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Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

By Hand

Re: Shareholder proposal to AT&T Inc. from Bruce E. Beckman

Dear Counsel:

I have been asked to respond on behalf of Bruce E. Beckman (the Proponent") to the letter from counsel for AT&T Inc. ("AT&T" or the "Company") dated 19 December 2006 ("AT&T Letter"), in which AT&T advises that it plans to omit the Proponent's resolution from the Company's 2007 proxy materials. For the reasons set forth below, the Proponent respectfully asks the Division to deny the no-action relief that AT&T seeks.

The Beckman Resolution

The resolution states as follows:

> **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 shareholders fully understand the vote is advisory and will not abrogate any employment agreement.

AT&T opposes inclusion of this proposal in its proxy materials on three grounds:

1. First, AT&T argues that the Proponent's resolution is not a proper subject for a stockholder proposal under Rule 14a-8(a).

2. Second, AT&T argues that a proposal recommending a shareholder vote at an indefinite number of future annual meetings circumvents the eligibility requirements of Rule 14a-8(b) and (c).

3. Third, AT&T argues that the proposal would cause the company to violate Delaware law. Exclusion is thus sought under Rule 14a-8(i)(2).

AT&T additionally argues, in the alternative, that the Proponent's co-filer – the Association of Ameritech/SBC Retirees (the "Retirees") – failed to proffer adequate proof of eligibility. Exclusion of the Retirees as a co-sponsor of the resolution is thus sought under Rule 14a-8(b) and Rule 14a-8(f)(1).

Under Rule 14a-8(g), AT&T bears the burden of demonstrating why the Proponent's proposal may be excluded. As we now demonstrate, AT&T has not sustained its burden, and the request for no-action relief should therefore be denied.

The "Proper Subject Matter" Exclusion

AT&T argues that Proponent's resolution does not present a proper subject and may therefore be excluded under Rule 14a-8(a). Rule 14a-8(a) defines a shareholder proposal as "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." Based on this, AT&T claims that Proponent's resolution is not a "proposal," as defined, because it allegedly does not recommend or require that the Board "take action." The argument fails for several reasons.

First, the plain language of the Beckman resolution requests AT&T's Board of Directors to "take action" – namely, that "the Board adopt a policy" relating to executive compensation. The recommended policy is that the board prepare and include "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 ...".

The Beckman proposal is not self-executing. His recommended policy will not occur unless the board "take[s] action" by affirmatively voting to follow the recommendation and then implements the policy proposal in subsequent years.

In effect, AT&T's shareholders are being asked to endorse a recommendation that AT&T's Board take a series of future actions related to the formulation of senior executive compensation policy. Indeed, it seems difficult to maintain that the Proponent is not recommending the adoption of a substantial new policy

considering, as noted in the Supporting Statement, that "[t]he advisory vote proposed here is similar to the nonbinding shareholder vote required since 2003 at the annual meetings of all U.K.-listed firms and, beginning in 2005, at Australia-based companies."

Second, AT&T expends much effort arguing that even if the Beckman proposal does ask the AT&T board to "take action" by adopting a "policy," couching resolutions in terms of adopting a "policy" is not enough to save the resolution. The reason, AT&T argues, is that the Division has granted no-action relief if the subject matter covered by the proposed policy is itself excludable under Rule 14a-8(i). This argument also fails.

AT&T's argument rests on a mischaracterization of the "subject matter" of the proposal. The "subject matter" of the Beckman proposal is not an advisory vote *per se*, but executive compensation, a topic that the Division has stated for 15 years is a proper subject for shareholders to raise under Rule 14a-8. *See Battle Mountain Gold Co.* (12 February 1992) ("In view of the widespread public debate concerning executive and director compensation policies and practices, and the increasing recognition that these issues raise significant policy issues, it is the Division's view that proposals relating to senior executive compensation no longer can be considered matters relating to a registrant's ordinary business.") AT&T's attempt to conflate the one-sentence definition of a "proposal" in Rule 14a-8(a) with the Division's normal inquiry into whether the underlying subject matter runs afoul of Rule 14a-8(i) is a recipe for eviscerating a constructive and well-established category of shareholder resolutions.

Third, AT&T's "advisory vote" argument rests on two no-action letters that are far removed from the Beckman resolution. In *CSX Corp.* (1 Feb. 1999) the proponent asked the company to include three poems in its proxy statement. There was no request that the board take any action or that the shareholders be given a vote on the poems. In *Sensar Corp.* (23 April 2001), the resolution did not recommend or require any board action; it merely stated that "[t]he shareholders wish to express displeasure over the terms of the options on 2.2 million shares of Sensar that were recently granted to management, the board of directors, and certain consultants, and the shareholders wish to express displeasure over the seemingly unclear or misleading disclosures relating to those options." The Division excluded this proposal because of the failure to "recommend or require" that the board do anything.

Fourth, AT&T ignores the only no-action precedent that addresses one of these proposals, namely, *Sara Lee Corp.* (11 Sept. 2006), in which the Division rejected claims that a similar proposal could be excluded as "ordinary business" under Rule 14a08(i)(7). (The proposal subsequently received a 42.5% approval level by Sara Lee shareholders.) The Division clearly recognized – and was not troubled

by – the fact that the proposal sought a recurring future advisory vote on the Board's compensation policy for senior executive officers.

Finally, it is worth noting the seemingly radical nature of AT&T's proposed reinterpretation of Rule 14a-8. Many shareholder proposals take the form of a request for a future shareholder vote on a particular matter, with the proposal to be drafted and submitted by management. If AT&T's claim were to be credited, the result would be to cast doubt on many proposals that are introduced each year requesting shareholder ratification or approval of various elements of executive compensation, including:

- Proposals that boards of directors seek shareholder approval for future golden parachute or executive severance agreements that exceed some multiple of the executive's base salary and bonus;

- Proposals that boards of directors seek shareholder approval for future SERP or other non-qualified executive retirement arrangements that are more generous than those offered to other employees;

- Proposals that shareholders approve any future repricing of stock options granted to senior executives.

In these cases – and others, such as requests to bring future poison pills to a shareholder vote – the shareholder proposal requests that the board adopt a policy that involves the company drafting and placing a voting item on a future annual meeting agenda. That *modus operandi* has not previously been viewed as problematic under Rule 14a-8.[1]

The "Future Eligibility Requirements" Exclusion

AT&T next argues that a proposal seeking a policy that would provide for a matter to be submitted for a vote of the shareholders "at an indefinite number of

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[1] AT&T adds a footnote suggesting that the proposal might violate the "unbundling" requirement that normally requires a separate shareholder vote on different items when a company seeks *prospective* approval of those items. The reasons for that salutary practice have little application here, however, where the vote is *retrospective* in nature and intended to let shareholders communicate with their company in a general and non-binding fashion. We assume that adoption of the recommended policy, whereby management brings forward the requested proposal on an annual basis, would not prevent shareholders from offering individual shareholder proposals on specific elements of executive compensation policy that can be changed prospectively, *e.g.*, the items cited in the bullet points above.

future meetings" fails to meet "the procedural requirements of Rule 14a-8 with respect to those future years." (AT&T Letter, page 9). AT&T claims that to maintain a proposal of this nature, the Proponent must demonstrate that he will meet the stock ownership and other eligibility requirements, particularly Rule 14a-8(b) and (c), for all subsequent years that the recommended item may be put forward for a shareholder vote.

AT&T erroneously conflates a request to adopt a policy whereby the *board* would bring forward a *board* proposal in future years – with a proposal to be offered by a shareholder. The criteria for *shareholders* to have proposals included in a company proxy in a given year are governed by Rule 14a-8. Those limits simply do not apply to a corporate board. The AT&T board surely has the power to include a vote of the sort recommended by the Beckman proposal, even if a shareholder would be subject to eligibility limitations on ownership, holding period and the like. The procedural requirements of Rule 14a-8(b) and (c) are thus irrelevant in this context.

The "Violates State Law" Exclusion

AT&T next argues that Proponent's proposal may be excluded under Rule 14a-8(i)(2), which permits the omission of a proposal that "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." AT&T's counsel attaches the opinion of its Delaware counsel that the proposal would be invalid under Section 141(a) of Delaware's General Corporation Law (the "DGCL"). (See AT&T's Letter, Exhibit C). Section 141(a) generally vests in the board of directors the power and authority to manage the business affairs of the corporation. AT&T makes the flawed argument that if the Board chooses to implement Mr. Beckman's precatory proposal, that would necessarily violate Section 141(a) because "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, . . . regardless of the Board's judgment whether the submission of such proposal . . . is in the best interests of AT&T and its stockholders." This argument fails for a variety of reasons.

At the outset, it is important to remember one key fact. Under Delaware law, the directors work for the shareholders, not the other way around. If AT&T shareholders want their board to adopt a policy on executive compensation, it is not the board's job to save shareholders from themselves.

If there is any doubt on this point, consider the recent decision in *UniSuper Ltd. v. News Corp.*, No. 1699-N (Del. Ch. 20 December 2005), where the Delaware Court of Chancery rejected the expansive view of board power that AT&T asserts here. That case involved a contract in which the News Corporation agreed to give shareholders a vote on a poison pill in certain situations. When the company reneged on the contract, the shareholders sued. The company defended (as here) by

arguing that the contract interfered with the board's right to manage the affairs of the company. The court disagreed. In a useful reminder of first principles, the Chancellor stated that Delaware law "vests managerial power in the board of directors because it is not feasible for shareholders, the owners of the corporation, to exercise day-to-day power over the company's business and affairs." Slip op. at 16-17 (footnote omitted). However, when shareholders vote to assert control over a company's business, "the board must give way," because the "board's power – which is that of an agent's with regard to its principal – derives from the shareholders *who are the ultimate holders of power under Delaware law*." Slip op. at 17 (footnote omitted) (emphasis added).

Several additional comments are warranted.

We begin with a point that AT&T does its best to obscure, namely, that there is no authority holding that a proposal of this sort is prohibited by Delaware law. As the Division has said in this situation, it "cannot conclude that state law prohibits the bylaw when no judicial decision squarely supports that result." *Exxon Corp.* (28 February 1992). Similarly in *PLM International, Inc.* (28 April 1997), the Division refused to exclude a bylaw when the company could establish only that the legal presented an "unsettled" question of Delaware law). These are only some of the cases in which the Division has rejected arguments of the sort that AT&T raises here. *See Technical Communications, Inc.* (10 June 1998); *PG&E Corp.* (26 January 1998); *International Business Machines Corp.* (4 March 1992); Sears Roebuck & Co. (16 March 1992).

Second, the cases cited by AT&T's Delaware counsel deal not with policies recommended by shareholder resolutions, but with derivative actions in which shareholders challenge specific board decisions.[2] The rules governing lawsuits in which a shareholder tries to steer the company are very different from the rules governing precatory proposals from shareholders on what policies should be followed in the future.

Third, the Division has previously rejected similarly sweeping assertions as to the power of a board of directors under Delaware law. Indeed, it has done so in a context where the shareholders are directly able to impose their view on corporate policy by adopting a golden parachute bylaw opposed by management. *E.g., Verizon Communications, Inc.* (2 February 2004). If the shareholders have the power to

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[2] *E.g., Grimes v. Donald*, C.A. No. 13358 (Del. Ch. 11 January 1995), *aff'd*, 673 A.2d 1207 (Del. 1996); *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984); *Maldonado v. Flynn*, 413 A.2d 1251 (Del. Ch. 1980), *decided on appeal sub nom. Zapata Corp. v. Maldonado*, 430 A.3d 779 (Del. 1981).

adopt bylaws, it is difficult to see how they lack the power to propose precatory policy changes. It is also difficult to identify any limiting principle that would restrain AT&T's seeming assertion of that the board is omnipotent.

Eligibility issues.

AT&T claims that it may properly omit Mr. Beckman's co-filer, the Association of Ameritech/SBC Retirees (the "Retirees"), for failure to provide adequate proof of stock ownership eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1). There is no need for the Division to answer this claim, inasmuch as AT&T has not objected to Mr. Beckman's eligibility and compliance under Rule 14a-8(b) with respect to the forthcoming 2007 Annual Meeting. AT&T's separate claim that the Proponent must meet 14a-8 eligibility requirements for an indefinite number of years in the *future* is addressed above.

Conclusion.

In sum, AT&T has failed to carry its burden of demonstrating that the proposal is not a proper subject for a shareholder proposal under Rule 14a-8(a), or that the Proponent is required to meet the eligibility requirements for future shareholder voting items put forward by the company or its management. AT&T also has failed to carry its burden of demonstrating that the resolution "*would*, if implemented" result in a violation of Delaware law, which is the criteria set out in the (i)(2) exclusion. Because the Company has failed to meet its burden under Rule 14a-8, we respectfully ask you to advise AT&T that the Division cannot concur with the Company's objections.

Thank you for your consideration of these points. Please feel free to contact me if additional information is required. I would be grateful as well if you could fax me a copy of the Division's response once it is issued.

Very truly yours,

Cornish F. Hitchcock

cc: Amy L. Goodman, Esq.
Bruce E. Beckman