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FILE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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OCT 25 1972

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In the Matter of:

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

DOCKET NO. 19143

OCT 25 1972

EEOC REPLY TO OPPOSITION OF
BELL COMPANY RESPONDENTS

Introduction

On September 22, 1972, the Equal Employment Opportunity Commission moved to strike the testimony of five Bell System witnesses on the grounds of immateriality to the issues of this proceeding. In its supporting Memorandum, the EEOC set forth the judicially accepted method of proving and defending cases of systemic employment discrimination and the reasons for this method. The EEOC showed that statistical proof of substantial underrepresentation of minorities or females in certain jobs establishes a prima facie case of employment discrimination. Once such

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prima facie case has been made, the burden then shifts to the defendant to rebut the prima facie case by showing either that the statistical underrepresentation is caused by job-related qualifications which screen out minorities or females or that the defendant has made good faith efforts to recruit minorities or females.

The EEOC further demonstrated that the testimony of the Bell System witnesses it has moved to strike -- which presents material on the general interests and/or general qualifications of females and minorities ^{1/} -- does not relate to the two accepted defenses to a prima facie case nor does itself constitute a legal defense to the EEOC's statistical prima facie case. Thus, to avoid burdening the Record with testimony which is not legally cognizable, the EEOC moved to strike this testimony as immaterial.

Nowhere in its Opposition to EEOC's Motion to Strike has the Bell System directly rebutted the extensive case law and policy arguments cited in EEOC's Memorandum in

^{1/} The testimony of Frank Coss will be treated separately as was done in the September 22 Memorandum.

support of the statistical prima facie case of employment discrimination. Rather, Bell has seriously misconstrued the argument. It has postulated EEOC's contention to be that a statistical showing of underrepresentation of females or minorities constitutes a per se violation of the law, creating an un rebuttable presumption of discrimination. Having set up this straw man (or woman), the Bell System then proceeds to knock it down, arguing that an un rebuttable presumption based on statistical divergence from the population violates the national policy against quotas, gives more importance to statistics than found in the case law, and runs counter to the use of statistics in voting and jury discrimination cases. Thus, these arguments are completely immaterial to the question of whether a statistical proof of underrepresentation constitutes a prima facie showing of employment discrimination.^{2/}

As the Bell System itself acknowledges,^{3/} the issue is not whether a defendant is to be allowed to rebut the

^{2/} Bell has also made a brief collateral attack on the use of statistics to prove sex discrimination, which will also be discussed below.

^{3/} Bell System Opposition, p. 3.

statistical showing of underrepresentation, but how the defendant is to be allowed to rebut that showing. It is only in the latter part of its Opposition that the Bell System squarely meets the issue: whether proof concerning general interest and/or general qualifications of females and minorities can constitute a legally cognizable explanation of the statistical underrepresentation of females or minorities in certain jobs. The EEOC demonstrates below that Bell's arguments on this issue are incorrect and unsubstantiated and thus do not rebut EEOC's prior demonstration that such proof is legally immaterial in employment discrimination hearings.

I. The Principle That a Statistical Proof
of Underrepresentation Constitutes a
Prima Facie Case of Discrimination is
Unchallenged.

In its September 22, 1972, Memorandum, the EEOC set forth the aforestated principle of a statistical prima facie case of discrimination. That principle remains unchallenged. The Bell System in its Opposition has not