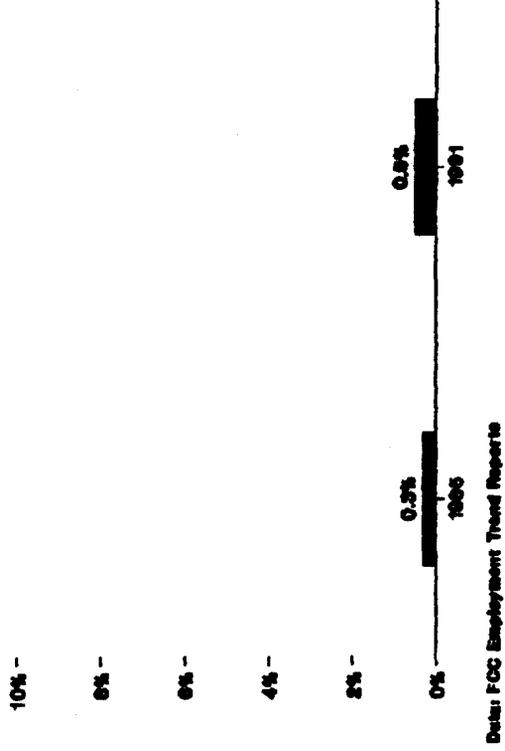
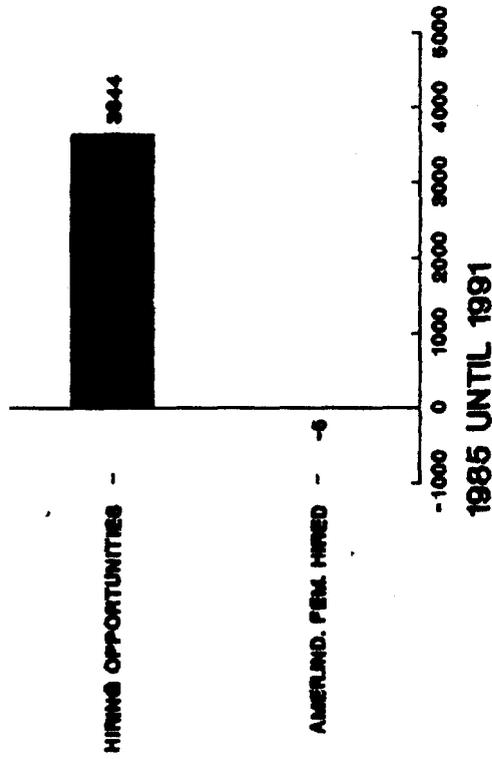
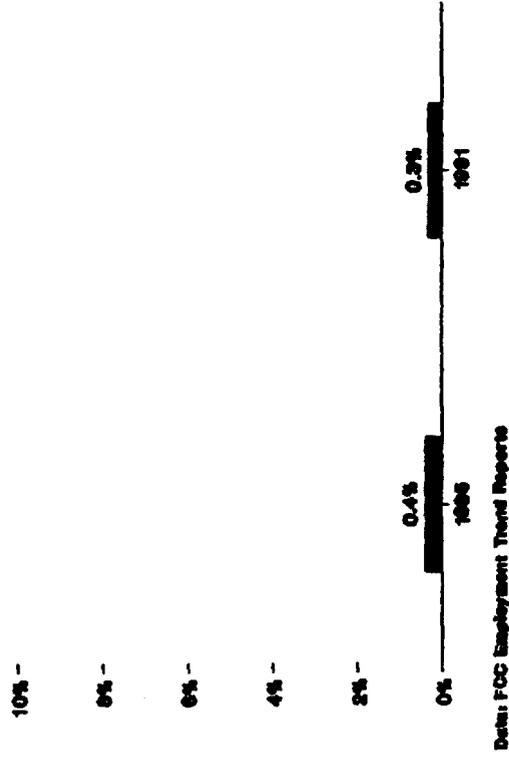


EXHIBIT VIII.

**TOTAL HIRING OPPORTUNITIES VERSUS AMER. INDIAN FEM. HIRED: OFFICIALS & MANAGERS**



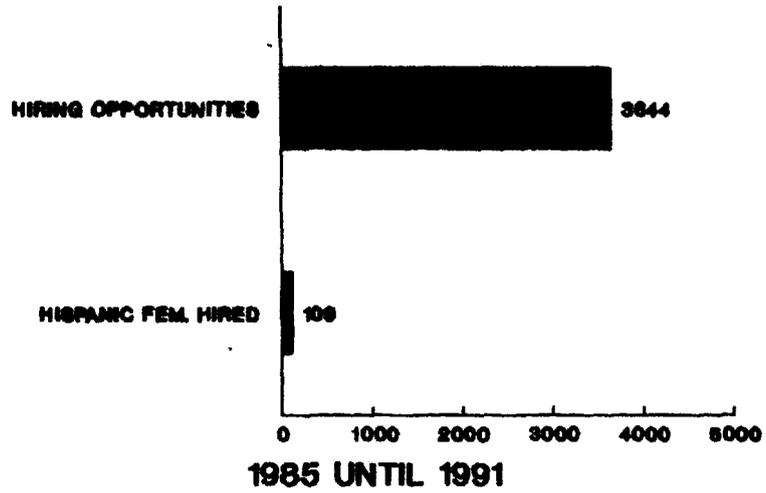
**AMER. INDIAN FEMALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91**



Data: FCC Employment Trend Reports

EXHIBIT IX.

**TOTAL HIRING OPPORTUNITIES VERSUS HISPANIC FEMALES HIRED: OFFICIALS & MANAGERS**



**HISPANIC FEMALES AS A PERCENTAGE OF OFFICIALS AND MANAGERS: '85 vs '91**

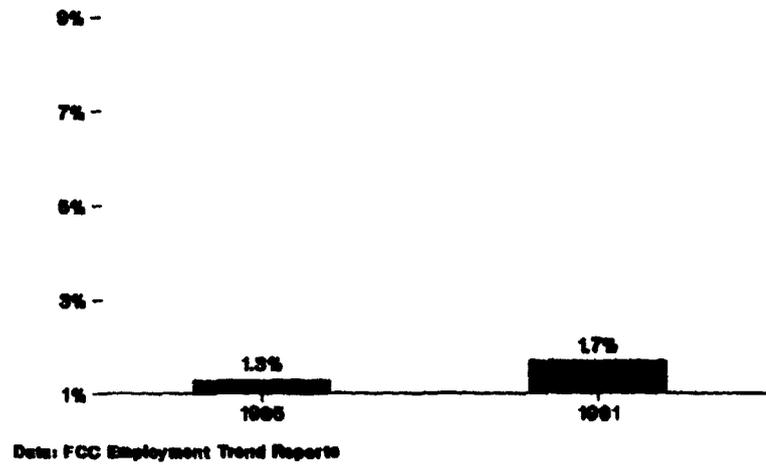
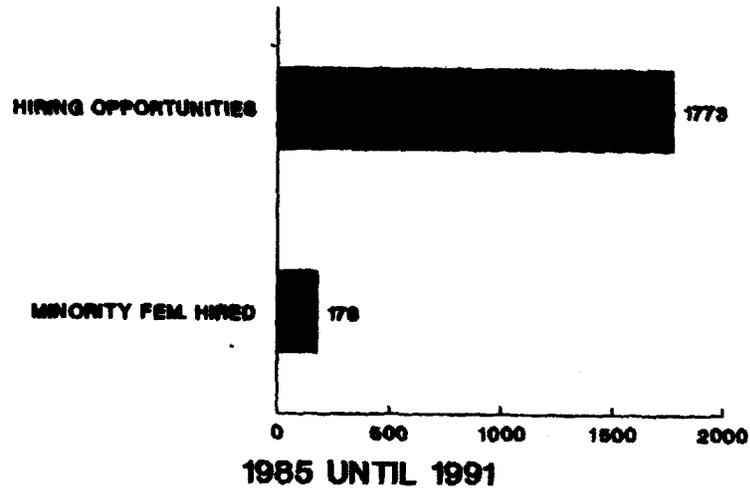
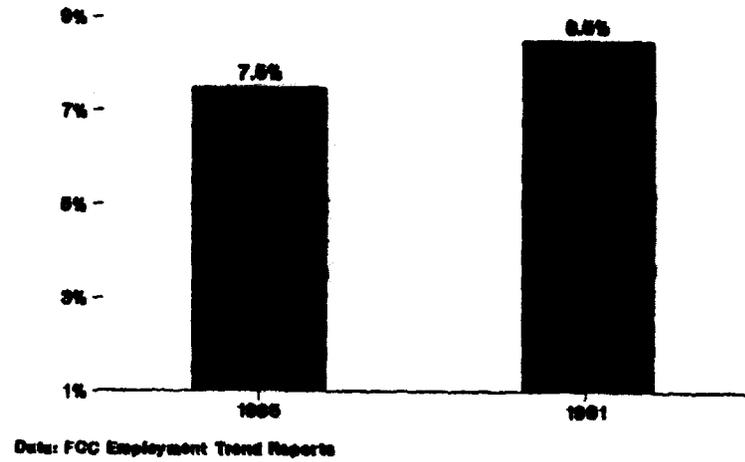


EXHIBIT X.

**TOTAL HIRING OPPORTUNITIES VERSUS  
MINORITY FEMALES HIRED: PROFESSIONALS**



**MINORITY FEMALES AS A PERCENTAGE OF  
PROFESSIONAL EMPLOYEES: '85 vs '91**



**SECTION III EEO POLICY AND PROGRAM REQUIREMENTS**

EXHIBIT XI.  
FORM 395-A

Check YES or NO to each of the following questions. If answer to any question below is NO, attach as EXHIBIT B an explanation.

YES NO

1. Do you disseminate your EEO Program to job applicants, employees, and those with whom you regularly do business?
2. Do you contact minority organizations, women's organizations, media, educational institutions, and other potential sources of minority and female applicants for referrals whenever job vacancies are available in your organization?
3. Do you evaluate your employment profile and job turnover against the availability of minorities and women in your franchise area?
4. Do you undertake to offer promotions to positions of greater responsibility to minorities and women in a nondiscriminatory manner?
5. To the extent possible, do you seek out minority and female entrepreneurs and encourage them to conduct business with all parts of your organization?
6. Do you analyze the results of your efforts to recruit, hire, promote, and use the services of minorities and women and use these results to evaluate and improve your EEO Program?
7. Do you define the responsibility of each level of management to ensure a positive application and vigorous enforcement of your policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?
8. Do you conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age, or sex from your personnel policies and practices and working conditions?
9. Do you conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

**SECTION IV ADDITIONAL INFORMATION**

You may provide as Exhibit C any additional information that you believe might be useful in evaluating your efforts to comply with the Commission's EEO provisions. There is no requirement to provide additional data or information.