

At Issue

- (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.¹ In addition, these companies are well-positioned to benefit tremendously from the global growth underway in the telecommunications industry.

It is in the public interest that minority-owned businesses be given every opportunity to share in the industry's procurement, subcontracting, technology transfer, research and development, technical training, and future earnings and asset appreciation potential.

The discriminatory contracting practices summarized in this report thwart the intent of public laws enacted to promote the meaningful development of minority and women business enterprises.

These systematic acts of discrimination towards minority and women businesses are not likely to change without legislative action and conscious intervention by government.

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.

¹ See Tables IV-VIII, pages 93-96, for a comparison of estimated 1984 vs. 1990 revenue, net income, assets, access lines and employees for AT&T and the Regional Bell Operating Companies.

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	Rohm 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.

MBELDEF TELECOMMUNICATIONS INDUSTRY SURVEY

Your answers are very important to the accuracy of our research. Your answers will be kept confidential and we will not, of course, identify your company or comments.

Thank you for your help.

Please return by no later than: **November 29, 1991**

1. Please specify principal type of business:
(check one only)

- | | |
|---|---|
| <input type="checkbox"/> Manufacturer | <input type="checkbox"/> Engineering Services |
| <input type="checkbox"/> Distributor or Dealer | <input type="checkbox"/> Research & Development |
| <input type="checkbox"/> Construction/Architectural | <input type="checkbox"/> Professional Services |

2. Please specify type of ownership:

- | | |
|--|---|
| <input type="checkbox"/> Black | <input type="checkbox"/> Hispanic |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Asian Pacific American |
| <input type="checkbox"/> Asian Indian | <input type="checkbox"/> Non-Minority Woman |
| <input type="checkbox"/> Other (specify) _____ | |

3. Number of years in business: _____

4. Number of employees: _____

5. Does your company have 8A status?

- | | | | |
|------------------------------|-----------------------------|----------------------------------|------------------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Pending | <input type="checkbox"/> Graduated |
|------------------------------|-----------------------------|----------------------------------|------------------------------------|

6. Please specify what services your company performs in the telecommunications industry.
(check only those that apply)

We:

- Sell long-distance for Telecommunications companies
- Distribute parts & supplies to Telecommunications companies
- Buy products from Telecommunications companies
- Engineering & design for network & transmission facilities
- Engineering & design for network products, equipment, or components
- Provide facilities management
- Manufacture raw materials to finished goods
- Sub-assemble products for Telecommunications companies
- Provide outside plant construction
- Install microwave equipment
- Install prewiring, cabling and conduit
- Install central office equipment
- Install PBX and other switching equipment
- Install interior fiber optics
- Provide maintenance services for switching equipment
- Repair & refurbish switching equipment
- Provide: Cellular telephone services
 - Cable TV network services
 - Pay telephone services
- Other Professional Services:
 - Training & personnel services
 - Data & information services
 - Telemarketing services
 - Advertising/marketing services
 - Legal/financial services
 - Insurance services
 - Computer products & equipment/office furniture/supplies
 - Transportation services

Other Services: (please specify)

7. Check which of the companies to the left you have marketed your company to:

- | | | |
|--|---|---|
| <input type="checkbox"/> Ameritech | <input type="checkbox"/> GTE | <input type="checkbox"/> NYNEX |
| <input type="checkbox"/> Anixter | <input type="checkbox"/> Harris Corporation | <input type="checkbox"/> Pacific Bell |
| <input type="checkbox"/> AT&T | <input type="checkbox"/> Hitachi America | <input type="checkbox"/> Rolm Company |
| <input type="checkbox"/> Bell Atlantic | <input type="checkbox"/> MCI | <input type="checkbox"/> Southwestern Bell |
| <input type="checkbox"/> Bell South | <input type="checkbox"/> MITEL | <input type="checkbox"/> United Telecom |
| <input type="checkbox"/> British Telecom | <input type="checkbox"/> NEC America | <input type="checkbox"/> U S Sprint |
| <input type="checkbox"/> Contel | <input type="checkbox"/> North Supply | <input type="checkbox"/> U S WEST |
| <input type="checkbox"/> Ericsson | <input type="checkbox"/> Northern Telecom | <input type="checkbox"/> Williams Telecomm. |
| <input type="checkbox"/> Fujitsu America | | |

8. Did you prepare and distribute marketing materials to the telecommunications companies listed in #7?

- Yes No

9. Which of the following materials did you provide?
(check as many as apply)

- Capability Statements Sales Brochures
 Product Catalogs & Lists Qualification Statements
 Other _____

10. Did you follow-up after submitting your company information?
(please indicate how)

- Telephone Call Appointment Follow-up Letter
 Cold Call Presentation

11. Did you contact any of the telecommunications companies' small business coordinators?

- Yes No

12. If you did contact any small business coordinators, were they helpful?

- Yes
- No
- Most of the time
- Some of the time

13. Check the statements below which most closely reflect your opinion of telecommunications company small business coordinators:
(check all that apply)

- Effective
- Ineffective
- Concerned
- Not concerned
- Considerate
- Inconsiderate
- Proactive
- Non-proactive
- Conservative
- Liberal
- Flexible
- Inflexible

14. Have you ever received solicitations or requests for bids from any telecommunications companies?

- Yes
- No

15. Have you ever teamed with a telecommunications company on a proposal effort?

- Yes
- No

16. How many bids/proposals have you received in the past one-year?

- 0
- 1-2
- 3-5
- 6-10
- Over 10

17. Have any of these efforts resulted in subcontracting or purchases for your company?

- Yes
- No

18. Please indicate the areas where you feel your company has experienced unusual problems.

- | | |
|---|---|
| <input type="checkbox"/> Slow payment of invoices | <input type="checkbox"/> Lack of work |
| <input type="checkbox"/> Invoice disputes | <input type="checkbox"/> Changes in contract terms & conditions |
| <input type="checkbox"/> Credit terms | <input type="checkbox"/> Bonding requirements |
| <input type="checkbox"/> Delivery terms | <input type="checkbox"/> Quality assurance requirements |

19. Listed below are several statements which might apply to the telecommunications industry. For each statement simply check whether you Agree Strongly, Agree, Are Not Sure, Disagree, or Disagree Strongly.

	<u>Agree Strongly</u>	<u>Agree</u>	<u>Not Sure</u>	<u>Disagree</u>	<u>Disagree Strongly</u>
The telecommunications industry is a growth industry.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The industry continues to be monopolized by a few companies.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minority companies are underrepresented in the industry.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Telecommunications companies are committed to MBE development.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minority companies are being limited to low technology services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Telecommunications companies only do business with MBEs because it is the law.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Telecommunications companies offer equal contract opportunities to minorities and non-minorities alike.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

20. Please specify any developmental assistance your company has received, and from what company.

(check all areas that apply)

Company Name

- Subcontracts/Purchases _____
- Advance Payments _____
- Early Progress Payments _____
- Equipment Loans _____
- Inventory Financing _____
- Bonding & Insurance _____
- Employee Loans _____
- Recruiting _____
- Personnel Training _____
- Proposal Preparation _____
- Estimating for Bids _____
- Contract Administration _____
- Customer Service _____
- Project Management _____
- Budgeting/Cash Management _____
- Purchasing _____
- Inventory Control _____
- Vendor Relations _____
- Engineering & Design _____
- Transfer of Technology _____
- Quality Control _____

DISCRIMINATORY CONTRACTING PRACTICES
IN
THE TELECOMMUNICATIONS INDUSTRY

MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAMS IN THE TELECOMMUNICATIONS INDUSTRY

Since the divestiture of AT&T and the Bell Operating Companies, the industry has made some notable progress in its procurement practices to include contracting opportunities for minority and women-owned businesses.

The major telecommunications companies have all established programs aimed at increasing purchasing and contracting opportunities for minority and women-owned business enterprises (MWBEs).

All of the major telecommunications companies claim to be committed to the development of minority businesses. All have spent substantial dollars, creating brochures, ads in minority publications, donations to key minority organizations, and attendance at minority business trade fairs and conferences.

Discriminatory Practices in the Telecommunications Industry

Our mission was to look beneath the surface of these program activities in order to find answers to the following questions:

- (1) **What role do minority companies play in the telecommunications industry?**
- (2) **Exactly how are major telecommunications companies achieving their MWBE program goals?**
- (3) **Are minority-owned companies receiving meaningful developmental assistance?**
- (4) **Are minority-owned companies being discriminated against in the industry?**
- (5) **What must be done to improve the industry's MWBE programs?**

It is widely recognized that the State of California has enacted the most comprehensive and effective MWBE legislation among the states regulating public utilities. While our study of the industry encompassed all of the major telecommunications companies, we have presented detailed information on the State of California's program because no other state has established goal-based, race and gender specific MWBE programs for public utilities. Major telecommunications companies outside of California administer their programs under a "best efforts" approach. Goals are not always clearly set. Detailed and verifiable annual reporting is not required by state law, except in California.

The California Public Utilities Code, Section 8283, requires that California Public Utilities Commission regulated gas, electric, and telephone utilities (and their regulated subsidiaries and affiliates) with gross annual revenues exceeding \$25 million submit annual, detailed, verifiable plans for increasing minority and women enterprise (MWBE) procurement in all categories. Public Utilities Code 8283 also requires the Commission to provide an annual report to the Legislature, on September 1 of each year, on the progress of MWBE activities undertaken by each of the utilities. For the utility MWBE programs, the Commission established procurement goals of not less than 20% for MWBE enterprises (15% for minority enterprises and 5% for women enterprises) to be attained within a five-year period or by 1993.

The objectives of the program are as follows:

- Encourage greater economic opportunity for women and minority businesses;
- Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electric, gas, and telephone corporation contracts as well as contracts let by subsidiaries and affiliates that come under the jurisdiction of the Public Utilities Commission;
- Clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from minority and women business enterprises.⁴

⁴ As required by the Public Utilities Code, Section 8283, Chapter 1259, Statutes of 1986 and amended by Chapter 712, Statutes of 1989.

Discriminatory Practices in the Telecommunications Industry

This section of the report presents discriminatory contracting practices that are adversely impacting upon the procurement opportunities for minority-owned businesses engaged in the telecommunications industry.

The investigation and Inquiry was initiated due to a large number of reported complaints of discrimination from small disadvantaged businesses across the country.

The report contains anecdotal accounts obtained from confidential interviews with minority and women-owned businesses in the telecommunications industry. The interviews, along with sworn statements and other documentation by MWBEs, offer additional evidence that several forms of discrimination are afflicting the industry. These forms of discrimination can be classified into three general categories:

- (1) **Discrimination denying market access to competitive minority and women-owned businesses;**
- (2) **Discrimination adversely affecting the availability of industry equipment and technology to minority and women-owned businesses; and**
- (3) **Discrimination adversely affecting the ability of minority and women-owned business to grow and develop.**

THE EFFECTS OF DISCRIMINATION ON MINORITY BUSINESS ENTERPRISE DEVELOPMENT

Minority businesses in the telecommunications industry find themselves at a significant disadvantage when compared to white businesses, particularly if their primary activity is technology related contractual services. MWBEs frequently encounter inequities in access to private and public markets for these services especially when goal-based minority participation programs do not exist. This unequal market access is compounded by discriminatory practices by white-owned firms. All small firms are confronted with unique problems, but none as unique as those facing minority business owners.

Some important issues to consider are:

- (1) The effects of past discrimination and anti-competitive behavior against competitors in a particular industry;**
- (2) The effects of past discrimination and anti-competitive behavior against competitors in a particular industry; and**
- (3) The impact of the lack of access to technical and managerial training, debt and equity capital, and equipment, on the ability of minority-owned firms to compete.**

FEDERAL LAW

In the closing days of the 95th Congress, Congress amended the Small Business Act, significantly strengthening the Government's ability to help minority firms. One purpose of this law (P.L. 95-507, Small Business Act and Small Business Investment Act of 1958, as amended, enacted October 24, 1978) was to strengthen the 8(a) program and attempt to eliminate what had been a major problem: the use by non-minority-owned firms of fake "minority front" firms to qualify for 8(a) assistance.

P.L. 95-507 mandated a Government-wide subcontracting program under which prime contractors must seek minority businesses as subcontractors. Under the subcontracting provisions of this law, prime contractors awarded large contracts -- \$1 million or more for construction contracts; \$500,000 or more for all other contracts -- must submit plans outlining their goals for the use of small and minority contractors and subcontractors and how they intend to meet these goals.

In addition, prime contractors are required to obtain similar plans from their large subcontractors. However, although P.L. 95-507 was enacted nearly 14 years ago, there is still no uniform checklist in use by Government agencies to assess the acceptability of subcontracting plans; there are no uniform enforcement procedures applicable to the breach of a subcontract plan; no consistency in reporting instructions; and no consistency in the interpretation of "flowdown" requirements or the use of incentive clauses.⁵

⁵ U.S. Congress. House. Committee on Small Business. Minority Business Development Efforts of the Small Business Administration. House Report No. 97-956, 97th Cong., 2nd Sess., 1982. Washington, U.S. Govt. Print. Off., 1982. p.55.