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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-261
	)	
Equal Employment Opportunities	)	

OPPOSITION OF GTE

GTE Service Corporation ("GTE"), on behalf of its domestic telephone operating companies and GTE Laboratories Incorporated, hereby opposes the "Petition for Reconsideration" of the National Association for the Advancement of Colored People and the Office of Communication of the United Church of Christ ("NAACP/UCC") in the above referenced proceeding.[1] The Petition seeks reconsideration of the Commission's Report and Order[2] implementing the Equal Employment Opportunity ("EEO") provisions, Section 22, of the Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-385, 102 Stat. 1460 ("1992 Act").

In the Report and Order, the FCC determined that its EEO rules implementing Section 22 should not apply to video dialtone carriers ("VDCs"). (Order, ¶46) More specifically, the Commission concluded that Congress' intent was to ensure the greatest level of programming diversity. Because a LEC offering video dialtone service will not provide video programming directly to the public or have the ability to exercise control over the selection of programming provided

[1] Notice of receipt of petition published at 58 Fed.Reg. 49303, September 22, 1993.

[2] Implementation of Section 22, Equal Employment Opportunities, 8 FCC Rcd 5389 (1993).

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directly to the consumer, the FCC determined that application of the EEO rules to VDCs would not impact program diversity.

NAACP/UCC assert that the EEO requirements should apply to VDCs and they have petitioned the Commission, among other things, to reconsider its conclusion to the contrary. The petition mischaracterizes the Commission's order as electing to abstain from EEO regulation of VDCs. It also asserts that there are EEO objectives other than programming diversity which the Commission failed to consider. Both of these arguments were made in the rulemaking and should be rejected again on reconsideration.

NAACP/UCC mischaracterize the Commission's decision not to apply the Section 22 EEO requirements to VDCs as an act of discretion. The Cable Act, however, does not give the Commission discretion to selectively enforce its EEO provisions against some multichannel video program distributors ("MVPDs") and not against others. Section 634(a) of the Act, 47 U.S.C. 554(a) clearly states that "[t]his section *shall* apply to any [entity] . . . engaged primarily in the management or operation of any cable system." (emphasis added) Subsection (h)(1) further states that, for purposes of Section 634, the term "cable operator" includes MVPDs. Thus, the Commission was not exercising discretion when it concluded that the EEO requirements are not applicable to VDCs.

The only determination the Commission had to make was whether VDCs qualified as MVPDs. An MVPD is "a person . . . who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. 522(12) The Commission correctly determined that VDCs are not MVPDs when it recognized that VDCs are common carriers that do not sell programming directly to subscribers or customers. Rather, as the Commission properly recognized, the entity that purchases capacity from the VDC and selects the programming is an MVPD to which the EEO requirements do apply. Thus, in

concluding that the EEO requirements do not apply to VDCs, the Commission was simply adhering to the mandates of the Cable Act.

NAACP/UCC also argue that the Commission construed the objectives of the EEO provisions too narrowly by focusing primarily on programming diversity. This position, however, completely ignores the clear statement of intent in the Act itself and in the legislative history. The Congressional findings in Section 22(a) of the 1992 Act declare that there is a lack of females and minorities in cable and broadcast television, that increased numbers will advance the national policy favoring diversity in the expression of views in the electronic media, and that rigorous enforcement of EEO rules is required to deter discrimination and effectively bring about increased numbers of females and minorities. No other findings were made. Furthermore, the Commission properly recognized that both the legislative histories of the 1984 and 1992 Acts illustrate Congress' focus on program diversity. (Order, ¶45 note 147) Thus, any attempt to advance other goals is beyond the scope of the Cable Act.

NAACP/UCC predict dire consequences for equal employment opportunities if the 1992 Act's EEO requirments are not applied to VDCs. Through this claim, the petitioners would have one believe that there are no protections against discrimination in the telephone industry. LECs are subject to an entire set of EEO regulations separate and apart from those applicable to cable and MVPDs. If Congress believed that those regulations were inadequate, it could have mandated changes similar to those in the 1992 Act. Thus, EEO regulations are currently in effect for telcos that will protect against the consequences predicted by NAACP/UCC.

CONCLUSION

For the reasons discussed above, GTE requests that the Commission deny the NAACP/UCC Petition for Reconsideration of the Commission's determination that Section 22 of the 1992 Cable Act and accompanying regulations do not apply to video dialtone carriers providing only common carrier transport service.

Respectfully submitted,

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Certificate of Service

I, Javae D. Smith, hereby certify that copies of the foregoing "Opposition of GTE" have been mailed by first class United States mail, postage prepaid, on this 7th day of October, 1993 to all parties of record.

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