

EEOC v. AT&T Consent Decree (1/18/1973)

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Phyllis A. Wallace, ed., Equal Employment
Opportunity and the AT&T Case (MIT Press 1976)

Appendix A

Consent Decree: Equal Employment Opportunity Commission *et al.* v.
American Telephone and Telegraph, *et al.*, January 18, 1973

In the United States District Court for the Eastern District of Pennsylvania

Equal Employment Opportunity Commission, James D. Hodgson, Secretary of La-
bor, United States Department of Labor, and United States of America, Plaintiffs,

v.

American Telephone and Telegraph Company,
New England Telephone and Telegraph Company,
The Southern New England Telephone Company,
New York Telephone Company,
New Jersey Bell Telephone Company,
The Bell Telephone Company of Pennsylvania
and the Diamond State Telephone Company,
The Chesapeake and Potomac Telephone Company,
The Chesapeake and Potomac Telephone Company of Maryland,
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
Southern Bell Telephone and Telegraph Company,
South Central Bell Telephone Company,
The Ohio Bell Telephone Company,
Cincinnati Bell Inc.,
Michigan Bell Telephone Company,
Indiana Bell Telephone Company, Incorporated,
Wisconsin Telephone Company,
Illinois Bell Telephone Company,
Northwestern Bell Telephone Company,
Southwestern Bell Telephone Company,
The Mountain States Telephone and Telegraph Company,
Pacific Northwest Bell Telephone Company,
The Pacific Telephone and Telegraph Company
and Bell Telephone Company of Nevada, Defendants.

Civil Action No. 73-149

The Equal Employment Opportunity Commission (hereinafter, EEOC), the Secretary of Labor (hereinafter, the Secretary), and the United States of America having filed their Complaint herein, the EEOC pursuant to Sections 706 (f) (1) and (3) and Section 707 (e) of Title VII, of the Civil Rights Act of 1964, as amended by Public Law 92-261 (March 24, 1972), 42 U.S.C. § 2000e *et seq.* (hereinafter Title VII), the Secretary pursuant to Sections 6 (d), 15 (a) (2) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* (hereinafter, the Equal Pay Act), and the United States pursuant to Executive Order 11246, as amended, and the Defendants having filed their Answer denying the allegations in the Complaint and setting forth the extensive affirmative actions they have taken and are taking to provide equal employment opportunity to minorities and women,* and the parties having waived hearing and findings of fact and conclusions of law, the following order is entered without any admission by any of the Defendants or finding by the Court of any violation by any of the Defendants of any of the abovementioned statutes or Executive Order, or any regulations adopted pursuant thereto,

Now therefore it is ORDERED, ADJUDGED AND DECREED as follows:

Part A

I. Affirmative Action Programs

The American Telephone and Telegraph Company's (AT&T's) Model Affirmative Action Program, Upgrading and Transfer Plan, and Job Briefs and Qualifications, attached hereto as Appendices A, B and C, respectively (said three Appendices being referred to herein as the "Model Programs"), subject to the clarifications and amplifications contained in this Decree, are consistent with the requirements of Revised Order No. 4, 29 C.F.R. §§ 60-2.1 *et seq.*, issued by the Office of Federal Contract Compliance (hereinafter, OFCC) pursuant to Executive Order 11246, as amended, and constitute a "bona fide seniority or merit system" within the meaning of Section 703 (h) of Title VII. Such Model Programs, if adopted and implemented without material deviation by individual Bell Companies for each of their respective establishments, shall be considered as complying with the requirements of Revised Order No. 4, and employment decisions made in conformity with these Model Programs shall be considered as complying with Title VII. Provided, however, that all individual Company programs embodying material deviations from such Model Programs and any material revisions of such programs resulting from the annual reviews thereof

*Defendants contend that venue in the present action is improper as to all Defendants except the American Telephone and Telegraph Company, and The Bell Telephone Company of Pennsylvania. However, all Defendants have waived objections to venue for the limited purpose of the entry of this Decree. By submitting to the jurisdiction of this Court and waiving objections to the venue of this action solely for the purpose of the entry of this Decree, all Defendants preserve their rights to object to the appropriateness of jurisdiction and venue in all other actions brought in the Eastern District of Pennsylvania or any other federal judicial district.

will be submitted to the OFCC and the EEOC prior to implementation by any Bell Company. Such programs shall be deemed accepted unless disapproved by the OFCC within 45 days from the date of submission, consistent with Section 718 of the Civil Rights Act of 1964, as amended.

II. Goals and Timetables

A utilization analysis of each of the fifteen (15) Affirmative Action Program Job Classifications as defined in Section IV of the Model AAP (Appendix A hereto) within each establishment will be conducted pursuant to 41 C.F.R. § 60-2.11. For those job classifications wherein there exists a substantial salary range, such analysis shall specifically include reference to the relative distribution of minorities and women within such salary range. Each factor in 41 C.F.R. § 60-2.11(a) (1) and (2) for which accurate and relevant data are available shall be considered. A goal will be developed for each of the 15 AAP job classifications within each establishment where underutilization is determined to exist pursuant to 41 C.F.R. § 60-2.12. In a good faith effort to meet such goals, each Bell Company will establish intermediate targets for one, two and three-year time frames. At the end of each intermediate three-year time frame, the goal for each classification for which a goal has been set will be re-evaluated to determine whether underutilization still exists, and the goals for each job classification will be adjusted or eliminated as appropriate. All goals and all intermediate targets and time frames for each Company and each establishment must be individually approved by the OFCC, and shall be submitted for approval to the OFCC within 120 days from the date of this Decree, together with the relevant utilization analysis, including worksheets. Such goals, intermediate targets and time frames shall be deemed approved unless disapproved by the OFCC within 90 days of their submission, notwithstanding Section 718 of the Civil Rights Act of 1964, as amended. Worksheets shall include that portion of the goal which each establishment will make a good faith effort to achieve as intermediate targets within stated time frames.

The foregoing utilization analysis, goals, intermediate targets, and time frames shall also be developed for males in the operator and clerical classifications as part of each Bell Company's program.

All goals and all intermediate targets and time frames, as approved by the OFCC, and as adjusted at the end of each intermediate time frame will promptly be submitted by each Bell Company to the appropriate collective bargaining representative of its employees.

III. Transfer, Promotion, Layoff and Recall

A. Each Bell Company shall offer each of its female and minority employees in non-management, noncraft jobs who had four or more years of net credited service on July 1, 1971, and who expresses a desire for transfer as required by the appropriate

upgrading and transfer plan or posting and bidding system to a job in AAP job classification 9 or 10, an opportunity to compete therefor with other employees on the basis of net credited service and basic qualifications, as set forth in Appendix C [not reprinted here—ed.], if females or minorities currently are underutilized in such AAP classification 9 or 10 and such employee is a member of the group which is underutilized. For purposes of this Decree, "net credited service" shall mean total length of service with the operating company in which the vacancy occurs. Provided, however, that total length of service within the Bell System shall continue to be used for other purposes, including bridging rights, consistent with the provisions of the applicable Bell Company's collective bargaining agreement(s).

Provided further, each Bell Company and each collective bargaining representative of their employees shall be free to bargain to expand this definition of net credited service, for purposes of this Agreement, to mean total length of service with the Bell System.*

Where the term net credited service is presently defined in applicable collective bargaining agreements as length of service greater than that of the company into which the employee was last hired, definition of that term shall be unaffected by this paragraph.

B. In filling vacancies in AAP job classifications 6 and 7, candidates for promotion shall be evaluated on the basis of net credited service and best qualified, unless a lower standard of qualification is provided in a collective bargaining agreement or pursuant to Bell Company practices. However, if any Bell Company is unable to meet its intermediate targets within the stated time frames using these criteria, it will use only the criteria of net credited service and a basic qualified criterion and, if necessary, will seek new hires who meet at least the basic qualified criterion. Efforts to achieve intermediate targets should be substantially uniform throughout the appropriate time frame. Each Bell Company agrees to notify the appropriate collective bargaining representative of its employees prior to promoting or transferring persons into AAP job classifications 6 and 7 on the basis of net credited service and basic qualifications.

C. Net credited service shall be used for determining layoff and related force adjustments and recall to jobs where nonmanagement female and minority employees would otherwise be laid off, affected or not recalled. Collective bargaining agreements or Bell Company practices shall govern the confines of the group of employees being considered. Provided, however, vacancies created by layoff and related force adjustments shall not be considered vacancies for purposes of transfer and promotion under this Section.

D. Minimum residency (time in title) requirements shall not be greater than the following, in the major job titles noted below:

*Employees returning from maternity leave do not have their service broken (absence in excess of 30 days will be deducted from net credited service).

1. Clerical, six- twelve months time in title;
2. Operator, six- twelve months time in title;
3. Service Representative, fifteen- eighteen months time in title;
4. Lower and Middle Craft, fifteen- eighteen months time in title;
5. Top Craft (Switchman, PBX Installer, PBX Repairman, Toll Test man, etc.), twenty-four- thirty months time in title.

Collective bargaining agreements of company practices which provide lower minimum residency requirements than those outlined above shall continue in effect.

IV. Employee Information Program

A. Each Bell Company shall inform its employees who are affected by the provisions of this Decree, and the appropriate collective bargaining representative of its employees, of the terms thereof in a manner approved by AT&T, EEOC, and OFCC.

B. Each Bell Company will, with respect to each of its transfer bureaus, provide a quarterly notice to nonmanagement employees served by such transfer bureau and to any collective bargaining representative representing such employees of the projected number of job opportunities by the major job titles (*e.g.*, installer, lineman) set forth in the Job Briefs contained in Appendix C hereto, in his or her transfer bureau for the balance of the calendar year and the number of jobs filled during the previous quarter by net credited service date, date of transfer, job title, EEO-1 minority designation, sex, and last previous job assignment.

V. Testing

Each Bell Company may continue to utilize test scores on validated tests along with other job-related considerations in assessing individual qualifications. However, no Bell Company shall rely upon the minimum scores required or preferred on its pre-employment aptitude test batteries as justification for its failure to meet its intermediate targets for any job classification.

VI. Promotion Pay Plan

Each employee promoted from one nonmanagement job to another with a higher basic maximum rate of pay, shall have his or her rate of pay in the higher rated job determined as follows:

The employee shall be placed on the step of the new wage table as determined by allowing the employee full wage experience credit, both in progression and at maximum, on the old wage table, but not to exceed the step down from maximum on the new schedule as listed below:

AAP Classifications	Step from Maximum
15. Service Workers	0
14. Operators	0

AAP Classifications	Step from Maximum
13. Office Clerical—Entry Level	0
12. Office Clerical—Semi-skilled	0
11. Office Clerical—Skilled	6 months
10. Telephone Craft—Semiskilled-Inside	6 months
9. Telephone Craft—Semiskilled-Outside	6 months
8. General Services—Skilled	12 months
7. Telephone Craft—Skilled-Inside	12 months
6. Telephone Craft—Skilled-Outside	12 months
5. Sales Workers	12 months

Notes

1. "Wage experience credit" is defined as the "number of months" step on the wage schedule at which an employee is paid.
2. Moves within an AAP classification shall be at full wage experience credit.
3. Net credited service shall be used instead of the wage experience credit allowance defined above if its use is more favorable to the employee; provided, however, that if the more favorable condition is solely a result of the length of the progression schedule having been shortened in 1970 or 1971 collective bargaining, then the wage experience credit allowance shall be used.
4. Current promotion pay practices which provide more favorable treatment than the procedure outlined above shall continue in effect.
5. Modification of Plan for Promotion from Simple to Complex Line Assigning:

Employees who have work experience in simple plant line assigning (not including clerks whose duties do not require that they use cable books to locate available cable pairs) and are promoted to complex line assigning (Top or Second Craft) will be treated as follows:

 - a. Those with over four years of wage experience credit or net credited service (as provided in note 3 above), at least one year of which is simple plant line assigning experience, upon promotion will receive wage experience credit on the new wage schedule equal to their wage experience credit or their net credited service (as provided in note 3 above).
 - b. Employees to whom paragraph 5.a. is not applicable will be accorded promotion pay under the basic promotion pay plan described above.

VII. College Graduate Females Hired Directly into Management

In each Bell Company (other than Cincinnati Bell Inc., which did not have an Initial Management Development Program (IMDP) at any time between July 2, 1965, and December 31, 1971, and The Bell Telephone Company of Pennsylvania, which has

heretofore satisfactorily resolved issues respecting female college graduate management hires):

A. Four-year college graduate female employees hired directly into management other than IMDP between July 2, 1965, and December 31, 1971, with the exception of those thereafter placed in IMDP or who were offered placement in IMDP and declined, will be surveyed to determine their interest in promotion to District level (third level) and above management positions. Provided, however, that any Bell Company may during the thirty-day period following the date of this Decree present to the EEOC and OFCC data indicating that an IMDP program was not underutilizing women during any year or years between July 2, 1965, and December 31, 1971. Upon presenting such data, this Section VII shall be inapplicable to four-year college graduate women hired directly into management for those years during which underutilization did not exist in the IMDP program in question. For purposes of this paragraph only, an absence of underutilization shall mean that women constituted 25% of all enrollees in an IMDP program. Failing agreement as to whether an IMDP program or an individual should be excluded from the application of this Section VII.A., such determination shall be submitted to the Court for final and binding adjudication under the Decree.

B. Those employees surveyed pursuant to Section VII.A. who are found to be interested will be scheduled for a two-to-three day assessment at a management center to evaluate their potential for promotion to District level. This assessment process will be conducted under procedures outlined by AT&T and will be completed to the extent possible within twelve months of the date of this Decree. Those employees assessed as satisfactory and who are below second level will be candidates for promotion to second level as vacancies occur and will be added to the District level potential list. Those employees assessed as satisfactory and who are at second level at the date of assessment will be candidates for promotion to District level as vacancies occur. Prior to promotion, both these second level and below second level employees may be reassigned for further developmental experience preparatory to promotion.

C. AT&T shall provide the EEOC and OFCC with descriptions of the criteria employed in making such assessments and on request will provide data at reasonable intervals on the number of persons evaluated and rated satisfactory; provided, however, the foregoing assessment procedure may not be relied upon as a defense by an individual Bell Company for its failure to reach the intermediate targets for those job classifications for which such procedures are used.

D. Those employees evaluated under paragraphs A and B of this Section VII who do not receive a satisfactory rating will return to their current assignments and their assessment rating will not be entered into their permanent personnel file.

VIII. Pay Adjustments

A. **Nonmanagement Jobs.** Employees promoted prior to January 1, 1973, will have

their rate of pay adjusted as of the first pay period after January 1, 1973, to the rate they would have achieved if the Promotion Pay Plan described in Section VI above had been in effect at the time of their promotion.

B. Craft Jobs Only.

1. In recognition of alleged claims of possible discrimination in compensation:
 - a. Except for Switchroom Helpers at Michigan Bell Telephone Company (Michigan Bell), back wages shall be accorded those female employees who were resident in AAP classifications 6, 7, 9 and 10 at any time during the period January 1, 1971, to December 31, 1972, as follows:

Each such employee shall be paid an amount equal to the difference between the amount which was paid to her under the promotion pay plan in effect at that time, and that which would have been paid to her during the period from January 1, 1971, to December 31, 1972, had the promotion pay plan described in Section VI above been in effect at the time of her promotion and for the period of time such employee was resident in a position in AAP classifications 6, 7, 9 or 10.

- b. In order to bring the minimum and maximum rate of pay of Switchroom Helpers at Michigan Bell into the range for the Frameman job in other Bell Companies, the rates for such job will be increased by means of the following formula to be effective the beginning of the first pay period following January 1, 1973:

	Present Minimum Rate	Present Maximum Rate	Proposed Minimum Rate	Proposed Maximum Rate
Zone 1	\$124.50	\$157.00	\$127.50	\$169.50
Zone 2	117.00	153.50	119.00	166.00
Zone 3	111.00	151.00	113.50	161.50
Zone 4	109.00	149.50	111.50	159.00

Michigan Bell will establish new wage schedules similar to those in effect for the Frameman job in other Bell Companies to reflect these minimum and maximum rates of pay.

Michigan Bell will pay to Switchroom Helpers who were so classified during any part of the period from January 1, 1971, to December 31, 1972, the difference between what they earned had the wage schedule set forth in the columns "Present Maximum Rate" and "Present Minimum Rate" been in effect during the period January 1, 1971, to December 31, 1972, and what they would have earned had the wage schedules been those set forth in the columns "Proposed Maximum Rate" and "Proposed Minimum Rate."

2. In recognition of alleged claims of possible delay in promotion in nonmanagement jobs because of discrimination, lump sum payments shall be made to each fe-

male and minority employee in each establishment where there exists in his or her respective job classification an underutilization of the group of which he or she is a member, who meets the following criteria:

- a. had four or more years' net credited service on July 1, 1971;
- b. has been or will be promoted from nonmanagement, noncraft jobs into AAP classifications 6, 7, 9 and 10 subsequent to June 30, 1971, and prior to July 1, 1974; and
- c. remain in that job or another job in AAP classifications 6, 7, 9 and 10 for a total of more than six months.

Those employees meeting the criteria listed in a), b) and c) will receive lump sum payments in accordance with the following schedule (a female minority employee shall be entitled to receive only one lump sum payment).

Promotion Date	Payment
7/1/71 through 12/31/71	\$100
1/1/72 through 12/31/72	200
1/1/73 through 12/31/73	300
1/1/74 through 6/30/74	400

In the event that on July 1, 1974, at least ten thousand (10,000) employees have not received payments pursuant to this Section VIII.B. (2), the Bell Companies will extend the date until 10,000 employees have been paid. All payments after July, 1974, shall be at the rate of \$400.

C. Management Jobs. Those employees who are assessed as satisfactory pursuant to Section VII above will have their salary increased \$100 per month as of their assessment date or September 1, 1973, whichever is earlier.

D. Limitation on Recovery. No individual who has received back pay and/or individual relief under a prior settlement agreement, conciliation, or consent decree shall be eligible to receive back pay or individual relief with respect to the same claim of discrimination as a result of this Decree.

Part B

I. Reporting

A. EEOC and OFCC will each receive summaries of the information compiled pursuant to Part A, Section IV.B. compiled by each Bell Company for each of the first two full calendar quarters following the date of this Decree and annually thereafter during the duration of this Decree. These quarterly and annual compilations will be forwarded in duplicate within 45 days subsequent to the second full calendar quarter following the date of this Decree and within 45 days after the close of each calendar year, respectively.

B. During the term of this Decree, except for the requirements of 29 C.F.R. Part 516 and the filing of EEO-1 reports and reports required pursuant to the equal employment rules of the Federal Communications Commission (FCC), 47 C.F.R. §§ 1.815, 21.307, and 23.49, or such other reports of general application which are hereinafter promulgated by EEOC, FCC, or the Department of Labor, the reports required by this Decree will be exclusive, and the Bell Companies shall not be required to file any additional reports or, except as noted below,* submit to any compliance reviews with respect to obligations under any law, regulation or Executive Order concerning equal employment opportunity including Title VII, the Equal Pay Act, Executive Order 11246, as amended.

II. Effect of Decree

A. As to the issues identified in the Complaint and Decree, compliance with the terms of this Decree resolves all remaining questions amongst the parties of the Bell Companies' compliance, for acts or practices occurring prior to the date of this Decree, with the requirements of Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, as amended, and Executive Order 11246, as amended. Moreover, compliance with the terms of the Decree in the future will constitute compliance with such laws, orders, and regulations as respects those issues dealt with in the Decree.

B. Acceptance by any person of individual relief ordered in Part A. Section VIII of this Decree shall constitute a waiver and release by such person of any claims for alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 1981, 1983, Executive Order 11246, as amended, or any applicable state fair employment practice laws or regulations based upon occurrences prior to the date of this Decree.

C. In the present case, the Secretary's Complaint seeks restraint of any further delay in payment of wages, due under Sections 6 (d) and 15 (a) (2) of the Fair Labor Standards Act, within the meaning of the last sentence of Section 16 (b) of the Act, as to the following class of Defendants' employees:

1. All female employees in nonmanagement jobs who have claims for equal pay violations resulting from the application of the Defendants' promotion pay policies.
2. All Switchroom Helpers employed by Defendant, Michigan Bell Telephone Company, who have claims for equal pay violations resulting from the lower rates paid to Switchroom Helpers by that Defendant than are paid by other Defendants to Framemen.

*The above provision concerning compliance reviews shall not apply to investigations of charges by the EEOC under Section 706(b) of Title VII or to investigations by the Secretary under Section 11 of the Fair Labor Standards Act, and investigations to determine compliance with this Decree. Defendants agree to cooperate with the investigations above described.

D. This Decree shall not be interpreted as requiring the abandonment of any provisions in any Bell Company's collective bargaining agreement(s) except as required to maintain compliance with Federal law, Executive Orders and regulations promulgated pursuant thereto pertaining to discrimination in employment. All of the Bell Companies' obligations in this Decree are required for compliance with Federal law; provided, however, that nothing in this Decree is intended to restrict the right of the Bell Companies and the collective bargaining representatives of their employees to negotiate alternatives to the provisions of this Decree which would also be in compliance with Federal law.

To the extent that any Bell Company has in effect a posting and bidding system, said system shall continue to be used. Provided, however, that such system will be modified to the extent necessary to conform with Part A, Section III of this Decree.

Each Bell Company shall notify all appropriate collective bargaining representatives of the terms of this Decree and of its willingness to negotiate in good faith concerning these terms.

III. Compliance Procedures

A. The government Plaintiffs shall endeavor to coordinate their efforts to assure compliance with this Decree and shall develop such procedures as may be appropriate to this end.

B. The government will promptly notify the Bell Company involved and AT&T of any problems of noncompliance which it believes warrant investigation. Such Company will be given 60 days to investigate the complaint and conciliate with the government regarding the taking of any appropriate corrective action. At the end of this period, the government, if not satisfied, may seek an appropriate resolution of the question by the Court.

IV. Duration of the Decree

A. The Court retains jurisdiction of this action for entry of such orders as are necessary to effectuate the provisions of this Decree. The term of this Decree shall be six years from this date, but as to the issues in Part A, Sections VI, VII and VIII, the Defendants are permanently enjoined from violating the provisions of the Equal Pay Act. Upon certification to this Court that the payment of back wages ordered in Part A, Section VIII, have been made, that portion of this Decree will be dissolved as having been satisfied. Defendants waive none of their rights to move for dissolution or modification of this Decree at any time in addition to those specifically provided for in Section IV.B. (2), below.

B. An essential basis for the agreement of the parties to the entry of this Decree is that the opinion letters from EEOC and the Wage and Hour Administrator to be issued pursuant to the Memorandum of Agreement of the parties which is attached

hereto shall remain in full force and effect. Therefore, should either opinion or portion thereof be withdrawn or overruled, the Defendant affected by such withdrawal or overruling may move the Court to dissolve any portion of the Decree which involves the issue or issues with respect to which the opinion letter has been withdrawn or modified and to strike any portion of the pleadings in this action relevant thereto, and such motion shall be granted.

So Ordered:

Leon Higginbotham
Judge, United States District
Court, Eastern District of
Pennsylvania

Consent to the entry of the foregoing Decree is hereby granted.

American Telephone and Telegraph
Company, for itself and on behalf
of its associated telephone com-
panies as set forth herein.

[Signed:]

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George E. Ashley,
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