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

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 )  
 )  
Equal Employment Opportunities )

MM Docket No. 92-261

PARTIAL OPPOSITION

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to Section 1.429(f) of the Federal Communications Commission's ("Commission") Rules,<sup>1</sup> hereby files its Partial Opposition to the Petition for Reconsideration (or "Joint Petition") filed by The National Association for the Advancement of Colored People and The Office of Communication of the United Church of Christ ("Joint Petitioners") on August 23, 1993, in the above-captioned rulemaking. In this Partial Opposition, U S WEST opposes the request of the Joint Petitioners that, on reconsideration, the Commission extend the 1992 Cable Act's<sup>2</sup> Equal Employment Opportunity ("EEO") requirements to video dialtone (or "VDT") service providers. U S WEST expresses no opinion on any other portions of Joint Petitioners' Petition for Reconsideration.

<sup>1</sup>47 C.F.R. § 1.429(f).

<sup>2</sup>Cable Television Consumer Protection and Competition Act of 1992.

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## I. BACKGROUND

In the 1992 Cable Act, Congress found "that females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries"<sup>3</sup> and adopted statutory provisions relating to equal employment opportunity.<sup>4</sup> Congress extended these EEO requirements to cable operators and defined "cable operators," for EEO purposes, to include "any multichannel video programming distributor."<sup>5</sup> Section 602(12) of the Act defines a multichannel video programming distributor as:

a person such as, but not limited to, a cable operator, a multichannel, multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.<sup>6</sup>

In its Order implementing the EEO provisions of the Act,<sup>7</sup> the Commission adopted rules limiting the scope of these provisions to "those entities which have control over more than one channel of video programming provided directly to the

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<sup>3</sup>1992 Cable Act, Section 22(a)(1), H.R. Rep. No. 862, 102d Cong., 2d Sess. (1992), at 41 ("1992 House Report").

<sup>4</sup>47 U.S.C. § 554.

<sup>5</sup>47 U.S.C. § 554(h)(1).

<sup>6</sup>47 U.S.C. § 522(12).

<sup>7</sup>In the Matter of Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order, 8 FCC Rcd. 5389 (1993) ("Order").

public."<sup>8</sup> Thus, "[m]ultichannel video programming distributors do not include any entity which lacks control over the video programming distributed."<sup>9</sup> Since local exchange carrier ("LEC") VDT service providers are not permitted either to control the provision of video programming<sup>10</sup> provided over their VDT networks<sup>11</sup> or provide video programming directly to the public,<sup>12</sup> LEC VDT providers are not subject to the Cable Act's EEO provisions.<sup>13</sup>

Joint Petitioners object to this exclusion and argue that, on reconsideration, the Commission should extend the Act's EEO requirements to video dialtone providers. U S WEST opposes Joint Petitioners' request.

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<sup>8</sup>Id. at 5398 ¶ 45.

<sup>9</sup>Id. at 5402 Appendix B (to be codified at 47 C.F.R. § 76.71(a)).

<sup>10</sup>The Cable Act defines "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. § 522(19).

<sup>11</sup>47 C.F.R. § 63.54(d).

<sup>12</sup>47 U.S.C. § 533(b)(1), (2).

<sup>13</sup>However, as the Commission notes in its Order, program service providers using LEC video dialtone service to deliver video programming to subscribers would be subject to the Cable Act's EEO requirements. See Order at 5398-99 ¶ 46. Similarly, if LEC VDT providers are allowed to provide video programming directly to subscribers in the future, they will also be subject to these provisions.

II. CONTROL OVER VIDEO PROGRAMMING IS A REASONABLE TEST FOR DETERMINING WHETHER AN ENTITY SHOULD BE CLASSIFIED AS A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR

In arguing that the Act's EEO requirements should be extended to VDT providers, Joint Petitioners imply that the Commission's "control" test for identifying multichannel video program distributors ("MVPD") is unreasonable.<sup>14</sup> U S WEST disagrees.

If Congress felt strongly about including VDT providers in the coverage of the Act's EEO requirements, it could have explicitly included them in the definition of MVPD -- but it did not. By including the language "but not limited to," Congress provided a definition of MVPD which was open-ended and forced the Commission to exercise its discretion. The Commission's decision to focus on "control over video programming" as the primary factor in determining whether an entity was an MVPD was quite reasonable given the Act's goal of favoring program diversity.<sup>15</sup> Joint Petitioners offer no arguments or evidence as to why the Commission's control test is unreasonable, nor do they offer any alternative tests for determining which entities are included within the scope of the term "multichannel video programming

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<sup>14</sup>See Joint Petition at 9-10.

<sup>15</sup>In adopting the Cable Act's EEO provisions, Congress found that "increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media." 1992 Cable Act, § 22(a)(2), 1992 House Report at 41. See also Order at 5398 ¶ 45.

distributor" for purposes of implementing the Act. As such, Joint Petitioners' request for reconsideration of this issue should be denied.

III. JOINT PETITIONERS' INFERENCE THAT LEC VIDEO DIALTONE PROVIDERS ARE NOT SUBJECT TO EEO REQUIREMENTS IS UNFOUNDED

Joint Petitioners' inference that VDT providers are not subject to EEO requirements<sup>16</sup> is baseless. U S WEST and other potential VDT providers are subject to a plethora of EEO requirements. U S WEST is committed to complying with both the spirit and the letter of these requirements. Attachment 1 contains a summary of the EEO requirements which currently apply to U S WEST. Joint Petitioners perform a disservice by heedlessly inferring that without the application of the Cable Act's EEO requirements there will be no effective EEO regulation of VDT providers.

Congress found that minorities and women are not employed in significant numbers in managerial positions in the broadcast and cable television industries<sup>17</sup> -- not in the telecommunications industry. It makes little sense to try to remedy this problem by applying what are essentially CATV EEO requirements to telecommunications common carriers.

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<sup>16</sup>See Joint Petition at 10.

<sup>17</sup>See supra note 3.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny those portions of the Joint Petition which request extending the Cable Act's EEO requirements to video dialtone providers.

Respectfully submitted,

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October 7, 1993

**ATTACHMENT 1**

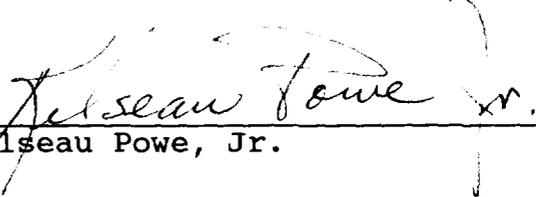
**FEDERAL EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION  
LAWS, EXECUTIVE ORDERS, AND AGREEMENTS  
GOVERNING HUMAN RESOURCES ISSUES WITHIN U S WEST COMPANIES**

| <u>Common Title</u>                                              | <u>Cite</u>                                                                                                 | <u>Who Applies To</u>                                                                                                                                                                                                                                              | <u>Annual Reporting Forms</u>                                                                               | <u>Basic Requirements</u>                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title VII of the Civil Rights Act of 1964                        | 42 U.S.C. §2000e, <u>et seq.</u>                                                                            | Private employers with 15 or more employees, and others                                                                                                                                                                                                            | Standard Form 100 (EEO-1) (must be filed only by employers with 100 or more employees)<br>29 C.F.R. §1602.7 | Prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin. Administered by EEOC.                                                                                                                                                                                                                    |
| Age Discrimination in Employment Act of 1967 (ADEA)              | 29 U.S.C. §621, <u>et seq.</u>                                                                              | Private employers with 20 or more employees, and others                                                                                                                                                                                                            | None                                                                                                        | Protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment. Administered by EEOC.                                                                                                                                                                                                                                           |
| Americans with Disabilities Act of 1990 (ADA)                    | 42 U.S.C. §12101, <u>et seq.</u>                                                                            | Private employers with 15 or more employees, and others                                                                                                                                                                                                            | None                                                                                                        | Protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardships. Administered jointly by EEOC and OFCCP. |
| Equal Pay Act of 1963                                            | 29 U.S.C. §206 (Part of Fair Labor Standards Act, which begins at 29 U.S.C. §201)                           | Private employers (no lower limit on number of employees), and others                                                                                                                                                                                              | None                                                                                                        | Prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment. Administered by EEOC.                                                                                                                                                                                                                                                                                                           |
| Section 503 of the Rehabilitation Act of 1973                    | 29 U.S.C. §701, <u>et seq.</u>                                                                              | Employers holding federal contracts or subcontracts for \$2,500 or more. (Employers with 50 or more employees, and contract of \$50,000 or more, must have affirmative action program. Proposed revisions raise this to 150 or more employees and over \$150,000.) | Standard Form 100 (EEO-1)<br>41 C.F.R. §60-741.6                                                            | Prohibits job discrimination because of disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodation, can perform the essential functions of a job. Administered by OFCCP.                                                                                                                                                                                          |
| Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRA) | 38 U.S.C. §4212, <u>et seq.</u>                                                                             | Employers holding federal contracts or subcontracts for \$10,000 or more. (Employers with 50 or more employees, and contract of \$50,000 or more must have affirmative action program.)                                                                            | Federal Contractor Veterans' Employment Report (VETS-100)<br>41 C.F.R. §61-250.10                           | Prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans and qualified special disabled veterans. Administered by OFCCP.                                                                                                                                                                                                                                                                  |
| Communications Act of 1934                                       | 47 U.S.C. §151, <u>et seq.</u><br>[See 47 C.F.R. §21.307, and others, which implement EEO goals of the FCC] | Common carriers, broadcasters, cable companies and others regulated by FCC                                                                                                                                                                                         | Form 395 Annual Employment Report<br>47 C.F.R. §1.815                                                       | Prohibits employment discrimination based on sex, race, color, religion, or national origin. Requires establishment and filing with FCC an equal opportunity program, and annual reporting on employment.                                                                                                                                                                                                                                                        |
| Executive Order 11141                                            | --                                                                                                          | Employers holding federal contracts or subcontracts for \$10,000 or more                                                                                                                                                                                           | None                                                                                                        | Prohibits discrimination against applicants and employees in employment practices and decisions on the basis of age. No agency has been given specific authority to administer.                                                                                                                                                                                                                                                                                  |

| <u>Common Title</u>                                                                                                                        | <u>Cite</u>                 | <u>Who Applies To</u>                                                                                                                                                                   | <u>Annual Reporting Forms</u>                                                                                                                                  | <u>Basic Requirements</u>                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Executive Order 11246                                                                                                                      | --                          | Employers holding federal contracts or subcontracts for \$10,000 or more. (Employers with 50 or more employees, and contract of \$50,000 or more must have affirmative action program.) | Standard Form 100 (EEO-1)<br>41 C.F.R. §60-1.7                                                                                                                 | Prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment. Administered jointly by EEOC and OFCCP.                                                                                                                                                                                                                            |
| Executive Order 11625                                                                                                                      | --                          | Employers holding federal contracts for \$10,000 or more                                                                                                                                | Periodic reports of subcontracting                                                                                                                             | Provides for maximum practicable opportunity for minority owned businesses to participate in performance of government contracts by requiring federal contractors to establish programs to enable MBE's to be considered fairly, and encourage their competition for such work. Requires contractors to submit periodic reports of subcontracting, as requested by government. Administered by OFCCP.                                                          |
| Executive Order 11701 of 1973                                                                                                              | --                          | Employers holding federal contracts or subcontracts for \$10,000 or more                                                                                                                | None                                                                                                                                                           | Prevents discrimination against Vietnam era veterans (see VEVRA above). Administered by OFCCP.                                                                                                                                                                                                                                                                                                                                                                 |
| Executive Order 11758 of 1974                                                                                                              | --                          | Employers holding federal contracts or subcontracts for \$2,500 or more                                                                                                                 | None                                                                                                                                                           | Prevents discrimination against handicapped (see Rehabilitation Act above). Administered by OFCCP.                                                                                                                                                                                                                                                                                                                                                             |
| Executive Order 12138                                                                                                                      | --                          | Employers holding federal contracts for \$10,000 or more                                                                                                                                | Period reports of subcontracting                                                                                                                               | Provides for maximum practicable opportunity for women owned businesses to participate in performance of government contracts by requiring federal contractors to establish programs to enable WBE's to be considered fairly, and encourage their competition for such work. Requires contractors to submit periodic reports of subcontracting, as requested by government. Administered by OFCCP.                                                             |
| Standard Affirmative Action Format (SAAF) and National Reporting System (NRS) (formerly National Self-Monitoring Reporting System (NSMRS)) | OFCCP Order 810a4, 12/21/82 | Multi-establishment employers with homogeneous personnel policies. (Former Bell System companies and their subsidiaries have such agreements.)                                          | RBOC Agreements - Report 1<br>- Regional Job Group Summary (annual). Reports 2 and 3 are only required when Report 1 shows underutilization in a job category. | Agreements signed by RBOCs require affirmative action and annual reporting of hiring and employment practices to prevent discrimination on basis of race, color, national origin, religion, sex, age. Consists of two agreements, SAAF and NRS, signed in 1986 and 1987, respectively, between the OFCCP and Bell System companies. Replaced the NSMRS, which had been in effect since 1982, and contained many of the same provisions. Administered by OFCCP. |

**CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 7th day of October, 1993, I have caused a copy of the foregoing **PARTIAL OPPOSITION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

  
\_\_\_\_\_  
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Hot List Items From 10/04/93 to 10/19/93

EVENT DATE -- NOTES/OPUS PROCEEDING -- SUBJECT/EVENT TITLE

10/04/93 -- BM/RD (NAP) MO  
CN 92-1628 -- AT&T TARIFF FORB. REAFFIRMAT'N APPEAL  
+AT&T BRIEF IN OPPOSITION TO MCI PETITION FOR WRIT OF CERTIORARI -- U.S. SUP.  
CT.

10/04/93 -- BM/RD (NAP?) MO  
CN 93-1592 -- BELL ATL. CABLE BENCH'K RATE REG. APPEAL  
+INTERVENTION MOTION -- D.C.CIR.

10/04/93 -- BM/RD (F?) MO  
CN 93-1598 -- COMPTEL OVEREAR'S COMPL. INTEREST APPEAL  
+INTERVENTION MOTION -- D.C.CIR.

10/06/93 -- BM/RD (NAP?) WE  
CN 92-70083 -- CAL. CI-III NONSTRUCT. SAFEGUARDS APPEAL  
+INT'RS (SUPP'G PET'RS) JOINT REPLY BRIEFS -- 9TH CIR.

10/07/93 -- BM/RD (F?) TH  
CN 91-1507 -- GTE 800 SERVICE ACCESS APPEAL  
+RESPONSE TO SHOW CAUSE RE PROPOSED BRIEFING FORMAT -- D.C.CIR.

10/08/93 -- BM/RD (F?) FR  
CN 93-1606 -- SWBT OVEREARNINGS COMPL. INTEREST APPEAL  
+INTERVENTION MOTION -- D.C.CIR.

10/12/93 -- BM/RD (F?) TU  
CN 93-000 -- USWC OVEREARNINGS COMPL. INTEREST APPEAL  
+PETITION FOR REVIEW -- D.C.CIR.

10/12/93 -- BM/RD (F?) TU  
CN 93-1607 -- NET/NYT OVEREAR'S COMPL. INTEREST APPEAL  
+INTERVENTION MOTION -- D.C.CIR.

10/12/93 -- BM/RD (F?) TU  
CN 93-1608 -- PACBELL OVEREAR'S COMPL. INTEREST APPEAL  
+INTERVENTION MOTION -- D.C.CIR.

10/12/93 -- BM/RD (F?) TU  
CN 93-1609 -- PACBELL OVEREAR'S COMPL. INTEREST APPEAL  
+INTERVENTION MOTION -- D.C.CIR.

10/13/93 -- BM/RD (F?) WE  
CN 93-1613 -- SWBT OVEREARNINGS COMPL. INTEREST APPEAL  
+INTERVENTION MOTION -- D.C.CIR.

10/18/93 -- BM/RD (F) MO  
CN 92-1619 -- BELL ATL. EXPANDED INTERC. S.A. APPEAL  
+USWC, ET AL. JOINT OPENING BRIEF -- D.C.CIR.