December 14, 2020

Via email: shareholderproposals@sec.gov

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 1

Ladies and Gentlemen,

This correspondence is in response to the letter of Wayne Wirtz on behalf of AT&T, Inc. (the "Company") dated November 27, 2020, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our Shareholder Proposal (the "Proposal") from its 2021 proxy materials for its 2021 annual shareholder meeting.

RESPONSE TO AT&T'S CLAIMS

Our Proposal asks the Board of Directors to prepare a report "at reasonable expense and excluding proprietary information, listing and analyzing charitable contributions made or committed during the prior year."[1] The Proposal was both facially and materially neutral, applying to all charitable contributions without distinction as to subject matter or anything else.

The Company seeks to exclude this proposal pursuant to Rule 14a-8(i)(7), under which "a shareholder proposal may be excluded from a company's proxy materials if the proposal 'deals with matters relating to the company's ordinary business operations.' The purpose of the ordinary business exclusion is 'to confine the resolution of ordinary business problems to

[1] Attachment (Free Enterprise Project – Proposal, CHARITABLE GIVING REPORT (2020)).

management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.'"[2] The Company noted that "[t]he ordinary business exclusion is based on two central considerations."[3] It is to exclude proposals that apply to "'[c]ertain tasks [that] are so fundamental to management's ability to run a company on a day-to-day basis' that they are not proper subjects for shareholder proposals"; and "proposal[s that] seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders … would not be in a position to make an informed judgment," as by "'seek[ing] to impose specific time-frames or methods for implementing complex policies."[4]

The Company failed, in its response, to address the precedent on which we explicitly relied in fashioning our Proposal, precedent that we were generous enough to provide in our Proposal itself.[5] And because of this failure, the Company also failed to recognize – or at least to acknowledge – that in those proceedings and elsewhere the Staff has established that charitable contributions "involve a matter of corporate policy which is extraordinary in nature and beyond a company's ordinary business operations;" and that proposals seeking reporting about them do not represent micromanagement of the company. *Wells Fargo & Co.* (avail. Feb. 19, 2010). It has also failed, as will be discussed within, to demonstrate that our Proposal, which simply instructs the company to report annually on the efforts it is making to ensure that its charitable efforts will not redound to the detriment of the Company, constitutes micromanagement of the Company.

The precedent that we cited in our Proposal also establishes that when proposals to require charitable-contribution reporting are neutrally drawn and not intended to create a "referendum on donations to particular charities or types of charities," *McDonald's Corporation* (avail. Feb. 28, 2017), they are non-excludable. Our proposal is wholly neutral in application and, as the text demonstrates, mentions current controversies solely for the purpose of establishing the importance and saliency of charitable-giving concerns this year. As we explained in our Proposal, our concerns were triggered by the significant increases in charitable giving made by the Company and others over the course of the summer. We recognized that the events that occasioned the giving raised contentious and disputed issues. This in turn raised in us a concern about the risks that the Company runs in making charitable contributions that might redound to the ultimate injury of the firm's reputation, standing, and financial prospects unless carefully made and overseen. We thought that shareholders would agree with us that instructing the Board to report on its giving and monitoring efforts would ensure all parties that due care was being taken, while simultaneously also spurring relevant actors in the Company to take that due care.

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[2] Letter from Wayne Wirtz to Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission 3 (Nov. 27, 2020) (*quoting* Release No. 34-40018 (May 21, 1998)) ("No-Action Request").

[3] *Id.*

[4] *Id.*

[5] *See* Attachment (Free Enterprise Project – Proposal, CHARITABLE GIVING REPORT (2020)).

Our explanation of the triggers that led us to make the Proposal was not grandiose or overblown – not designed to make the proposal a referendum on anything – but instead reserved and understated, the least necessary to justify and explain our Proposal. All of this renders our Proposal easily within the bounds of acceptable proposals established by precedent.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden. Our Proposal is neutral in application and modest in its establishment of the context in which it is proposed. And it creates no obligations or constraints on, or responsibilities for, the Company other than that of reporting. Clear Staff precedent establishes that our Proposal is non-excludable.

Analysis

Part I. Rule 14-8(i)(7) & Relevant Precedent.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal "deals with a matter relating to the company's ordinary business operations." The underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." SEC Release No. 34-40018 (May 21, 1998) (the "1998 Release").

As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other consideration is that a proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

In its decision letter in *Wells Fargo & Co.* (avail. Feb. 19, 2010), the Staff explained that "we note that the proposal[s that] relate[] to charitable contributions … involve a matter of corporate policy which is extraordinary in nature and beyond the company's ordinary business operations. Moreover, in our view, the proposal does not pertain to specific types of organizations," and so was not excludable under Rule 14a-8(i)(7). That decision also, *sub silentio*, necessarily established the proposition, contested by Wells Fargo in that proceeding, that merely requiring *reporting* about charitable contributions does not constitute micromanagement of the company by shareholders.

Part II. The Company Argues That Our Proposal Would Dictate Its Behavior in Inappropriately Intrusive Ways, But This Is False; Rather, It Simply Requires the Company to

Report the Oversight and Risk Management That It Is Actually Already Undertaking (or Not Undertaking).

As we have already indicated, we modeled our Proposal on the proposals in *Wells Fargo & Co.* and *McDonald's Corp.*, which were adjudged to survive challenge under Rule 14a-8(i)(7). The Company has not even tried to suggest any way in which our Proposal would prove more onerous to the Company than the proposals that were found unomittable in those proceedings.

In pursuit of this argument, the Company tries hard to suggest that our Proposal would require it to undertake analysis and monitoring of its charitable activities that would be novel, onerous, and unnecessary. But in fact, our Proposal would not require it to do anything new at all – except to report its donations and whatever it does (or, by implication, fails to do) to manage the risk that those donations might be used inappropriately or otherwise redound to the detriment of the Company.

As an initial matter, we note that the Company pulls out some of the terms in our Proposal for emphatic treatment, as though our having used the words "all," "any" and "actual" make the Company's compliance with our Proposal impossible or unreasonable,[6] as though we were asking the Company to report "all" of the decimal notation of pi. But these words, in their context, do not make the reporting impossible or even onerous; they just indicate that the Company must report all that it has bothered to discover or implement, not to omit inconvenient details of what it knows. And we note that the first adjective in our Proposal is "reasonable," as in "prepare … a report … at reasonable expense," and that this initial adjective applies, like the one ring to bind them all, to temper and cabin all that follows. (Reasonable was not underlined in our Proposal, of course, but then neither were the words that the Company thought to be so talismanically definitive.)

And what follows that controlling adjective are obligations on the Company to report what it actually does and knows, not to develop oppressive new charitable-monitoring regimes that would result in micromanagement. Our Proposal requires the company to declare to whom it has made donations and what it has done to ensure that those donations will redound to the benefit of the company without running inappropriate risk of harming the Company. We hope and trust that these steps are already reasonable and appropriate, but what we seek is a report from which we and all shareholders (and all other relevant and interested stakeholders) can judge for ourselves.

Our Proposal requires that the Company disclose "the purposes to which the donations are to be put, any restrictions on the use of the donations, and any mechanisms by which the restrictions on donations will be monitored and enforced."[7] This sentence does contain the dreaded "any," but that does not make it oppressive or invasive. If the Company really does little by way of overseeing its charitable spending, then the answer "$X to Y Charity for general purposes with

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[6] No-Action Request, at 4.

[7] Attachment (Free Enterprise Project – Proposal, CHARITABLE GIVING REPORT (2020)).

no monitoring or involvement," would satisfy the obligations of our Proposal. It would probably *not* satisfy shareholders and other stakeholders, who might find this information troubling and, consequently, useful, but that would not be a fault of our Proposal on the basis of which omission could be permitted. Rather, it would be a demonstration of the urgency of our Proposal.

Our Proposal would also require the Company to provide its "evaluation of the efficacy of the donation and the Company's intention with regard to future donations to the organization."[8] Again, this is simply a requirement that the Company report the evaluation that it has made. The Company says that it sometimes requires reports and undertakes oversight of organizations and donations, but that "it does so only if our contribution is greater than a certain amount – and where the Company sets that amount depends on the facts and circumstances of the donation and the recipient."[9] Great. That is exactly the information that our Proposal would see reported. The Company then gives an example. "For example, a first-time recipient may be asked to submit a report of impact with respect to a relatively small donation whereas a long-time recipient receiving that same amount may not be asked to submit a report of impact."[10] Again, this is exactly the information that our Proposal seeks, and reporting it without changing anything would fully satisfy our Proposal.

The Company also points out that "[t]he report requested by the Proposal would also require management to analyze '<u>any</u> risks' to the Company posed by '<u>all</u> public controversies associated with the donations,' regardless of the nature and materiality of the risk or the controversy."[11] The use of the scare-underscoring here gives away the game; the Company seeks to pretend that this reporting will require the Company to do onerous and unnecessary things that it would otherwise not do. But again – and despite the typographical theatrics – this is not the case. If there are public controversies associated with some donation that the Company has made that it has judged not material, then it need only note that fact in its report. This is not onerous reporting and does not require any changes in behavior or procedure by the Company. Nor does it require the Company to achieve the impossibility of reporting on public controversies of which it is unaware or to make any but "reasonable" efforts (that controlling adjective that the Company ignored) even to find out about any public controversies (something that we certainly presume that the Company is already doing). It merely would prohibit the Company from ignoring public controversies of which it is perfectly well aware without making any additional effort at all, but would find inconvenient to report about. The Company appears eager to remain able to continue to ignore inconvenient facts of which it is well aware, but its desire to evade reporting that it would find uncomfortable is not a ground on which our Proposal can be omitted; it is rather a factor in our Proposal's favor.

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[8] *Id.*

[9] No-Action Request, at 5.

[10] *Id.*

[11] *Id.*

We note the Company's aside that "the report requested by the Proposal is clearly, and, it should be noted, purposefully burdensome,"[12] with confusion. Under neither scenario – good oversight or lax – should this reporting be particularly burdensome to put together. In the good oversight scenario, the Company is already conducting appropriate oversight, which would include keeping track of that oversight, and so would merely require publishing what it has already compiled. In the lax oversight scenario, the Company will have little to report because it knows little and does little: a shrug doesn't take very long to convey. The best we can make of the Company's snark is that it feels that the reporting will be burdensome because its current monitoring and oversight efforts are lax, when reporting is absent, while accountability to shareholders will put pressure on the Company to improve its efforts once reporting is required.

It is true that the reporting requirement that our Proposal would establish might spur the Company, of its own initiative, to deploy additional diligence in making and monitoring charitable contributions rather than having to admit to its shareholders policies that have been found to be – when considered in anticipation of the cold light of reporting – inappropriately lax. But this would merely be a salutary consequence of the Proposal, not an obligation of it.

And the Company's executive managers should be eager for such increased caution, if it should arise. The Company already has a fiduciary duty to its shareholders to know what it does, and to have made reasonable efforts to predict the likely effects of its actions on the Company's future. This would presumably include knowing to whom it directs its contributions, for what purpose, and with what monitoring and safeguards. As the Company itself acknowledges, "after all, cash is cash, and once pooled with other donations, it would be extremely difficult to 'trace' the Company's donation to its actual 'use.'"[13] This recognition that money is fungible suggests that the Company may well have legal fiduciary duties to investigate the whole panoply of activities undertaken by the organizations it sponsors, while its dismissiveness of the consideration suggests that it is perhaps not treating this potential legal obligation *and* potential risk-management lacuna very seriously. If the Company is failing to fulfill fiduciary duties under current practices, it is putting the Company in legal, and the executive managers themselves in professional, jeopardy. Though our Proposal would, again, not *require* any changes in policy or practice at all, everyone would certainly benefit if a reporting regime caused these managers to align their charitable-giving policies with their fiduciary duties.

Meanwhile, though, simply reporting to shareholders what the Company actually does by way of contributing and of ascertaining risk (or not) and monitoring use (or not) of those contributions will certainly not add significantly to the Company's costs, nor burden its operations. And publication of that information hardly represents "micro-management," just as such reports were deemed not to fit such categories in *Wells Fargo & Co.* and *McDonald's Corp.*

Because our Proposal would only require the Company to report what it does and what it knows, without changing anything at all, it is wholly unlike the proposals at issue in the proceedings to

[12] No-Action Request, at 4.

[13] *Id.*

which the Company compares it. In *PayPal Holdings, Inc.* (Mar. 6, 2018), the proposal would have required a

> report to shareholders that evaluates the feasibility of the Company achieving by 2030 "net-zero" emissions of greenhouse gases from parts of the business directly owned and operated by the Company, including any executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices, as well as the feasibility of reducing other emissions associated with the Company's activities.

PayPal Holdings, Inc. This proposal is nothing whatever like ours. We seek reporting about the Company's charitable donations and what the Company does (or, implicitly, fails to do) in monitoring those donations and their potential risks. The *PayPal* proposal would have required the Company to undertake a massive investigation that it otherwise would not have undertaken. Likewise, unlike the *Ford Motor Co.* (Mar. 2, 2004) proposal, our Proposal does not mandate onerous preparation methods or weighty and complex detail. Our Proposal would simply require the Company to tell shareholders who it donates to, and what it does to ensure value and decrease risk. To the extent it fails to do the latter, it will merely report its failures of knowledge. That might be embarrassing, but its hardly inappropriately intrusive or micromanaging.

Part II. Our Proposal Is Neutral in Its Application and Does Not Set up a "Referendum" on Charitable Giving of a Certain Type.

Our Proposal is neutral in its application. Full stop. It would require reporting about all charitable contributions, without distinction.

In order to elide and obscure this basic fact, the Company asserts that the unquestionable neutrality of the proposal is eviscerated because

> [t]he Proposal, read together with the Supporting Statement and the Supporting Statement's footnotes, does not have a general objective. Instead, it is directed at specific organizations that support a particular movement to which the Proponent is apparently opposed: Black Lives Matter ("BLM"). … Here, the "underlying subject matter" of the Proposal is made clear by the Supporting Statement, which in part states that the Company has committed to "making significant charitable contributions in recent months" and that such commitments were "triggered" by political and social events that "are potentially highly divisive, and carry with them significant potential for misapplication of well-intentioned contributions to activities fraught with risk to the Company's reputation." The reference to "activities fraught with risk" is not generic. Rather, Proponent provides context and support for these statements by providing footnotes with links to an article describing the Company's support for the BLM movement, an article describing the Company's CEO's support for the BLM movement, and to an article describing

> recent protests in connection with BLM. The Proposal, when read in conjunction with the accompanying Supporting Statement and its footnotes, plainly seeks to limit the Company's charitable contributions only with respect to organizations supporting BLM. The Proposal does not refer to any other public controversy associated with the Company's donations. Accordingly, the Proposal relates directly to an ordinary business matter – namely, a company's decision about the nonprofit organizations to which it should or should not make charitable contributions.[14]

The Company's assertions about the text of our Proposal, and its meaning, purpose and import, are all quite wrong. Our Proposal does not include any derogation of any policies or positions or organizations at all. Instead, we merely explained to voting shareholders our generalized, neutral concern, whence it arose, and why it highlights concerns that pose a real risk to the Company and a legitimate concern for shareholder consideration. In fact, it is difficult to imagine how we could have explained the temporal importance of our proposal more demurely and even-handedly than we did. And we note that our footnotes contain only web addresses – not even the names of any articles.

The Company's attempt to make our Proposal something it is not, so as to make it omissible, is jarringly disconnected to what the Company needs to demonstrate in order for it to permissibly omit our proposal. Charitable-contribution proposals can be omitted if the proposal will bring on a "referendum" among shareholders about the Company's donations to certain organizations or types of organizations. But proponents can hardly be shown to be seeking a "referendum" about donations to an organization or topic that they never mention in the text of the proposal, and that can only be posited by deep interrogation of footnotes that contain only web addresses. The Company provides no evidence, and there is certainly no independent reason to believe, either that shareholders voting on shareholder-submitted proposals ransack the footnotes to conduct textual exegeses of this sort, or that, even if they did, and did so in material numbers, they would reach the strained conclusion that the Company offers to the Staff.

Shorn of the Company's imaginative embellishments, our Proposal does not single out any organization or topic for censure. This places it, as we indicated in our Proposal itself, squarely within the ambit of non-omissible charitable-reporting proposals. As the successful proponents in *McDonald's Corp.* noted of the proposal in that case, it

> does not attempt to direct the Company to make, or stop making, contributions to specific organizations or specific types of organizations. As prior Staff decisions have demonstrated, the inclusion of examples of issues of concern does not render a proposal excludable. The examples in the Supporting Statement are permissible examples, such as those in *Wells Fargo.* In the *Wells Fargo* Supporting Statement, the Proponents describe their concern regarding Wells Fargo's contributions to controversial causes and provide examples of these controversial causes, which

[14] No-Action Request, at 5-6.

> include Planned Parenthood, The Human Rights Campaign and GLAAD. The Supporting Statement also included explanation of why donations to these organizations are controversial and risk impacting the company's reputation, in the proponent's opinion. The present Proposal is no different. The Supporting Statement similarly provides examples of McDonald's contributions to controversial causes, provides explanation and context as to why donations to these organizations are controversial and why the Proponents are concerned that such could negatively impact the Company's reputation.

McDonald's Corp. Note that our Proposal is even less susceptible to the charge of non-neutrality than are those that were found not-omittable in *McDonald's* and *Wells Fargo*. While the *resolution* of our Proposal sticks closely to the text approved in *McDonald's*, our supporting statement is shorter and more generalized and discreet – *i.e.,* more utterly neutral. The same is true in comparison to the approved proposal in *Wells Fargo*. In fact, as we have indicated above, our Proposal's supporting statement was as short and neutral as we could make it while still giving even a minimum reasonable explanation of the context of the Proposal. Meanwhile, we are certain that should we have provided no explanation of the considerations that led us to make the Proposal, the Company would have asked the Staff to reject the Proposal on the ground that it pointed to no issue of particular salience, and so represented an unnecessary expense. And then it would have made the same argument to shareholders should the Staff have refused to allow them to omit the Proposal.

The Company's fundamental problem – that what it wishes our Proposal says, it simply doesn't say, anywhere – also defeats the Company's claim that our Proposal resembles the proposal offered, and found excludable, in *JP Morgan* (avail. Feb. 28, 2018) and *Starbucks Corp.* (Jan. 4, 2018). Those proposals were found omissible because, the Staff noted, they "relate[d] to contributions to specific types of organizations." *Id.* And indeed they did. The proposals' long supporting statements went into significant detail about certain organizations that the proponents found objectionable, and why the proponents found those organizations objectionable. Our Proposal is notable for containing absolutely nothing comparable, in any way.

But if the Company remains genuinely concerned about our even fleeting references to current events, we will make it a deal. If it agrees to adopt the resolution of our Proposal at the Board level, and begin reporting for actions taken after January 1, 2021, then we will withdraw our Proposal. This will result in the adoption of an entirely neutral reporting regime about subject matter that is surely an appropriate issue about which to inform shareholders, without causing the supposedly evocative footnotes in our Proposal to be presented to the shareholders. But if the Company is unwilling to grant this request, then we can begin to discount any worry that the Company is legitimately overwhelmed with concern that our Proposal, as drafted, threatens to derail its shareholder meeting or set precedent that would allow for shareholder meetings to be turned into "referend[a] on particular charities or types of charities." *McDonald's Corp.*

Conclusion

For the above reasons, we urge the Staff to find that our Proposal may not be omitted under Rule 14a-8(i)(7).

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject AT&T's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Staff may have with respect to this letter, please do not hesitate to call me at 202-507-6398 or email me at sshepard@nationalcenter.org. If the Staff does not concur with our position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position.

Sincerely,

Scott Andrew Shepard

cc: Wayne Wirtz (ww0118@att.com)
Justin Danhof, National Center for Public Policy Research

<u>**Attachment**</u>

Charitable Giving Reporting

Be it RESOLVED that shareholders of AT&T, Inc. (the "Company") request that the Company prepare and annually update a report to shareholders, at reasonable expense and excluding proprietary information, listing and analyzing charitable contributions during the prior year. The report should

1. Identify organizational or individual recipients of donations, whether cash or in-kind, in excess of $500 and aggregate smaller contributions by categories of recipients such as community organizations, schools, medical groups, churches, political or social activism organizations, and the like;
2. Identify for donations not yet spent or used: the purposes to which the donations are to be put, any restrictions on the use of the donations, and any mechanisms by which the restrictions on donations will be monitored and enforced;
3. Identify for donations already spent or used: the purposes to which the donations were to be put, the purposes to which the donations were actually put, the method by which the use of the donations was monitored and ascertained, and an evaluation of the efficacy of the donation and the Company's intention with regard to future donations to the organization;
4. Include management's analysis of any risks to the Company's brand, reputation, or shareholder value posed by all public controversies associated with the donations, including an explanation of the objective and consistent standards by which such controversies were discovered and their effect on the Company gauged; and
5. Identify, if and as appropriate, philanthropic areas or initiatives considered most germane to corporate values while posing less risk to Company reputation; or in the alternative, any decision to scale back without replacement risky or misused donations.

Supporting Statement

The Securities & Exchange Commission has long and consistently stated that charitable contributions by corporations are "generally found to involve a matter of corporate policy which is extraordinary in nature and beyond a company's ordinary business operations,"[15] and so is amenable, without omission, to shareholder proposals to require reporting about them and about potential or realized risks and controversies arising from them, so long as the proposal relates to the corporation's "charitable contributions generally," rather than merely to some segment of the corporation's charitable contributions.[16]

The need for such reporting has grown particularly acute in this shareholder season. Many corporations, including the Company, have committed to making significant charitable

[15] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2010/humanlife021910-14a8.pdf

[16] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/johnharrington022817-14a8.pdf

contributions in recent months.[17] The political and social events which triggered these commitments are potentially highly divisive, and carry with them significant potential for misapplication of well-intentioned contributions to activities fraught with risk to the Company's reputation.[18] It has therefore become more important than ever for corporations, and for Company specifically, to monitor carefully, and to report to shareholders, the content of, intentions for, actual use of and lessons learned from its charitable contributions.

[17] https://www.forbes.com/sites/ashoka/2020/10/07/on-call-can-atts-employees-teach-the-company-a-new-form-of-public-responsibility/?sh=572d335a70b3; https://www.cnet.com/news/at-t-ceo-randall-stephenson-defends-black-lives-matter/

[18] https://www.cnet.com/news/at-t-ceo-randall-stephenson-defends-black-lives-matter/; https://www.breitbart.com/politics/2020/06/02/silent-majority-poll-shows-american-voters-support-use-of-military-national-guard-in-riots/

AT&T

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November 27, 2020

By email to shareholderproposals@sec.gov

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

Re: AT&T Inc. – Request to Exclude Shareholder Proposal Submitted by National Center for Public Policy Research

Ladies and Gentlemen:

Pursuant to Exchange Act Rule 14a-8(j), AT&T Inc., a Delaware corporation ("AT&T" or the "Company"), hereby notifies the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") of AT&T's intention to exclude a shareholder proposal (the "Proposal") submitted by National Center for Public Policy Research (the "Proponent") from AT&T's proxy materials for its 2021 Annual Meeting of Shareholders (the "2021 Proxy Materials"), for the reasons stated below.

This letter, together with the Proposal and the related correspondence, are being submitted to the Staff via email in lieu of mailing paper copies. A copy of this letter and the attachments are being sent on this date to the Proponent. We respectfully remind the Proponent that if it elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned pursuant to Rule 14a-8(k).

The Proposal

The Proposal sets forth the following resolution to be included in the 2021 Proxy Materials:

"**Charitable Giving Reporting**

> **Be it RESOLVED** that shareholders of AT&T, Inc. (the "Company") request that the Company prepare and annually update a report to shareholders, at reasonable expense and excluding proprietary information, listing and analyzing charitable contributions during the prior year. The report should
>
> 1. Identify organizational or individual recipients of donations, whether cash or in-kind, in excess of $500 and aggregate smaller contributions by categories

of recipients such as community organizations, schools, medical groups, churches, political or social activism organizations, and the like;
2. Identify for donations not yet spent or used: the purposes to which the donations are to be put, any restrictions on the use of the donations, and any mechanisms by which the restrictions on donations will be monitored and enforced;
3. Identify for donations already spent or used: the purposes to which the donations were to be put, the purposes to which the donations were actually put, the method by which the use of the donations was monitored and ascertained, and an evaluation of the efficacy of the donation and the Company's intention with regard to future donations to the organization;
4. Include management's analysis of any risks to the Company's brand, reputation, or shareholder value posed by all public controversies associated with the donations, including an explanation of the objective and consistent standards by which such controversies were discovered and their effect on the Company gauged; and
5. Identify, if and as appropriate, philanthropic areas or initiatives considered most germane to corporate values while posing less risk to Company reputation; or in the alternative, any decision to scale back without replacement risky or misused donations.

Supporting Statement
The Securities & Exchange Commission has long and consistently stated that charitable contributions by corporations are "generally found to involve a matter of corporate policy which is extraordinary in nature and beyond a company's ordinary business operations,"[1] and so is amenable, without omission, to shareholder proposals to require reporting about them and about potential or realized risks and controversies arising from them, so long as the proposal relates to the corporation's "charitable contributions generally," rather than merely to some segment of the corporation's charitable contributions.[2]

The need for such reporting has grown particularly acute in this shareholder season. Many corporations, including the Company, have committed to making significant charitable contributions in recent months.[3] The political and social events which triggered these commitments are potentially highly divisive, and carry with them significant potential for misapplication of well-intentioned contributions to activities fraught with risk to the Company's reputation.[4] It has therefore become more important than ever for corporations, and for Company specifically, to monitor carefully, and to report to shareholders, the content

[1] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2010/humanlife021910-14a8.pdf
[2] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/johnharrington022817-14a8
[3] https://www.forbes.com/sites/ashoka/2020/10/07/on-call-can-atts-employees-teach-the-company-a-new-form-of-public-responsibility/?sh=572d335a70b3; https://www.cnet.com/news/at-t-ceo-randall-stephenson-defends-black-lives-matter/
[4] https://www.cnet.com/news/at-t-ceo-randall-stephenson-defends-black-lives-matter/; https://www.breitbart.com/politics/2020/06/02/silent-majority-poll-shows-american-voters-support-use-ofmilitary-national-guard-in-riots/

of, intentions for, actual use of and lessons learned from its charitable contributions."

A copy of the Proposal and related correspondence with the Proponent is attached to this letter as Exhibit A.

Analysis

I. The Proposal May Be Excluded Pursuant to 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations.

A. Background

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." The purpose of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."[5] As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations."[6]

The ordinary business exclusion is based on two central considerations. First, the Commission notes that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis" that they are not proper subjects for shareholder proposals.[7] The second consideration "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."[8] The Staff indicates that this second consideration "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." In Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("SLB 14J"), the Staff elaborated on this by explaining that "a proposal that seeks an intricately detailed study or report" may be excluded on micromanagement grounds. SLB 14J also emphasizes that a proposal that may not be excludable on the basis of its subject matter may nevertheless be excludable on the basis of micromanagement: "it is the manner in which a proposal seeks to address an issue that results in exclusion on micromanagement grounds."

In Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K"), the Staff clarified that "where we concurred with a company's micromanagement argument, it was not because we viewed the proposal as presenting issues that are too complex for shareholders to understand.

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[5] *See* Release No. 34-40018 (May 21, 1998) (the "1998 Release").
[6] *Id*.
[7] *Id*.
[8] *Id*.

Rather, it was based on our assessment of the level of prescriptiveness of the proposal. When a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted."

B. The Proposal seeks to micromanage the Company because it would require an intricately detailed report, and therefore may be omitted under Rule 14a-8(i)(7).

The report requested by the Proposal would require that the Company identify any recipient of a donation (whether cash or in-kind) "in excess of $500" and "aggregate smaller contributions by categories of recipients." Once the donations are made: for donations actually "spent or used" by the recipient, the report would need to identify (1) the "purposes to which the donations were to be put," (2) the "purposes to which the donations were <u>actually</u> put," (3) the "method by which the use of the donations was monitored and ascertained," (4) an "evaluation of the efficacy of the donation" and (5) the "Company's intention with regard to future donations to the organization" (emphasis added). For donations "not yet spent or used" by the recipient, the report would need to identify (1) the "purposes to which the donations are to be put," (2) "any restrictions on the use of the donations" and (3) any "mechanisms by which the restrictions on donations will be monitored and enforced."

The report would also need to include management's analysis of "<u>any</u> risks to the Company's brand reputation or shareholder value posed by <u>all</u> public controversies associated with the donations," which analysis would also need to explain the "objective and consistent standards by which such controversies were discovered and their effect on the Company gauged" (emphasis added). Finally, the report would need to "identify, if and as appropriate, philanthropic areas or initiatives considered most germane to corporate values while posing less risk to Company reputation" or, in the alternative, "any decision to scale back without replacement risky or misused donations."

Setting aside the question as to whether this information could even be collected – after all, cash is cash, and once pooled with other donations, it would be extremely difficult to "trace" the Company's donation to its actual "use" – the report requested by the Proposal is clearly, and, it should be noted, purposefully burdensome and would require the Company to expend significant administrative and due diligence efforts in following through on every donation above $500. In 2019, the Company made approximately 13,000 donations that were each greater than $500.

However, it is the Proposal's level of prescriptiveness that merits and warrants its exclusion under the micromanagement prong of Rule 14a-8(i)(7), as explained further by SLB 14K: the Proposal affords management no "flexibility or discretion in addressing the complex matter presented by the proposal." The Proposal would require extensive disclosure for <u>any</u> recipient who receives more than $500, which is a small amount for a company of AT&T's size. For each such recipient, the Proposal would require the Company to evaluate the "efficacy" of the donation. Evaluating the "efficacy" of a donation as small as $501 is at once self-evident and unnecessary. And yet, the Proposal would require it for each and every donation above $500. In contrast, while the Company does require reports of impact from the organizations we fund, it does so only if our contribution is greater than a certain amount – and where the Company sets that amount depends on the facts and circumstances of the donation and the recipient. For example, a first-time recipient may be asked to submit a report of impact with respect to a relatively small donation whereas a long-time recipient receiving that same amount may not be asked to submit a report of impact. The report requested by the Proposal would also require management to analyze "any risks" to the Company posed by "all public controversies associated with the donations," regardless of the nature and materiality of the risk or the controversy. Moreover, any such "controversies" would need to be identified and disclosed using "objective and consistent standards."

In its excessive prescriptiveness, the Proposal seeks to dictate both the contents of the report and the manner in which the Company evaluates the recipients of its charitable contributions, with no flexibility or discretion to weigh costs and benefits or to exercise judgment to act in the best interests of the corporation. Because of the micromanagement manner in which the Proposal seeks to address the issue of corporate charitable giving, exclusion of the Proposal is warranted under Rule 14a-8(i)(7).

The Staff has in the past concurred that proposals seeking reports with high levels of requested detail, such as the report requested in the Proposal, may be omitted in reliance on Rule 14-8(i)(7). *See, e.g., PayPal Holdings, Inc.* (Mar. 6, 2018) (concurring in the omission of a proposal requesting that the company prepare a report evaluating the feasibility of the company of achieving "net zero" emissions by 2030); *Ford Motor Co.* (Mar. 2, 2004) (concurring in the omission of a proposal seeking to dictate "the specific method of preparation and the specific information to be included in a highly detailed report").

C. The Proposal relates to charitable contributions that are made to specific types of organizations, and therefore may be omitted under Rule 14a-8(i)(7).

The Company also believes that the Proposal may be excluded in reliance on Rule 14a-8(i)(7) because it relates to charitable contributions to specific types of organizations, which is a component of "ordinary business." The Proposal, read together with the Supporting Statement and the Supporting Statement's footnotes, does not have a general objective. Instead, it is directed at specific organizations that support a particular movement to which the Proponent is apparently opposed: Black Lives Matter ("BLM").

When applying Rule 14a-8(i)(7), the Staff evaluates the "underlying subject matter" of the proposal, regardless of how the proposal is framed. *See Release No. 34-20091* (Aug. 16, 1983); *Staff Legal Bulletin No. 14H* (Oct. 22, 2015). Here, the "underlying subject matter" of the Proposal is made clear by the Supporting Statement, which in part states that the Company has committed to "making significant charitable contributions in recent months" and that such commitments were "triggered" by political and social events that "are potentially highly divisive, and carry with them significant potential for misapplication of well-intentioned contributions to activities fraught with risk to the Company's reputation." The reference to "activities fraught with risk" is not generic. Rather, Proponent provides context and support for these statements by providing footnotes with links to an article describing the Company's support for the BLM movement, an article describing the Company's CEO's support for the BLM movement, and to an article describing recent protests in connection with BLM. The Proposal, when read in conjunction with the accompanying Supporting Statement and its footnotes, plainly seeks to limit the Company's charitable contributions only with respect to organizations supporting BLM.[9] The Proposal does not refer to any other public controversy associated with the Company's donations. Accordingly, the Proposal relates directly to an ordinary business matter – namely, a company's decision about the nonprofit organizations to which it should or should not make charitable contributions.

In contrast to shareholder proposals that relate to a company's charitable contributions generally, which are typically not excludable under Rule 14a-8(i)(7), the Staff has consistently granted no-action relief under Rule 14a-8(i)(7) where the proposal requests that charitable contributions be made, or not made, to specific organizations or specific types of organizations. In *The Walt Disney Co*. (Nov. 20, 2014), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal urging the company to "preserve the policy of acknowledging the Boy Scouts of America as an charitable organization to receive matching contributions (grants)" after the company decided it would no longer provide the organization with funding. *See also PepsiCo., Inc.* (Feb. 24, 2010) (concurring in the exclusion of a proposal requesting that the company specifically prohibit financial or other support of any "organization or philosophy which either rejects or supports homosexuality," noting that "[p]roposals that concern charitable contributions directed to specific types of organizations are generally excludable under rule 14a-8(i)(7))"; *Target Corporation* (Mar. 31, 2010) (concurring in the exclusion of a proposal requesting a report on charitable donations and a feasibility study of policy changes, "including minimizing donations to charities that fund animal experiments," on the basis that it related to the company's ordinary business operations in that it concerned "charitable contributions directed to specific types of organizations").

The fact that the Proposal's resolution is facially neutral does not change the analysis. The Staff has concurred with the exclusion of proposals where the language of the resolution does not target specific charities or types of charities but where the supporting statement makes clear that the proposal in fact would serve as a shareholder referendum on corporate contributions to a particular charity or type of charity, as is the case with the Proposal. For example, in *JPMorgan Chase & Co.* (Feb. 28, 2018), the Staff concurred in the exclusion of a proposal requesting that the board issue a report disclosing the company's standards for choosing organizations that receive charitable contributions, where the supporting statement focused on the company's contributions to Planned Parenthood and the Southern Poverty Law Center. The Staff agreed that this proposal related to "contributions to specific types of organizations". *See also Starbucks Corp*. (Jan. 4, 2018) (concurring in the exclusion of a facially neutral proposal in which the supporting statement criticized Planned Parenthood for "being the subject of much controversy").

[9] The Proponent's website clearly demonstrates its aversion to the BLM movement. For example, there is a petition on the website that demands that "Amazon cease all funding to Black Lives Matter" and claims that Black Lives Matter advocates extreme positions. *See* https://nationalcenter.org/tell-amazon-to-stop-funding-black-lives-matter/.

* * *

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Proposal may properly be omitted from the Company's 2021 Proxy Materials on the basis of Rule 14a-8(i)(7). We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to me at ww0118@att.com. If I can be of any further assistance in this matter, please do not hesitate to contact me at (214) 757-3344.

Sincerely,

Wayne Wirtz

Wayne Wirtz

Attachment: Exhibit A

cc: Justin Danhof, Esq., National Center for Public Policy Research
(JDanhof@nationalcenter.com)

EXHIBIT A

November 5, 2020

Via FedEx to

David R. McAtee II
Senior Vice President, Assistant General Counsel & Secretary
AT&T, Inc.
208 S. Akard Street
Suite 2954
Dallas, Texas 75202

Dear Mr. McAtee,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the AT&T Inc. (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Deputy Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding $2,000 for a year prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2021 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Copies of correspondence or a request for a "no-action" letter should be forwarded to Justin Danhof, Esq, General Counsel, National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to JDanhof@nationalcenter.org.

Sincerely,

Scott Shepard

Enclosure: Shareholder Proposal

Charitable Giving Reporting

Be it RESOLVED that shareholders of AT&T, Inc. (the "Company") request that the Company prepare and annually update a report to shareholders, at reasonable expense and excluding proprietary information, listing and analyzing charitable contributions during the prior year. The report should

1. Identify organizational or individual recipients of donations, whether cash or in-kind, in excess of $500 and aggregate smaller contributions by categories of recipients such as community organizations, schools, medical groups, churches, political or social activism organizations, and the like;
2. Identify for donations not yet spent or used: the purposes to which the donations are to be put, any restrictions on the use of the donations, and any mechanisms by which the restrictions on donations will be monitored and enforced;
3. Identify for donations already spent or used: the purposes to which the donations were to be put, the purposes to which the donations were actually put, the method by which the use of the donations was monitored and ascertained, and an evaluation of the efficacy of the donation and the Company's intention with regard to future donations to the organization;
4. Include management's analysis of any risks to the Company's brand, reputation, or shareholder value posed by all public controversies associated with the donations, including an explanation of the objective and consistent standards by which such controversies were discovered and their effect on the Company gauged; and
5. Identify, if and as appropriate, philanthropic areas or initiatives considered most germane to corporate values while posing less risk to Company reputation; or in the alternative, any decision to scale back without replacement risky or misused donations.

Supporting Statement

The Securities & Exchange Commission has long and consistently stated that charitable contributions by corporations are "generally found to involve a matter of corporate policy which is extraordinary in nature and beyond a company's ordinary business operations,"[1] and so is amenable, without omission, to shareholder proposals to require reporting about them and about potential or realized risks and controversies arising from them, so long as the proposal relates to the corporation's "charitable contributions generally," rather than merely to some segment of the corporation's charitable contributions.[2]

The need for such reporting has grown particularly acute in this shareholder season. Many corporations, including the Company, have committed to making significant charitable contributions in recent months.[3] The political and social events which triggered these

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[1] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2010/humanlife021910-14a8.pdf

[2] https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/johnharrington022817-14a8.pdf

[3] https://www.forbes.com/sites/ashoka/2020/10/07/on-call-can-atts-employees-teach-the-company-a-new-form-of-public-responsibility/?sh=572d335a70b3; https://www.cnet.com/news/at-t-ceo-randall-stephenson-defends-black-lives-matter/

commitments are potentially highly divisive, and carry with them significant potential for misapplication of well-intentioned contributions to activities fraught with risk to the Company's reputation.[4] It has therefore become more important than ever for corporations, and for Company specifically, to monitor carefully, and to report to shareholders, the content of, intentions for, actual use of and lessons learned from its charitable contributions.

[4] https://www.cnet.com/news/at-t-ceo-randall-stephenson-defends-black-lives-matter/; https://www.breitbart.com/politics/2020/06/02/silent-majority-poll-shows-american-voters-support-use-of-military-national-guard-in-riots/

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