

Original
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

144

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

F. RAY MARSHALL, Secretary of Labor,

and

UNITED STATES OF AMERICA,

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
et al.,

Defendants,

v.

COMMUNICATION WORKERS OF AMERICA, et al.,

Intervenors.

CIVIL ACTION NO.
73-149

FILED

JAN 17 1979

JOHN J. HARDING, Clerk
By NMB Dep. Clerk

FINAL REPORT

The Consent Decree in this action will expire on January 17, 1979, unless the government plaintiffs, for good cause, move for an extension of the Decree. The purpose of this report is to apprise the Court of the results of the defendants' (AT&T and its 23 operating companies, hereinafter "Bell System") corrective action taken under the Decree over the last six years. We have attached to this Report, reports for each of the 23 Bell System operating companies. As the reports indicate, each of the defendant companies is in substantial compliance with the obligations of the Decree. Accordingly, we do not seek an extension of the Decree.

The principal objectives of the Decree were (1) to desegregate sexually the traditionally male plant departments and the traditionally female traffic departments within each of the Bell System companies; (2) more fully to integrate racially, ethnically, and sexually those job classifications within each company where any such groups were underutilized; and (3) to address equal pay matters in non-management ranks. With these objectives in mind we present here and in each individual report that information which will enable the Court to make an evaluation of what progress the Bell System as a whole and each company has made in achieving these objectives.

Any presentation of information concerning an entity as large and complex as the Bell System will have limitations. We settled on the information contained in each of the reports because it presents two snapshots of each company: one in 1973 and one in 1978.

In our judgment the Bell System, including each of its 23 operating companies, substantially complied with the Decree, and by doing so, achieved significant progress toward its major objectives. Inroads have been made in altering the historic patterns of male plant departments and female traffic departments. In addition previously underutilized race, sex and ethnic groups are participating in increasing numbers in most affirmative action job classifications (AAJC's). The Bell System made substantial changes in its promotional and pay system to meet the equal pay allegations of the complaint. In addition, of course, the Bell System has paid more than \$12 million in one time payments in the nature of back pay and incentive payments pursuant to its obligations under the Decree and Supplemental Order, and has thus far

paid more than \$40 million in pay adjustments of a continuing nature.

The government does not believe however that all equal employment opportunity problems have been remedied and forever put to rest. Problems of both an individual and systemic nature may still exist within all the companies. In our judgment, however, the existence of such problems would not constitute a violation of the Decree.

TARGET PERFORMANCE

As noted in the Interim Report, in 1973 and 1974 there were substantial problems in the attainment of many intermediate targets under the original Decree. These problems gave rise to the Supplemental Order filed with the Court on May 5, 1975, and entered August 20, 1976.

Since 1975, the Bell System has achieved substantially all intermediate targets. The major factor responsible for the improvement of 1975-1978 target performance over 1973-1974 performance was the implementation of management controls and reporting systems to permit regular analysis of target performance.

STATISTICAL ANALYSIS

Since the Decree was entered, the total number of employees within the Bell System has decreased from 793,715 to 792,522: a percentage decline of 0.2%. While total employment remained relatively stable, significant progress was made for women in positions where they had been excluded or underutilized. Women now comprise 28.5% of the management employees (Affirmative Action Job Classifications 1, 2, 3), as compared with 22.4% in 1973. More specifically in top level management (AAJC 1) women increased from 2.1% to 6.9%,

in mid-level management (AAJC 2) they increased from 11.2% to 20.7% and in entry level management the increase was from 30.8% to 35.0%. In the craft positions (AAJC's 6, 7, 9, 10) women now represent 9.5% of these employees, as compared to 2.8% when the Decree was entered. The progress is perhaps more apparent when viewing inside craft positions and outside craft positions separately. Between 1972 and 1978 women in outside craft positions (AAJC's 6, 9) went from 0.2% to 3.9%. In inside craft positions (AAJC's 7, 10) women went from 6.5% to 17.2%.

In the clerical (AAJC's 11, 12, 13) and operator (AAJC 14) positions, men made substantial gains. Between December 31, 1972, and September 30, 1978, men increased in the clerical positions from 4.1% to 10.9%; and in the operator position from 1.4% to 7.5%

Employment of blacks on a system-wide basis went from 10.6% to 12.0% under the Decree. In management (AAJC's 1, 2, 3) blacks increased from 2.3% to 5.6%. They increased from .5% to 1.4% in AAJC 1, from 1.0% to 3.7% in AAJC 2, and from 3.2% to 7.0% in AAJC 3. Although blacks declined in their representation in semi-skilled crafts (AAJC's 9, 10, including a redistribution of AAJC 8) from 10.4% to 9.7%, their representation in the skilled craft positions (AAJC's 6, 7) increased from 3.2% to 5.4%. Similarly, while in the entry level clerical positions (AAJC 13) and operator positions (AAJC 14) blacks declined from 20.0% to 19.8%, in skilled and semi-skilled clerical positions (AAJC's 11, 12) they increased from 12.7% to 17.7%.

Overall Hispanic employment increased from 2.5% to 3.9%. Hispanic representation in management increased from 0.7% to 2.1%,

as Hispanic representation in AAJC 1 went from 0.1% to 0.5%, from 0.4% to 1.3% in AAJC 2, and from 1.0% to 2.7% in AAJC 3. Hispanics experienced an increase in semi-skilled crafts (AAJC's 9, 10) from 3.6% to 4.3%, and a more significant increase in skilled crafts (AAJC's 6, 7) from 1.6% to 3.2%. Similarly, Hispanics showed an increase in the operator and entry level clerical positions (AAJC's 13 and 14) from 3.6% to 5.2% and a more substantial increase in the skilled and semi-skilled clerical positions (AAJC's 11 and 12) from 2.9% to 5.2%.

The foregoing statistics should be viewed in light of a 9.9% national black labor force, and a 3.9% national Hispanic labor force as reflected in the 1970 Census.

THE SETTING OF INTERMEDIATE TARGETS

The process by which intermediate targets have been established on a yearly basis is known as Goals II. In effect, a computer, with data input from each of the Bell System companies, sets the intermediate targets for each race, sex, ethnic group for each of the companies' establishments.

Because an underlying principle of the Decree was that targets should be based on normal movement patterns, targets, although in compliance with the Decree, were sometimes low. For example, in the skilled crafts (AAJC's 6, 7) the female targets tended to be low because the targets were set in many companies on the basis of the female representation in the semi-skilled crafts (AAJC's 9, 10) where, notwithstanding notable progress, significant female underutilization persisted throughout the term of the

Decree. This situation was particularly evident in AAJC 6 where targets were usually based on female representation in AAJC 9. Female representation there never exceeded 5.3% on a system-wide basis, and in certain companies, because of either no growth or a reduction in force, was negligible throughout the term of the Decree.

Minority males, on the other hand, often had, in our view, insufficient targets (in many cases lower than their existing representation) in the semi-skilled crafts (AAJC's 9, 10) because the pools for those positions were predominantly female. The experience gained under this Decree should enable us to provide appropriate adjustments to the target setting mechanisms to provide for reasonable targets for all groups.

The companies were not required to adhere strictly to the suggested pool classifications. In some companies we found that any job classification which contributed at least 10% of the persons moving into another job classification was automatically made a pool job classification for purposes of Goals II the next year. In one company those classifications which provided the greatest movement into the subject classification and collectively provided more than 75% of that movement were included in the pool. Still in other companies, there were no objective criteria employed for purposes of determining pool classifications. And certain companies permitted the pooling structure to be determined at the establishment level in which case a minimal and possibly aberrational movement might be the basis for a consequential pooling change. However, we have no evidence that any individual company

manipulated pool classifications in order to lower intermediate targets.

Another way in which the determination of intermediate targets was subject to the judgment of individual companies was in the projection of the proportion of opportunities to be filled by hires. In some instances these projections had significant impact on minority male targets. The higher the hiring projection the greater would be the influence of the group's representation in the external labor market which would as a rule be substantially higher than that group's representation in the relevant employee pool (this procedure would rarely affect female targets). During the declining employment situation that was the case in most companies in recent years, the low hiring projections were reasonable. However, there were instances where underestimated hiring projections caused targets to be substantially lower than a correct projection would have yielded. (See Addendum) We did not find that any such erroneous projections were deliberate.

TEST BATTERIES

The test batteries used by the Bell System in the clerical, craft and management areas generally screen out minorities or women at a substantially disproportionate rate. Under the Decree the use of such tests was acceptable so long as the intermediate targets were being met, thus precluding the necessity of a lengthy and complicated validation inquiry. Absent the affirmative requirements of the Decree, the tests could become a serious impediment to the Bell System's progress and could be unlawful.

CONCLUSION

While the limited growth and in some cases decline in total employment for many companies caused the progress toward the elimination of underutilization to be less than otherwise would have been the case, the Bell System operating companies did make significant progress toward the achievement of the objectives of the Decree.

However, even apart from the remaining underutilization of certain groups, the Decree did not solve all of the equal employment opportunity problems within the Bell System operating companies. It was not intended to be the instrument to accomplish such a broad purpose. It was designed to alter historic, systemic patterns of dual lines of progression for men and women and the exclusion of minorities from the more desirable jobs, and thus to desegregate departments and jobs within the Bell System. We

believe that all the Bell System operating companies have substantially complied with the Decree. Accordingly, we do not recommend that the Decree be extended.

Respectfully submitted,

Carin Clauss

CARIN CLAUSS
Solicitor of Labor

Louis G. Ferrand, Jr.

LOUIS G. FERRAND, JR.
Attorney
U.S. Department of Labor
Washington, D.C. 20210

William L. Robinson

WILLIAM L. ROBINSON
Associate General Counsel

David W. Zugschwerdt

DAVID W. ZUGSCHWERDT

ROBBIE DIX III

JAMES P. SCANLAN

Attorneys

Equal Employment Opportunity
Commission

Washington, D.C. 20506

David L. Rose

DAVID L. ROSE

JAMES S. ANGUS

Attorneys

Department of Justice

Washington, D.C. 20530

TOTAL

TOTAL MEN

WHITE MEN

BLACK MEN

HISPANIC MEN

AMERICAN
INDIAN MENASIAN/PACIFIC
ISLANDER MEN

	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78	12/31/72	9/30/78
Job Class																				
1	15,780	16,144	15,442	97.9	15,026	93.1	15,313	97.0	14,713	91.1	79	0.5	179	1.1	14	0.1	72	0.5	19	0.1
2	43,138	51,389	38,308	88.8	40,731	79.3	37,772	87.6	39,007	75.9	308	0.7	1081	2.0	114	0.3	477	0.9	46	0.1
3	95,949	115,418	65,949	69.1	75,037	65.0	63,689	66.7	68,945	59.7	1464	1.5	3670	3.2	526	0.6	1848	1.6	86	0.1
4	32,716	30,936	5,336	16.3	7,363	23.8	4,937	15.1	6,550	21.2	283	0.9	526	1.7	79	0.2	215	0.7	12	0.0
5	5,813	8,455	4,274	75.5	4,735	56.0	3,987	68.6	4,041	47.8	204	3.5	472	5.6	68	1.2	188	2.2	11	0.2
6	65,107	70,884	65,069	99.9	68,956	97.3	62,368	95.8	62,714	88.5	1564	2.4	3,328	4.7	888	1.4	2407	3.4	123	0.2
7	76,542	74,584	73,923	96.6	65,754	88.2	69,147	90.3	59,952	80.4	2817	3.7	3,420	4.6	1324	1.7	1749	2.4	113	0.2
8	11,347	703	10,843	95.6	527	75.0	8,079	71.2	297	42.3	2150	19.0	229	32.6	530	4.7	1	0.1	19	0.2
9	66,104	63,767	65,898	99.7	60,381	94.7	58,344	88.3	53,209	83.4	5188	7.9	4315	6.8	2084	3.2	2388	3.7	112	0.2
10	18,011	21,907	14,457	80.3	14,128	64.5	11,254	62.5	11,097	50.7	2128	11.8	2081	9.5	859	4.8	733	3.4	34	0.2
11	82,392	102,548	4,759	5.8	12,553	12.2	4,093	5.0	10,013	9.8	446	0.5	1372	1.3	170	0.2	891	0.9	6	0.0
12	74,689	86,609	1,280	1.7	7,425	8.6	843	1.1	5,307	6.1	257	0.3	1222	1.4	97	0.1	611	0.7	7	0.0
13	45,140	34,748	2,211	4.9	4,443	12.8	1,319	2.9	3,200	9.2	552	1.2	700	2.0	208	0.5	376	1.1	18	0.0
14	148,622	104,134	2,060	1.4	7,786	7.5	1,517	1.0	5,789	5.6	338	0.2	1102	1.1	167	0.1	715	0.7	7	0.0
15	12,365	10,296	7,724	62.5	6,042	58.7	4,262	34.5	3,808	37.0	2688	21.7	1622	15.8	629	5.1	508	4.9	22	0.2
	793,715	792,522	877,533	47.6	890,887	49.3	846,924	43.7	848,642	44.0	20466	2.6	25239	3.2	7757	1.0	1379	1.7	635	0.1

Corporate

ASIAN/PACIFIC
ISLANDER WOMEN

Job	Class	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
12/31/72		338	2.2	1118	6.9	333	2.1	1058	6.6	3	0.0	44	0.3	1	0.0	12	0.1
9/30/78																	
12/31/72		4830	11.2	10,658	20.7	4647	10.8	9563	18.6	116	0.3	799	1.6	37	0.1	206	0.4
9/30/78																	
12/31/72		29,543	30.9	40,381	35.0	27,258	28.5	34,145	29.6	1634	1.7	4406	3.8	435	0.5	1305	1.1
9/30/78																	
12/31/72		27,380	83.7	23,573	76.2	24,643	75.3	19,223	62.1	2317	7.1	3457	11.2	288	0.9	685	2.2
9/30/78																	
12/31/72		1539	26.5	3720	44.0	1353	23.8	2919	34.5	119	2.1	623	7.4	28	0.5	149	1.8
9/30/78																	
12/31/72		38	0.1	1928	2.7	37	0.1	1609	2.3	1	0.0	162	0.2		126	0.2	
9/30/78																	
12/31/72		2619	3.4	8830	11.8	2381	3.1	7371	9.9	172	0.2	997	1.3	43	0.1	345	0.9
9/30/78																	
12/31/72		540	4.4	176	25.0	426	3.8	125	17.8	51	0.5	51	7.3	21	0.2		1
9/30/78																	
12/31/72		206	0.3	3386	5.3	182	0.3	2744	4.3	18	0.0	453	0.7	6	0.0	151	0.2
9/30/78																	
12/31/72		3554	19.7	7779	35.5	3058	17.0	5964	27.2	407	2.3	1279	5.8	63	0.4	387	1.8
9/30/78																	
12/31/72		77,633	94.2	89,995	87.8	66,628	80.9	70,446	68.7	8918	10.8	14467	14.1	1610	2.0	3756	3.7
9/30/78																	
12/31/72		73,409	98.3	79,184	91.4	59,421	79.6	56,297	65.0	10274	13.8	16415	19.0	2673	3.6	4554	5.3
9/30/78																	
12/31/72		42,929	95.1	30,305	87.2	31,829	70.5	21,377	61.5	8275	18.3	6729	19.4	2108	4.7	1652	4.8
9/30/78																	
12/31/72		146562	98.6	96,348	92.5	111792	75.2	72,001	69.1	29607	19.9	18997	18.2	4424	3.0	4410	4.2
9/30/78																	
12/31/72		4641	37.5	4254	41.3	3092	25.0	2825	27.4	1421	11.5	1149	11.2	106	0.9	243	2.4
9/30/78																	
12/31/72		415761	52.4	401635	50.7	337110	42.5	307667	38.8	63333	8.0	70028	8.8	11843	1.5	1785	2.3
9/30/78																	
12/31/72		0.6	4423	0.3	22573	0.2	1532	0.1	865	0.1	1532	0.2	2573	0.3	4423	0.6	0.6

ADDENDUM - Shortcomings of the Goals II Target-Setting Procedure

I. Introduction

In the course of the final compliance reviews the reviewing teams discovered many instances of intermediate targets which were thought inadequate or even quite unreasonably low, as well as instances of radical changes in targets from year to year. For example, at one establishment of an operating company, the black male target in AAJC 9 (semi-skilled outside crafts) dropped from 28% ^{1/} in 1976 to 2% in 1977; in another establishment of the same company, the black male target in AAJC 9 dropped from 18% in 1976 to 4% in 1977. The Goals II target-setting procedure yielded these 1977 targets even though at the first establishment the black male ultimate goal in AAJC 9 was 17% and the black male representation in that AAJC at the beginning of 1977 was 5%; at the second establishment the black male ultimate goal in AAJC 9 was 12% and the black male representation in that AAJC at the beginning of 1977 was 5%. These targets were thus not merely inadequate to promote the accelerated elimination of underutilization that was the primary purpose of the Consent Decree, but were below the rates of movement that could be expected in a non-discriminatory situation even without a decree.

^{1/} Since the references to actual and hypothetical intermediate targets and related numerical data are presented here solely for illustrative purposes, such numbers will be rounded off to the nearest percentage point except in instances where doing so would yield a clearly erroneous result. The rounding will not affect the the illustrative value of the material presented and should enhance the readability of this somewhat complex document.

There are two disturbing ramifications of such, in our view, unreasonably low targets even beyond the fact that they do nothing to promote the primary purpose of the Decree. First, there exists the danger that in more or less subtle ways the targets will act as a ceiling on movement of the targeted groups (even below normal non-discriminatory movement rates), if only by causing a company's higher management to relax its monitoring of the selection process once a target is achieved. Second, the Decree provides that the Bell System companies may continue to use their tests as long as targets are achieved. In situations of the unreasonably low targets under discussion, the Bell System has achieved insulation for its tests while giving nothing in return. 2/

In any event, the situations of these very low targets for black males in AAJC 9 at these and other establishments of the same company, as well as a number of similar or related situations at other companies, caused the reviewers to carefully study the target-setting mechanism of the Model Affirmative Action Program as it in fact operated at the companies reviewed. That study indicated that, even accepting the underlying

2/ A reviewing team travelled to one establishment largely because it noted that the establishment met, but did not exceed, its low targets for black males in AAJC 9 in 1977 and the first quarter of 1978. It found, for example, that of 33 promotions going to males in 1977, black males received none (the black male target having been achieved through hires), even though black males constituted a substantial proportion of the male pool. The company explained this as a result of the fact that all three of the eligible black males who bid on openings in AAJC 9 in 1977 were disqualified by tests.

principle of the target-setting procedure (i.e., that promotional targets should be based on normal movement patterns), the target-setting mechanism was subject to at least four shortcomings, some of which actually caused that underlying principle to be defeated.

We emphasize that we do not regard these shortcomings in the target-setting procedure to reflect on the Bell System's good faith in fulfilling its obligations of establishing a program for the accelerated advancement of the underutilized groups nor at all to bear on its compliance with the terms of the Decree. Indeed, to the extent that there is any culpability connected with the fact that these shortcomings were permitted to exist throughout the term of the Decree, it primarily belongs to the government plaintiffs. They could have discovered these shortcomings at a time when their correction might have been negotiated and a more precise mechanism put into effect for a significant part of the six-year term of the Decree. However, because of the fact that this Decree and its target-setting procedure or parts thereof have been adopted as models for decrees and affirmative action programs in similar contexts, we believe it is important to set forth, on the public record, the failings of that procedure.

Before proceeding to the discussion of these problems, we believe it appropriate to note certain factors which played into the failure to discern these problems at an earlier date. We do so not to exculpate the government plaintiffs for failings to make a timely discovery of these problems, but because we believe it is important to demonstrate the various factors which may affect the ways a decree of this nature is monitored.

First of all, when the initial compliance reviews were conducted in 1974, there was the widespread failure to meet targets throughout much of the Bell System which made necessary the entry of the Supplemental Order. The fact that so many targets were being missed would tend to cause less attention to be directed to the adequacy of the targets. More importantly, however, during the period between the initial review and the subsequent period of negotiations which culminated in the Supplemental Order and certain other specific alterations of the target-setting procedure, there were simply no instances of the unreasonably low targets, such as those cited above, which might make evident the fact that the targets which the procedure yielded warranted its severe scrutiny. This was so because, through 1976, most Bell System operating companies had in effect as an adjunct to the regular target-setting procedure a mechanism called "the Four Checks." Without belaboring its more complex aspects, the critical feature of the Four Checks was a mechanism for profile maintenance whereby targets arrived at through the normal procedure were adjusted to prevent an underutilized group from becoming more underutilized at the end of a year than it was at the beginning of the year. The procedure was initially instituted unilaterally by the Bell System in 1973 and 1974 ^{3/} because it regarded its obligation under the Decree as not merely to meet targets but also to see that

^{3/} Two of the Four Checks were put into effect in 1973 and two in 1974. The critical feature was put into effect in 1973.

it actually made progress in increasing the representation of underutilized groups. The Four Checks had a variety of ramifications depending on the situation. Most germane to the subject under discussion is the fact that the mechanism would almost never permit a target to be below an underutilized group's existing representation in an AAJC. 4/ Thus, while the Four Checks system was in effect, there were no undeniable instances of the unreasonably low targets such as were discussed at page 1, supra, to make evident the fact that the target-setting procedure required a thorough reappraisal.

4/ For example, if an underutilized group's current representation in the subject AAJC was 8% and the normal target-setting mechanism yielded a target of 4%, the target would probably be adjusted to something slightly in excess of 8% (depending on the expected growth and expected losses). The above example suggests that while the Four Checks would prevent a target from dropping below the current representation, it would have little effect in terms of increasing targets which, although above the current representation, were nevertheless insufficient to promote accelerated elimination of underutilization. In the cases of AAJC's where numerous opportunities were projected, this would be true. However, in an AAJC in which negligible opportunities were expected, an underutilized group which was expected to lose a disproportionate number of employees might get a very high target. For example, if only two opportunities were expected and a particular underutilized group was expected to lose one employee while all other groups lost none, the group's target might be as high as 50%. The impact of the procedure in such a case would nevertheless appear to be essentially inconsequential since only two opportunities were to be allocated. However, if the projection of opportunities proved to be underestimated, even grossly so, the group would still be allocated 50% of all the opportunities irrespective of the total. This inequity was one of the reasons that the Four Checks mechanism was abandoned.

The Bell System eliminated the Four Checks from the target-setting procedure after 1976. It did so because of certain inequities caused by the mechanism (see footnote 4) as well as the fact that it was uncertain as to the propriety of its implementing a procedure inevitably disadvantaging certain employees which was not dictated by the Decree. It advised representatives of the Government Coordinating Committee that it was abandoning the procedure, and no objection was raised. ^{5/} Only with the elimination of the Four Checks were the situations which we noted above possible. Although, as shown below, these dramatic declines in targets were not specifically results of elimination of the Four Checks, but rather of a pooling change, the operation of the Four Checks would have mitigated the effect of that change to the point of obscuring the extent to which the target-setting procedure can yield almost absurdly low targets.

II. Illustration of the Shortcomings of the Target-Setting Mechanism.

The Flow Chart for the target-setting procedure is attached as an Exhibit to this Addendum. It is complex, but essentially self-explanatory. It is important for the subsequent discussion to bear in mind the following facts. An intermediate target is the proportion of opportunities which will be allocated to qualified members of targeted groups.

^{5/} Nor do we now believe that the Bell System acted improperly in abandoning the Four Checks. We do, however, believe it would be desirable for similar decrees to have a similar procedure which would at least prevent targets from falling below existing profiles.

Although it may be achieved by any combination of hires and promotions, the target is derived by a combination of a projected promotional allocation and a projected hiring allocation for a targeted group, with each such projected allocation weighted according to the proportion of opportunities which, at the beginning of each year, it is projected that promotions and hires shall account for. In most instances, the projected promotional allocation will be the most significant, if not sole, determinant of the intermediate target for AAJC's above entry level, since only in expanding companies will many hires be projected in those AAJC's. The composition of the relevant employee pool will be the most significant element in the determination of the projected promotional allocation. 6/

- A. The Absence of a Mechanism for Weighting the Influence of the Various AAJC's in a Relevant Employee Pool in Determining the Various Race/Sex/Ethnic Groups' Representation in the Pool.

The most evident problem with the target-setting procedure arises from the fact that there is no mechanism for weighting the influence of the various AAJC's in the relevant employee pool for another AAJC in determining each race/sex/ethnic group's representation in the pool. In the reviews, a variety of methods were found for determining which AAJC's should be included in a relevant employee pool for another AAJC. Some of these

6/ It should also be kept in mind that there is a ceiling on projected promotional allocations of one and one-half times a group's ultimate goal. A number of the actual and hypothetical projected promotional allocations that will be contrasted in the subsequent discussion will have been substantially reduced because of this limitation. Thus, absent the limitation, the contrasts would be more striking. However, since the end result, as affected by the limitation, is the relevant consideration, the figures will always be presented as so limited.

methods permitted aberrational movements to be the basis for a very consequential pooling change. Of greater significance, however, is the fact that all methods permitted a particularly large AAJC's composition to have an influence in the determination of the composition of the pool substantially disproportionate to the amount of the promotional movement it provided.

For example, the first situation referred to at the outset in which the intermediate target for black males in AAJC 9 at an establishment declined from 28% in 1976 to 2% in 1977 occurred primarily because, in 1977, AAJC 14, the operator classification, was brought into the pool for AAJC 9. 7/ This change in the pooling structure caused such a radical decline in the target because AAJC 14 was both very large and overwhelmingly female. 8/ Accordingly, the black male representation in the pool dropped from 20% in 1976 to 2% in 1977 because the pool had suddenly become almost entirely (95%) female.

7/ This was not the only change in the pool for AAJC 9. In 1976, the pool had included AAJC's 8 (skilled services), 10 (semi-skilled inside crafts), and 15 (services); in 1977, it became AAJC's 8 and 14; and in 1978, the pool became AAJC's 10 and 14 when AAJC 8 was redistributed (see Representation Memorandum, ¶2). However, it is the inclusion of AAJC 14 in the pool which is the significant factor, and with which the subsequent discussion is primarily concerned.

8/ At that establishment AAJC 14 was over 95% female and was more than 20 times the size of AAJC 8, the only other AAJC in the pool.

We cannot take issue with the inclusion of AAJC 14 in the pool for AAJC 9. It was based on the fact that 40% of the promotional movement (company-wide) into AAJC 9 in 1976 came from AAJC 14. Its inclusion in the pool was therefore consistent with accepted practice under the Decree. However, it is an obvious shortcoming of the target-setting procedure that on the basis of its providing 40% of the promotional movement into AAJC 9, AAJC 14 became 96% of the pool and that, consequently, AAJC 14's composition became, in effect, the pool's composition. A weighting mechanism in the target-setting procedure would have both corrected this anomaly and eliminated the problem of the unreasonably low black male target. Using a logical weighting system, and assuming that the other 60% of the movement came from AAJC 8 (the other AAJC in the pool), 9/ the weighted black male composition of the relevant employee pool would have been 22% 10/ instead of the 2% unweighted composition which was actually used for setting the target. The projected promotional allocation (and, accordingly, the intermediate target, no hires having been projected) would have been 25% (one and one-half times the black male ultimate goal of 16.9% having operated as a ceiling), rather than the 2% it actually was.

One other example of an instance where weighting is clearly called for is appropriate here because it involves a situation in which it might erroneously be thought that there is an irreconcilable

9/ While such an assumption is undoubtedly not completely accurate, its use here is acceptable for illustrative purposes.

10/ Black males constituted 37.1% of AAJC 8 and 0.2% of AAJC 14. The following formula was used:

$$\begin{array}{rcl} .370 \times .60 & = & .223 \\ .002 \times .40 & = & .001 \\ \hline & & .224 \end{array}$$

conflict between providing reasonable targets for both minorities and females in a Decree of this nature. Specifically, some companies included only AAJC's 9 (semi-skilled outside crafts) and 10 (semi-skilled inside crafts) in the pools for AAJC 7 (skilled inside crafts), as in the AT&T model, and consequently had higher minority male targets but lower female targets than the companies which also included any of the predominantly female AAJC's 11-14 in the pool. For example, in 1978 at one establishment of such a company, the total female target for AAJC 7 was 12% while the black male target was 19% (one and one-half times ultimate goal). If AAJC 11 (skilled clerical) had been included in the pool (as was the case at some companies), let us say on the basis of providing 20% of the promotional movement, the estimated total female target would have been 57% and the estimated black male target would have been 14%. Under the existing system the company is presented with the difficult question of how much movement from AAJC 11 is necessary in order to warrant its inclusion in the pool, and anyone attempting to appraise the resulting targets would have some difficulty in determining which would be the more desirable. In fact, both sets of targets are substantially deficient in the sense that neither is in fact significantly related to actual movement patterns. In the first situation, AAJC 9 (which is 14% black male and 2% female) exercises a very predominant influence on the targets because it is much larger (592 compared to 196) than AAJC 10 (which is 36% black male and 30% female). This is so even though AAJC 10 (semi-skilled inside crafts), because it is the most logical pool for AAJC 7 (skilled inside crafts), will often provide up to 50% of the promotional movement. In the second situation AAJC 11, which is 96% female and 1% black male, because of its size (1061), exercises a much greater influence than the 20% movement it provides would warrant.

The evident solution to these situations is a weighting mechanism. In the first situation, assuming a 50% movement from each of AAJC's 9 and 10, the total female target would be 32% and the black male target would be 19% (one and one-half times ultimate goal having operated as a ceiling). In the second situation, assuming 20% movement from AAJC 11, 40% from AAJC 9 and 40% from AAJC 10, the total female target would be 48% and the black male target would still be the maximum 19%. Such targets not only bear a relationship to actual movement patterns in accord with the underlying principle of the Decree, but no marginal decision respecting the inclusion of a particular AAJC in a pool significantly disadvantages one underutilized group while it benefits another.

- B. The Procedure's Failure to Take Into Account the Fact That in the Outside Crafts the Composition of the Relevant Employee Pools Will in Many Cases not Reflect Actual Movement Patterns.

A second problem with the target-setting procedure which played a role in causing the unreasonably low black male targets for AAJC 9 cited on page 1 is related to the problem of the absence of a weighting mechanism in that both arise from the fact that the representations of the various groups in the pool for AAJC 9 often do not actually reflect the movement patterns of those groups. Specifically, the problem is that the target-setting procedure uses the minority male composition of the overwhelmingly female pool for the purpose of determining the minority male projected promotional allocation for AAJC 9 without taking into account the fact that, in actual practice, the female proportion of opportunities will seldom exceed 28.5%. This 28.5% limitation on actual female movement occurs because the maximum female target is 28.5% (one and one-half times the female ultimate goal of 19.0% in outside crafts) and because the limited number of interested

and competitively qualified females in the pool makes it necessary to use overrides even to meet this figure; hence, 28.5% is rarely significantly exceeded. Thus, although males will therefore assuredly receive 71.5% of the opportunities, the minority male targets will be based on the minority male group's very small proportion of the total pool (e.g., 2% for black males in 1977 at the first establishment cited on page 1), even though they are a very substantial proportion of the male pool (e.g., 38% for black males at the cited establishment in 1977) which will receive that 71.5% of the total promotions. 11/ The failing of this method is demonstrated by the fact that, in the 1977 situation under discussion, for example, white males, while only 3% of the relevant employee pool, are on the intermediate target reports projected for 69% of the promotions because the white males column receives the residue of the 100% after all other groups are targeted. Neither the figure which appears as the projected promotional allocation under the white males column nor that which appears as the white males' intermediate target itself is actually a target in the sense that anything is to be done to achieve it. However, the ways these figures are arrived at does highlight the failing of the existing system.

11/ As indicated earlier, both the problem under discussion and the weighting problem discussed earlier stem from the fact that the existing system does not base promotional allocations on actual movement patterns. Thus, the weighting of the pools would, to some extent, alleviate the problem presently under discussion, since it would cause those pools to be more reflective of the actual movement patterns. However, it would not alleviate this problem entirely. For example, the weighting of the pools at the establishment discussed above would still leave women constituting 50% of the relevant employee pool, although they were to receive only 28.5% of the opportunities.

A method which would not merely be fairer, but also much more in keeping with the underlying principle of the target-setting procedure that promotional allocations should be based on normal movement patterns, would be to base the black male promotional allocation of 71.5% of the total promotions on the black male composition of the male pool which will get this 71.5%. Under such a method, the black male promotional allocation would have been more than 25% of the 71.5% of the total promotions which were projected for males, or more than 17% of the total of all promotions, rather than the 2% share of the total of all promotions they were targeted for under the existing method. 12/

C. The Anomaly of the Multiplier.

The third problem with the target-setting procedure also involves the determination of a group's projected promotional allocation. It is the most fundamental shortcoming of the procedure, although possibly the least evident. Specifically, it is that there is no supportable rationale for the formula for determining the multiplier.

As indicated in the Exhibit, a preliminary step in determining the promotional allocation entails dividing the targeted group's current representation in the subject AAJC by the lower of the group's representation in the relevant employee pool (R.E.P.%) or its ultimate goal (U.A.%). If the resultant ratio is from 0% to 50%, the multiplier is two; if the ratio is from 51% to 79%, the multiplier is one and one-half; if the ratio is 80% or over, the multiplier is one. That multiplier is then

12/ As a rule, the problem discussed above concerned only AAJC 9, since only that AAJC had both the overwhelmingly female pool and the effective 28.5% limitation on female movement. The same problem would exist in AAJC 6 to the extent that the female composition of the pool exceeded 28.5%. However, this was seldom the case since most companies included only AAJC 9 in the pool for AAJC 6.

applied to the lower of R.E.P.% or the U.A.%. The product is then compared to one and one-half times U.A.%, with the smaller figure becoming the projected promotional allocation for the targeted group.

Applying the multiplier to the lower of R.E.P.% or U.A.% is perfectly reasonable. Use of R.E.P.% when it is lower is consistent with the underlying movement-from-within philosophy of the target-setting procedure; use of U.A.% when it is lower is a reasonable method of preventing targets for any particular group from becoming exorbitant. ^{13/} However, there is no supportable rationale consistent with the underlying philosophy of the Decree for the use of the lower of R.E.P.% or U.A.% in the ratio for determining the multiplier.

The reasonable method of determining the multiplier which would be in accord with the philosophy of the target-setting mechanism and the purpose of the Decree would be to compare the group's current representation in the subject classification with the group's U.A.% (ultimate goal). The resultant ratio would then be indicative of how far the group has to go to reach parity and, accordingly, how substantial should be the target. Comparison with the R.E.P.% (representation in the relevant employee pool), on the other hand, does not relate in any way to the matter of how far a group has to go. Indeed, it is difficult to perceive how the use of R.E.P.% got into the determination of the multiplier in the first place. It does have the look of being another instance of deference to the promote-from-within philosophy of the procedure. However, that philosophy is fully served by the mechanism whereby the multiplier is applied to

^{13/} The policy of preventing exorbitant targets is also reasonably effectuated by the one and one-half times U.A.% limitation on promotional allocations.

R.E.P.% when lower than U.A.%; the ratio of the current representation to R.E.P.% has no real bearing on this or any other rationale of the target-setting procedure. 14/

More significant than the analysis of underlying philosophies, however, is the simple fact of how the procedure works in practice. For, quite anomalously, when a group's representation in the relevant employee pool is very low, the multiplier tends also to be low; when it is high, the multiplier tends to be high. Both of the situations of the radical reduction in black male targets referred to on page 1 were influenced by this phenomenon; however, a hypothetical example in which one and one-half times ultimate goal does not act as a ceiling on projected promotional allocations is more illustrative. Assume a situation where a

14/ It might be argued that the size of the multiplier is intended to be proportional to the severity of the discrimination the targets are intended to remedy and that the relationship of the group's existing profile to the profile of the pool does reflect the extent of the discrimination. This might be true with some decrees which are directed simply to the correction of discrete discrimination in promotions. However, the philosophy of the decree in this case is that there has been discrimination at each step in the process which is to be corrected by, optimally, achieving an ultimate goal that is the group's representation in a subject AAJC that would have been the case had there been no discrimination at any stage in the process. Accordingly, that argument is not apposite to this situation.

group's current representation in a subject AAJC is 4% and its ultimate goal is 15%. If its representation in the relevant employee pool is 10%, the resultant ratio being less than 50%, the multiplier would be two and the projected promotional allocation 20%. Now assume the same situation except that, because of a pooling change, the group's representation in the pool is only 2%. The group still has as far to go to get to its ultimate goal, and, if anything, needs a greater multiplier than before since the R.E.P.% to which the multiplier will be applied is so low. However, because the group's current representation in the subject AAJC is even greater than its R.E.P.%, the multiplier is only one and the resultant projected promotional allocation is only 2%. 15/

15/ Discussion of this problem has elicited the suggestion that use of R.E.P.% (when lower than U.A.%) in the ratio for determining the multiplier is based on a practical consideration of the difficulty of finding sufficient qualified persons for a high target when the group's representation in the pool is very low. However, the problem of finding qualified persons in the pool is the same whether the target is some multiple of a low representation in a pool or some multiple of a high representation in a pool.

Thus, in a more rational procedure the multiplier should always be determined on the basis of the ratio of the group's current representation in the subject AAJC to its ultimate goal, whether that ultimate goal is higher or lower than the group's representation in the relevant employee pool.

D. The Dangers of Erroneous Hiring Projections.

As indicated earlier, a group's intermediate target is a combination of its projected allocation of promotions and its projected allocation of hires weighted according to the proportion of opportunities projected to be filled by each method. This projection (hereinafter simply referred to as the hiring projection) may have a significant impact on targets whenever a group's projected promotional allocation and projected hiring allocation (which, as a rule, is one and one-half times its ultimate goal) vary substantially. ^{16/} Nevertheless, the intermediate target so determined (which may be achieved by any combination of hires and promotions) remains in effect throughout the year even though the projection of the proportion of opportunities to be filled by each method may prove to be erroneous.

^{16/} For example, a group with a projected promotional allocation of 4% and a projected hiring allocation of 22% would have an intermediate target of 13% if 50% of the opportunities were projected for hires and a 4% intermediate target if 0% of the opportunities were projected for hires.

The danger of this method was pointedly illustrated in 1978 at the two establishments referred to on page 1. At one of these establishments, no hires were projected for AAJC 9 and, accordingly, the black male promotional share of 3% also became the intermediate target. As of the end of the third quarter of 1978, of 192 opportunities at that establishment, 117, or 60%, were filled by hires. Black males received 13 (7%) of these opportunities, 7 more than the 6 the 3% intermediate target would have required. If the 60% proportion of the opportunities to be filled by hires had been correctly projected, the black male intermediate target would have been 16.5% which would have required that black males receive 32 opportunities, 19 more than the 13 actually received and 26 more than were required by the actual target. At the other establishment, the consequence of an erroneous projection was less dramatic but not inconsequential. There 30% of the opportunities were projected for hires; this projection yielded a 7.6% black male target (based on a 3.1% promotional allocation and an 18% hiring allocation). As of the end of the third quarter, there were 185 opportunities at that establishment of which 126 (68%) were filled by hires. Black males received 15 (8%) of the opportunities, one more than the 14 their intermediate target required. If the 68% hiring figure had been correctly projected, black males would have had an intermediate target of 13.3% which would have required that black males receive 25 opportunities, 10 more than they actually received and 11 more than could have been counted on.

There are three reasons why the target-setting procedure should provide a mechanism for adjusting targets when it becomes clear that a hiring projection having a significant effect on targets was erroneous. The first is that, as a matter of general principle, a deviation from the underlying philosophy of the target-setting procedure should be avoided.

The second reason is that the current system offers opportunities for manipulation of the targets whenever there is a significant difference between the promotional allocation and the hiring allocation. The danger of such manipulation is even greater when the projection is made at the establishment level, although that is clearly the level at which such projections can most reasonably be made. 17/

The third reason a mechanism for adjusting erroneous projections is necessary is that, even when projections are honestly attempted, the fact that they will often be erroneous 18/ has a tendency to diminish, rather than increase, opportunities for minority groups. This is so, even though, at first glance, it might appear that the results of erroneous hiring projections (which, if honestly made, should be too high as often as they are too low) would even out.

17/ Although both the above situations caused us serious concern, we determined that it would not be appropriate to assert either situation as a violation of the Decree.

18/ There is no doubt that the hiring projection is an extremely difficult operation involving numerous speculations.

For hiring projections tend to be too low in years in which there is substantial unexpected growth, and too high in years when there is less growth than expected, since the need to resort to hires is a function of the extent of the growth (as it exhausts the internal pools). Thus, targets tend to be too low in years when there are relatively many opportunities to be distributed and too high in years in which there are fewer opportunities to be distributed. ^{19/} The net, long-run effect therefore will be that substantially fewer targeted groups receive opportunities as a result of erroneous projections.

19/ For example, in the second situation described above, if there had been only 50 opportunities and consequently no need to resort to hires, the black male intermediate target should have been (on the basis of a correct hiring projection) 3.1% rather than the 7.6% it actually was. However, the difference in the number of opportunities the two targets would have yielded would have been 2 rather than the difference of 11 that occurred in the situation of the erroneous underestimation of hires that actually transpired. Moreover, since black males evidently could move at a rate in excess of 7.6% even without overrides, whether the 7.6% or 3.1% target was used would have made no difference.

We would not, however, recommend the replacement of the system of merging hiring and promotional allocations into a single intermediate target with separate targets for hires and promotions. Although such a course would be the simplest method of remedying the above situation, it would have two undesirable effects. First, it would unduly impair the companies' flexibility in filling a particular vacancy by hire or promotion as circumstances warrant. Second, it would increase the so-called "fractional opportunity" problem whereby the number of actual opportunities times the intermediate target often will not equal 0.5, in which case the targeted group is not entitled to an opportunity. 20/

We believe there are a variety of means by which an erroneous hiring projection can be adjusted. One possibility would be the quarterly or semi-annual revision of targets whenever the projection is proven substantially in error, with the new target applied to the remainder of the year and deficiencies assessed for the elapsed part of the year on the basis of the revised intermediate target. While this, or other possibilities that might be explored, will no doubt further complicate an already complicated procedure, we believe that the figures

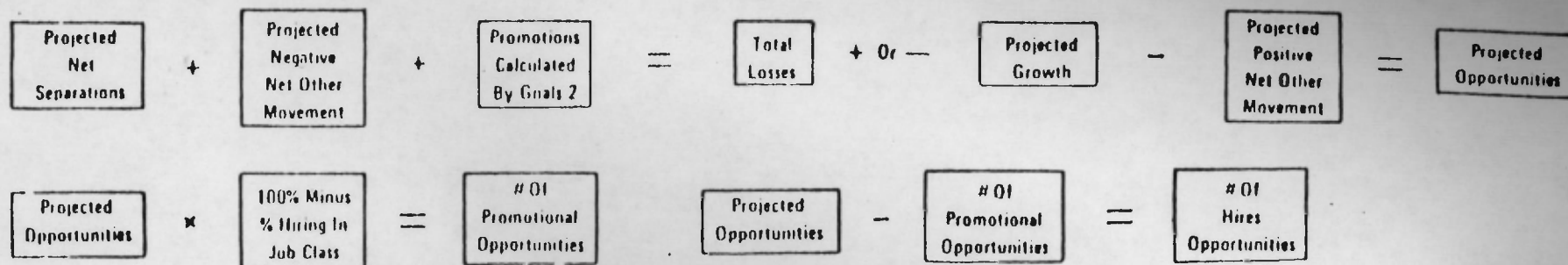
20/ The more groupings and targets there are, the greater will be the possibility that there will be insufficient opportunities in a category to require a targeted movement. This was the reason that so many establishments were merged during the term of the Decree.

cited in the foregoing text make evident that such a system should be adopted unless clearly technically infeasible.

III. Conclusion

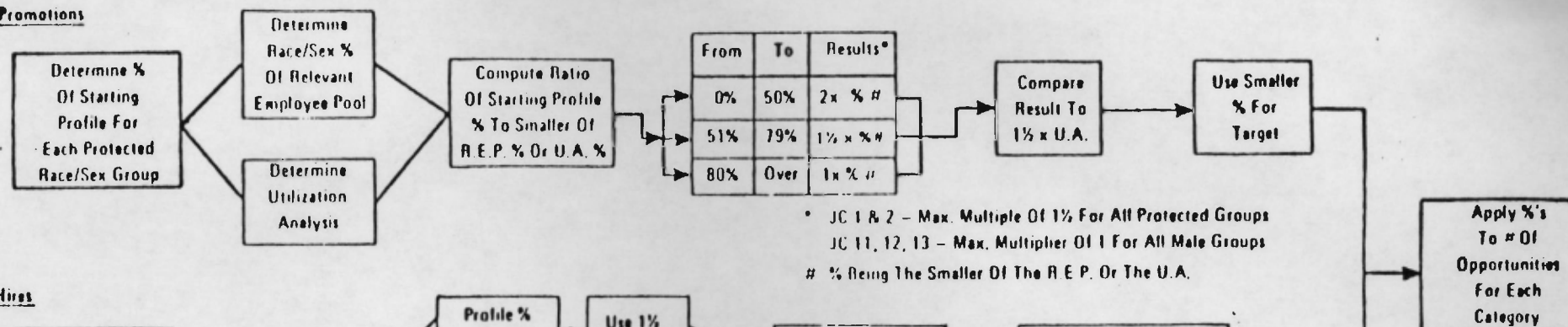
We do not believe that correction of the above problems in the Goals II target-setting procedure will resolve all the difficulties entailed with a decree of this nature. However, we believe that it is important that our experience with the operation of such a decree over a six-year period be made part of the public record in order that certain of the pitfalls which were encountered may be avoided in subsequent documents of this nature.

I. DETERMINE PROJECTED OPPORTUNITIES

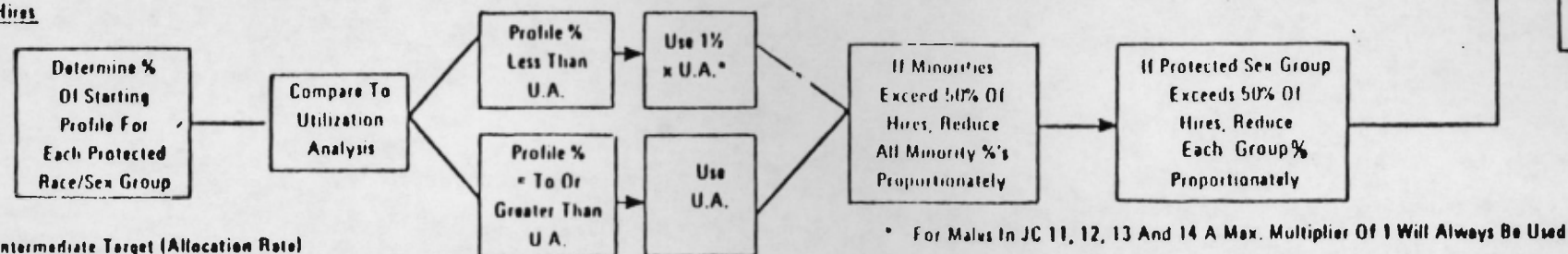


DETERMINE ALLOCATION OF PROJECTED OPPORTUNITIES

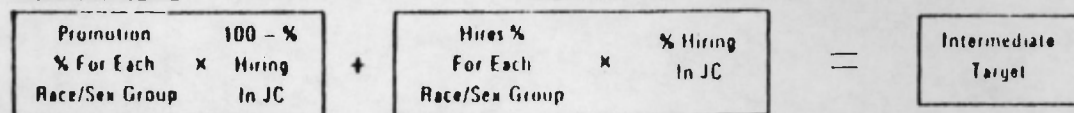
A. Promotions



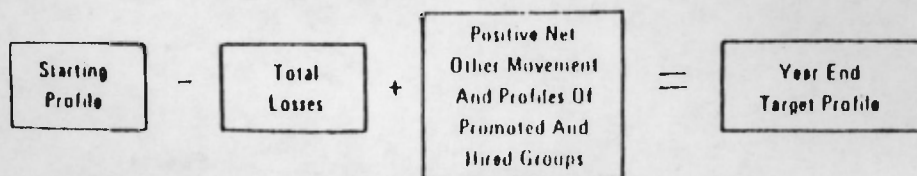
B. Hires



C. Intermediate Target (Allocation Rate)



III. DETERMINE END OF YEAR TARGET PROFILE



CERTIFICATE OF SERVICE

I hereby certify that copies of the Final Report and its 22 attachments have been served on the following counsel of record by placing copies thereof in the United States mail, postage prepaid, this 17th day of January, 1979:

Richard H. Markowitz, Esquire
Markowitz & Kirschner
1500 Walnut Street
Philadelphia, Pennsylvania 19102

Attorney for Communication Workers
of America

FILED

Elihu I. Leifer, Esquire
Sherman, Dunn, Cohen & Leifer
1125 Fifteenth Street, N.W.
Suite 801
Washington, D.C. 20005

JAN 17 1979

JOHN J. HARDING, Clerk
By *JMB* Dep. Clerk

Attorney for Telephone Coordinating
Council TCC-1, International
Brotherhood of Electrical Workers

Abraham Weiner, Esquire
Paul M. Levinson
Mayer, Weiner & Levinson
19 West 44th Street
New York, New York 10036

Attorneys for Alliance of Independent
Telephone Unions

James A. DeBois, Esquire
American Telephone & Telegraph
Company
195 Broadway
New York, New York 10036

Attorney for American Telephone & Telegraph
Company

James S. Angus
JAMES S. ANGUS

Attorney
Department of Justice
Washington, D.C. 20530

February 8, 1973

FEBRUARY 1, 1973

Chairman William H. Brown III
Equal Employment Opportunity Commission
1800 M Street N.W.
Washington, D.C. 20506

Dear Don:

Many thanks for your kind and thoughtful note of February 1 congratulating me on the leadership in the AT&T case. It is indeed gratifying to me, but as you know, a great deal of work was involved in this particular case and the Task Force here headed by David Copus deserves full credit.

It is indeed a giant step toward achieving our goal of employment equality for those to whom it has so long been denied.

Again my thanks, Don, and my best wishes to you for a peaceful and prosperous year in 1973. Your support is always appreciated.

Sincerely,

William H. Brown III
Chairman

Mr. Donald L. Hollowell
Regional Director
Atlanta Regional Office - EEOC
Citizens Trust Building, Suite 1150
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303

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