

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

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In the Matter of:

Petitions filed by the
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, et al.

DOCKET NO. 19143 ✓

EEOC MEMORANDUM IN SUPPORT
OF MOTION TO STRIKE

On Jan. 21, 1971, the Commission ordered hearings
in this Docket and designated five issues to be deter-
mined by the Hearing Examiner:

- "(A) Whether the existing employ-
ment practices of AT&T tend
to impede equal employment
opportunities in AT&T and its
operating companies contrary
to the purposes and require-
ments of the Commission's
Rules and the Civil Rights
Act of 1964?
- (B) Whether AT&T has failed to
inaugurate and maintain speci-
fic programs pursuant to Com-
mission Rules and Regulations,
insuring against discriminatory
practices in the recruiting,

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selection, hiring, placement
and promotion of its employees?

- (C) Whether AT&T has engaged in pervasive, system-wide discrimination against women, Negroes, Spanish-surnamed Americans, and other minorities in its employment policies?
- (D) Whether any of the employment practices of AT&T, if found to be discriminatory, affect the rate charged by that company for its services, and if so, in what ways is this reflected in the present rate structure?
- (E) To determine in light of the evidence adduced pursuant to the foregoing issues, what order, or requirements, if any, should be adopted by the Commission?" 1/

As the foundation of their direct case, Petitioners presented a massive amount of statistical data which showed a substantial underrepresentation of females and minorities in craft and middle and upper management jobs. On Aug. 1, 1972, the Bell System Respondents distributed their responsive case, a substantial portion of which is an attempt to rebut Petitioner's use of statistical data.

1/ 27 FCC 2d 309.

However, as shown below, due to the Bell System's fundamental misconstruction of the law of employment discrimination, this portion of their responsive case is of no material assistance in answering the issues designated for hearing and cannot be used to rebut Petitioners' statistical evidence. The EEOC has, therefore, moved to strike this portion of the Bell System's testimony.

Fundamentally, the Bell System's major defense, as presented by several expert witnesses, is based on the proposition that, because of pervasive societal discrimination, females and minorities are not generally interested in and/or qualified for many Bell System jobs. This memorandum will demonstrate that testimony as to general societal discrimination, general interests of females and minorities, and general qualifications (educational attainment) of minorities is totally immaterial to a rebuttal of Petitioners' statistical evidence and to any issue in this proceeding.

The Bell System's major defense is completely at odds with the nature of proof required to establish and to rebut claims of unlawful employment discrimination. This defense should be rejected as immaterial (and the expert witness testimony struck) as the Courts have wisely rejected similar arguments advanced by other defendants; to do otherwise would be to nullify the national commitment to eradicate unlawful employment discrimination since every defendant could escape liability by pointing the finger at "society."

I

INTRODUCTION

Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d), provides that "Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence."

In short, nothing in Mr. Coss's proposed testimony has any material bearing on this case and his entire testimony should be stricken.

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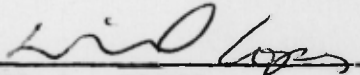
CONCLUSION

This case has already produced an almost unmanageable record. The addition of substantial testimony which is not material is a luxury which even a small case cannot afford. "[I]t would be an invitation to unnecessarily prolong and complicate the proceeding. Each participant may well find it necessary to bring its own 'expert' to establish by rebuttal some conclusion contra to that advanced by" Coss, Tyler, Oppenheimer, or Glazer. American Telephone & Telegraph Co., supra, 13 Ad. L. 2d at 205.

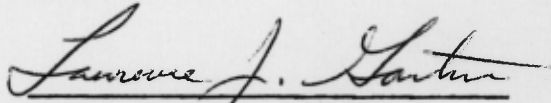
More than simply burden the record, however, the immaterial testimony offered by the Respondents will divert attention away from the real issues in the case:

Has the Bell System engaged in unlawful employment practices, and if so, what remedy should the FCC impose? The testimony of Coss, Tyler, Oppenheimer, and Glasser cannot help answer these questions and should therefore be stricken.

Respectfully submitted,



DAVID A. COPUS
Attorney



LAWRENCE J. GARTNER
Attorney

Equal Employment Opportunity
Commission
1800 G Street, N. W.
Washington, D. C. 20506

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