A, how many organizations in the following categories have you contacted for applicants, whenever job vacancies are available in your organization: a) minority organizations, b) women's organizations, c) media institutions, d) educational institutions, and e) other potential sources minority and female applicants."

2) adding a question 10 to the Form designed to ensure that an operator maintains a record-keeping system of its EEO program. Specifically - "Do you maintain a record-keeping system for your EEO program that can substantiate all of your affirmative responses to the questions above? yes__ no __"

D. THE INVESTIGATION OF CABLE OPERATORS EVERY FIVE YEARS SHOULD INVOLVE A MORE THOROUGH EXAMINATION OF SUPPORTING DOCUMENTATION.

As noted in the NOI, a Supplemental Investigation Sheet (SIS) is sent to cable operators once every five years in fulfillment of the requirement to periodically investigate operator employment practices. Section 634(e)(2) of the Communications Act.

Routinely, only 3 or 4 out of the eighteen SIS questions are selected by Commission staff to be completed by each cable operator.[34] Operators are not required to provide support documentation in their response to the questions. Moreover, staff select questions based upon responses provided by operators in their most recent Annual Employment Report - an instrument that has been previously has been proven to be ineffective in identifying noncompliance (see subsection C, supra).

In short, the statutorily mandated investigation consists of a poorly selected list of 3 to 4 questions. Given the

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[34] Interviews with FCC EEO specialists January 14 and February 1, 1993.

unlikelihood of an audit (see subsection D, infra), most operators submit the same boilerplate language for every investigation.

An investigation that is intended to examine employment practices in any significant way should, at minimum, require that support documentation be submitted. This would serve the two-fold purpose of ensuring accuracy and minimizing the need for on-site audits.

Operators should be required to supply documentation in each of the following areas:

-reliance upon minority and other referral agencies as a part of the recruitment effort;

-evaluations of employment profile and job turnover against the availability of women and minorities in the labor market;

-efforts to promote women and minorities in positions of greater responsibility;

-self-assessment and analysis of efforts and difficulties encountered in implementing the EEO program;

-efforts to business with female and minority entrepreneurs; and

-efforts to ensure that each level of management is informed and, in fact, carries out its EEO responsibilities.

The SIS questions selected by the Commission also appear to overlook the need to ensure that employees are properly classified on the Annual Employment Report. Section 634 (e)(2). It is apparent that all aspects of the Commission's five-year investigation are greatly need of revision.

E. TWELVE CABLE TV AUDITS PER YEAR IS INSUFFICIENT TO VERIFY COMPLIANCE WITH EEO RULES.

The NOI states that the Commission "schedules" audits of 25 cable companies a year. NOI para. 17. While this may be technically true the Commission actually conducts about 12 audits per year.[35] Given that there are over 2,300 cable units, the number of audited operators represents only .005 percent of the entire industry.

The need for more audits is underscored by the fact that half of all operators fail on-site inspections of the EEO program.[36] According to FCC staff, operators fail on-site audits because: 1) of their inability to produce evidence that they have recruited from minority and female referral sources, 2) they do not maintain an EEO record-keeping system that would enable them to assess their EEO efforts, 3) they misclassify employees in job categories of the Annual Employment Report. Field inspections often turn into EEO training sessions, according to FCC staff.

Commenters recommend that the Commission significantly increase the number of inspections, and also conduct regional training programs during the course of field visits. This approach would both serve to maximize the use of Commission resources and increase EEO compliance.

F. THE PUBLIC HAS A RIGHT TO KNOW IF THE CABLE OPERATOR IN THEIR COMMUNITY PRACTICES EMPLOYMENT DISCRIMINATION. THE COMMISSION SHOULD PUBLISH THE LIST OF CABLE OPERATORS DENIED EEO CERTIFICATION.

Each year the Commission is required to determine whether

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[35] Interview with FCC EEO staff December 2, 1993.

[36] NOI para. 17. Interviews with FCC EEO staff January 14 and February 1, 1993.

every cable operator is in compliance with the EEO requirements of the Cable Act. Section 634(e)(1) of the Communications Act of 1934. Denial of certification means that an operator has failed to afford equal employment opportunity in accordance with the standards of Sections 634(b),(c),(d) of the Act.

Except upon special request, the list of operators denied certification is maintained for the internal use of the Commission and is not released to members of the public.

Denial of certification holds little significance if the identity of operators that engage in employment discrimination is kept a secret. The Commission forfeits the opportunity to improve employment practices by not publishing the identities of non-complying operators. Like any other business, cable operators have a natural incentive to correct business practices that would otherwise undercut their public image.

In addition to releasing information to the general public, the Commission should provide special notice to the franchise authorities where operators conduct business. Subscribers have a right to know if the cable operator serving their community engages in employment discrimination.

In order to avoid untimely delays due to the processing backlog at the Commission, OC/UCC urges the Commission to release the names of operators as the list is updated. The public should not have to wait two to three years before receiving notice.

G. RECORDS SHOULD BE RETAINED FOR A PERIOD OF EIGHT YEARS.

The NOI requests comment on the length of time that cable

operators should be required to maintain records about their recruitment efforts. NOI para. 34.

Commenters recommend that all records be remain available for public inspection for a period of eight years. The Cable Act defines failure to comply to mean "3 or more failures during any 7-year period." Section 634 (f)(1) of the Communications Act. Therefore, in order to determine whether repeated noncompliance has occurred the Commission and the general public must be able to review seven years of operator records. An additional year is necessary in order to perform the review in the year following the seventh year.

H. PROGRAM PROVIDERS USING THE FACILITIES OF MULTICHANNEL VIDEO PROGRAM DISTRIBUTORS SHOULD BE PLACED ON NOTICE OF THEIR EEO OBLIGATIONS.

In response to the Commission's Cable TV NPRM, OC/UCC recommended that video dialtone be subjected to the EEO provisions of the Cable TV Act. This argument was based upon the expressed intent of Congress[37] as well as Commission precedent where the monopoly status of common carriers has provided a basis

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[37] Legislative history commenting on the definition of a "multichannel video programming distributor" stated

> This provision reflects the Committee's belief that it is important to ensure females and minorities equal employment and promotional opportunities in <u>new, emerging, and alternative</u> technologies.

House Committee on Energy and Commerce, H.R. Rep. No. 102-628. 102d Cong., 2d. Sess., at 113 (emphasis provided).

for EEO jurisdiction.[38]

For the purpose of this proceeding, Commenters reassert the arguments previously made by OC/UCC with regard to video dialtone,[39] and further note that Congresswomen Cardis Collins has supported this position in a letter that is part of the record of that proceeding.[40]

For reasons that Commenters find to be inconsistent with FCC precedent, the Commission declined to regulate video dialtone, deciding instead to exert jurisdiction over "program service

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[38] In exerting its EEO jurisdiction over cable TV, a *de facto* monopoly service, the FCC said,

> 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 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.

Report and Order, 24 FCC 2d 725, 726 (1970) ("Common Carrier Report and Order"). (emphasis provided)

[39] Comments of OC/UCC, Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket 92-261, February 16, 1993. at 17.

[40] Letter of Congresswomen Cardiss Collins, dated April 15, 1993, to Chairman James H. Quello.

provider[s] using the video dialtone transport facility".[41] Having adopted this policy, the Commission is now confronted with the task of placing such "program service providers" on notice of their EEO obligations. NOI para. 36.

An efficient method of achieving this objective is to require video dialtone providers and other MVPDs to obtain a written acknowledgement of EEO obligations from each program provider that uses their common carrier facilities. A copy of such acknowledgement should be forwarded to the Commission. This procedure would assist the Commission in developing a list of covered program providers that can be compared with the list of Annual Employment Reports that are filed each year.

I. TO THE EXTENT THAT VIDEO DIALTONE IS USED TO TRANSMIT THE PROPRIETARY PROGRAMMING OF LECs, THE EEO PROVISIONS OF THE CABLE ACT SHOULD APPLY.

Under the Commission's Video Dialtone Second Report and Order[42] the telephone industry has been granted considerable programming privileges. The Order specifically says that two types of programming fall outside of the statutory ban on video programming:[43] 1) any programming that is not "severable" from the underlying service (e.g. interactive shopping or "video catalogue" services, programming involving multimedia graphics and information, other programs that entail two-way viewer

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[41] Cable TV EEO Report and Order, para. 46.

[42] Second Report and Order, CC Docket No. 87-266, FCC 92-327 (1992) ("Second Report and Order")

[43] id., paras. 74 - 77.

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).

Now that the various LECs have submitted Section 214 applications to provide video dialtone service the Commission needs to ascertain whether any programming fitting the above description will be offered. To the extent that such proprietary programming is marketed directly to consumers, the Commission should require LECs to comply with the EEO provisions of the Cable Act.

By issuing a clarifying statement, the Commission could place industry and the general public on notice of its EEO policy. Such a statement should provide examples of the kinds of programming in which LECs are permitted to have an ownership interest. Commenters would gladly work with the Commission in developing such a clarifying statement.

V. THE EEO PROVISIONS OF THE COMMUNICATIONS ACT SHOULD APPLY TO TITLE II CARRIERS.

The Commission has requested comment on whether its EEO jurisdiction should be extended to common carriers, particularly those that compete with broadcast, cable TV, and MVPDs. NOI para. 39.

The distinctions that characterized these once separate industries are rapidly disappearing. Commenters, therefore, contend that the EEO provisions of the Cable Act should apply to

all Title II companies with a workforce of significant size.

Title II carriers are presently required to comply with an EEO policy adopted by the Commission in 1970.[44] The policy which was a forerunner of cable TV EEO enforcement simply requires common carriers to adopt an EEO program and to submit an Annual Employment Report. Enforcement on the part of the Commission has been virtually nonexistent.[45] Firmly established precedent for expanded EEO jurisdiction may be found in the 20 years that the common carrier industry has substantially complied with the 1970 policy. Given the convergence that is taking place technologically and in the marketplace, there is need to update outmoded rules by applying the same EEO requirements to all competitors.

The basis for the Commission's EEO jurisdiction has traditionally been the nexus between content-based services and diversity.[46] Essential services (newspapers, books, medical services, and civic information), however, can be increasingly

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[44] Common Carrier EEO Report and Order. See 47 CFR 21.307 concerning point-to-point microwave (i.e. the transmission of radio and TV signals), 47 CFR 22.307 governing cellular and mobile telephone, and 47 CFR 23.55 governing international transmissions.

[45] For nearly 25 years the Commission has collected and stored common carrier Annual Employment Reports. An industry-wide employment trend analysis has never been compiled by the Commission. For nearly 25 years the Commission has collected and stored common carrier Annual Employment Reports. An industry-wide employment trend analysis has never been compiled by the Commission. Common carrier "enforcement" is responsibility of 50 percent of the time of one Common Carrier Bureau employee.

[46] NAACP v. Federal Power Commission, 425 U.S. 662 (1975) note 7.

accessed by means of sophisticated digitized multi-media technology. Policies of diversity that were once reserved for content-based services must be applied to services that will control access to information in a digitized format. Common carriers can no longer be viewed as strictly content-neutral service providers.

Companies that serve as conduits of information created by others will impact diversity by determining: 1) the nature of the services that will be researched and developed for electronic services, 2) the consumer market demographics that will initially receive services,[47] and 3) pricing in accordance with targeted consumer market segments.

For example, affluent households are estimated to subscribe to custom calling features at three times the rate of non-affluent households.[48] Hence, a high priority has placed on development of this kind of product for consumers with a high level of disposable income.

Payment terms, the location of public telephones, enhanced

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[47] Petition for Relief From Unjust and Unreasonable Discrimination in the Deployment of Video Dialtone Facilities, by Center for Media Education et al, May 23, 1994, complaining that video dialtone deployment plans systematically exclude communities with high concentrations of minorities and low-income people.

[48] According to the Yankee Group, a market research firm for the Regional Bell Operating Companies, the penetration rate for call-waiting, three-way calling, call forwarding services was 43.3 percent for "technologically advanced families" ("TAFs") compared to 15.4 percent for non-TAFs. TAFs constitute 15.7 percent of U.S. households and have a mean annual income of $58,800, according to a 1989 survey by the Yankee Group. The Technologically Advanced Family, The Yankee Group, Boston, Massachusetts 1990 p. 42.

service features, and the availability of foreign language operators are all factors that greatly determine access for members of minority and low-income communities. In short, by controlling access common carriers significantly determine whether broad and diverse segments of society will receive advanced communication services.

For the above reasons Commenters contend that the provisions of Section 634 should apply to Title II companies. The exception that the top six job classifications contained in Section 634 (d)(3)(A) should be amended. Commenters are interested in working with the Commission to develop job classifications that would be appropriate for Title II carriers.

VI. CONCLUSION: A REGULATORY MANDATE FOR THE NEXT GENERATION OF MEDIA AND TELECOMMUNICATIONS

For the foregoing reasons, Commenters suggest that the Commission improve its EEO policies in ways that convey its commitment to the goals of diversity and increased employment opportunities for minorities and women. Specifically, the Commission should set higher employment level standards and revise its employment reporting procedures to more accurately reflect the progress of employers in the broadcast and cable industries. The Commission should also apply its EEO rules to common carriers.

The Commission should be mindful, however, of the need to consider the suggestions in these comments with an eye toward the future. In describing the development of multimedia technology,

Stewart Brand notes: "Communications media are not just changing, they're changing into each other, and when they get together, they breed."[49] Today, new technologies, ventures and mergers combine industries that at one time appeared discrete and insular. The lines that historically have divided communications systems are quickly disappearing.

The Commission must develop a regulatory scheme that reflects the trend of convergence and provides for the diversity of viewpoints -- conveyed through whatever means -- that the public deserves. To that end, Commenters recommend that EEO rules be applicable across the board to every industry regulated by the Commission. Commenters also suggest that the Commission hire a historian to chronicle the pervasiveness of discrimination in all of the businesses that it regulates.

Respectfully submitted,

Anthony Pharr
Counsel, Washington Office
Office of Communication
Representation
of the United Church of Christ
Center
2000 M Street N.W., 4th Fl.
Washington, D.C. 20036
(202)

David Honig
Executive Director
Erik Williams
Student Intern
Minority Media and

Lisa Stevens
Fellow
Institute for Public

Georgetown University Law

600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

Dennis Courtland Hayes
General Counsel
Everald Thompson
Assistant General Counsel
NAACP

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[49] Stewart Brand, The Media Lab: Inventing the Future at MIT, New York, NY: Penguin Books, 1988, p. 19.

Telecommunications Council
3636 16th Street, N.W., B-863
Washington, D.C. 20010
(202) 332-7005

4805 Mt. Hope Drive
Baltimore, Maryland 21215
(301) 486-9193

June 14, 1994

EXHIBITS

Exhibit I

CHART 1

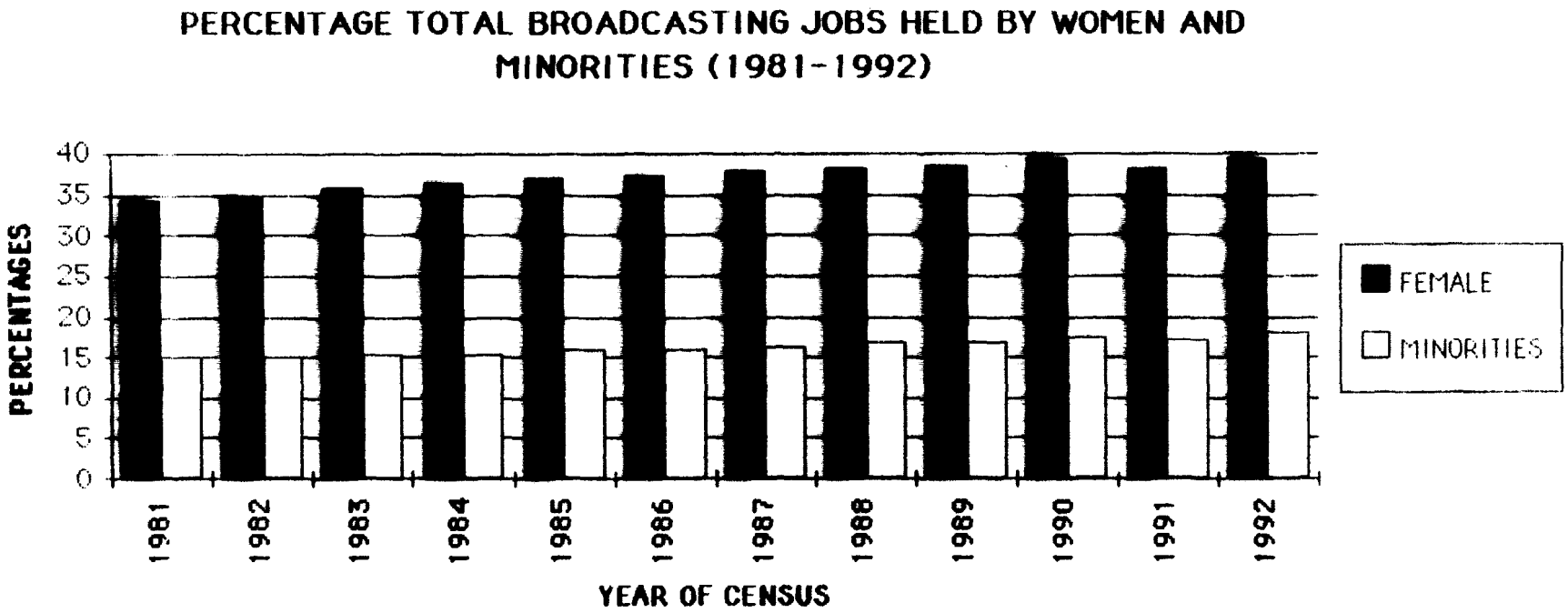


EXHIBIT Ia

TOTALSALLJOBS WKS

TOTAL PERCENTAGES FOR BROADCASTING ALL JOBS

YEAR	PERCENT FEMALE	PERCENT MINORITIES
1981	34.2	15.1
1982	35.0	15.1
1983	35.7	15.3
1984	36.4	15.4
1985	37.0	15.9
1986	37.4	16.0
1987	37.8	16.2
1988	38.3	16.8
1989	38.6	17.0
1990	39.4	17.5
1991	38.2	17.3
1992	39.5	18.2

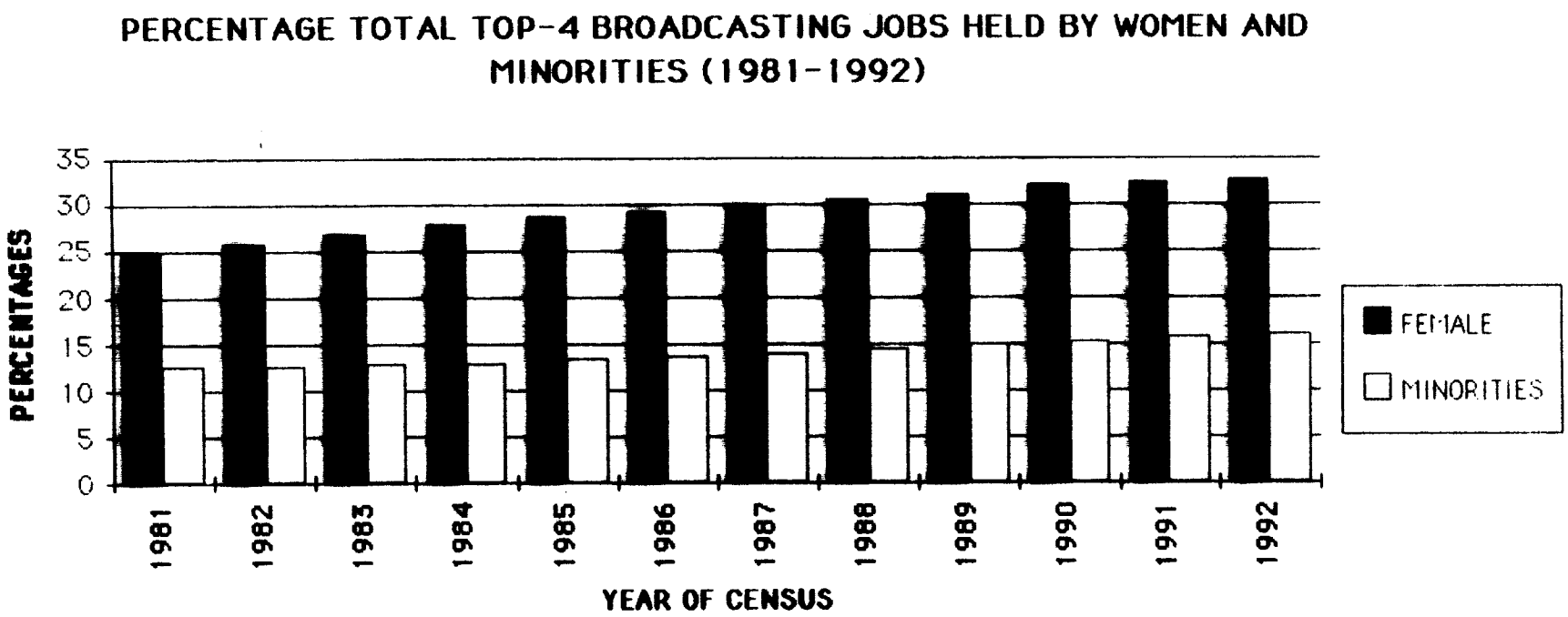

PERCENTAGE TOTAL TOP-4 BROADCASTING JOBS HELD BY WOMEN AND MINORITIES (1981-1992)
PERCENTAGES
35
30
25
20
15
10
5
0
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
YEAR OF CENSUS
FEMALE
MINORITIES

EXHIBIT II a

TOP4JOBS.WKS

TOTAL PERCENTAGES FOR BROADCASTING TOP-4 JOBS

YEAR	PERCENT FEMALE	PERCENT MINORITIES
1981	24.9	12.7
1982	25.9	12.7
1983	27.0	12.8
1984	27.8	13.0
1985	28.6	13.5
1986	29.2	13.7
1987	29.9	14.0
1988	30.4	14.4
1989	31.2	15.0
1990	32.1	15.4
1991	32.4	15.8
1992	32.6	16.1

EXHIBIT III

Chart4

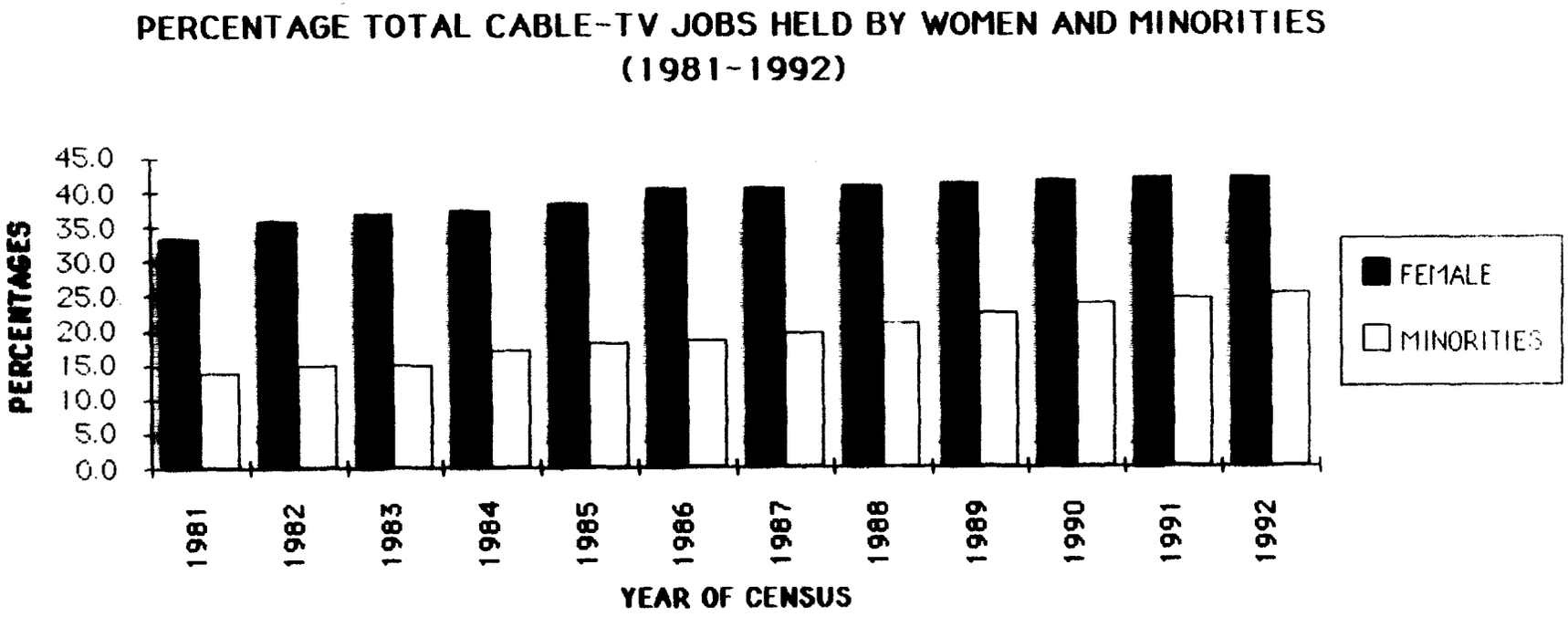


EXHIBIT IIIa

CABLEALL.WKS

TOTAL PERCENTAGES FOR
CABLE-TV
ALL JOBS

YEAR	PERCENT FEMALE	PERCENT MINORITIES
1981	33.4	14.0
1982	35.7	15.0
1983	37.0	15.0
1984	37.2	17.1
1985	38.3	18.1
1986	40.4	18.5
1987	40.4	19.5
1988	40.7	21.0
1989	41.1	22.3
1990	41.4	23.7
1991	41.8	24.6
1992	41.7	25

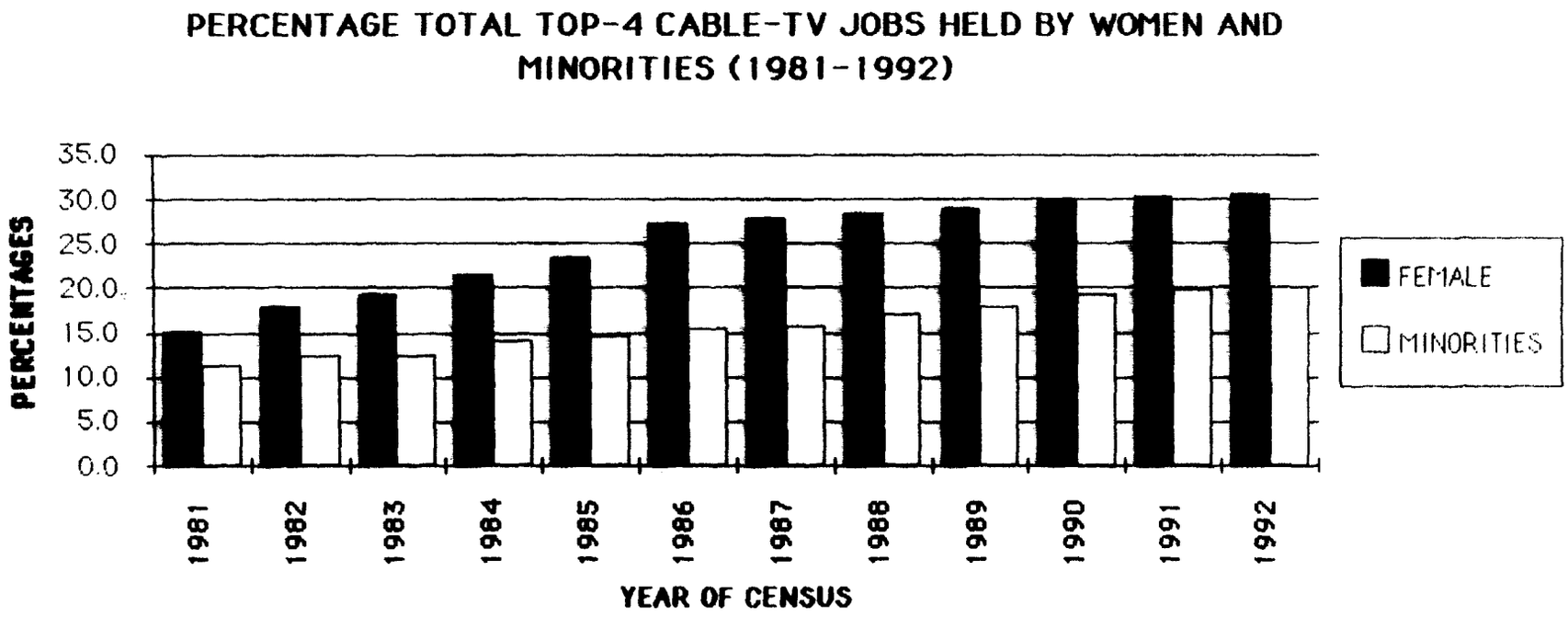

PERCENTAGE TOTAL TOP-4 CABLE-TV JOBS HELD BY WOMEN AND MINORITIES (1981-1992)
PERCENTAGES
35.0
30.0
25.0
20.0
15.0
10.0
5.0
0.0
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
YEAR OF CENSUS
FEMALE
MINORITIES

EXHIBIT IVa

TOTAL PERCENTAGES FOR CABLE-TV TOP-4 JOBS

YEAR	PERCENT FEMALE	PERCENT MINORITIES
1981	15.3	11.4
1982	17.9	12.3
1983	19.4	12.4
1984	21.5	14.0
1985	23.5	14.7
1986	27.4	15.4
1987	27.8	15.7
1988	28.3	17.1
1989	29.0	18.0
1990	30.1	19.2
1991	30.4	19.8
1992	30.7	20.0

EXHIBIT V

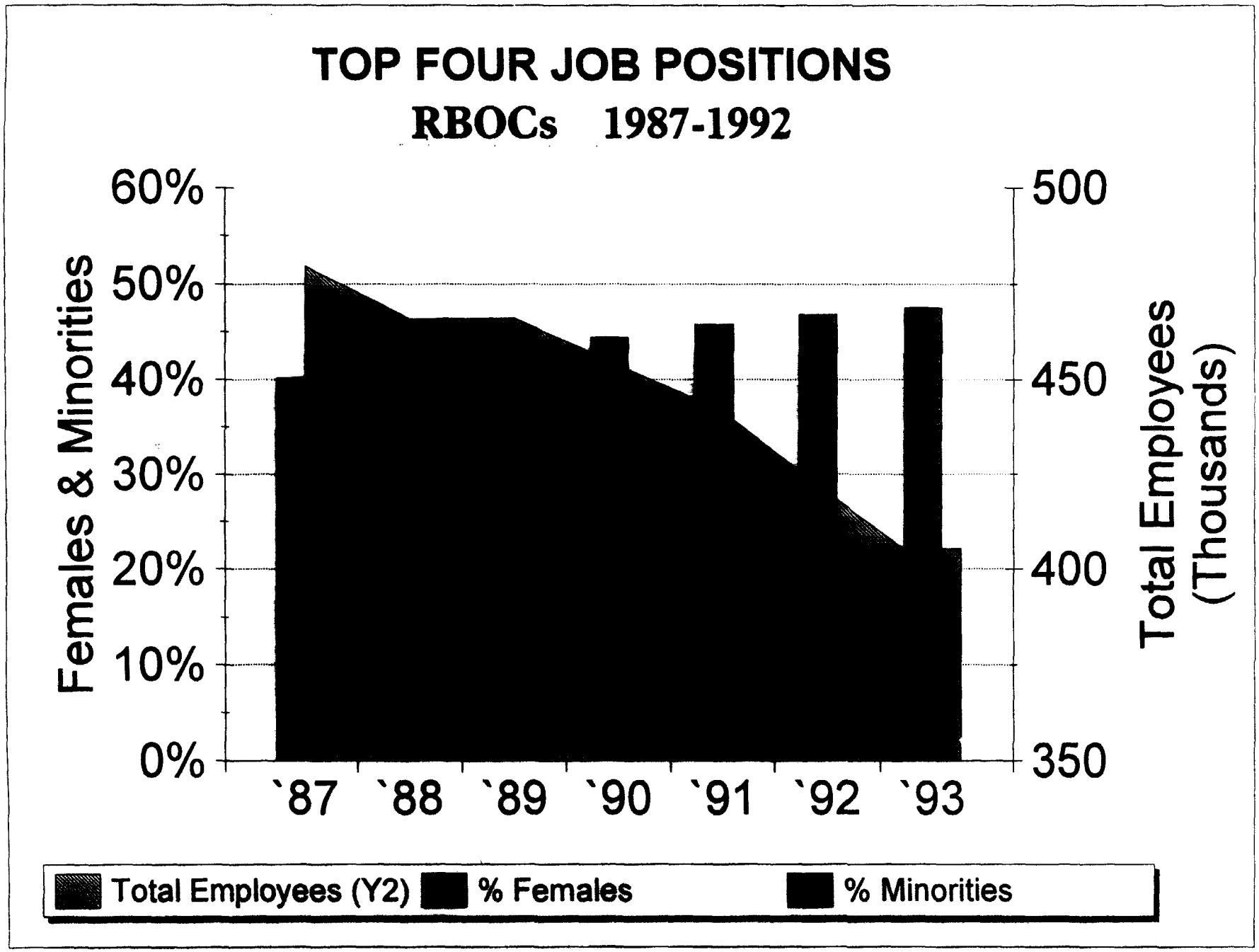
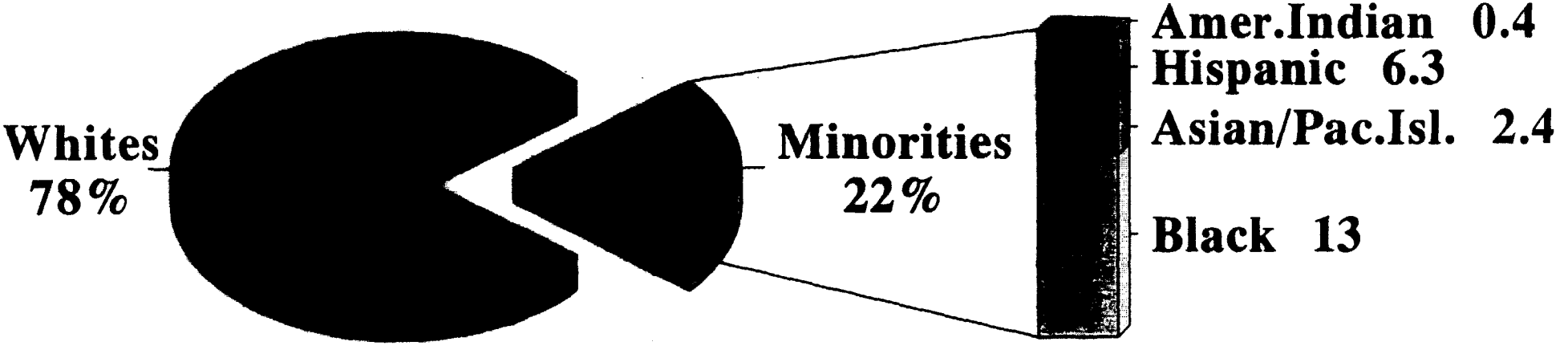

TOP FOUR JOB POSITIONS
RBOCs 1987-1992
Females & Minorities
60%
50%
40%
30%
20%
10%
0%
500
450
400
350
Total Employees (Thousands)
`87
`88
`89
`90
`91
`92
`93
Total Employees (Y2)
% Females
% Minorities

EXHIBIT VI

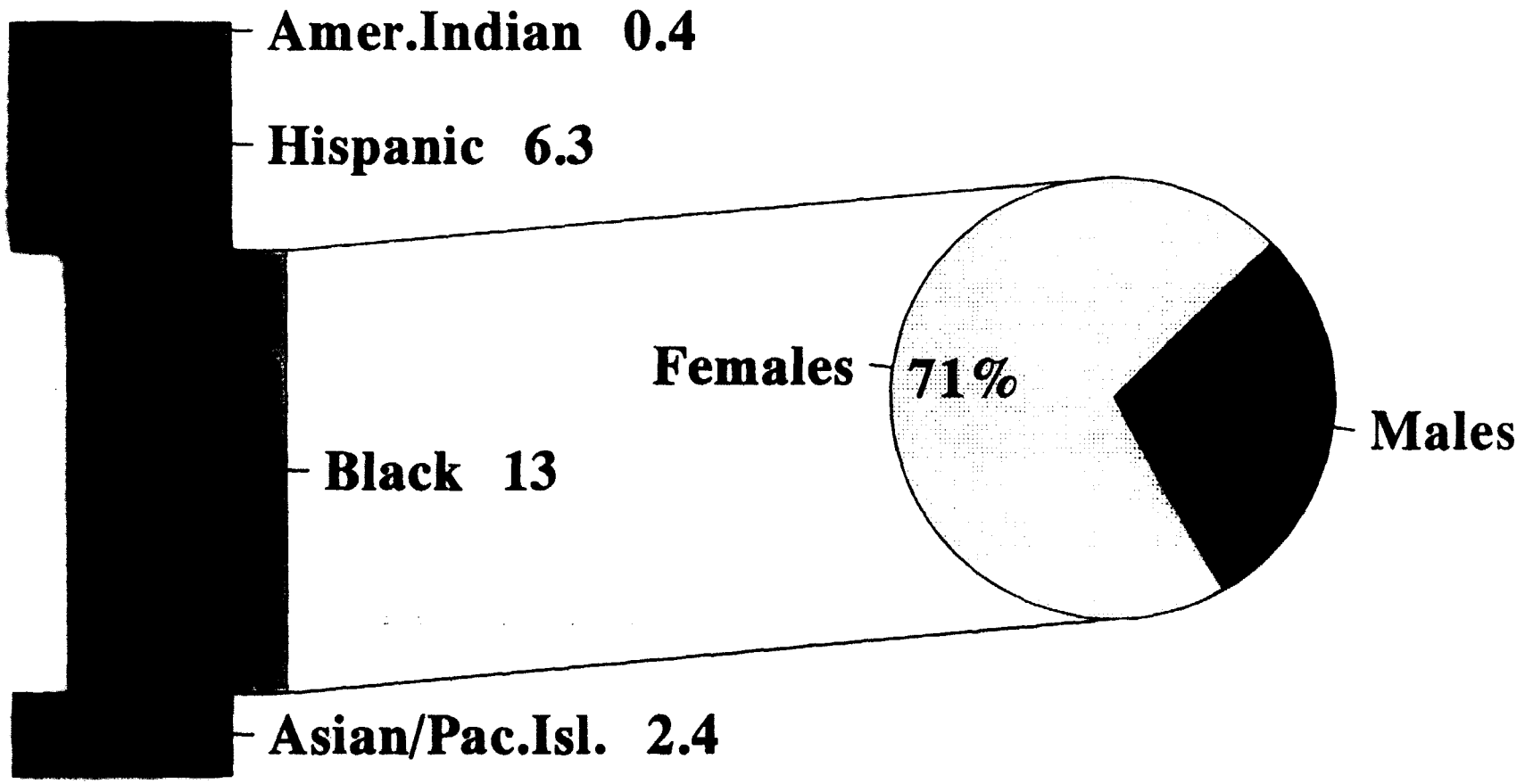
RBOCs - TOP FOUR POSTIONS
1993



Data: FCC Annual Employment Reports

EXHIBIT VII

RBOCs - TOP FOUR POSITIONS
1993 - Gender Analysis



Data: FCC Annual Employment Reports