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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of)
)
Petitions filed by the Equal Employment) Docket No. 19143
Opportunity Commission (EEOC), et. al.)

MEMORANDUM OPINION AND ORDER

Adopted: January 21, 1971 Released: January 21, 1971

By the Commission: Commissioner Johnson concurring for the reasons stated
in his separate opinion in today's decision in Docket No. 19129;
Commissioner Houser not participating.

Introduction

1. On November 19, 1970, the American Telephone and Telegraph Company (hereafter AT&T) filed with the Commission a revised tariff schedule to be effective January 19, 1971, which provided for increases in rates for long distance message telephone service in the 48 contiguous states, and was designed to raise AT&T's rate of return from 7.5 percent to 9.5 percent (Transmittal No. 10989). On December 10, 1970, the Equal Employment Opportunity Commission (hereafter EEOC) filed a Petition to Intervene in the above matter wherein it opposed the instant rate increase and alleged generally that AT&T and its operating companies engage in pervasive, system-wide discrimination in employment against women, Negroes, Spanish-surnamed Americans, and other minorities. Specifically, the EEOC petition claims that employment practices by AT&T and its operating companies violate Sections 201(b), 202(a), 214, 501, and 502 of the Communications Act of 1934, as amended, Sections 21.307 and 23.49 of the Commission's Rules and Regulations, Sections 703(a) and (d) of Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Equal Pay Act of 1963, Executive Order 11246, and the fair employment practices acts of numerous states and cities. On the basis of the foregoing assertions, the EEOC urges that the Commission deny the proposed rate increase, bring actions against AT&T and its officials for violations of the Commission's Rules and Regulations, and take whatever appropriate steps may be necessary to insure that AT&T and its operating companies will cease their discriminatory employment practices.

2. The Commission has also received other filings in the instant matter which also raise questions of discriminatory employment practices in the AT&T

system. The National Association for the Advancement of Colored People (hereafter NAACP) has filed a Petition for Suspension of Rates, Hearing and Declaration of Unlawfulness with the Commission. In its petition, the NAACP claims violations by AT&T of Federal and state laws, and of Commission Rules and Regulations which correspond to the violations alleged by the EEOC in its petition. The NAACP also states that it "incorporates by reference the entire Memorandum in Support of EEOC Petition to Intervene . . ."

The Commission has also received a Petition for Suspension from the National Organization for Women (hereafter NOW) and a telegram from the American GI Forum which states that it is prepared to produce evidence that the charges of discrimination were true. Both of these latter two filings also fully support and incorporate the petition filed by the EEOC. The California Rural Legal Assistance, Inc. (CRLA) and the Mexican American Legal Defense Fund (MALD) filed a joint petition for Rate Suspension, Hearing Intervention, and Declaration of Unlawfulness. 1/ In their petition, the CRLA and the MALD raise identical issues with those raised by the EEOC Petition to Intervene, and incorporate the EEOC petition by reference. The American Civil Liberties Union (ACLU) has also filed a Petition for Suspension of Rates, Hearing and Declaration of Unlawfulness, similarly raising those issues contained in the EEOC petition and incorporating that petition by reference. The Commission has received other filings in the instant rate matter, but these do not raise the issue of discriminatory hiring policies and need not be discussed here. 2/

1/ The filings by CRLA and MALD are made in response to AT&T Transmittal No. 11027, rather than Transmittal No. 10989. Transmittal No. 11027, which asks for a lesser rate increase in the same revised tariff schedule as referred to in Transmittal No. 10989, was filed pursuant to Commission action requesting postponement of the effective date of the proposed increased rates and giving AT&T special permission to file for a lesser rate increase (See F.C.C. News Release No. 61049 January 12, 1971). The ACLU, EEOC and NAACP have also filed new petitions with respect to Transmittal No. 11027, raising essentially the same issues as in their earlier filings. For the purposes of this decision, however, these filings shall be considered along with those filed in response to Transmittal No. 10989 without special reference to which transmittal they refer.

2/ Other parties who have filed in the instant proposed rate increase (AT&T Transmittal No. 10989) include: Utility Users League, City of Chicago, Silver Beehive Telephone Company, Microwave Communications, Inc., City of Los Angeles, Anthony R. Martin-Trigona, Ralph Nader and the Secretary of Defense filing on behalf of all United States Executive Agencies.

3. On December 21, 1970, AT&T filed a petition in Opposition to the Petition for Intervention filed by the Equal Employment Opportunity Commission. In its opposition, AT&T denies generally the allegations of the EEOC in its petition and offers to show that it has, in fact, conformed to provisions of Federal and state law, Commission rules and regulations, and has actively promoted minority hiring and promotion in its employment practices and policies. AT&T also claims that the introduction of the broad allegations raised by the EEOC in the present rate matter falls beyond the scope of a rate proceeding and is not relevant to any proceeding used to determine the adequacy of rates for telephone service. AT&T has also filed oppositions to the filings of the NAACP and NOW. 3/

Discussion

4. The Commission has repeatedly stated its concern regarding discriminatory employment practices by its licensees. In its Notice of Proposed Rule Making to require communications common carriers to show non-discrimination in their employment practices, adopted November 19, 1969 (Docket No. 18742), 34 Fed. Reg. 19200, the Commission, in noting that the common carriers operate in a unique public interest capacity, stated that when consideration regarding authorization of a communications common carrier is undertaken, "the Commission must consider whether the applicant has violated or is in violation of the Civil Rights Act or pertinent State or local laws or ordinances in the field". In the same proceeding, the Commission went on to say that "both because of the special position granted communications common carriers by the government, and the relationship between service to the public and the carriers' employment practices, it would be intolerable to countenance discriminatory employment practices".

5. On August 5, 1970, the Commission adopted comprehensive rules and regulations requiring communications common carriers to show nondiscrimination in their employment practices (24 F.C.C. 2d 725), becoming the first independent regulatory agency to adopt such a program applicable to its regulated industries. 4/ In adopting its proposed rules prohibiting discriminatory employment practices by its licensees and permittees, the Commission recognized its "independent responsibility to effectuate the strong national policy against discrimination in employment, and that it need not be dependent upon the judgement of some other forum to maintain its own affirmative program for insuring compliance with this Act". 24 FCC 2d 725.

3/ There have been subsequent filings and replies which we have considered in making our conclusions herein. None of these affect the conclusions reached herein.

4/ The Commission had earlier adopted similar rules applicable to its Broadcast licensees. In this regard see 18 F.C.C. 2d 240 (1969) and 23 F.C.C. 2d 430 (1970).

6. By the adoption of the above referenced rules requiring communications common carriers to show nondiscrimination in their employment practices, contained in new Sections 1.815, 21.307, and 23.49 of the Commission's Rules and Regulations, 47 CFR §§1.815, 21.307, 23.49, the Commission has undertaken a systematic program to insure equal employment in the communications industry. As regards communications common carriers, the general policy of nondiscrimination is expressed in Sections 21.307(a) and 23.49(a) of the Commission's Rules and Regulations. 5/ To insure nondiscriminatory employment practices by communications common carriers, the Commission has provided, in Sections 21.307(d) and 23.49(d), 47 CFR §§2.307(d), 23.49(d), that complaints "indicating a general pattern of disregard of equal employment practices" received against a particular licensee or permittee, could be investigated by the Commission.

7. The subject filing by the EEOC clearly alleges "a general pattern of disregard of equal employment practices" pursuant to the above noted rules. The EEOC has not, however, submitted its petition pursuant to the above noted Commission rules. It has rather chosen to file its petition in the form of a Petition for Suspension of Tariff Schedules, as foreseen in Section 1.773 of the Commission's Rules and Regulations, 47 CFR §1.773. 6/

8. As we have already stated this day in our decision in Docket No. 19129 In the Matter of American Telephone and Telegraph Company Revision of Tariff FCC No. 263, no showing has been made as to any logical or functional relationship between rate levels and the company's policies and practices in the matter of equal employment opportunity. The EEOC has claimed, in Appendix A to its petition, that Section 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. 202(a), prohibits, "on its face", employment discrimination by a carrier. We do not agree. The language in Section 202(a) is designed to protect the users of telecommunications services against discriminatory rates; it does not apply to the employees of a carrier except insofar as they may be discriminated against through rates and charges as users of the system. 7/

5/ Sections 21.307(a) and 23.49(a) provide: "Equal Opportunity in employment shall be afforded by all common carrier licensees or permittees to all persons, and no personnel shall be discriminated against in employment because of sex, race, color, religion, or national origin."

6/ Although entitled a Petition for Intervention, it cannot be considered as such in that the proceeding had not, at the time of the filing of the petition, been set for hearing, and Section 1.223 of the Commission's Rules and Regulations provides for petitions to intervene "not later than 30 days after the publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto." (emphasis added).

7/ Section 202(a) provides: "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

Accordingly, we feel that the petitions by the EEOC and others raising the issues of discriminatory employment practices should not be introduced in the subject rate hearing referred to above.

9. We reaffirm our position that in divorcing these claims from the subject rate proceeding we are not intimating that they are without merit. On the contrary, we feel that the claims made by the EEOC and the other aforementioned organizations raise serious questions under those provisions of our rules requiring common carriers to show nondiscrimination in their hiring and employment policies. Accordingly, as we have already mentioned in our decision in Docket No. 19129, we are setting this matter down for a separate hearing to allow us to determine the outstanding questions of law and fact. We are including an issue herein as to whether and in what manner any of the alleged practices, if proved, affect revenues, expenses, and rates of AT&T. At the same time we are retaining jurisdiction in our proceeding in Docket No. 19129 to enable us to take any conclusions we may reach on the subject into account before finally disposing of the issues raised therein. Such procedures are designed to afford the petitioners full opportunity to make any relevant showing while at the same time ensuring due and orderly dispatch of our responsibilities to all interested parties.

10. Accordingly, IT IS ORDERED, That pursuant to the provisions of Sections 4(i), 4(j), 208, 218, and 403 of the Communications Act of 1934, as amended, a public hearing SHALL BE HELD at a time and place to be hereinafter designated upon the following specific issues:

Issues

- (A) Whether the existing employment practices of AT&T tend to impede equal employment opportunities in AT&T and its operating companies? Contrary to other purposes and requirements of the Commission's Rules and the Civil Rights Act of 1964.
- (B) Whether AT&T has failed to inaugurate and maintain specific programs, pursuant to Commission Rules and Regulations, insuring against discriminatory practices in the recruiting, 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 rates 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?

11. IT IS FURTHER ORDERED, That the above designated hearing shall be an adjudicatory hearing, and that the rules of procedure as set forth in the Commission's Rules and Regulations pertaining to Hearing Proceedings, Sections 1.201 et. seq., shall govern.

12. IT IS FURTHER ORDERED, That the American Telephone and Telegraph Company, the American Civil Liberties Union, the California Rural Legal Assistance, the Equal Employment Opportunity Commission, the Mexican American Legal Defense Fund, the National Association for the Advancement of Colored People, the National Organization for Women, and the American GI Forum of the United States ARE HEREBY DESIGNATED parties to this proceeding.

13. IT IS FURTHER ORDERED, That the Common Carrier Bureau is named a party herein.

14. IT IS FURTHER ORDERED That in the presentation of evidence, the petitioner-complainants shall open and close, pursuant to these provisions of Section 1.255 of the Commission's Rules and Regulations.

15. IT IS FURTHER ORDERED, That interested parties may avail themselves of an opportunity to be heard by filing with the Commission, pursuant to Section 1.221(c) of the Commission's Rules, within twenty days of the release date hereof, a written notice stating an intention to appear on the date set for the hearing and present evidence on the issues specified in the Memorandum Opinion and Order.

16. IT IS FURTHER ORDERED, That a Hearing Examiner SHALL BE DESIGNATED to preside in the proceeding ordered herein, who SHALL PREPARE an Initial Decision on all of the issues in the complaint proceeding as provided in Section 1.267 of the Commission's Rules and Regulations.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary