Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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In the Matter of	
Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies	MM Docket No. 98-204
and	
Termination of the EEO Streamlining Proceeding	MM Docket No. 96-16

COMMENTS OF TELE-COMMUNICATIONS, INC.

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SUMMARY

Since the adoption of federal equal employment opportunity requirements, TCI has led the cable industry in embracing the spirit and objectives of those statutory provisions, and has fulfilled the specific EEO program requirements articulated by the Federal Communications Commission in the FCC's EEO rules for cable television entities. TCI therefore commends the Commission for its decision to swiftly revise and reaffirm its EEO policies and regulations to redress the constitutional infirmities articulated by the court in *Lutheran Church-Missouri Synod v. FCC*, No. 97-1116 (D.C. Cir. April 14, 1998), so that the program to which we are all committed will pass any future constitutional challenge and, perhaps more significantly, make federal EEO requirements compatible with an industry that has time and again demonstrated its commitment to sound EEO practices.

TCI believes that the Commission's EEO rules can be shaped to accomplish the Congressional goals and objectives for equal employment practices while allowing cable entities some degree of flexibility in operating their businesses. Therefore, as detailed below, while TCI submits these Comments to wholeheartedly endorse the Commission's proposed retention of certain EEO practices, Commenter also respectfully proposes that the Commission use this proceeding as an opportunity to fine-tune those requirements which no longer represent the most effective means to achieve equal employment opportunity practices in the workplace due to changes in the marketplace. As more fully discussed below, TCI proposes the following modifications:

- Allowing cable entities to implement and maintain employment recruitment policies tailored to the unique characteristics of the entities' local markets;
- Modifying self-assessment obligations to more accurately capture cable entities' EEO practices;

- Maintaining current recordkeeping requirements to demonstrate continued operator compliance with the proposed open and effective recruitment processes;
- Revising annual EEO reporting forms to reflect amended EEO requirements;

TCI believes that these modifications—in addition to comporting with the holding in *Lutheran Church*—will improve cable entities' abilities to implement and maintain effective, flexible and proactive EEO programs which the Commission may review and regulate consistent with Congressional intent. TCI's well-established commitment to sound EEO policies and practices underscore its proposed revisions to the Commission's EEO rules.

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Tele-Communications, Inc. ("TCI" or "Commenter"), by its attorneys, submits these Comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") released November 20, 1998, in the captioned proceeding.

I. INTRODUCTION

> *I am taking personal responsibility for assuring that our workforce adequately represents the cultural and ethnic diversity that exists among our customers and in our nation at large.* ***This is the right thing to do, and we will do it.***[1]

This statement by TCI's President, Leo J. Hindery, Jr., illustrates TCI's continued dedication to equal employment opportunity and diversity issues, and evidences TCI's support for continued FCC EEO oversight and guidance for the cable industry as a whole. Since the adoption of federal equal employment opportunity ("EEO") requirements,[2] TCI has embraced the

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[1] Speech by Leo J. Hindery, Jr. at Washington Cable Club, Washington, D.C., May 1, 1997.

[2] The federal EEO requirements were enacted as part of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) ("Cable Act"), and are codified Section 554 of the Communications Act, 47 U.S.C. § 554.

spirit and objectives of those statutory provisions and has fulfilled the specific EEO program requirements articulated by the Federal Communications Commission ("Commission" or "FCC") in the FCC's EEO rules for cable television entities.[3] Moreover, TCI's commitment to equal employment opportunities and diversity goes beyond the FCC's EEO provisions. Indeed, so central are equal employment opportunity and diversity programs and policies to TCI's operating philosophy that Mr. Hindery has asserted the Company's dedication to these principals in TCI's Employee Handbook and on its Internet web page:

> *The old adage that a company is only as good as its people has never been more true in today's highly competitive cable market—and at TCI.*
>
> *We are a nation reflective of many cultures and diverse ethnic backgrounds. This has been listed as one of our greatest national strengths and a major source of our international influence. The same must hold true within our Company.*
>
> *We value having employees of many different backgrounds, because diverse backgrounds lead to new approaches and new ideas. Our belief is that a company which is representative of our national diversity is better able to understand the complex marketplace in which we operate.*[4]

TCI commends the Commission for its decision to swiftly revise and reaffirm its EEO policies and regulations to redress the constitutional infirmities articulated by the court in *Lutheran Church-Missouri Synod v. FCC*, No. 97-1116 (D.C. Cir. April 14, 1998) ("*Lutheran Church*") so that the program to which we are all committed will pass any future constitutional challenge and, perhaps more significantly, make federal EEO requirements compatible with an industry that has time and again demonstrated its commitment to sound EEO practices. Indeed,

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[3] 47 C.F.R. § 76.71 *et. seq.*

[4] TCI Employee Handbook at 8; *see also* TCI Internet world wide web site (http://www.tci.com/tci.com/jobs/welcome).

TCI was among the first of several other national media companies to pledge to the Commission to continue to observe non-discriminatory and equal employment opportunity practices, despite the *Lutheran Church* decision.[5] FCC Chairman William Kennard applauded TCI and the other media companies for their pledge, adding that he was "proud that these major media companies have agreed that equal opportunity efforts will always be part of their companies policies."[6]

TCI believes that the Commission's EEO rules can be shaped to accomplish the Congressional goals and objectives for equal employment practices while allowing cable entities some degree of flexibility in operating their businesses. In light of the express statutory authority to amend its rules, Commenter believes that this proceeding provides the Commission with an excellent opportunity to go beyond simply revising its EEO rules in light of *Lutheran Church*, by also streamlining its EEO requirements to facilitate cable entities' abilities to implement and maintain EEO programs and thereby best advance the Congressional goals identified in Section 554 of the Communications Act. Indeed, these twin goals are not mutually exclusive, as evidenced by the industry's consistent improvement in recruiting, hiring and promoting women and minorities throughout its employment ranks. Therefore, as detailed below, while TCI submits these Comments to wholeheartedly endorse the Commission's proposed retention of certain EEO practices, Commenter also respectfully proposes the modification of certain EEO program requirements, and the consideration of alternative and more efficient means to achieve the goals of equal employment opportunity specified by Congress in the Communications Act.

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[5] Kelvin Childs, *Media Affirmative Action Pact*, E&P INTERACTIVE, Aug. 7, 1998 (http://www.mediainfo.com/ephome/news).

[6] FCC News Release, *FCC Chairman Applauds Media Companies' Commitment To EEO Principals*, July 30, 1998.

As an industry leader, TCI welcomes this opportunity to provide its insight to the Commission to aid it in the process of revising its EEO Rules. TCI believes that by understanding how cable entities approach and implement EEO programs and practices today, the Commission will be much better equipped to finalize a new set of EEO rules for cable entities as we enter the next century.

II. EEO PROGRAMS ARE ESSENTIAL TO CABLE INDUSTRY SUCCESS

At TCI, the diversity effort is embraced at high levels and is now part of a corporate culture supported by management and implemented by the human resources department. TCI understands the critical importance of progressive EEO programs, and its Employee Handbook makes that point abundantly clear:

> *One of the Company's most important missions will be to work toward strengthening the Company through a diverse workforce with employees of various ethnic backgrounds, religions, genders, ages, sexual orientation and disabilities.*
>
> *New employees are sought from diverse backgrounds through the hiring, recruitment and selection process. Decisions in areas such as pay, performance, promotions and work assignments are made on an objective basis, without regard to gender, sexual orientation, race, color, national origin, marital status, disability, age, veteran status or religious beliefs.*[7]

TCI believes a company's business can benefit from having an organization that reflects the diversity of its customer base. This has been part of the motivation behind TCI's push for greater diversity in its workforce, and has led to TCI's independent development of an enhanced 11-step program to more successfully foster diversity. To ensure that the diversity program is

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[7] TCI Employee Handbook at 8.

working, TCI monitors its progress. Since its inception at the beginning of 1998, feedback from company employees has been overwhelmingly positive.

TCI has reached beyond its own offices to further pursue its commitment to diversity and equal opportunity. TCI has worked with the FCC, NAACP, Rainbow Push and other public and non-profit institutions to better educate itself and to further advance the causes of equal employment and non-discrimination. TCI executives have met with the FCC's EEO representatives on an on-going basis to discuss its EEO commitments, program and progress and update the Commission on new TCI initiatives. In addition to those meetings, TCI's efforts have included staffing and financial contributions to industry employee organizations, as well as the development of relationships with community outreach programs to draw upon the widest possible base for grooming TCI's workforce and securing talent for the company that reflects the make-up of TCI's communities. Specifically, to date, TCI has made and followed through on commitments to broaden its outreach efforts and support expanded female and minority representation at TCI, and in the cable industry as a whole, by:

- Increasing by 500% its membership in National Association of Minorities in Cable (NAMIC) by the end of 1999;
- Maintaining its support of the Walter Kaitz Foundation and increasing the number of Kaitz Fellows placed within TCI;
- Doubling its membership in the Women in Cable and Telecommunications (WICT) organization, and taking a much more active role in WICT's national and regional training sessions and fellowship program;
- Committing to remain a highest-level sponsor of the Cable Television Public Affairs Association (CTPAA) and maintain its active presence on CTPAA's Board; and
- Tripling its financial support of Cable Positive and taking much more extensive advantage of the AIDS in the Workplace seminars offered by Cable Positive.

The positive results from meeting with the Commission's EEO staff and undertaking these initiatives already have become evident, and TCI has been lauded by the press and acknowledged by the Commission as implementing and maintaining a successful EEO program.[8] Indeed, the Commission has certified 100% of TCI's employment units for the 1996, 1997 and 1998 reporting periods. As further evidence of TCI's commitment to its EEO program and policies, TCI's workforce currently consists of approximately 51% female employees, with women accounting for roughly 40% of all management positions. These are more than statistics; in a recent survey, TCI employees gave the Company and its diversity program its highest approval ratings ever.

As these highlights demonstrate, TCI has been at the forefront of the cable industry's steady expansion and enhancement of its equal employment opportunity programs and recruitment efforts, providing job openings and opportunities to applicants with a wide array of backgrounds and interests. These efforts have been enthusiastically embraced throughout the entire cable industry. Indeed, in 1998 the Commission reported that total female representation increased to 42.0% and minority representation increased to 29.1% for cable industry employment units of five or more employees in 1997.[9]

The Commission's EEO Rules do not operate in a vacuum, however. As competitive demands and low unemployment further squeeze entities in search of qualified employees, sound

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[8] "Many companies think of equal opportunity programs and employee diversity as just one more government mandate—a noble goal that's hard to implement. Not so at TCI Media Services Inc." Teri Robinson, *TCI Media: Serious About Corporate Diversity Plan*, INTERNETWEEK, Oct. 19, 1998 (http://www.internetwk.com). Also, Mr. Hindery was honored by NAMIC in May 1998 for his contributions to minorities in the cable television industry. *See* Carlos Campos, *Turner, Campbell Praise Diversity*, ATLANTA JOURNAL AND CONSTITUTION, May 6, 1998, at 10D.

[9] 1997 Broadcast and Cable Employment Report (rel. June 23, 1998).

EEO policies and practices become more than simply a threshold requirement for attracting the necessary workforce. In other words, TCI believes that effective EEO programs are vital to the lifeblood of the cable industry, namely, its people.[10] Therefore, TCI provides these Comments in an effort to provide insight to the Commission as to how its EEO Rule requirements play out in the marketplace, and how they might be revised to reflect current competitive market realities.

III. THE COMMISSION SHOULD RETAIN CRUCIAL EEO PROGRAM ELEMENTS

TCI wholeheartedly agrees with the Commission that certain general EEO policies and specific EEO program practices are fundamental to guiding the cable industry's continued implementation of proactive EEO practices. Therefore, TCI supports the Commission's proposal to maintain certain core EEO requirements and policies. Specifically, TCI agrees that the Commission should continue to require cable entities to adhere to the following general EEO policies and specific EEO practices:

- Defining the responsibility of management to ensure compliance with their policy of equal opportunity, and establishing a procedure to review and control supervisory performance;
- Informing employees of their EEO program;
- Communicating their EEO policy and employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and soliciting their recruitment assistance on a continuing basis;
- Conducting a continuing program to exclude all unlawful forms of prejudice from personnel policies and working conditions;

[10] This is being, and has been, played out historically and has been recognized by the Commission itself. In its NPRM, the Commission notes the cable industry's increasingly positive EEO performance, specifically in the area of providing opportunities for women and minorities. NPRM ¶ 4.

- Conducting a continuing review of job structure and employment practices and adopting measures to ensure equality of opportunity to participate fully in the entity.
- Disseminating the entity's EEO program to employees and job applicants;
- Reviewing seniority practices to ensure that they are non-discriminatory;
- Examining and eliminating any inequalities in pay or benefits based on race or gender discrimination;
- Offering promotions on a non-discriminatory basis;
- Cooperating with unions in the development of programs to assure equal employment opportunities;
- Including non-discrimination clauses in union agreements; and
- Avoiding discriminatory selection techniques or tests.

See NPRM ¶¶ 54 - 55.

These program elements currently form the backbone of the FCC's EEO regulatory regime, and are vital for "open and effective" outreach and continuing EEO compliance. TCI believes that the most effective method for ensuring adherence to these EEO requirements is through continued application of the FCC's existing EEO enforcement provisions. Generally, Commenter believes that compliance and deterrence goals will best be served through annual certification, EEO program on-site audits and financial penalties for willful or knowing violations. Specifically, TCI proposes maintaining the current process for filing annual employment Form 395-A's and Supplemental Investigation Sheets (such forms being modified as proposed by Commenter herein), continuing the FCC's program of periodic on-site EEO program audits, and

penalizing entities found to knowingly or willfully violate EEO rules with appropriate monetary fines or decertification.[11]

Such a three-pronged enforcement mechanism would require cable entities annually to assess and certify compliance with the Commission's EEO requirements, including outreach and non-discriminatory employment practices, and provide the Commission with an opportunity to verify cable entities' claims with on-site investigation of files and records. Finally, Commenter believes that the Commission's current schedule of sanctions and decertification procedure are appropriate for entities found to knowingly or willfully violate the outreach and other EEO program commitments. This enforcement scheme and series of penalties constitute the regulatory oversight that is necessary to maintain an adequate incentive for repeat violators to comply with the Commission's EEO rules.

IV. SPECIFIC RESPONSES TO COMMISSION NPRM PROPOSALS

TCI believes that the FCC's continued application of the above-described EEO policy and requirements and enforcement provisions will more than adequately advance the Congressional EEO objectives spelled out in the Communications Act. Commenter therefore proposes that the Commission use this proceeding as an opportunity to fine-tune those requirements which no longer represent the most effective means to achieve equal employment opportunity practices in the workplace due to changes in the marketplace. As more fully discussed below, TCI proposes the following modifications:

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[11] Commenter endorses the Commission's proposal to sanction entities for deficiencies in their outreach and EEO program *efforts*, and *not* for the *results* of their hiring decisions, subject to the duty to refrain from unlawful discrimination. *See* NPRM ¶ 74.

- Allowing cable entities to implement and maintain employment recruitment policies tailored to the unique characteristics of the entities' local markets;
- Modifying self-assessment obligations to more accurately capture cable entities' EEO practices;
- Maintaining current recordkeeping requirements to demonstrate continued operator compliance with the proposed open and effective recruitment processes;
- Revising annual EEO reporting forms to reflect amended EEO requirements;

TCI believes that these modifications—in addition to comporting with the holding in *Lutheran Church*—will improve cable entities' abilities to implement and maintain effective, flexible and proactive EEO programs which the Commission may review and regulate consistent with Congressional intent.

TCI's well-established commitment to sound EEO policies and practices underscore its proposed revisions to the FCC's EEO rules, and TCI cautions against increasing or further regulating the specific ministerial performance of cable entities' EEO functions. Indeed, increased reporting and recordkeeping requirements would only serve to divert or limit resources and abilities that cable entities could otherwise direct towards the implementation and perfection of their EEO programs.

TCI, therefore, presents the following suggested revisions to the FCC's EEO rules for cable entities to best achieve the goals highlighted above.

A. "Open And Effective Recruitment" Policies Should Be Left To The Discretion Of Individual Cable Entities

Effective recruitment for all job vacancies is important to ensure that all qualified applicants are notified of, and have an opportunity to compete on a level playing field for, job openings, and Commenter supports the Commission's commitment to "open and effective

recruitment" of all potential applicants, including females and minorities. Commenter specifically endorses the Commission's recruitment proposal that "would afford entities the discretion to determine how to conduct recruitment efforts as long as they can demonstrate that their efforts attract a broad cross section of qualified applicants." NPRM ¶ 64.

Although the NPRM suggests several alternative methods to achieve "open and effective recruitment," giving cable entities the latitude to fashion recruitment strategies will result in more individualized and, thus, more effective, programs. Individual cable entities know their local area and referral sources best, and therefore are most qualified to develop, maintain and modify their own recruitment programs and resources. Fixed formulas for recruitment sources cut against customization of recruitment efforts. Two alternatives proposed by the Commission in its NPRM, however, would ignore cable entities' understanding of local demographics, and impose a mechanical and inflexible recruitment requirement.[12] In addition to eliminating specific constraints on a cable entity's recruiting methods, a discretionary recruitment policy will complement other Commission EEO requirements in that it will afford entities greater flexibility to fashion their EEO program.

The Commission itself identifies some of the problems inherent in any requirement for the use of minimum referral sources in recruitment efforts. Significantly, the Commission notes that rigid recruitment requirements "may penalize an entity that does not follow the rule *even where* the entity's recruiting efforts attract a broad cross section of qualified applicants for

[12] As competing alternatives, the Commission has proposed either (i) to require entities to take specific steps, such as to use a minimum number of recruiting sources, to fill each job vacancy, or (ii) to require entities to use a specific number of recruitment sources, but tailor the number of sources required to the size of the local minority labor force. *See* NPRM ¶¶ 65-66.

consideration." NPRM ¶ 65 (emphasis added). This potential adverse effect alone should caution against adopting a specific inflexible recruitment requirement. Even under the Commission's proposal for a semi-flexible recruitment provision, where the number of required female and minority recruitment referral sources would be directly dependent on the percentages of females and minorities in the relevant community (NPRM ¶ 66), it would be burdensome for both the Commission and the responding entity to determine the demographic information and calculate corresponding recruitment obligations, making that approach unworkable. A flexible recruitment obligation that allows a cable entity to develop, maintain and modify its own recruitment programs and resources presents the best method for open and effective recruitment.

The Commission should maintain a great deal of control over any recruitment requirement, while allowing cable entity discretion to set the means of its outreach efforts. Indeed, as discussed above, Commenter supports the continued practice of on-site FCC audits and certification of outreach efforts through an annual reporting requirement for all cable entities. These enforcement mechanisms will continue to allow the Commission to correct specific deficient recruitment practices and serve as an effective on-going deterrent to anything less than "open and effective" outreach programs. Moreover, through the certification and audit process, the Commission would be able to assess and gauge cable entities' efforts to identify female and minority applicants for available openings by reviewing the nature of recruitment sources contacted, the frequency of such contacts and the entities' overall commitment to making potential minority and female employees aware of job vacancies in the cable industry.

Therefore, Commenter supports the Commission's proposal to afford discretion to cable entities with respect to their development and maintenance of "open and effective" recruitment

strategies. Under this discretionary model, cable entities will continue their efforts to identify recruiting sources that are reflective of the community served. In light of the convincing evidence of the cable industry's successful past EEO performance and continued improvement, TCI believes that it is reasonable to allow cable entities to set the recruitment methods and policies that best suit each operator.

B. The Commission Should Retain Existing Employer Self-Assessment Rules.

TCI proposes that the Commission leave the self-analysis reporting requirement intact, given both Congress' express mandate that any Commission reporting requirement not unnecessarily burden cable entities,[13] and Commenter's endorsement of the current FCC self-analysis reporting obligation. The Commission should continue to require cable entities to submit an analysis of their efforts during the previous 12 months to recruit, hire, promote and use the services of minorities and women, and explain any difficulties in implementing their equal employment opportunity programs as a response to a request on the Supplemental Investigation Sheet ("SIS"), filed by cable entities once every five years. TCI agrees with the Commission that in light of the *Lutheran Church* decision, any reporting requirement should *not* include the use of any employment profiles to determine the adequacy of an entity's EEO efforts. Commenter proposes that a cable entity's response to an SIS request for information on self-assessment issues should provide information responsive to questions focusing on program elements such as: respondent's general protocol for recruiting for job openings; policies for ensuring equal and non-

[13] Section 554(d)(2)(F) of the Communications Act, 47 U.S.C. § 554(d)(2)(F), grants the Commission the authority to require cable entities to detail and report—"to the extent possible"—the analyses of their efforts to recruit, hire, promote and use the services of minorities and women, and explain any difficulties encountered in implementing their equal employment opportunity programs.

discriminatory hiring practices; efforts to review promotion policies to ensure that promotions are offered in a non-discriminatory and consistent manner; respondent's efforts to seek out and track business relationships with female- and minority-owned vendors and contractors; and information detailing any difficulties that respondent may have encountered in the implementation of any aspect of its EEO program.

The NPRM notes that cable entities may be able to file Supplemental Investigation Sheets with the Commission electronically, which might also require cable entities to respond to a series of "yes" or "no" questions to detail their EEO program analysis. NPRM ¶ 72. In the event that the Commission adopts an electronic-only filing requirement for future SIS forms and modifies SIS forms to include *only* "yes/no" questions, Commenter proposes that the Commission focus on the following areas in shaping the specific list of "yes/no" questions to be included in an electronic filing: policy for contacting applicant referral sources whenever job openings become available; assessment of the productivity of recruiting and referral sources; review of hiring practices and applicant screening and interview process; and inclusion of EEO issues as part of any performance reviews conducted for supervisory or managerial positions.

C. The Commission Should Maintain Its Current Recordkeeping Requirements.

In the NPRM, the Commission proposes to "continue requiring . . . cable entities to retain records to prove that they have made good faith efforts to broaden their applicant pools for all vacancies." NPRM ¶ 73.[14] In support of this requirement, the Commission notes that it would

[14] The Commission's proposal flows from its unquestioned authority under Section 554(d)(4) of the Communications Act, which grants the Commission the authority to "amend such [EEO] rules from time to time to the extent necessary to carry out the provisions" of the EEO statute. *See* NPRM ¶ 46.

not be able to "ascertain whether an entity is making sincere efforts to recruit women and minorities into its applicant pools" without adequate records, which could include an entity's recruitment sources, copies of all advertisements and bulletins announcing vacancies, and compilations totalling the race, ethnic origin and gender of all applicants generated by each recruiting source. NPRM ¶ 73. TCI agrees that a cable entity should be required to retain documentation or records in support of a claim that it has endeavored to practice "open and effective recruitment" and outreach for job vacancies, and suggests that the Commission should continue to require cable entities to compile and maintain specific types of outreach information.

Therefore, TCI submits that the Commission should adopt its proposal to require cable entities to record all information detailing their recruitment efforts and sources for each job vacancy. There would be no harm to cable entities in requiring the collection of such information because they already collect such information in managing their operations. TCI submits that the Commission will be better able to assess the effectiveness of cable entity recruitment efforts with the aid of information such as recruitment and referral sources, dates that vacancies were filled, dated copies of all advertisements for job openings, bulletins and letters announcing job vacancies, annual compilations of their workforces totaling the race, ethnic origin, and sex of all applicants generated by each recruiting source according to vacancy.

TCI believes that the collection of such information will greatly benefit cable entities' own internal assessment of their recruitment practices, allowing them to quickly identify and remedy problem trends or ineffective practices. Combined with the continued practice of cable entity certification and on-site audits, requiring operators to maintain recruitment data would provide

the Commission with an effective tool to enforce open and effective recruitment, and a deterrent to protect against lax outreach efforts.

D. The Commission Should Revise Its Annual Employment Forms.

The annual EEO Employment Form 395-A should be revised to reflect the several rule modifications proposed by the Commission and advanced by Commenter herein. Generally, Commenter favors the process currently used by the Commission, with an annual submission of a Form 395-A, with a Supplemental Investigation Sheet filed once every five years. Specifically, Commenter proposes that the Form 395-A be modified as follows, consistent with Commenter's justifications, detailed above, for modifying the FCC's EEO rules:

- Consistent with the Commission's position, Form 395-A Section V.C. (annual job hires) and Section VI (detailing the comparison of the cable entity's workforce with the local labor force statistics), should be eliminated.
- Consistent with the Commission's position, revision of Section VII to eliminate annual hiring information for upper-level job sub-categories.
- Retention of current Sections I, II, III, IV, VA., V.B., VII, VIII and IX.

With these proposed revisions, the annual Form 395-A employment report would consist of sections detailing the following: operator identification; community information; "yes/no" questions certifying entity compliance with EEO policy and program requirements; additional voluntary explanatory information; annual employment profile information for tracking industry trends and entity certification of the employment report. TCI submits that the Commission should not modify the Form 395-A to request information concerning the total of applicants received from each referral source or the total number of female and the total number of minority

applicants received.[15] Instead, cable entities should be required to maintain such information and make it available to the Commission through on-site or letter audits.

The Supplemental Investigation Sheet should be revised consistent with Commenter's proposal set forth in Section IV.B., above. These modifications will significantly streamline the annual employment Form 395-A and Supplemental Investigation Sheet, and, more importantly, properly implement revised FCC EEO rules.

CONCLUSION

TCI been a strong advocate of FCC efforts in the area of diversity and equal employment opportunity. Indeed, TCI submits these Comments, in part, to endorse the Commission's proposal to maintain the core components of its EEO program requirements. TCI also proposes, however, that the Commission use this opportunity to revise its EEO Rules in light of cable entities' demonstrated strong commitment to, and support for, their own EEO programs. Indeed, the commitment to equal opportunity must and should come from the companies that benefit ethically from implementing these policies—it should not be driven by government requirements. These Comments advance modest modifications to the FCC's EEO rules that would further the Congressional objectives set forth in Section 554 of the Communications Act while incorporating administrative efficiencies for the industry. For these and the foregoing reasons, TCI respectfully requests that, in addition to retaining the critical core elements of its EEO rules, the Commission

[15] *See* NPRM ¶ 77.

consider revising the FCC's EEO rules for cable entities to streamline reporting operations and minimize potential future constitutional challenges to the Commission's regulatory oversight role.

Respectfully submitted,

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