

MBELDEF

Minority Business Enterprise Legal Defense and Education Fund, Inc.

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Founder and Chairman

Anthony W. Robinson
President

IN THE MATTER OF:

FEDERAL COMMUNICATIONS
COMMISSION - IMPLEMENTATION
OF SECTION 309(j) OF THE
COMMUNICATIONS ACT
COMPETITIVE BIDDING

COMMENT AND RESPONSE TO:
PP DOCKET NO. 93-253
PERSONAL COMMUNICATIONS
SERVICES (PCS)
NOVEMBER 10, 1993

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INTRODUCTION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Prior to the divestiture of AT&T and the Bell operating companies in 1984, telecommunications was a virtual monopoly, especially on the voice side of the business. AT&T "owned" the marketplace in domestic communications, and interconnected with other comparable companies in countries overseas.

The break-up of AT&T established the largest long distance interexchange carrier (IXC) and seven (7) regional Bell operating companies (RBOCs) for local telephone service, and competition began.

Competition emerged mainly in the IXC arena with MCI and US Sprint. The regulatory environment continued to make it difficult to compete against the RBOCs, until recently. Over the past few years, the regulatory environment has "loosened up" relative to guidelines for which types of companies are allowed to do business in which types of related telecommunications businesses (equipment, local telephone service access, cable television, information services, etc.)

Facing increased market competition the RBOCs continue to lobby for permission to compete in almost every area of telecommunications including manufacturing, cable television, information services, the proposed new superhighway, and the new personal communications services (PCS).

The primary purpose of this document is to respond to the notice of proposed rule making to implement the Omnibus Budget Reconciliation Act of 1993, Section 309(j) to the Communications Act of 1934. This amendment to the Communications Act gives the Federal Communication Commission authority to employ competitive bidding to award licenses for use of the radio spectrum, called Personal Communications Services (PCS).

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THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253

AT ISSUE

The Minority Business Legal Defense and Education Fund (MBELDEF) is a non-profit organization that acts as a national advocate and legal representative for the minority business community on important issues that affect the class interests of minority business.

During 1992, MBELDEF conducted a study of the contracting and procurement practices in the telecommunication industry (See Attached Exhibit).

Based on the results of our study we believe there is compelling evidence that telecommunications companies continue to use their dominate market position to limit the competitive access and development of minority-owned companies in subcontracting, procurement of products and equipment, technology transfer, technical training, and meaningful development assistance.

Our examination of the industry revealed discriminatory contracting practices, specifically, but not limited to:

1. **using minority companies as "fronts" solely for the purpose of generating volume sales in order to meet MWBE participation goals;**
2. **controlling the profit margins that minority companies are allowed under these "fronting" arrangements;**
3. **selling products and services to minority companies at different prices than other purchasers for the same products;**
4. **refusal to offer minority companies the same opportunity to joint-venture, partner, or participate in acquisitions as offered to majority-owned companies;**
5. **restricting high-technology transfer to and from minority companies; and**
6. **limiting minority companies to non-core business and low-technology products and services.**

Since divestiture, AT&T and the regional Bell operating companies (RBOCs) have experienced strong earnings and asset appreciation. In addition, these companies are well-positioned to benefit tremendously from the global growth underway in the telecommunications industry.

Public Law 104-66 changed the law to permit the sale of "a national resource".

It is in the public interest that minority-owned businesses be given maximum opportunity to share in the new PCS license awards.

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

DOCKET PARAGRAPH

4. ¶ **Propose setting aside blocks of BTA spectrum (Blocks C - 20 MHz & Block D - 10 MHz). Additionally propose designated groups be able to pay over time, with potential use of tax certificates.**

RECOMMENDATION: Our consultation with various minority-owned telecommunications companies have raised concerns over whether Block D in the higher frequency range (over 2 gigahertz) can be built out over the short term due to technical limitations. Therefore, we believe it is imperative that a minimum of 20 MHz in the lower spectrum, Block C, be set aside for minorities. A block of 30 MHz in the lower spectrum would be an even better candidate for set aside, due to the concern held by many that 20 MHz may not be sufficient for a cost justifiable build out. If 30 MHz is required, the designated group holding a 20 MHz license may have to acquire a 10 MHz license in the aftermarket at great expense, and with associated unresolved technical issues. Further recommend that tax certificates not be used as they will provide no benefit to designated minority groups.

RECOMMENDATION: Payment over time is the only feasible way to achieve any potential minority participation.

RECOMMENDATION: Minority companies should not be thrown in the same pot with small businesses and rural telephone companies. Since certain small businesses in non-telecom industries, as well as rural telephone companies have "deeper financial pockets" than minorities as a group, putting them in the same category risks the participation of minorities and women in a competitive bidding environment.

7. ¶ **Reference to substantial upfront payment to enter bidding. Later referenced as approximately 3% of license value.**
104. ¶ **Reference to additional amount due by winner immediately, to bring total to 20% of bid amount.**

RECOMMENDATION: Recommend the 20% down payment be reduced to 10% for qualified minority-owned businesses. Recommend the 3% of license value be reduced to 2% due as upfront payment.

9. ¶ **Combinatorial bidding for all BTA 's in an MTA, as well as combination of spectrum within one MTA/BTA.**

RECOMMENDATION: Recommend that designated blocks for minorities and women be exempt from combinatorial bidding. Combinatorial bidding will inhibit the intent of "distributing the opportunity".

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

ft. 19. ¶ **Auction framework.**

RECOMMENDATION: The proposed auction process appears to draw on a framework developed in the 1984-85 Department of Interior Coal Lease Auctions. A variety of auctions procedures are required to address the unique problems facing small companies in general, but more specifically minorities, women and rural telephone companies.

The current auction approach is marginally feasible for major companies, however, it is not feasible for small and minority-owned companies and will lead to tremendous protest both legally and politically.

We believe that a streamlined version of the Department of Housing and Urban Development UDAG program offers a more realistic approach while achieving a better result sought through a auction bid.

84. ¶ **Preventing windfall profits on resale.**

RECOMMENDATION: FCC should consider a windfall profits provision similar to the windfall profits tax applied to oil companies during the Gulf War.

85. ¶ **Propose that deferred payments become immediately due at resale.**

RECOMMENDATION: The FCC should require execution of a PCS license grant agreement; requiring that the amount of the deferred payments that become immediately due upon resale shall be based on the percentage the original purchase price the license bears to the resale price received by the seller. FCC should retains right to approve license transfer and seller agrees to assume responsibility for the balance of deferred payments to the government.

86. ¶ **Designated licensee remits all of gain on sale to the government.**

RECOMMENDATION: No PCS licensee should be required to remit all of the gain on sale to the government, but should be required to make payment to the government under capital gains or windfall profits provisions consistent with the Internal Revenue Code.

88. ¶ **Designated licensee remits a portion of gain on sale to the government, or license cancels upon transfer.**

RECOMMENDATION: The FCC should discourage aggregation in general and not in particular (by designated groups). Designated minority block winners should not be discriminated against in this regard. All licensees should remit gains as described in paragraph 86.

46. ¶ **Proposed bidding methods include sealed bids for multiples.**

RECOMMENDATION: The use of sealed bids will result in few, if any minority licensees. We recommend that designated license blocks for minorities be exempt from sealed, multiple bids.

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

50. ¶ Refers to use of the Small Business Advisory Committee proposed "innovator's bidding preference". Represents a 10% credit, based upon technological innovation, to encourage participation by designated entities and strategic small business alliances.

RECOMMENDATION: "Innovator's Bidding Preference" should be part of the overall evaluation process; however, a 10% credit should be offered, only to majority firms/entities that include substantial minority participation (i.e. 25% minimum minority ownership participation). Applicant should be required to clearly demonstrate "Related Technology Innovation".

69. ¶ **Installment payments available to designated entities, REGARDLESS WHICH LICENSE THEY ARE BIDDING ON.**

RECOMMENDATION: Installment payments should be made available to all entities bidding on a license; however, longer more favorable installment terms should be offered to minority-owned businesses to serve as an incentive for larger entities to include minority-ownership participation. Minimum minority ownership of 25% should be required to receive longer installment terms.

71. ¶ **Types of payment methods for designated entities, including evaluation of credit worthiness. Also, how should default on payments be handled. Should default result in license cancellation? What about a grace period or an opportunity to restructure payment plan?**

RECOMMENDATION: Minorities applicants should be afforded the opportunity to present their financial, managerial and technical capabilities to the FCC. This would allow the FCC to evaluate the ability of the minority licensee to succeed at the propose project. Default provisions should be consistent with other government loan programs.

- 73 & 74. ¶ **Legal issues raised by designating entities. Must be supported by a record demonstrating preferences are substantially related to the objectives of the Budget Act. Rural telcos and small businesses "could be reviewed under a more deferential judicial standard".**

Could the congressional objective be satisfied simply by affording preferences to small businesses and other small entities, and through this means promote economic opportunity by ensuring that minorities and women are afforded an opportunity to participate. If preferences are ties to minority or gender status, how could judicial review be satisfied.

OBSERVATION: Discrimination in business, which is not prohibited by Federal Law, is widespread and deep-seated throughout the nation. The impact it has on minority-owned businesses is severe.

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

On January 23, 1989, in what is perhaps the best known case, City of Richmond v. J. A. Croson Co., 488 U.S. , 102 L.Ed.2d 854, 109 S. Ct. 706 (1989), the Supreme Court struck down the City of Richmond's Minority Business Enterprise Ordinance as violative of the equal protection clause of the Fourteenth Amendment to the U. S. Constitution. For the first time, in a six-to-three majority decision authored by Justice O'Connor, the Court applied a strict scrutiny standard to reject Richmond's affirmative action program for minority businesses.

The Court held that state and local governments may implement MBE programs, provided they demonstrate a compelling governmental interest justifying the program (i.e., the present effects of past discrimination in the marketplace), and if they "narrowly tailor" the programs to remedy the discrimination identified.

The Richmond MBE Ordinance failed under both prongs of the test. Richmond's generalized assertions of discrimination and broad statistical comparisons of disparities in contract awards to minorities versus percentages of minorities in the overall population were found to be not probative of discrimination. Moreover, Richmond's program was not narrowly tailored because it benefitted classes of minorities for whom there was no specific evidence of discrimination. Similarly, the Court found no rational basis for the size of the set-aside goal, no logical ending point for the program, and no consideration given to the use of less restrictive race-neutral remedies.

The Court reaffirmed, however, the less strict application of the standard as enunciated in Fullilove v. Klutznick, 448 U.S. 448, 65 L.Ed.2d 902, 100 S. Ct. 2758 (1980) pertaining to federal MBE initiatives. There, the Court accorded great deference to Congressional findings of past societal discrimination and the "unique remedial powers of Congress under Section 5 of the Fourteenth Amendment." Justice O'Connor distinguished this power from the constraint on state power found at Section 1 of the Fourteenth Amendment.

In the decision, the U.S. Supreme Court said that localities, before they could adopt set-aside programs, would have to demonstrate that racial discrimination against minority enterprises actually exists in the area. The statistical criterion that the court established was based on the ration of the fraction of "contract dollars" going to minority business enterprises which were minority-owned in that year. This statistical relationship was referred to as the "Utilization Percentage Ratio," or UPR. If the value of the UPR is equal to or greater than 1.00, there is no discrimination; if it is significantly less than 1.00, this provides evidence of racial discrimination.

As part of the study, UPR's are calculated for all minority-owned enterprises in major geographic areas and three time periods using Census Bureau data.

For the total United States, during the year 1972, 1977 and 1982 the UPRs were 0.13, 0.10 and 0.06.

Despite problems of statistical estimation, one conclusion can be drawn from the foregoing calculations with virtual certainty; discrimination exists throughout the United States.

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

OBSERVATIONS: Almost every major jurisdiction covered in the FCC's MTA and BTA areas have conducted studies to show that historical, systematic, and institutionalized discrimination against minorities and women exist and severely restrict their access to sources of wealth and power. The hard evidence overwhelmingly demonstrates that economic disparities between minorities and whites remain considerable. Any statistical profile of business discrimination in the telecommunications industry will validate this position. **We believe a set aside for minority PCS license designation could satisfy judicial review.**

75. ¶ **Use of different incentives for different groups. For example, deferred payment terms for small businesses and tax certificates for minorities and women.**

RECOMMENDATION: The FCC should use the most lucrative for minorities and women, due to minimal participation of these groups in the industry today. Tax incentives are of little or no use to minority companies.

76. ¶ **Request comments on mechanisms Commission might employ to promote preferential objectives - most notably fulfilling the statute objectives and comports with the relevant case law precedent.**

RECOMMENDATION: We recommend that the FCC operate the granting of the PCS licenses to designated minority groups via a process similar to that used by the U.S. Department of Housing and Urban Development/UDAG grants. 24 CFR CH V (4-1-88 Edition) Subpart G. The FCC's mechanism would be a streamlined version of the UDAG review and award process. Applicants would have to compete to be considered for project selection. Selected applicants would be given the opportunity to present their capabilities, project business plans and demonstrate firm financial and technical capability to successfully complete the project.

The FCC would accept applications from MTA cities and counties on a certain day of the month and from BTA cities on a certain of the month.

The process would include:

- criteria for selection
- submission requirements
- application review and presentation period
- evaluation criteria (point system)
- submission of bid financial commitments
- execution of preliminary approval requirements
- award dates/procedures

The FCC evaluation committee would announce PCS license award winners.

77. ¶ **Refers to establishing criteria for the enumerated entities. For small business, reliance on the definition devised by the SBA. For women, minorities and rural telcos, reliance on existing Commission rules and policies.**

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

The FCC should rely on the small business administration's definition of eligible members of minority groups, and the definitions of small business concerns defined in 124.4 of the SBA rules and regulations 13 CFR 121.4.

SIZE STANDARDS

The Small Business Act of 1953 broadly defines a small business as independently owned and not dominant in its field. The act authorizes the Administrator of the SBA to establish more specific, industry-related criteria that can be used to identify the small business community in order to determine eligibility for SBA program benefits, procurement set-asides, regulatory exemptions and other forms of federal assistance. The size standards developed through these criteria are of vital concern to every business that considers itself to be small.

In 1978, the SBA initiated a comprehensive study of its size standards. Major revisions were announced in 1982, including eliminating geographical differentials; basing all SBA size-standard categories on the Office of Management and Budget's published Standard Industrial Classifications (SIC) codes in lieu of written descriptions; eliminating broad-based non-manufacturing size standards and replacing them with industry-specific size standards; eliminating special size standards for the surety bond guarantee program; and increasing small business size standards by 25% for businesses located in labor surplus or redevelopment areas.

Currently, the SBA uses two basic measures for size determinations: annual receipts and employee criteria. The largest number of businesses in agriculture, communications, construction, retail; trade, services (business, educational, legal, membership and utility), and transportation are measured by annual receipts criteria averaged over three years. The majority of businesses in mining, manufacturing, research and development, and wholesale trade are measured by employee criteria. A combination of annual receipts and employee criteria is used to determine size for some businesses in major groups such as communications, mining, transportation and utility services. The non-manufacturer size standard of 500 employees is used for firms in retail and wholesale trade with regard to government procurement of supplies.

ft. 53. ¶ **Minorities include black, hispanic, asian, etc. In the past, the Commission has included women among its groups eligible for certain preferential measures.**

OBSERVATION: Evidence of discrimination against women-owned firms in general is significant, however, discrimination against white-female owned firms is not as severe as against other minority female-owned firms.

RECOMMENDATION:

- Non-minority owned small business, and rural telephone companies should compete in a designated group and;
- Minorities and women should compete in a designated group

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

77. ¶ **Seek comment on whether 51% needs to be owned by these groups, or whether simple control is enough to qualify regardless of the percentage of the equity held. How can the FCC deter potential abuses where less than 51% ownership and control is involved.**

RECOMMENDATION: In order to be eligible to participate in a designated PSC license group an applicant concern should be at least 51% owned and controlled by an individual who is determined to be a member of designated group considered socially disadvantaged. It is highly unlikely that many PSC applicants will be economically disadvantaged as determined by the SBA. FCC should require minority business to provide certification for minority status.

78. ¶ **How FCC can ensure designated groups are aided, vs. others who might us a member of those groups to achieve special treatment by the Commission.**

RECOMMENDATION: 51% minority control for entire license period should be legally binding.

Should consortia be wholly or predominantly comprised of the preferential candidates to qualify for a preferential measure.

RECOMMENDATION: Yes, without question. Otherwise a large consortium can give minority members a small piece of control or equity, and garner a substantial portion of the bandwidth, locking out other small candidates. Recommend that set-aside blocks are ineligible for combinatorial bidding, thereby effectively excluding consortia. Consortia bidding on single licenses should require qualification similar to other entities (51% control).

OBSERVATION: A close investigation by the Minority Business Enterprise Legal Defense and Education Fund has uncovered "fronting" activity in the telecommunication industry.

Resistance to the use of legitimate minority companies is due in part to the perception by many white firms that participation by bonafide minority companies will only serve to reduce their market share and profits.

The FCC should take appropriate steps to ensure that minority companies are not used as "fronts" for white companies to obtain preferential treatment to obtain PSC licenses. (Application concerning wireless services)

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

79. ¶ **Should installment payment benefit apply to all designated entities.**

RECOMMENDATION: We are concerned that large rural phone companies with deep financial pockets will end up with the same benefit that small companies, minorities and women. Perhaps small companies who are bidding, as well as minorities and women should be screened such that they are in similar or related businesses. This would insure that bidders can effectively "build out" the PCS network. The FCC wouldn't want to auction a key license to a small well-heeled company in the bagel business, for example. This could become a game of showing you have financial stability, but not TOO strong a financial depth. Without prequalification, any company could play a game, be in an unrelated industry, and walk off with a PCS license.

80. ¶ **SBAC report addresses special barriers to telecommunications ownership encountered by minorities and women, and FCC seeks comment on its conclusions.**

OBSERVATION: The SBAC reports finding are consistent with MBELDEF's report on discrimination practices in the telecommunications industry.

95. ¶ **What requirements, in addition to existing service specific qualifications should be imposed on prospective bidders.**

RECOMMENDATION: In the designated minority groups category, background in related industry will cut down on speculators. Additionally, the SBA is well qualified to identify requirements and monitor performance. Suggest their involvement in this area.

- ft. 89. ¶ **Seek comment on SBAC's proposal to allow certification of financial qualifications to build and construct based upon "highly confident" letters from qualified investment banking firms, venture capital funds, and SBA chartered Specialized Small Business Investment Companies (SSBICs).**

RECOMMENDATION: The FCC must establish a means of verification of all financial commitments without regard for the source.

102. ¶ **Upfront payment required before bid. Possibly upfront payment is condition of entry to auction premises.**

OBSERVATION: Discriminatory to designated minority groups.

104. ¶ **Propose that the winning bidder would have to pay the FCC 20% of the license price (less upfront payment) promptly.**

RECOMMENDATION: 30 days.

105. ¶ **When should 20% be due. If immediately, high bidder declared auction winner, completing the auction.**

RECOMMENDATION: 30 days.

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

106. ¶ Potential additional time granted (1-2 business days) to pay the 20%.

OBSERVATION: Time period too short for large sums.

ft. 100. ¶ Return of upfront payments to non-winners.

RECOMMENDATION: Upfront payment should be refunded to non-winners.

109. ¶ Should FCC retain upfront payment if winner is subsequently found ineligible or unqualified.

RECOMMENDATION: No.

121. ¶ Propose to allow designated entities to use installment payment plans with interest. Should this preference be given for non-set-aside blocks. Should this apply to consortia.

RECOMMENDATION: Yes, the preference should be across the board, as long as the 51% control is adhered to. Recommend no as applies to consortia ACROSS MULTIPLE BANDS, because this forces a "window dressing" approach.

123. ¶ Should grouping of BTA 's within an MTA be allowed on a sealed bid basis. Might allow preferential groups to compete with other licensees, but might exclude small business applicants.

RECOMMENDATION: There are so few minority firms with the necessary financial resources to bid on all of the BTAs, we recommend that the designated block for minorities be excluded from group bidding.

124. ¶ Group bidding on all spectrum within a geography.

RECOMMENDATION: Exclude designated minority blocks.

128. ¶ Propose standards for filing FCC Form 401 where applicants would be required to demonstrate available financial resources to meet costs of constructing and operating facilities for 1 year.

RECOMMENDATION: The FCC should establish an application review process similar to that used by the U.S. Department of Housing and Urban Development/UDAG grants. 24 CFR CH V (4-1-88 Edition) Subpart G. Applicants were required to demonstrate their financial capacity to deliver the resources necessary to carry out the activity, and commit resources to the project. In documenting the firm 's commitment, the participating party must:

**THE MINORITY BUSINESS LEGAL DEFENSE AND EDUCATION FUND
COMMENT AND RESPONSE TO: PP DOCKET NO. 93-253**

1. Specify the authority by which the commitment is made, the amount of the commitment and the use of the funds. If a portion of it is to be self-financed, the participating party must evidence its financial capability through a corporate or personal financial statement or through other appropriate means. If any portion of it is to be financed through a lending institution, the participant must submit evidence (i.e., letter of credit) of the institution's commitment to fund the down payment, construction and operating facilities.
2. State the amount and use of the funds, and the number of net new permanent and construction jobs to be created by the activity.
3. Affirm that its down payment investment is contingent upon receipt of the license grant, and state a willingness on the part of the signatory to sign a legally binding commitment for the balance of the down payment and installment sale upon preliminary approval of license grant.
4. A "legally binding commitment" means a legally enforceable written obligation made by a private or public participating party to complete a specified activity or set of activities which is approved as part of the license grant project.

"The future of our country will depend heavily on access to economic and political power by all major racial, gender, and ethnic groups. Such access not only promotes social harmony, but also stimulates competition. In a competitive global economy, people who cannot support themselves must be subsidized by someone else. It is therefore more costly to deny opportunity to those who can become self-supporting."

Parren J. Mitchell

TELECOMMUNICATIONS INDUSTRY MWBE SURVEY

SUMMARY OF FINDINGS

This section of the report summarizes the primary findings, opinions and conclusions which emerged from MBELDEF's survey of (581) minority and women-owned firms doing business in the telecommunications industry.

A copy of the survey questionnaire is included in this section of the report.

TELECOMMUNICATIONS INDUSTRY MWBE SURVEY

A common opinion among minority businesses surveyed is that opportunities in the telecommunications industry are closed to them. As a result, most of the successful minority firms have relied heavily on participating in the U.S. Small Business Administration's 8(a) Development Program.

Of the top five most successful minority-owned firms (based on gross sales) in the telecommunications industry, all are either graduates or current participants in the SBA 8(a) Program.²

Firms complain that they are rarely invited to participate on private projects with telecommunications companies, and on government projects they are only invited to bid where a strong indication exists that without MWBE participation they may not be the successful bidder. Otherwise, they are excluded.

One interviewee asserted that "the subcontracting arena in the telco business is dominated by the "Old Boy" network. Purchasing managers tend to use the same white companies over and over".³

² -- Black Enterprise Magazine 100
-- U.S. Small Business Administration 8(a) Competitive Analysis, 1991

³ Interview No. 21

Many of the long-standing relationships in the industry continue to exist in part, due to the close-knit, pre-divestiture supply contracts between AT&T and the Regional Bell Operating Companies. Most of the industry's major suppliers and subcontractors today are the same companies that provided service prior to divestiture. Many of these relationships have become institutionalized and self-perpetuating.

Our findings strongly support the position of many MWBEs that telecommunications companies only use minority companies if they feel an advantage can be gained during a bid or evaluation process, or if the contract requirements dictate a goal-based set-aside for small disadvantaged businesses.

TELECOMMUNICATIONS INDUSTRY MWBE SURVEY: SUMMARY OF FINDINGS

RESPONDENTS

178 or 30.6% of the MWBE firms responded to the survey.

97 or 16.7% of the firms when contacted by phone expressed strong reluctance to respond to the survey, offering the following reasons:

- Fear of retaliation that their company would lose the contracts they now held with major telecommunications companies;
- Concern about what the survey was being conducted for; and
- Fear that their company name would not be kept confidential.

SMALL BUSINESS COORDINATORS

78.7% of all MWBE respondents feel that telecommunications small business coordinators are ineffective, not concerned and non-proactive.

12.5% of all MWBEs reported they had ever received a solicitation or request for bid from any telecommunications company.

CONTRACTING OPPORTUNITIES

72% of MWBEs reported they had marketed their companies to major telecommunications companies.

4.6% of all MWBEs reported they had ever teamed with a telecommunications company on a proposal.

13.5% of all MWBEs surveyed have received subcontracts or purchase awards from telecommunications companies.

TELECOMMUNICATIONS COMPANY RATINGS

The following companies were rated by respondents for contract opportunities and developmental assistance:

Ameritech	MITEL
Anixter	NEC America
AT&T	North Supply
Bell Atlantic	Northern Telecom
Bell South	NYNEX
British Telecom	Pacific Bell
Contel	Rolm Company
Ericsson	Southwestern Bell
Fujitsu America	United Telecom
GTE	US Sprint
Harris Corporation	US WEST
Hitachi America	Williams Telecommunications
MCI	

The following companies rated highest for subcontracting opportunities by 38.5% of all MWBE respondents: PACIFIC BELL, US WEST, AMERITECH, AT&T, respectively. The remaining companies were rated fair or poor.

MWBE PROCUREMENT PROBLEMS

91% of all MWBEs identified their number one problem as lack of work.

42.7% of all MWBEs identified bonding requirements as a problem.

46.1% of all MWBEs identified slow payment of invoices as a problem.

DEVELOPMENTAL ASSISTANCE

Only 14 or 8% of respondents indicated that they had received developmental assistance beyond subcontracts or purchases. The assistance received was as follows:

- 8 received assistance with inventory financing and control;**
- 4 received assistance with advanced payments;**
- 2 received assistance with employee loans, and equipment loans.**

Without exception, MWBE respondents indicated that developmental assistance was poor, or designated N/A, not applicable.

OTHER EXPRESSED OPINIONS

95.6% of all MWBEs surveyed feel that the telecommunications industry continues to be monopolized by a few companies.

69.7% of all MWBEs surveyed feel that minority companies are underrepresented in the telecommunications industry.

84.3% of all MWBEs surveyed feel that minority companies are being limited to low technology.

82.7% of all MWBEs surveyed feel that telecommunications companies only do business with MWBEs because it is the law.

12.4% of all MWBEs surveyed feel that telecommunications companies offer equal contract opportunities to minorities and non-minorities alike.

CONCLUSION

Discrimination against minorities continues to damage America's economic and social health.

It has become increasingly more evident that America cannot remain a prosperous and competitive world power while continuing to limit the ability of minorities to compete in the free enterprise system.

This is so because minorities represent the fastest growing segment of the nation's population. While technological advancements in the telecommunications industry will continue beyond the 21st century, we must remember that people have always been our society's most important resource.

Our challenge is to maximize the distribution of skills, knowledge and economic opportunities available to all of the various groups of our multicultural, multiracial society.

MAJOR CITY MINORITY POPULATIONS

City	% Black	% Asian	% Hispanic	Combined Totals
Atlanta	67.1	0.9	1.9	69.9
Boston	25.6	5.3	10.8	41.7
Chicago	39.1	3.7	19.6	62.4
Dallas	29.5	2.2	20.0	52.6
Denver	12.8	2.4	23.0	38.2
Detroit	75.7	0.8	2.8	79.3
Houston	28.1	4.1	27.6	59.8
Los Angeles	14.0	9.8	39.9	63.7
Miami	27.4	0.6	62.5	90.5
New York	28.7	7.0	24.4	60.1
Philadelphia	39.9	2.7	5.6	48.2
San Jose	4.7	15.3	26.6	50.8
Washington, D.C.	62.8	0.7	15.4	79.9

Source: U.S. Census Bureau - Census 1970 or most recent 1970 population.

**DISCRIMINATORY CONTRACTING
PRACTICES
IN
THE TELECOMMUNICATIONS INDUSTRY**

For Immediate Release

MBELDEF

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MBELDEF Report to the U.S. Congress
Discriminatory Contracting Practices in the Telecommunications Industry

TELECOMMUNICATIONS LEGISLATION INTRODUCED

S. 4 — sponsored by Senator Ernest Hollings (D-SC), this bill contains provisions to establish manufacturing technology centers and to establish an information infrastructure development program to follow up on the Gore II legislation. (Introduced in January 1993; approved by Commerce Committee on May 25 and sent to the Senate)

S. 335 — sponsored by Sens. Inouye (D-HI) and Stevens (D-AK), this is a companion bill to Rep. Dingell's spectrum bill; this bill also contains an experimental spectrum auction provision. (Introduced in February 1993; approved by Commerce Committee in May 1993; budget reconciliation legislation is scheduled for markup on June 15, 1993)

S. 570 — sponsored by Sens. Exon (D-NE) and Grassley (R-IA), "The Local Exchange Infrastructure Modernization Act of 1993" requires the FCC to direct local exchange companies to coordinate network planning and technical standard development for the deployment of advanced network functionality in the public switched network. Local exchange carriers would also make business arrangements to share network functionality with other local exchange carriers lacking economies of scales or scope. (Introduced in March 1993; referred to Commerce Committee)

S. 1014 — sponsored by Sen. Dennis DeConcini (D-AZ) to prohibit the regional Bell companies from participating in the alarm industry business. (Introduced in May 1993; referred to Commerce Committee)

S. 1086 — sponsored by Sens. Inouye (D-HI) and Danforth (R-MO), this measure would allow cable companies into telephone service and permit telephone companies to provide video programming under certain conditions in their local areas. The bill requires separate subsidiaries, the opening up of networks of all types (including wireless), unbundling of services and resale requirements, and limits the use of customer information. State regulatory barriers to entry into the local exchange market would be prohibited, leading to the entry of many providers of local exchange service, including cable companies. (Introduced in June 1993)

H.R. 707 — sponsored by Rep. John Dingell (D-MI), this legislation reassigns 200 megahertz of government-owned spectrum to private sector and non-federal uses. The bill does not address spectrum auctions. (Introduced in February 1993; passed House in March 1993)

H.R. 820 — sponsored by Rep. Tim Valentine (D-NC) to promote new technologies to increase U.S. competitiveness. This bill, a companion to S. 4, passed the House on May 19 by a vote of 243-167. (Introduced in February 1993)



Minority Business Enterprise Legal Defense and Education Fund, Inc.

Parren J. Mitchell
Founder and Chairman

Anthony W. Robinson
President

MBELDEF Report to the U.S. Congress

Discriminatory Contracting Practices in the Telecommunications Industry

H.R. 857 — sponsored by Rep. Mike Oxley (R-OH), this legislation would reallocate spectrum through a competitive bidding process. (Introduced in February 1993; referred to Telecommunications Subcommittee)

H.R. 1312 — sponsored by Reps. Boucher (D-VA) and Fields (R-TX), "The Local Exchange Infrastructure Modernization Act of 1993," introduced as companion legislation to S. 570, requires the FCC to direct local exchange companies to coordinate network planning and technical standard development for the deployment of advanced network functionality with local exchange carriers lacking economies of scale or scope. (Introduced in February 1993; referred to Commerce and Judiciary Committees)

H.R. 1504 — sponsored by Reps. Boucher (D-VA) and Oxley (R-OH), "The Communications Competitiveness and Infrastructure Modernization Act of 1993" would allow local exchange companies to offer video programming services in their own service areas under certain conditions. It requires the deployment of a video dialtone platform, a separate subsidiary for video programming, and other safeguards. (Introduced in March 1993; referred to the Commerce Committee)

H.R. 1707 — sponsored by Rep. Rick Boucher (D-VA), "The High Performance Computing and High Speed Networking Applications Act of 1993" establishes a federal interagency program to develop network applications for computer and network technologies for education, healthcare, libraries and the provision of government information. (Introduced in April 1993)

H.R. 1757 — sponsored by Rep. Rick Boucher (D-VA), this legislation establishes a government program to develop infrastructure-related computer applications. (Introduced in April 1993; three Science Subcommittee hearings held in April and May 1993; approved by Science Subcommittee on June 21; approved by House Science Committee on June 30)

H.R. 2264 — sponsored by Rep. John Dingell (D-MI), this legislation is designed to allocate S. 1134 (passed House May 27, 1993) P.L. 103-66. Changed the law to permit the sale of a "national resource" (radio frequencies). The intent is to action off new personal communication service bandwidth as a way to bring money into the federal treasury.

FCC Gen. Docket 90-314, September 23, 1993

The Federal Communications Commission has authorized new personal communications services (PCS) in a new 2 GHz emerging technologies bandwidth. The Omnibus Budget Reconciliation Act enacted August 10, 1993, authorized the FCC to use competitive bidding procedures to award PCS licenses. Special opportunities for participation by small businesses, rural telephone companies and businesses owned by minorities and women are provided in sections 309 (j) (3) and (4) of P.L. 103-66. Separate notice of proposed rule making on competitive bidding procedures were adopted on September 23, 1993.

**ANECDOTAL ACCOUNTS FROM INTERVIEWS
WITH MINORITY-OWNED BUSINESSES**