GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306
(202) 955-8500
www.gibsondunn.com

agoodman@gibsondunn.com

December 19, 2006

Direct Dial
(202) 955-8653
Fax No.
(202) 530-9677

Client No.
C 69125-00026

VIA HAND DELIVERY

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: *Stockholder Proposal of Bruce E. Beckman and the Association of Ameritech/SBC Retirees, Inc.*
Exchange Act of 1934—Rule 14a-8

Dear Ladies and Gentlemen:

This letter is to inform you that our client, AT&T, Inc. ("AT&T"), intends to omit from its proxy statement and form of proxy for its 2007 Annual Stockholders Meeting (collectively, the "2007 Proxy Materials") a purported stockholder proposal and statements in support thereof (the "Submission") received from Bruce E. Beckman and the Association of Ameritech/SBC Retirees, Inc. (collectively, the "Proponents"), with Mr. Beckman appointed as the primary contact.

Pursuant to Rule 14a-8(j), we have:

- enclosed herewith six (6) copies of this letter and its attachments;
- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before AT&T files its definitive 2007 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) provides that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to this Submission, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of AT&T pursuant to Rule 14a-8(k).

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Submission may be excluded from the 2007 Proxy Materials pursuant to Rule 14a-8(a) because it is not a proper subject for a stockholder proposal. Alternatively, if the Staff does not concur that the Submission may be excluded on this basis, we request the Staff's concurrence that the Submission may be excluded pursuant to Rule 14a-8(i)(2), because implementation of the Submission would violate state law. Alternatively, should the Staff not concur that AT&T may omit the Submission in its entirety, we respectfully requests that the Staff concur that AT&T may omit the Submission received from one of the Proponents—the Association of Ameritech/SBC Retirees (the "Retirees")—under Rule 14a-8(b) and Rule 14a-8(f)(1), because the Retirees failed to submit evidence demonstrating sufficient proof of ownership.

THE SUBMISSION

The Submission requests that AT&T's Board of Directors adopt a policy of including, as a voting item in the proxy statement for each year, an advisory resolution proposed by management to approve the compensation of named executive officers described in the Summary Compensation Table and accompanying narrative disclosures of relevant material factors. The Submission underscores that the vote is intended to be purely advisory, and should not abrogate any employment agreement. The supporting statement describes the Submission as giving stockholders more influence over pay practices and allowing them to provide feedback to the Board on this issue.

A copy of the Submission and supporting statement, as well as initial correspondence from the Proponents, is attached to this letter as Exhibit A. On behalf of AT&T, we hereby respectfully request that the Staff concur in our view that the Submission may be excluded from the 2007 Proxy Materials for the reasons described below.

ANALYSIS

I. The Submission May Be Excluded Under Rule 14a-8(a) Because It Seeks An Advisory Vote.

The Submission is not a proposal for purposes of Rule 14a-8 because it does not present a proposal for stockholder action but instead seeks to provide a mechanism that would allow stockholders to express their views on a specified topic. Under the Commission's rules, Staff responses to no-action requests under Rule 14a-8(a) and other Staff precedent, such a vote is not a proper subject under Rule 14a-8(a).[1]

---

[1] It also should be noted that the Submission is inconsistent with the "unbundling" provisions of the Commission's proxy rules. Specifically, Rule 14a-4(a)(3) requires the form of proxy to "identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders." As the Commission explained with respect to Rule 14a-4(a) in Exchange Act Release No. 31326 (Oct. 16, 1992): "The amendments will allow shareholders to communicate . . . on each of the matters put to a vote. . . . [T]he amended rule . . . prohibits electoral tying arrangements that restrict shareholder voting choices on matters put before shareholders for approval." The Submission seeks to allow stockholders to communicate to AT&T's Board of Directors on executive compensation, but it presents exactly the "electoral tying arrangement[]" that the Commission sought to prohibit. Specifically, the Submission seeks a single vote on the Summary Compensation Table and related narrative disclosures. But the Summary Compensation Table and related narrative disclosures contain information on a variety of different types of executive compensation. Thus, the Submission "ties" together votes on AT&T's stock awards, option awards, salaries, bonuses, and other forms of compensation. If a company were to implement the policy requested in the Submission, stockholders would be unable to vote in a manner that distinguishes among different types of compensation. In this regard, the Staff has required issuers to "unbundle" their proposals relating to compensation matters pursuant to Rule 14a-4(a)(3). *See, e.g., SEC Staff Comment Letter to Daleco Resources Corp.* (Feb. 8, 2006) (asking that the issuer unbundle a proposal to ratify certain stock awards from a proposal to approve the future issuance of stock awards in similar situations). Thus, the Submission is additionally excludable under Rule 14a-8(i)(3), which allows exclusion of a proposal "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules," because the Submission would present an "electoral tying arrangement" prohibited by Rule 14a-4(a)(3).

A. *Requests For Advisory Votes Are Excludable Under Commission Amendments To Rule 14a-8.*

The rulemaking history of Rule 14a-8 clearly demonstrates that requests for advisory votes are not proper subjects for stockholder proposals and thus are excludable. Rule 14a-8(a) states in relevant part:

> Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors *take action*, which you intend to present at a meeting of the company's shareholders . . . .

Rule 14a-8(a) (*emphasis added*).

Rule 14a-8(a) was adopted as part of the 1998 amendments to the proxy rules. In the Commission's 1997 release proposing these amendments, the Commission noted:

> The answer to Question 1 of revised rule 14a-8 would define a "proposal" as a request that the company or its board of directors take an action. *The definition reflects our belief that a proposal that seeks no specific action. but merely purports to express shareholders' views, is inconsistent with the purposes of rule 14a-8 and may be excluded from companies' proxy materials.* The Division, for instance, declined to concur in the exclusion of a "proposal" that shareholders express their dissatisfaction with the company's earlier endorsement of a specific legislative initiative. Under the proposed rule, the Division would reach the opposite result, because the proposal did not request that the company take an action.

Proposing Release, *Amendments to Rules on Shareholder Proposals*, Exchange Act Release No. 39093 (Sep. 18, 1997) (*emphasis added*).

The Commission subsequently adopted this definition as proposed:

> We are adopting as proposed the answer to Question 1 of the amended rule defining a proposal as a request or requirement that the board of directors take an action. One commenter objected to the proposal on grounds that the definition appeared to preclude all shareholder proposals seeking information. In formulating the definition, it was not our intention to preclude proposals merely because they seek information, and the fact that a proposal seeks only information will not alone justify exclusion under the definition.

Adopting Release, *Amendments to Rules on Shareholder Proposals*, Exchange Act Release No. 40018 (May 21, 1998) (citations omitted).

The Submission is exactly of the type addressed by the Commission in the releases cited above as the supporting statement in the Submission acknowledges. Echoing the language in the Commission's rulemaking releases, the supporting statement indicates that the purpose of the Submission is to "provide useful feedback" to the Board on the issue of pay practices. Thus, under the clear language of Rule 14a-8(a), the Submission is not a proper subject under Rule 14a-8.

B. The Submission Is Not A Proposal For Purposes Of Rule 14a-8 Based On Staff Precedent.

Following adoption of Rule 14a-8(a), the Staff has consistently confirmed that a stockholder submission is excludable if it "merely purports to express shareholders' views" on a subject matter. For example, in *Sensar Corp.* (avail. Apr. 23, 2001), the Staff concurred that a submission seeking to allow a stockholder vote to express stockholder displeasure over the terms of stock options granted to management, the board of directors and certain consultants could be omitted under Rule 14a-8(a) because it did not recommend or require any action by the company or its board of directors. *See also CSX Corp.* (avail. Feb. 1, 1999) (concurring that a submission was excludable under Rule 14a-8(a) where a stockholder submitted three poems for consideration but did not recommend or require any action by the company or its board of directors).

The Submission parallels the submission in *Sensar*: it seeks an advisory vote on the compensation of executives set forth in the Summary Compensation Table, and the advisory vote merely allows stockholders to express their views on that information. The Submission's supporting statement clearly demonstrates that this is the Proponents' objective. For example, as noted above, the supporting statement indicates that "[a]n advisory vote would provide useful feedback and encourage shareholders to scrutinize the new, more extensive disclosures required by the SEC."

The Submission's formulation as a request that AT&T adopt a policy of submitting an advisory vote to stockholders does not change the Submission's status for purposes of Rule 14a-8(a). In Exchange Act Release No. 20091 (Aug. 16, 1983), the Commission stated that the substance of a proposal and not its form is to be examined in determining whether a stockholder proposal is a proper matter for a stockholder vote under Rule 14a-8. As the text of the release explains:

> In the past, the staff has taken the position that proposals requesting issuers to prepare reports on specific aspects of their business or to form special committees to study a segment of their business would not be excludable under Rule 14a-8(c)(7). Because this interpretation raises form over substance and renders the provisions of paragraph (c)(7) largely a nullity, the Commission has

> determined to adopt the interpretative change set forth in the Proposing Release. Henceforth, the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).

Adopting Release, *Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Exchange Act Release No. 20091 (Aug. 16, 1983).

The Staff applies this same approach throughout Rule 14a-8. When evaluating a proposal that requests that a company's board adopt a policy, the Staff has consistently looked at the subject underlying the proposed policy to determine whether the proposal is excludable under Rule 14a-8, and has not considered the request to adopt a policy itself as the subject of the proposal. Likewise, when a proposal has requested that management take a particular action, the Staff has examined whether that action is a proper subject under Rule 14a-8. For example:

- In letters where stockholders have requested companies to adopt a policy of submitting the selection of auditors to a vote, the Staff has focused on the subject of the policy (the manner of selecting auditors) in determining that the proposal is excludable under Rule 14a-8(i)(7). *See, e.g., Xcel Energy Inc.* (avail. Jan. 28, 2004). *See also El Paso Corp.* (avail. Feb. 23, 2005) (proposal requesting that the company adopt a policy of hiring a new independent auditor at least every ten years excluded under Rule 14a-8(i)(7) based on the underlying subject, "the method of selecting independent auditors.").

- In determining whether a stockholder proposal asking that a company adopt a policy, if implemented, would cause the company to violate the law for purposes of Rule 14a-8(i)(2), the Staff examines whether implementation of the actions that are the subject of the proposed policy would violate the law, not whether adoption of the policy itself would violate the law. *See, e.g., Mobil Corp.* (avail. Jan. 29, 1997) (proposal, as originally submitted to the company, asking it to adopt a policy prohibiting executives from exercising options within six months of a significant workforce reduction is excludable pursuant to the predecessor to Rule 14a-8(i)(2) because the subject matter of the policy would require the company to breach existing contractual obligations).

- In determining whether a stockholder proposal asking that a company adopt a policy is vague and indefinite for purposes of exclusion under Rule 14a-8(i)(3), the Staff looks at the subject matter of the proposed policy. *See, e.g., Duke Energy Corp.* (avail. Feb. 8, 2002) (proposal urging the board to adopt a policy to transition to a nominating committee composed entirely of independent directors as openings occur was vague because the underlying action required creation of a nominating committee, a fact not adequately disclosed in the proposal or supporting statement).

- In determining whether a stockholder proposal asking that a company adopt a policy involves a personal grievance for purposes of Rule 14a-8(i)(4), the Staff looks at the subject matter of the proposed policy. *See, e.g., Int'l. Business Machines Corp.* (avail. Dec. 18, 2002) (proposal urging the board to adopt a policy to honor any written commitments from company executives to investigate certain claims excluded because the subject matter of the proposed policy related to a personal claim or grievance).

- In determining whether a stockholder proposal requesting a company to adopt a policy is not significant to the company's business for purposes of Rule 14a-8(i)(5), the Staff looks to the subject matter of the proposed policy. *See, e.g., Proctor & Gamble Co.* (avail. Aug. 11, 2003) (proposal requesting that the company adopt a policy forbidding human embryonic stem cell research excluded under Rule 14a-8(i)(5) when the company did not engage in the activity that was the subject of the proposed policy); *Int'l. Business Machines Corp.* (avail. Feb. 23, 1983) (proposal requesting the company to adopt a policy that its directors require certain actions at other companies where they serve as directors excluded under predecessor to Rule 14a-8(i)(5) because the subject matter of the policy – the actions its directors were to take at other companies – did not relate to the company's business).

- When examining whether it is beyond a company's power to implement a stockholder proposal requesting that the company adopt a particular policy for purposes of Rule 14a-8(i)(6), the Staff looks at implementation of the actions that are the subject of the proposed policy, not whether the company has the power to adopt the policy itself. *See, e.g., Catellus Development Corp.* (avail. Mar. 3, 2005) (proposal that the company adopt a policy relating to a particular piece of property was beyond the company's power to implement because the company no longer owned the property that was the subject of the proposed policy and could not control the property's transfer, use or development); *General Electric Co.* (avail. Jan. 14, 2005) (proposal that the company adopt a policy that an independent director serve as chairman of the board excluded under Rule 14a-8(i)(6) because the company could not ensure that the subject of the proposed policy would be satisfied - i.e., that the chairman retain his or her independence at all times - and no mechanism was provided to cure a failure); *Ford Motor Co.* (avail. Feb. 27, 2005) (same).

- In determining whether a stockholder proposal conflicts with a company proposal for purposes of Rule 14a-8(i)(9), the Staff looks at the subject matter of the proposals, even if one requests the company to adopt a policy and the other is implemented through a different process. *See, e.g., Baxter Int'l Inc.* (avail. Jan. 6, 2003) (proposal urging the board to adopt a policy prohibiting future stock option grants to executive officers excludable because the underlying subject of the proposed action conflicts with substance

of the company's proposal that stockholders approve a new executive incentive compensation plan).

- In determining whether a company has, for purposes of Rule 14a-8(i)(10), substantially implemented a stockholder proposal asking the company to adopt a policy, the Staff looks at the substance of the underlying subject of the proposed policy compared with actions taken by the company. *See, e.g., Intel Corp.* (avail. Feb. 14, 2005) (proposal requesting adoption of policy of expensing stock options excluded under Rule 14a-8(i)(10) based upon the company's mandatory expensing of stock options under SFAS 123(R)).

- In determining whether one stockholder proposal substantially duplicates or conflicts with another proposal for purposes of Rule 14a-8(i)(11), the Staff looks at the subject matter of the proposals, even if one requests the company to adopt a policy and the other does not. *See, e.g., Merck & Co.* (avail. Jan. 10, 2006) (proposal requesting that the company adopt a policy that a significant portion of future stock option grants be performance-based substantially duplicated the subject of another proposal requesting the company to take the necessary steps so that no future stock options be awarded to anyone).

- In determining whether a stockholder proposal is substantially the same as other proposals that have not received an adequate vote in prior years for purposes of Rule 14a-8(i)(12), the Staff looks at the subject matter of the proposals, even if one requests the company to adopt a policy and the other does not. *See, e.g., Eastman Chemical Co.* (avail. Mar. 27, 1998) (proposal requesting that the company adopt a policy not to manufacture cigarette filters until certain research had been completed excluded because the subject of the proposed policy was substantially the same as a prior proposal requesting that the company take the necessary steps to divest its cigarette filter operations, which earlier proposal had not received sufficient shareholder support).

Here, the Submission asks for adoption of a policy, but the subject matter of the Submission concerns providing stockholders an advisory vote, a matter that is not a proper subject of a stockholder proposal under Rule 14a-8(a). The Proponents should not be able to avoid the application of Rule 14a-8(a) merely by asking that AT&T adopt a policy on (or submit for a vote) a matter that, if proposed directly by the stockholder, would not be a proper subject under Rule 14a-8(a). Consistent with the Commission's decision that proposals should be assessed on the basis of their substance and not their form, as stated in its prior Rule 14a-8 rulemaking discussed above, and consistent with the Staff's approach in interpreting every other aspect of Rule 14a-8 as reflected in the precedent above, the subject matter of the policy set forth under the Submission, and not the policy itself or the form of the proposal, is to be evaluated for purposes of assessing compliance with Rule 14a-8. Under those standards, the Submission does

not constitute a proposal for purposes of Rule 14a-8(a) and accordingly can be excluded from AT&T's 2007 Proxy Materials.

C. *A Request For Future Votes Is Not A Proper Form For A Stockholder Proposal And Fails To Satisfy The Procedural Requirements Of Rule 14a-8.*

In addition to the bases for exclusion discussed above, the Submission is not a proper form under Rule 14a-8 because it seeks to implement a policy that would provide for a matter to be submitted for a stockholder vote each year, without satisfying any of the procedural requirements of Rule 14a-8 with respect to those future years. This form of proposal is substantively different from a proposal that requests a company to take a particular action (such as implementation of a charter amendment declassifying the board) or a proposal to not take a particular action (such as adoption of a rights plan) without seeking a stockholder vote. In those situations, the underlying subject of the proposal is a specific corporate action and the future stockholder vote is incidental to management taking the underlying action. Here, in contrast, the underlying action sought by the Proponents is that a particular matter – an advisory statement expressing the stockholders' sentiment – be placed before stockholders for an annual vote. Rule 14a-8 prescribes the procedures that a stockholder is to follow if it wishes a particular matter to be placed before stockholders at a particular meeting;[2] it is inconsistent with the structure and intent of Rule 14a-8 to allow a stockholder to propose that management submit the stockholder's proposal to an annual vote at an indefinite number of future meetings.

If one looked only to what the Submission would accomplish in the current year, and not to its effect in subsequent years, the purposes of the procedural requirements under Rule 14a-8 could be evaded easily. For example, Rule 14a-8(b) requires a stockholder to satisfy certain ownership requirements, a proponent "must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder] submit[s] the proposal" and "must continue to hold those securities through the date of the meeting."[3] Rule 14a-8(c) limits a proponent to

---

[2] Allowing stockholders to submit a subject for vote at an indefinite number of annual meetings is inconsistent with Rule 14a-8(c), which instructs stockholders that "[e]ach shareholder may submit no more than one proposal to a company for a particular shareholders' meeting."

[3] In this regard, by a letter dated November 17, 2006, pursuant to Rule 14a-8(f), AT&T notified the Proponents of their view that the Proponents would be required to satisfy the requirements of Rule 14a-8(b) with respect to each future year at which the advisory vote sought by the Submission would be voted on. *See* Exhibit B. The Proponents responded on

[Footnote continued on next page]

submitting no more than one proposal for a particular stockholders' meeting. Rule 14a-8(i)(9) and (i)(11) allow a proposal to be excluded when it conflicts with a proposal submitted by the company or duplicates a topic that is the subject of a previously submitted proposal. Allowing a stockholder to submit a proposal calling for an annual vote on a specific topic for an indefinite number of years in the future would allow proponents to circumvent these important procedural requirements. Instead, the rules contemplate that a proponent will submit the topic or proposal itself at each meeting at which it is to be considered, and will demonstrate compliance with the requirements of Rule 14a-8 with respect to that meeting. Because the Submission would allow the Proponents to circumvent the requirements of Rule 14a-8, and the Proponents have not sought to demonstrate that the requirements of Rule 14a-8 would be satisfied with respect to future votes sought by the Submission, the Submission is excludable under Rule 14a-8.

II. The Submission May Be Excluded Under Rule 14a-8(i)(2) Because Implementation Of The Submission Would Cause AT&T To Violate State Law.

A proposal may be omitted from a company's proxy statement pursuant to Rule 14a-8(i)(2) if its implementation would cause the company to violate any state law. AT&T is incorporated under the laws of the State of Delaware. The Submission states that AT&T's stockholders should vote at each annual meeting on an advisory resolution, proposed by AT&T's management, to approve the compensation of the named executive officers. As discussed below, implementation of such a policy would violate Delaware Law.

The Staff has recognized on many occasions that conflict with state corporation law may be a basis for omission of a proposal. *See, e.g., PG&E Corp.* (avail. Feb. 14, 2006) (proposal to adopt majority voting in director elections was excludable because, if implemented, it would cause the corporation to violate California state law, which, at the time, required director elections by plurality voting); *AT&T Inc.* (avail. Feb. 7, 2006) (proposal to adopt cumulative voting either as a bylaw or as a long term policy was excludable because, if implemented, it would cause the company to violate Delaware law, which provides that cumulative voting is

---

[Footnote continued from previous page]

November 27, 2006, but did not provide the requested information. The request was properly sent to the Proponents within 14 days of AT&T receiving the Submission. Thus, the Submission may be excluded pursuant to Rule 14a-8(f) because the Proponents did not satisfy Rule 14a-8(b)(1) in this regard.

permitted only when it is authorized in the corporation's certificate of incorporation); *HealthSouth Corp.* (avail. Dec. 09, 2005) (proposal calling for "per capita" voting by shareholders to approve the number of directors was excludable because, if implemented, it would cause the company to violate Delaware law, which requires that any deviation from the "one share, one vote" standard appear in the company's certificate of incorporation); *Sara Lee Corp.* (avail. July 15, 2005) (proposal calling for "per capita" voting by shareholders was excludable because, if implemented, it would cause the company to violate the "votes cast" standard under Maryland law).

As set forth in the opinion of Richards, Layton & Finger, P.A., Delaware counsel for AT&T, the Submission, if adopted by the stockholders and implemented by the Board, would be invalid under Section 141(a) of the General Corporation Law of the State of Delaware (the "General Corporation Law"). *See* Exhibit C. Under Section 141(a) of the General Corporation Law, the directors of a Delaware corporation are vested with the power and authority to manage the business and affairs of the corporation. This section further provides that any deviation from such standard must appear in the General Corporation Law or the certificate of incorporation. The Delaware courts have characterized the fact that "directors, rather than the shareholders, manage the business and affairs of the corporation" as "[a] cardinal precept of the General Corporation Law of the State of Delaware." *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984). In managing the business and affairs of the corporation, directors are required to exercise their fiduciary duty to act in the best interests of the corporation and its stockholders.

If the Submission is adopted by the stockholders and the policy contemplated thereby is implemented by the Board, the Board would be required to include in AT&T's proxy statement for the annual meeting of stockholders in each succeeding year an advisory resolution, proposed by management, seeking stockholder approval of the compensation of certain senior executive officers of AT&T, regardless of the Board's judgment whether the submission of such proposal to the stockholders at an annual meeting is in the best interests of AT&T and its stockholders. The alleged purposes of the Submission are to ensure that the stockholders' views on such compensation are known to the Board and to encourage stockholders to scrutinize certain disclosures in the applicable proxy statement. The policy contemplated by the Submission, if implemented, would prevent the Board from exercising its fiduciary duty to determine what matters should be submitted to the stockholders at an annual meeting. It would require the Board to submit the advisory resolution to the stockholders in the form proposed by management without exercising its independent business judgment as to the merits of such advisory resolution or the decision to submit it to the stockholders. Accordingly, complying with the Submission would force the Board to disregard its fiduciary duties to AT&T and its stockholders and submit the advisory resolution to the stockholders without regard to the Board's assessment of its merits. Thus, the Submission, if adopted by the stockholders and implemented by the Board, would be invalid under the General Corporation Law.

We also note that the fact that the Submission "requests," rather than "demands," that the Board of Directors adopt a policy does not change the foregoing analysis—even a precatory proposal is excludable if the action called for by the proposal would violate state, federal or foreign law. *See, e.g., RadioShack Corp.* (avail. Feb. 28, 2005) (concurring that a proposal recommending amendment of the company's bylaws to require certain limitations on executive compensation was excludable under Rule 14a-8(i)(2) as it would violate Delaware law if implemented). *See also General Electric Co.* (avail. Jan. 12, 2005) (same result under New York law); *Gencorp Inc.* (avail. Dec. 20, 2004) (concurring that a proposal requesting amendment of the company's governing instruments to require implementation of all shareholder proposals receiving a majority vote was excludable under Rule 14a-8(i)(2)). Accordingly, we believe that the Submission is excludable from AT&T's 2007 Proxy Materials under Rule 14a-8(i)(2) because, as set forth in the legal opinion of Richards, Layton & Finger, P.A., the Submission, if adopted by AT&T's stockholders and implemented by AT&T's Board, would be invalid under the General Corporation Law.

III. Alternatively, AT&T May Exclude The Retirees' Submission For Failure to Satisfy Rule 14a-8(b) and Rule 14a-8(f).

Should the Staff not concur that AT&T may omit the Submission in its entirety under the bases described above, AT&T respectfully requests that the Staff concur that AT&T may omit the Retirees' Submission for failure to satisfy the eligibility requirements. On November 10, AT&T received the Submission from the Proponents. *See* Exhibit A. The Retirees did not include with the Submission evidence demonstrating satisfaction of ownership as required by Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder] submits the proposal." Furthermore, the Retirees do not appear on the records of AT&T's stock transfer agent as a stockholder of record.

Accordingly, on November 10, which was within 14 calendar days of AT&T receiving the Submission, AT&T sent a letter to the Retirees via both UPS and certified mail, return receipt requested, outlining the ownership deficiencies of the Retirees' Submission (the "Deficiency Notice"). *See* Exhibit D. UPS records indicate that the Deficiency Notice was received on November 13, 2006. *See* Exhibit D. Despite the instances in which AT&T informed the Retirees of their obligation to provide sufficient proof of ownership, AT&T never received sufficient evidence of the Proponent's continuous beneficial ownership of AT&T stock as required by Rule 14a-8(b). As such, AT&T is requesting the Staff's concurrence, pursuant to Rule 14a-8(f), that AT&T may omit the Retirees' Submission from the 2007 Proxy Materials.

Rule 14a-8(f)(1) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial

ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. AT&T satisfied its obligation under Rule 14a-8 in the Deficiency Notice to the Retirees, which stated:

- the ownership requirements of Rule 14a-8(b);
- the documentary support necessary to demonstrate beneficial ownership under Rule 14a-8(b); and
- that the Retirees' response had to be postmarked or transmitted electronically no later than 14 days from the date the Retirees' received the Deficiency Notice.

Despite the Deficiency Notice, the Retirees have failed to provide AT&T with satisfactory evidence of the requisite beneficial ownership. On numerous occasions the Staff has taken a no-action position concerning a company's omission of stockholder proposals based on a proponent's failure to provide satisfactory evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1). *See, e.g., Motorola, Inc.* (avail. Jan. 10, 2005), *Johnson & Johnson* (avail. Jan. 3, 2005); *Agilent Technologies* (avail. Nov. 19, 2004); *Intel Corp.* (avail. Jan. 29, 2004). Accordingly, we ask that the Staff concur that AT&T may exclude the Retirees' Submission from the 2007 Proxy Materials under Rule 14a-8(b) and Rule 14a-8(f)(1).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if AT&T excludes the Submission from its 2007 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. In addition, AT&T agrees to promptly forward to the Proponents any response from the Staff to this no-action request that the Staff transmits by facsimile to AT&T only.

If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8653 or Wayne Wirtz, Assistant General Counsel at AT&T, at (210) 351-3736.

Sincerely,

Amy L. Goodman

ALG/cvb

cc: Bruce E. Beckman
Ralph Kolderup, Vice President – ATT Relations, Association of Ameritech/SBC Retirees

100133915_3.DOC

EXHIBIT C

RICHARDS, LAYTON & FINGER
A PROFESSIONAL ASSOCIATION
ONE RODNEY SQUARE
920 NORTH KING STREET
WILMINGTON, DELAWARE 19801
(302) 651-7700
FAX (302) 651-7701
WWW.RLF.COM

December 15, 2006

AT&T Inc.
175 E. Houston
San Antonio, TX 78205

Re: Stockholder Proposal Submitted by The Association of Ameritech/SBC Retirees, Inc.

Ladies and Gentlemen:

We have acted as special Delaware counsel to AT&T Inc., a Delaware corporation (the "Company"), in connection with a proposal (the "Proposal") submitted by The Association of Ameritech/SBC Retirees, Inc. (the "Proponent") that the Proponent intends to present at the Company's 2007 annual meeting of stockholders (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the General Corporation Law of the State of Delaware (the "General Corporation Law").

For the purpose of rendering our opinion as expressed herein, we have been furnished and have reviewed the following documents:

(i) the Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware on July 28, 2006 (the "Certificate of Incorporation");

(ii) the Bylaws of the Company, as amended (the "Bylaws"); and

(iii) the Proposal and the supporting statement thereto.

With respect to the foregoing documents, we have assumed: (a) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of each of the officers and other persons and entities signing or whose signatures appear upon each of said documents as or on behalf of the parties thereto; (b) the conformity to authentic originals of all documents submitted to us as certified, conformed, photostatic, electronic or other copies; and (c) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any

respect material to our opinion as expressed herein. For the purpose of rendering our opinion as expressed herein, we have not reviewed any document other than the documents set forth above, and, except as set forth in this opinion, we assume there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. We have conducted no independent factual investigation of our own, but rather have relied solely upon the foregoing documents, the statements and information set forth therein, and the additional matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proponent requests that the following resolution be included in the Company's proxy statement for the Annual Meeting:

> **RESOLVED,** the shareholders of AT&T Inc. hereby request that the Board adopt a policy that includes, as a voting item in the proxy statement for each annual meeting, an advisory resolution, proposed by AT&T's management, to approve the compensation of the named executive officers ("NEOs"), as set forth in the proxy statement's Summary Compensation Table (the "SCT"), and the accompanying narrative disclosure of material factors provided to understand the SCT. The policy should ensure that the shareholders fully understand the vote is advisory and will not abrogate any employment agreement.

The Proposal also contains a Supporting Statement, which reads, in relevant part, as follows:

> We believe current rules governing senior executive compensation do not give shareholders sufficient influence over pay practices – nor do they give the Board adequate feedback from the owners of the company.

* * *

> An advisory vote would provide useful feedback and encourage shareholders to scrutinize the new, more extensive disclosures required by the SEC.

DISCUSSION

You have asked for our opinion as to whether the Proposal, if adopted by the stockholders and implemented by the Company's Board of Directors (the "Board"), would be valid under the General Corporation Law.

As a general matter, the directors of a Delaware corporation are vested with the power and authority to manage the business and affairs of the corporation. Section 141(a) of the General Corporation Law provides, in relevant part, as follows:

> The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.

8 *Del. C.* § 141(a). Section 141(a) expressly provides that if there is to be any deviation from the general mandate that the board of directors manage the business and affairs of the corporation, such deviation must be provided in the General Corporation Law or the certificate of incorporation. *See, e.g., Lehrman v. Cohen*, 222 A.2d 800, 808 (Del. 1966). Section 141(a) sets forth the overall approach taken by the General Corporation Law with regard to the separate and distinct roles of the stockholders or investors of the corporation, on the one hand, and the board of directors or managers of the corporation, on the other hand. As the Delaware Supreme Court has stated, "[a] cardinal precept of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation." *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984). *See also Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998) ("One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation.") (footnote omitted).

This principle has long been recognized in Delaware. Thus, in *Abercrombie v. Davies*, 123 A.2d 893, 898 (Del. Ch. 1956), *rev'd on other grounds*, 130 A.2d 338 (Del. 1957), the Court of Chancery stated that "there can be no doubt that in certain areas the directors rather than the stockholders or others are granted the power by the state to deal with questions of management policy." Similarly, in *Maldonado v. Flynn*, 413 A.2d 1251, 1255 (Del. Ch. 1980), *rev'd on other grounds sub nom. Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981), the Court of Chancery stated:

> [T]he board of directors of a corporation, as the repository of the power of corporate governance, is empowered to make the business decisions of the corporation. The directors, not the stockholders, are the managers of the business affairs of the corporation.

Id.; 8 Del. C. § 141(a). See also Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986); Adams v. Clearance Corp., 121 A.2d 302 (Del. 1956); Mayer v. Adams, 141 A.2d 458 (Del. 1958); Lehrman, 222 A.2d 800.

The rationale for these statements is as follows:

> Stockholders are the equitable owners of the corporation's assets. However, the corporation is the legal owner of its property and the stockholders do not have any specific interest in the assets of the corporation. Instead, they have the right to share in the profits of the company and in the distribution of its assets on liquidation. Consistent with this division of interests, the directors rather than the stockholders manage the business and affairs of the corporation and the directors, in carrying out their duties, act as fiduciaries for the company and its stockholders.

Norte & Co. v. Manor Healthcare Corp., C.A. Nos. 6827, 6831, slip op. at 9 (Del. Ch. Nov. 21, 1985) (citations omitted). As a result, directors may not delegate to others their decision making authority on matters as to which they are required to exercise their business judgment. See Rosenblatt v. Getty Oil Co., C.A. No. 5278, slip op. at 41 (Del. Ch. Sept. 19, 1983), aff'd, 493 A.2d 929 (Del. 1985); Field v. Carlisle Corp., 68 A.2d 817, 820-21 (Del. Ch. 1949); Clarke Mem'l College v. Monaghan Land Co., 257 A.2d 234, 241 (Del. Ch. 1969). Nor can the board of directors delegate or abdicate this responsibility in favor of the stockholders themselves. Paramount Communications, Inc. v. Time Inc., 571 A.2d 1140, 1154 (Del. 1989); Smith v. Van Gorkom, 488 A.2d 858, 873 (Del. 1985). Further, Section 142 of the General Corporation Law expressly authorizes the board of directors to determine the titles and duties of the officers who will execute the day-to-day business of the corporation. Section 142(a) provides, in relevant part, as follows:

> Every corporation organized under this chapter shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws. . . .

8 Del. C. § 142(a).

If the Proposal is adopted by the Company's stockholders and the policy contemplated thereby is implemented by the Board, the Board would be required to include in the Company's proxy statement for the annual meeting of stockholders in each succeeding year an advisory resolution, proposed by management, seeking stockholder approval of the compensation of certain senior executive officers of the Company, regardless of the Board's judgment as to whether the submission of such proposal to the stockholders at an annual meeting

is in the best interests of the Company and its stockholders. The alleged purposes of the Proposal are to ensure that the stockholders' views on such compensation are known to the Board and to encourage stockholders to scrutinize certain disclosures in the applicable proxy statement. The policy contemplated by the Proposal, if implemented, would prevent the Board from exercising its fiduciary duty to determine what matters should be submitted to the stockholders at an annual meeting. It would require the Board to submit the advisory resolution to the stockholders in the form proposed by management without exercising its independent business judgment as to the merits of such advisory resolution or the decision to submit it to the stockholders. Accordingly, complying with the Proposal would force the Board to disregard its fiduciary duties to the Company and its stockholders and submit the advisory resolution to the stockholders without regard to the Board's assessment of its merits.

In exercising their discretion concerning the management of the corporation's affairs, directors are not obligated to act in accordance with the desires of the holders of a majority of the corporation's shares. See Paramount Communications Inc. v. Time Inc., C.A. No. 10866, slip op. at 77-78 (Del. Ch. July 14, 1998) ("The corporation law does not operate on the theory that directors, in exercising their powers to manage the firm, are obligated to follow the wishes of a majority of shares."), aff'd, 571 A.2d 1140 (Del. 1989). For example, in Abercrombie v. Davies, 123 A.2d 893 (Del. Ch. 1956), rev'd on other grounds, 130 A.2d 338 (Del. 1957), the plaintiffs challenged an agreement among certain stockholders and directors which, among other things, purported to irrevocably bind directors to vote in a predetermined manner even though the vote might be contrary to their own best judgment. The Court of Chancery concluded that the agreement was an unlawful attempt by stockholders to encroach upon directorial authority:

> So long as the corporate form is used as presently provided by our statutes this Court cannot give legal sanction to agreements which have the effect of removing from directors in a very substantial way their duty to use their own best judgment on management matters.
>
> Nor is this, as defendants urge, merely an attempt to do what the parties could do in the absence of such an [a]greement. Certainly the stockholders could agree to a course of persuasion but they cannot under the present law commit the directors to a procedure which might force them to vote contrary to their own best judgment.
>
> I am therefore forced to conclude that [the agreement] is invalid as an unlawful attempt by certain stockholders to encroach upon the statutory powers and duties imposed on directors by the Delaware corporation law.

Abercrombie, 123 A.2d at 899-900 (citations omitted).

The Proposal, if adopted by the stockholders and implemented by the Board, would require management to spend a significant amount of time and resources preparing the advisory resolution, regardless of the Board's determination as to whether such expenditure of time and resources is in the best interests of the Company and its stockholders. Given the constraints on management's time and resources, the determination as to which duties are in the best interests of the Company and its stockholders, in the absence of a specific provision of the Certificate of Incorporation or Bylaws, must be established by the Board in the exercise of its fiduciary duties, not by the stockholders.[1] The Delaware courts have recognized this concept, stating: "In a world of scarcity, a decision to do one thing will commit a board to a certain course of action and make it costly and difficult (indeed, sometimes impossible) to change course and do another." Grimes v. Donald, 673 A.2d 1207, 1214-15 (Del. 1996). This is particularly apt in the present case, where the determination relates to the question of which matters should be submitted to a stockholder vote and is therefore of fundamental importance to the Company. By requiring management to prepare the advisory resolution, the policy contemplated by the Proposal could, "in a world of scarcity," effectively prevent the Board from directing management to take other actions, including preparing proposals that demand greater and more urgent stockholder attention. Id.

The Delaware Supreme Court's decision in Quickturn supports the conclusion that the Board's compliance with the policy contemplated by the Proposal would contravene Section 141(a) and would result in the Board breaching its fiduciary duties to the Company and its stockholders by removing from the directors their duty to use their own best judgment as to the matters to be considered by stockholders at an annual meeting. At issue in Quickturn was the validity of a "Delayed Redemption Provision" of a shareholder rights plan, which, under certain circumstances, would prevent a newly elected Quickturn board of directors from redeeming, for a period of six months, the rights issued under Quickturn's rights plan. The Delaware Supreme Court held that the Delayed Redemption Provision was invalid as a matter of law because it impermissibly would deprive a newly elected board of its full statutory authority under Section 141(a) to manage the business and affairs of the corporation:

> One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation. Section 141(a) requires that any limitation on the board's authority be set out in

---

[1] Neither the Certificate of Incorporation nor the Bylaws specifically provides that management shall be delegated the duty to propose the advisory resolution contemplated by the Proposal, and the Proposal does not seek an amendment to the Certificate of Incorporation or Bylaws to provide for any such delegation.

> the certificate of incorporation. The Quickturn certificate of incorporation contains no provision purporting to limit the authority of the board in any way. The Delayed Redemption Provision, however, would prevent a newly elected board of directors from completely discharging its fundamental management duties to the corporation and its stockholders for six months . . . . Therefore, we hold that the Delayed Redemption Provision is invalid under Section 141(a), which confers upon any newly elected board of directors full power to manage and direct the business and affairs of a Delaware corporation.

Quickturn, 721 A.2d at 1291-92 (emphasis in original; footnotes omitted). See also id. at 1291-92 ("The Delayed Redemption Provision 'tends to limit in a substantial way the freedom of [newly elected] directors' decisions on matters of management policy.' Therefore, 'it violates the duty of each [newly elected] director to exercise his own best judgment on matters coming before the board.'") (footnotes omitted).

The policy contemplated by the Proposal, if implemented, would have a practical effect similar to the "Delayed Redemption Provision" at issue in Quickturn. The policy would deprive the Board and any newly elected directors of the ability to exercise their judgment on a fundamental matter of corporate governance—namely, the authority to review and consider the matters that are submitted to the stockholders and the authority to determine which matters should be submitted to a stockholder vote. The policy may be distinguished from other arrangements pursuant to which a board of directors contractually limits its discretion (e.g., a loan agreement limiting the ability of the board to take certain actions without lender approval). See, e.g., John C. Coates & Bradley C. Faris, Second-Generation Shareholder Bylaws: Post-Quickturn Alternatives, 56 Bus. Law 1323, 1331 (Aug. 2001) (noting that the Delaware Supreme Court's decision in Quickturn should not be construed as prohibiting such arrangements because to read the case otherwise "would be absurd, as it would render unenforceable normal loan agreements (which frequently limit a board's authority to authorize certain corporate actions, such as dividends), and golden parachutes (which limit a board's ability to terminate an executive's employment with severance compensation) . . . ."). A board of directors, exercising its own business judgment, may restrict by contract its discretion as to limited matters falling within the scope of its authority. In Unisuper Ltd. v. News Corp., C.A. No. 1699 (Del. Ch. Dec. 20, 2005), the Court held that a board of directors could agree, by adopting a board policy, to submit the final decision on whether or not to adopt a stockholder rights plan to a vote of the stockholders. The case of a board agreeing with stockholders what is advisable and in the best interests of the corporation and its stockholders is different from the case of a board being told by stockholders to forgo, on its own behalf and on behalf of any future board, the exercise of its fiduciary duties. A limited contractual restriction would not unduly interfere with or otherwise deprive the board or any future board of the fundamental powers granted to it under the General Corporation Law, since such board or future board could renegotiate the terms of the contract,

take action to satisfy the contractual obligations or exercise its right to terminate the contract. Far from imposing a limited contractual restriction on the power of the Board or any future Board, the policy contemplated by the Proposal, if implemented, would deprive the Board (and any future Board) of its power under the General Corporation Law both in overseeing management's role in preparing matters to be submitted to the stockholders and in determining what matters should be considered by the stockholders at annual meetings, and it would hobble the Board's (and any future Board's) exercise of its fiduciary duties to manage the business and affairs of the Company.

CONCLUSION

Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if adopted by the stockholders and implemented by the Board, would be invalid under the General Corporation Law.

The foregoing opinion is limited to the General Corporation Law. We have not considered and express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission in connection with the matters addressed herein and that you may refer to it in your proxy statement for the Annual Meeting, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

WF/JMZ