

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No.
)	
v.)	
)	
GUY POTTER,)	Violations: Title 18, United States Code,
JERONE BROWN,)	Section 1341
MATTHEW GIOVENCO, and)	
CHERONNE MAYES)	
aka "Sherone Mayes")	

COUNT ONE

The SPECIAL FEBRUARY 2011-2 GRAND JURY charges:

1. At times material to this Indictment:

Relevant Entities and Individuals

- a. RCN Telecom Services of Illinois, LLC ("RCN") provided broadband cable television and telecommunications services in Chicago, Illinois and elsewhere.
- b. ICS Cable, Inc. ("ICS") provided cable installation and disconnection services. ICS had a subcontract with RCN to provide cable installation and disconnection services to RCN customers in Chicago.
- c. JERONE BROWN purported to function as the President of ICS.

The City of Chicago's Minority and Women Owned Business Enterprise Procurement Program

d. The City of Chicago (the "City") maintained a Minority and Women Owned Business Enterprise Procurement Program (the "MBE/WBE Program") to promote minority and women owned businesses in the City. The ordinance establishing the MBE/WBE Program ("the Ordinance") was codified at section 2-92-420 *et seq.* of the City's Municipal Code.

e. Section 2-92-420(p) of the Ordinance defined an MBE as:

a local business which is at least 51 percent owned by one or more members of one or more minority groups . . . whose management and daily business operations are controlled by one or more members of one or more minority groups,

f. Section 2-92-420(r)(i) of the Ordinance defined “Minority Group” as including “African-Americans or Blacks (persons having origins in any of the black racial groups of Africa).”

g. Section 2-92-420(v) of the Ordinance defined “owned” as:

having all the customary incidents of ownership, including the right of disposition, and sharing in all risks and profits commensurate with the degree of ownership interest.

h. To participate in the MBE/WBE Program, an MBE was required to be certified by the City’s Department of Procurement Services.

i. Businesses seeking an MBE certification status from the City were required to submit an application and supporting documentation to the Department of Procurement Services. In 2003, the application was titled “Schedule A - Certification Declaration Affidavit for Disadvantaged Business Enterprise (DBE) Minority Business Enterprise (MBE) Woman Business Enterprise (WBE);” and in 2005, the application was titled “Schedule A – Affidavit for Minority and Women-Owned Business Enterprise (M/WBE) Certification” (collectively referred to as a “Schedule A”).

j. To be City-certified, an MBE submitted the Schedule A and required documentation to the City demonstrating, among other things, that the applicant business met certain requirements, including:

i. that at least 51% of the business was owned and controlled by one or more members of a minority group, and that the ownership and control was real, continuing and beyond the pro forma ownership as reflected in ownership documents;

- ii. that the management and daily business operations of the business were controlled by one or more members of a minority group, who possessed the power to direct businesses policies and objectives and make all substantive, day-to-day decisions, and that primary responsibility for these functions was not vested in someone who was not a minority or member of a minority group; and
- iii. that the business was a viable, independent business and the minority owner of the business possessed the resources and expertise to operate in the business's area of specialty, without substantial reliance upon finances, resources, expertise, manpower, facilities, equipment, of a non-minority or non-minority businesses.

k. After becoming City-certified, an MBE was required to submit a "No Change Affidavit" annually to the Department of Procurement Services. In a "No Change Affidavit," an MBE-certified business was required to provide information related to its ownership, employees, and financial status, and to affirm that no change affecting its ability to meet the City's MBE certification requirements had occurred since the City last certified the business. In addition, an MBE-certified business was required to notify the City, in writing, within ten days of a change affecting its MBE-certified status.

The City's Cable Television Franchise Agreements with RCN

l. RCN was allowed to "construct, install, maintain, and operate a cable television system" in certain geographical areas of the City pursuant to two franchise agreements with the City. Each of the franchise agreements, (the "Area 1 Agreement" and the "Area 2 Agreement" respectively), contained a provision regulating RCN's usage of MBEs.

m. Section 24.2 of the Area 1 Agreement provided that:

Pursuant to Section 4-280-530(E) of the Cable Ordinance, the Grantee shall, during the term of this Agreement, exercise its best efforts to ensure that qualified minority-owned businesses ("MBEs") located in and certified by the City receive a fair and substantial share of the economic benefits forthcoming from development of Grantee's cable television services system. For purposes of this section 24.2, "a fair and substantial

share of the economic benefits” shall mean twenty-five percent (25%) of the total dollar value of contracts awarded by the Grantee, excluding contracts where participation of MBEs would not be practically possible such as factory direct purchases, purchases of satellite-delivery services and purchases of materials or equipment from a sole source of supply.

- n. Section 24.2 of the Area 2 Agreement provided that:

Pursuant to Section 4-280-530(E) of the Cable Ordinance, the Grantee shall, during the term of this Agreement, exercise its best efforts to ensure that qualified minority-owned businesses (“MBEs”) located in and certified by the City receive a fair and substantial share of the economic benefits forthcoming from development of Grantee’s cable television services system. For purposes of this section 24.2, “a fair and substantial share of the economic benefits” shall mean forty percent (40%) of the total dollar value of contracts awarded by the Grantee, excluding contracts where participation of MBEs would not be practically possible such as factory direct purchases, purchases of satellite-delivery services and purchases of materials or equipment from a sole source of supply.

- o. Section 24.5 of the Area 1 and Area 2 Agreements required RCN to submit quarterly reports to the Chicago Cable Commission. The reports were to include a descriptive summary of the total dollar value of contracts awarded to City-certified MBEs. The City used this information to monitor compliance with the MBE requirements of the Agreements.

- p. Section 28.6 of the Area 1 and Area 2 Agreements provided in part that:

[I]f the Grantee fails to comply with any provision of the Cable Ordinance or this Agreement, the Cable Commission may assess and impose monetary penalties, fines and other monetary sanctions for such failure in an amount not to exceed \$750.00 per day per violation for each day or part thereof that such failure continues. If the Grantee fails to comply with any rule or regulation lawfully adopted by the Cable Commission pursuant to Section 4-280-460(a)(10) of the Cable Ordinance, the Cable Commission may assess and impose fines for such failure in an amount not to exceed \$50.00 per day per violation for each day or part thereof that such failure continues. All such monetary penalties, fines and monetary sanctions shall be determined by the Cable Commission in accordance with the principals set forth below.

(1) Such monetary penalties, fines, and other monetary sanctions shall exceed the financial benefits to the Grantee's delaying or failing to comply with the applicable requirements;

q. Section 28.7 of the Area 1 and Area 2 Agreements provided in part that:

The Grantee shall not be subject to the imposition of monetary penalties, fines, . . . or monetary sanctions . . . for any act or omission if such act or omission was beyond the Grantee's control. An act or omission shall not be deemed to be beyond the Grantee's control if committed . . . or caused by [a] . . . Contractor or Subcontractor of the Grantee involved in constructing, installing, or maintaining or operating the Grantee's cable television system within the City of Chicago. Neither the inability of the Grantee to obtain financing for whatever reason nor the misfeasance or malfeasance of the Grantee's . . . Contractors and Subcontractors shall be deemed an act or omission beyond the Grantee's control.

r. Section 4-280-110 of the City's Municipal Code stated that "[w]henever a grantee shall refuse, neglect or willfully fail to . . . comply with . . . the terms and conditions of . . . the franchise or any applicable rule or regulation or practices any fraud or deceit upon the City . . . the franchise may be revoked."

s. Pursuant to section 4-280-100 of the City's Municipal Code, renewal of the Area 1 and Area 2 Agreements would be based on RCN's performance during the franchise term and compliance with the terms and conditions imposed by the Area 1 and Area 2 Agreements.

The Scheme to Defraud

2. Beginning in or about April 2003, and continuing to in or about October 2006, in Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUY POTTER,
JERONE BROWN,
MATTHEW GIOVENCO, and
CHERONNE MAYES, aka "Sherone Mayes,"

defendants herein, knowingly devised and intended to devise, and participated in a scheme to defraud and to obtain money, property, and funds in excess of \$8,300,000 owned by and under

the custody and control of RCN, by means of materially false and fraudulent pretenses, representations and promises, and material omissions, which scheme is further described below:

3. It was part of the scheme that defendants POTTER, GIOVENCO, BROWN, and MAYES fraudulently obtained money and property from RCN by falsely representing to RCN that ICS was owned, controlled, and operated by BROWN, an African American, and by supporting these false representations to RCN with an MBE certification for ICS that the defendants obtained by making false representations to the City regarding BROWN's purported ownership and control of ICS. In fact, as defendants knew, POTTER and GIOVENCO, both Caucasians, operated and controlled ICS, and made most, if not all, financial and managerial decisions for that business.

4. It was further part of the scheme that on or about April 21, 2003, defendant MAYES submitted a Schedule A ("2003 Schedule A") to the City seeking an MBE certification for ICS. The 2003 Schedule A, which defendant BROWN signed as "President" of ICS, falsely represented that BROWN was responsible for all of the financial and managerial decisions of ICS, when defendants well knew that defendants POTTER and GIOVENCO operated and controlled ICS, and made most, if not all, financial and managerial decisions for ICS.

5. It was further part of the scheme that defendant MAYES created a purported resume and a resignation letter for defendant BROWN, both of which falsely represented that BROWN previously had been employed at RCN. MAYES submitted the resume and resignation letter to the City with the 2003 Schedule A.

6. It was further part of the scheme that defendant GIOVENCO created fraudulent W-2 forms in defendant BROWN's name for 2001 and 2002. The W-2 forms falsely listed BROWN's employer as RCN. Defendant MAYES submitted the fraudulent W-2 forms GIOVENCO created with the 2003 Schedule A.

7. It was further part of the scheme that defendant MAYES paid City Employee A approximately \$500 to expedite the review of the 2003 Schedule A.

8. It was further part of the scheme that on or about June 10, 2003, defendants POTTER, GIOVENCO, BROWN, and MAYES caused the City to issue an MBE certification letter to ICS.

9. It was further part of the scheme that on or about June 17, 2003, defendants POTTER, GIOVENCO, BROWN, and MAYES caused the 2003 ICS MBE certification letter to be sent to RCN.

10. It was further part of the scheme that on or about July 17, 2003, ICS induced RCN to enter into a subcontractor agreement with ICS by falsely representing itself as a legitimate City-certified MBE. The subcontract agreement, pursuant to which ICS was to provide cable installation and disconnection services for RCN customers through RCN's franchise agreement with the City, was signed by defendant BROWN on behalf of ICS.

11. It was further part of the scheme that on or about April 28, 2004, defendant MAYES submitted a "No Change Affidavit" to the City, which defendant BROWN signed as "President" of ICS. The "No Change Affidavit" falsely represented that ICS continued to meet the City's MBE certification requirements, when, as defendants knew, defendants POTTER and GIOVENCO operated and controlled ICS, and made most if not all financial and managerial decisions for ICS. After the submission of the "No Change Affidavit," the City issued ICS an MBE certification letter on or about June 3, 2004.

12. It was further part of the scheme that on or about or about June 3, 2004, defendants POTTER, GIOVENCO, BROWN, and MAYES caused the 2004 ICS MBE certification letter issued by the City to be sent to RCN.

13. It was further part of the scheme that on or about July 26, 2005, defendant MAYES submitted a Schedule A to the City (the “2005 Schedule A”), which defendant BROWN signed as “President” of ICS. The 2005 Schedule A falsely represented that BROWN was responsible for all of the financial and management decisions of ICS when defendants knew that defendants POTTER and GIOVENCO operated and controlled ICS, and made most if not all financial and management decisions for ICS.

14. It was further part of the scheme that the 2005 Schedule A included false financial information, such as the purported gross receipts of ICS for the years 2003 and 2004, and defendant BROWN’s salary for the years 2003 and 2004. The 2005 Schedule A falsely reported ICS gross receipts of \$101,817 and \$181,739 for 2003 and 2004, respectively. To support these fraudulent revenue figures, defendant GIOVENCO created fraudulent federal corporate tax returns for the years 2003 and 2004 in the name of ICS. The fraudulent 2003 and 2004 corporate tax returns understated ICS’s gross revenues for those years by approximately \$2,800,000. Defendant MAYES submitted the fraudulent 2003 and 2004 ICS corporate tax returns to the City with the 2005 Schedule A. In addition, the 2005 Schedule A falsely reported BROWN’s 2003 and 2004 salaries as \$36,673 and \$45,735, respectively. To document BROWN’s purported salary, GIOVENCO created fraudulent 2003 and 2004 federal individual tax returns for BROWN, which overstated BROWN’s total income for 2003 and 2004 by approximately \$32,000 for each of those years. MAYES submitted BROWN’s fraudulent 2003 and 2004 federal income tax returns to the City with the 2005 Schedule A. After the submission of the 2005 Schedule A and the false supporting documents, the City issued ICS MBE certification extension letters on or about July 29, 2005, and on or about November 15, 2005.

15. It was further part of the scheme that on or about November 15, 2005, defendants POTTER, GIOVENCO, BROWN, and MAYES caused the November 15, 2005 ICS MBE certification extension letter issued by the City to be sent to RCN.

16. It was further part of the scheme that on or about January 30, 2006, defendants POTTER, GIOVENCO, BROWN, and MAYES induced RCN to enter into a subcontractor agreement with ICS by falsely representing ICS as a legitimate City-certified MBE. The subcontract agreement, pursuant to which ICS was to provide cable installation and disconnection services for RCN customers through RCN's franchise agreement with the City, was signed by defendant GIOVENCO as "General Manager/Secretary" of ICS.

17. It was further part of the scheme that on or about July 17, 2006, defendants POTTER, GIOVENCO, BROWN and MAYES caused the City to issue ICS an MBE certification extension letter. On or about August 25, 2006, defendants POTTER, BROWN, and MAYES caused the July 17, 2006 ICS MBE certification extension letter to be sent to RCN.

18. It was further part of the scheme that based on the fraudulently obtained ICS MBE certification letters that defendants POTTER, GIOVENCO, BROWN, and MAYES caused to be sent to RCN, RCN retained ICS as an MBE subcontractor from in or about July 2003 to in or about October 2006, during which period ICS received approximately \$8,300,000 from RCN pursuant to the subcontract agreements.

19. It was further part of the scheme that based on the fraudulently obtained ICS MBE certification letters that defendants POTTER, GIOVENCO, BROWN, and MAYES caused to be sent to RCN, RCN submitted to the Chicago Cable Commission "Compliance Summaries" for years 2003, 2004, and 2005, as well as quarterly reports on or about November 3, 2003, February 2, 2004, April 30, 2004, August 12, 2004, October 29, 2004, and January 31, 2005.

Compliance Summaries and quarterly reports inaccurately represented to the Chicago Cable Commission that ICS was a qualified MBE used by RCN.

20. It was further part of the scheme that defendants fraudulently caused RCN to pay ICS approximately \$8,300,000 from 2003 through 2006. Of this amount, defendants POTTER and GIOVENCO together received at least approximately \$2,225,000 in proceeds from ICS during the course of the scheme; defendant BROWN received approximately \$63,000; and defendant MAYES received approximately \$17,000.

21. It was further part of the scheme that defendants POTTER, GIOVENCO, BROWN, and MAYES failed to disclose to RCN that ICS fraudulently obtained its minority certification status from the City and was not a legitimately City-certified MBE.

22. It was further part of the scheme that defendants POTTER, GIOVENCO, BROWN, and MAYES concealed and hid, and caused to be concealed and hidden, the acts done in furtherance of the scheme, and the purpose of those acts.

23. On or about May 1, 2006, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUY POTTER,
JERONE BROWN,
MATTHEW GIOVENCO, and
CHERONNE MAYES, aka "Sherone Mayes,"

defendants herein, for the purpose of executing the aforesaid scheme, knowingly caused to be delivered by Federal Express, a commercial interstate carrier, according to the directions thereon, a package containing RCN check number 244675, payable to ICS Cable Inc, Attn Guy Potter, 675 Lake St # 146, Oak Park, IL 60301, in the amount of \$102,597, such package being addressed to 675 Lake St, Suite 146, Oak Park, Illinois 60301;

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT TWO

The SPECIAL FEBRUARY 2011-2 GRAND JURY further charges:

1. The allegations in paragraphs 1 through 22 of Count One of this indictment are hereby realleged and incorporated herein by reference.
2. On or about May 11, 2006, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUY POTTER,
JERONE BROWN,
MATTHEW GIOVENCO, and
CHERONNE MAYES, aka "Sherone Mayes,"

defendants herein, for the purpose of executing the aforesaid scheme, knowingly caused to be delivered by Federal Express, a commercial interstate carrier, according to the directions thereon, a package containing RCN check number 245433, payable to ICS Cable Inc, Attn Guy Potter, 675 Lake St # 146, Oak Park, IL 60301, in the amount of \$40,903.80, such package being addressed to 675 Lake St, Suite 146, Oak Park, Illinois, 60301;

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT THREE

The SPECIAL FEBRUARY 2011-2 GRAND JURY further charges:

1. The allegations in paragraphs 1 through 22 of Count One of this indictment are hereby realleged and incorporated herein by reference.
2. On or about May 19, 2006, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUY POTTER,
JERONE BROWN,
MATTHEW GIOVENCO, and
CHERONNE MAYES, aka "Sherone Mayes,"

defendants herein, for the purpose of executing the aforesaid scheme, knowingly caused to be delivered by Federal Express, a commercial interstate carrier, according to the directions thereon, a package containing RCN check number 245955, payable to ICS Cable Inc, Attn Guy Potter, 675 Lake St # 146, Oak Park, IL 60301, in the amount of \$114,710.50, such package being addressed to 675 Lake St, Suite 146, Oak Park, Illinois, 60301;

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT FOUR

The SPECIAL FEBRUARY 2011-2 GRAND JURY further charges:

1. The allegations in paragraphs 1 through 22 of Count One of this indictment are hereby realleged and incorporated herein by reference.
2. On or about June 5, 2006, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUY POTTER,
JERONE BROWN,
MATTHEW GIOVENCO, and
CHERONNE MAYES, aka "Sherone Mayes,"

defendants herein, for the purpose of executing the aforesaid scheme, knowingly caused to be delivered by Federal Express, a commercial interstate carrier, according to the directions thereon, a package containing RCN check number 248337, payable to ICS Cable Inc, Attn Guy Potter, 675 Lake St # 146, Oak Park, IL 60301, in the amount of \$101,077.90, such package being addressed to 675 Lake St, Suite 146, Oak Park, Illinois, 60301;

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT FIVE

The SPECIAL FEBRUARY 2011-2 GRAND JURY further charges:

1. The allegations in paragraphs 1 through 22 of Count One of this indictment are hereby realleged and incorporated herein by reference.
2. On or about June 7, 2006, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUY POTTER,
JERONE BROWN,
MATTHEW GIOVENCO, and
CHERONNE MAYES, aka "Sherone Mayes,"

defendants herein, for the purpose of executing the aforesaid scheme, knowingly caused to be delivered by Federal Express, a commercial interstate carrier, according to the directions thereon, a package containing RCN check number 248538, payable to ICS Cable Inc, Attn Guy Potter, 675 Lake St # 146, Oak Park, IL 60301, in the amount of \$55,009.70, such package being addressed to 675 Lake St, Suite 146, Oak Park, Illinois, 60301;

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT SIX

The SPECIAL FEBRUARY 2011-2 GRAND JURY further charges:

1. The allegations in paragraphs 1 through 22 of Count One of this indictment are hereby realleged and incorporated herein by reference.
2. On or about October 4, 2006, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUY POTTER,
JERONE BROWN,
MATTHEW GIOVENCO, and
CHERONNE MAYES, aka "Sherone Mayes,"

defendants herein, for the purpose of executing the aforesaid scheme, knowingly caused to be delivered by Federal Express, a commercial interstate carrier, according to the directions thereon, a package containing RCN check number 258440, payable to ICS Cable Inc, Attn Guy Potter, 675 Lake St # 146, Oak Park, IL 60301, in the amount of \$94,956.42, such package being addressed to 675 Lake St, Suite 146, Oak Park, Illinois, 60301;

In violation of Title 18, United States Code, Sections 1341 and 2.

FORFEITURE ALLEGATION

The SPECIAL FEBRUARY 2011-2 GRAND JURY further alleges:

1. The allegations of Counts One through Six of this Indictment are realleged and incorporated herein by reference for the purpose of alleging forfeiture to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. Upon conviction of the offenses in violations of Title 18, United States Code, Section 1341, as alleged in the in Counts One through Six of this Indictment,

GUY POTTER and
MATTHEW GIOVENCO,

defendants herein, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes and is derived from proceeds traceable to the offense of mail fraud. The property to be forfeited includes, but is not limited at least \$2,225,000.

3. Defendants POTTER and GIOVENCO are thereby jointly and severally liable to the United States for approximately \$2,225,000.

3. If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

FOREPERSON

UNITED STATES ATTORNEY