UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

January 14, 2025

Thomas J. Kim
Gibson Dunn & Crutcher LLP

Re: AT&T Inc. (the "Company")
Incoming letter dated January 10, 2025

Dear Thomas J. Kim:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 23, 2024 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Stefan Padfield
National Center for Public Policy Research

GIBSON DUNN

Thomas J. Kim
Partner
T: +1 202.887.3550
TKim@gibsondunn.com

December 23, 2024

VIA ONLINE PORTAL SUBMISSION

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

Re: *AT&T Inc.*
Stockholder Proposal of National Center for Public Policy Research
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, AT&T Inc. (the "Company" or "AT&T"), intends to omit from its proxy statement and form of proxy for its 2025 Annual Meeting of Stockholders (collectively, the "2025 Proxy Materials") a stockholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from National Center for Public Policy Research (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide 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 Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on at the 2025 Annual Meeting of Stockholders:

> **Resolved:** Shareholders request the Board of Directors of AT&T conduct an evaluation and issue a report within the next year, at reasonable cost and excluding confidential information, assessing how the Company's DEI requirements for contractors impacts AT&T's risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations. The Proposal focuses on the policies and procedures that the Company utilizes to engage in new contractual relationships and manage its existing relationships with vendors, suppliers, and other strategic partners. In addition, the Proposal does not raise issues with a broad societal impact, such that they transcend the Company's ordinary business, but instead focuses on internal policies that the Company has with regards to certain business relationships. Because the Proposal is focused on the Company's management of vendors, suppliers, and other strategic partners, it implicates ordinary business considerations within the scope of Rule 14a-8(i)(7), and accordingly the Proposal can properly be omitted.

BACKGROUND

As one of the largest corporations in the United States, AT&T does business with thousands of vendors, suppliers, and other strategic partners. These relationships are vital to the success of AT&T's business. In 2022, AT&T's Global Supply Chain team, which is responsible for the day-to-day management of the Company's supply chain, managed over $60 billion in supplier spending. In order to oversee and strategically expand this extensive network, AT&T has developed robust guidelines and policies with regards to its existing and prospective suppliers. These internal company policies and guidelines are enforced and utilized to ensure that all supplier relationships meet the Company's standards for quality and sustainability, which are crucial to maintaining a successful supplier network.

While the Proposal states that it is concerned about risks related to discrimination, the focus of the Proposal is on how the Company manages its supplier relationships. In the Supporting Statement, rather than discussing risks related to discrimination generally, the Proposal focuses on specific supplier policies, procedures and metrics that the Company uses to vet its existing and prospective suppliers. The Proposal seeks to influence the Company's supplier policies, focusing on the Company's DEI "requirements for [its] own supply chain" and the "condition[s] of receiving contracts or doing business." The Proposal is not concerned with discrimination but rather specific policies and practices that the Proponent views as "increasingly unpopular" and as a "politicization of corporate culture."

Since AT&T's supplier network is crucial to the Company's business, the Company is best suited to manage and vet these relationships. The policies, procedures, and metrics that the Company decides to use with respect to suppliers and vendors is a key part of the Company's ordinary business matters and should not be open to stockholder input. For these reasons, we request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations.

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company's ordinary business operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" does not "refer[] to matters that are . . . necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that 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."

The 1998 Release identified two central considerations that underlie this policy. *Id.* The first of those considerations 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." *Id.* The Commission stated that examples of tasks that implicate the ordinary business standard include "the management of the workforce . . . decisions on

production quality and quantity, and the retention of suppliers" (emphasis added). *Id.* When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("[i]n determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole"). A stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[w]here the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).").

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company's Management of Its Supply Chain.

The Proposal relates to the Company's supplier relationships. Specifically, the Proposal focuses on the policies, procedures, and metrics that the Company uses to vet its suppliers and manage its supply chain. The Proposal seeks to influence AT&T's supplier relations policies by characterizing Diversity, Equity, and Inclusion ("DEI") practices as "increasingly unpopular" and as "the politicization of corporate culture." Further, the Proposal argues against "requiring vendors to implement DEI training or workforce management policies or practices, diversity benchmarks for boards or workforces, disclosure of DEI metrics, promoting DEI through programs and initiatives, or similar requirements for their own supply chain."

In the 1998 Release, the Commission specifically cited "the retention of suppliers" as an example of a task that is so fundamental to management's ability to run a company on a day-to-day basis that it could not, as a practical matter, be subject to direct stockholder oversight. Subsequently, the Staff has concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to or affecting a company's supplier or vendor relationships. For example, in *Duke Energy Corp.* (avail. Jan. 24, 2011), the Staff concurred with the exclusion of a proposal requesting that the company "strive to purchase a very high percentage" of "Made in USA" goods and services on the grounds that it related to "decisions relating to supplier relationships." *See also PG&E Corp.* (avail. Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender, or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business operations).

Additionally, in numerous instances, the Staff has concurred with the exclusion of proposals under Rule 14a-8(i)(7) because they concerned decisions relating to monitoring supplier or vendor relationships. For example, in *Foot Locker, Inc.* (avail. Mar. 3, 2017), the Staff concurred with the exclusion of a proposal seeking a report on steps taken by the company

to monitor overseas apparel suppliers' use of subcontractors as relating "broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors." And in *Kraft Foods Inc.* (avail. Feb. 23, 2012), the Staff concurred with the exclusion of a proposal under Rule 14a-8(i)(7) that sought a report detailing the ways the company "is assessing water risk to its agricultural supply chain and action it intends to take to mitigate the impact on long-term shareholder value," noting that the "proposal relates to decisions relating to supplier relationships. Proposals concerning decisions relating to supplier relationships are generally excludable under rule 14a-8(i)(7)." *See also Corrections Corp. of America* (avail. Feb. 28, 2014, recon. denied Mar. 25, 2014) (concurring with the exclusion of a proposal requesting the board adopt and implement provisions "relate[d] to inmate telephone service contracts at correctional and detention facilities operated by the business" on grounds that it "relates to decisions relating to supplier relationships"); *The GEO Group, Inc.* (avail. Feb. 24, 2014, recon. denied Mar. 25, 2014) (same).

As with the proposals at issue in *PG&E Corp*, *Kraft Foods*, and *Corrections Corp. of America* and the other precedents cited above, the Proposal directly relates to the Company's ordinary business operations of monitoring and managing its supplier relationships, which is a core function of the Company's management. The Company has developed and maintains relationships with thousands of suppliers located around the world. Deciding which factors to consider in retaining these relationships and determining how best to manage these relationships is one of management's most fundamental day-to-day responsibilities. A significant aspect of managing supplier relationships is monitoring supplier labor practices and workforce management policies. Determining the requirements that suppliers must follow in this regard is not something that can, as a practical matter, be subject to direct stockholder oversight. The Company's decision to utilize DEI practices and metrics when engaging with its suppliers involves the consideration of numerous factors, including the upkeep of the Company's responsible sourcing standards, complying with regulatory reporting obligations, and satisfying evolving investment community expectations. As a result of the number, variety and complexity of issues related to supplier retention and management of the Company's relationships with its suppliers, these decisions require the expertise of the Company's management, and cannot, "as a practical matter, be subject to direct shareholder oversight." Because the Proposal relates to the policies, practices, and metrics that the Company uses to monitor and engage with suppliers, the Proposal squarely implicates decisions relating to the Company's supplier relationships. Consequently, as in the precedents cited above, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations, specifically, decisions relating to the Company's supplier relationships.

C. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations.

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission initially articulated in

the 1976 Release. In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("[i]n determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.").

The Staff most recently discussed how it evaluates whether a proposal "transcends the day-to-day business matters" of a company in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), noting that it is "realign[ing]" its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976, and reaffirmed in the 1998 Release. In addition, the Staff stated that it will "no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)" but rather will consider only "whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company."

The Company agrees that discrimination based on race, color, religion, sex, national origin, and political views is a significant societal issue that needs to be addressed. The Proposal, however, does not raise a broad societal issue that transcends the Company's ordinary business, but instead focuses on the Company's decision to use specific practices and metrics when managing its supplier relationships. As such, even though the Proposal references a topic with broad societal implications, that is not the focus of the Proposal. The Proposal therefore can be properly excluded under Rule 14a-8(i)(7).

The Staff consistently has concurred in the exclusion of proposals that reference or arise in the context of a significant policy matter but that address or focus on ordinary business matters. For example, the proposal in *PetSmart, Inc.* (avail. Mar. 24, 2011) requested that the board require its suppliers to certify that they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents" which related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) because the proposal addressed but did not focus on significant policy issues, stating that "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" Similarly, in *Walmart Inc.* (avail. Apr. 8, 2019), the Staff concurred with the exclusion of a proposal requesting a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness because it related "generally to the

[c]ompany's management of its workforce, and [did] not focus on an issue that transcends ordinary business matters." See *also Apple Inc.* (*D. Rahardja*) (avail. Jan. 3, 2023) (concurring with the exclusion of a proposal requesting a report assessing "the effects of [the company's] return-to-office policy on employee retention and [the company's] competitiveness," noting it "relate[d] to, and [did] not transcend, ordinary business matters"); *Amazon.com, Inc.* (*AFL-CIO Reserve Fund*) (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting a report on the company's workforce turnover rates and labor market changes resulting from the COVID-19 pandemic, noting that "the [p]roposal . . . does not focus on significant social policy issues"); *Amazon.com, Inc.* (*McRitchie*) (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting an annual report on the distribution of stock-based incentives throughout the workforce despite referring to wealth inequality in the United States as a significant policy issue); *Intel Corp.* (avail. Mar. 18, 2022) (concurring with the exclusion of a proposal requesting a report "on whether, and/or to what extent, the public display of the pride flag has impacted . . . employee's [sic] view of the company as a desirable place to work," stating it "relate[d] to, and [did] not transcend, ordinary business matters").

Recent precedents where the Staff concurred with exclusion of proposals that reference or arise in the context of a significant policy matter but that address or focus on ordinary business matters include *Fox Corp.* (avail. Sept. 19, 2024). There, the company received a proposal requesting a report on the social impact and risks to the company from inadequately distinguishing between news content and opinion content and the viability and benefits of such public differentiation, and the company argued that "potential social policy implications in a proposal does not qualify as 'focusing' on such issues, even if the social policies happen to be the subject of substantial public focus." The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7). Likewise, in *Shake Shack Inc.* (Apr. 23, 2024), the Staff concurred in the exclusion of a proposal requesting details about the company's claims that its chicken products were hormone-free. The company argued that the proposal was not focused on animal health but instead focused on the company's marketing and advertising of its chicken products, which related to the company's ordinary business. Similarly, in *The Coca-Cola Co.* (avail. Mar. 6, 2024), the Staff concurred in exclusion under Rule 14a-8(i)(7) because the proposal was not focused on addressing public health concerns but instead questioned the manner in which the company was pursuing those goals, asserting that the company "has addressed this topic until now solely by focusing on sugar and calorie reduction," which the proponent viewed as "insufficient."

As in the precedents cited above, the Proposal does not focus on a significant social policy issue that has a broad societal impact, such as discrimination, but instead focuses on the Company's management of its supply chain. The potential risk of actual discrimination against suppliers and vendors are, at best, secondary to the Proposal's central objective of limiting the Company's ability to utilize DEI policies and metrics when engaging with its suppliers. This is evident in the Supporting Statement's characterization of these practices as "unpopular" and a

"politicization of corporate culture." By focusing on specific policies and practices that the Company has in place with regards to its suppliers rather than the Company's treatment of suppliers generally, the Proposal's focal point is on an issue that falls within management's routine management under the ordinary business standard: determining the "condition[s] of receiving contracts or doing business." Decisions regarding the requirements that suppliers must follow with respect to workforce management and training do not transcend the Company's day-to-day operations. Thus, just as with *Walmart*, *Fox Corp*, and *Coca-Cola Co.* and the other precedents cited above, the Proposal properly may be excluded under Rule 14a-8(i)(7).

CONCLUSION

The Proposal addresses the Company's management of its supply chain and inappropriately attempts to step into the shoes of management to assess how to best manage supplier relations, an issue that Rule 14a-8(i)(7) reserves for management; therefore, the Proposal relates to ordinary business. Accordingly, we respectfully request that the Staff concur that the Proposal may be excluded from the Company's 2025 Proxy Materials pursuant to 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 shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 887-3550.

Sincerely,

/s/ Thomas J. Kim

Thomas J. Kim

Enclosures

cc: Bryan Hough, AT&T Inc.
Moni DeWalt, AT&T Inc.
Stefan Padfield, National Center for Public Policy Research

Exhibit A

December 5, 2024

Via email to

Corporate Secretary
AT&T Inc.
208 S. Akard Street
Suite 2951
Dallas, Texas 75202
Attn.: [redacted]

Dear Corporate Secretary,

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 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 at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2025 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a recorded meeting in person or via teleconference to discuss this proposal December 19, 2024, or December 20, 2024, from 1 p.m. to 4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times within the window proposed by Rule 14(a)-8(b)(iii) to talk. Please feel free to contact me at [redacted] so that we can determine the mode and method of that discussion. This letter constitutes notice of our intent to record any related meetings.

As you know, SEC guidance has admonished corporations against seeking no-action "relief" on grounds that could have been resolved by clear and open correspondence between the parties and a good-faith willingness on both sides to reach a mutually satisfactory resolution and to implement whatever revisions may be agreed to. We herewith express our openness to consideration in good faith of any specific objections to this proposal that you might wish to raise, and a commitment to work earnestly toward an acceptable adjustment in all instances in which the objections raised are demonstrably

supported by SEC regulation, staff guidance, or other relevant explications of specific rules governing the situation at hand.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, [redacted] and emailed to [redacted].

Sincerely,

Stefan Padfield
Director, Free Enterprise Project
National Center for Public Policy Research

cc: Ethan Peck, FEP Deputy Director
Enclosures: Shareholder Proposal

Report on Respecting Vendor Civil Liberties

Supporting Statement:

AT&T Inc. is one of the largest companies in the United States and does business with thousands of vendors, suppliers, and other strategic partners. AT&T should respect the diverse views of its business partners. But instead, it is requiring them to participate in Diversity, Equity, and Inclusion (DEI) or other divisive practices as a condition of receiving contracts or doing business.

The 2024 Viewpoint Diversity Score Business Index[1] found that 58% of the largest tech and finance companies, including AT&T, have public policies requiring their vendors and other business partners to implement divisive practices.[2] These include requiring vendors to implement DEI training or workforce management policies or practices, diversity benchmarks for boards or workforces, disclosure of DEI metrics, promoting DEI through programs and initiatives, or similar requirements for their own supply chain.[3]

This is especially concerning because AT&T purports to support viewpoint diversity and religious freedom.[4] AT&T also risks discriminating against religious vendors by failing to respect their legal right to make employment decisions that are consistent with their religious commitments.

These policies also raise serious legal risk. The Eleventh Circuit recently held that a company that offered grants only to minority entrepreneurs violated the Civil Rights Act's prohibition against race-based contracts in *American Alliance for Equal Rights v. Fearless Fund*. Requiring vendors and other business partners to implement DEI metrics similarly discriminates based on race.

This is on top of the fact that DEI workforce initiatives are facing sustained legal pressure in light of recent Supreme Court decisions in *Students for Fair Admission v. Harvard*, *Groff v DeJoy*, and *City of St. Louis v. Muldrow*.

These factors have made DEI increasingly unpopular. The Wall Street Journal recently reported that "Diversity Goals Are Disappearing from Companies' Annual Reports."[5] Some companies are even revoking their DEI commitments.[6]

This is part of a larger backlash against the politicization of corporate culture. A recent Gallup poll found that only 38% of Americans want businesses to take a

[1] https://www.viewpointdiversityscore.org/
[2] https://www.viewpointdiversityscore.org/company/att
[3] https://storage.googleapis.com/vds_storage/document/2024-evidence-items/att/MB2_AT&T-Principles-of-Conduct-for-Suppliers_Supplier-Diversity.pdf
[4] https://about.att.com/ecms/dam/csr/2019/governance/Equal-Employment-Opportunity.pdf
[5] https://www.wsj.com/business/diversity-goals-are-disappearing-from-companies-annual-reports-459d1ef3
[6] https://www.dailymail.co.uk/news/article-13812241/american-brand-dei-rules-backlash.html

stance on current events and that this was part of a steady, multi-year decline among Americans across nearly every age, race, sex, and political persuasion.[7]

AT&T should avoid needless political controversies and illegal discrimination and support fundamental freedoms that benefit every American. One step to do this is by increasing transparency around its vendor practices to ensure it is respecting the diverse views of its vendors.

Resolved: Shareholders request the Board of Directors of AT&T conduct an evaluation and issue a report within the next year, at reasonable cost and excluding confidential information, assessing how the Company's DEI requirements for contractors impacts AT&T's risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views.

[7] https://news.gallup.com/poll/648269/americans-business-stay-quiet-public-policy.aspx

January 6, 2025

Via Online Shareholder Proposal Form

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

Re: No-Action Request from AT&T Inc. Regarding a Shareholder Proposal by the National Center for Public Policy Research ("Proponent" or "NCPPR")

Ladies and Gentlemen:

This correspondence is in response to the letter of Thomas J. Kim on behalf of AT&T Inc. (the "Company") dated December 23, 2024, requesting that your office (the "Commission" or "Staff") take no action if the Company omits Proponent's shareholder proposal (the "Proposal") from its 2025 proxy materials for its 2025 annual shareholder meeting.

I. The Proposal Does Not Improperly Relate to the Company's Ordinary Business Operations

The Company notes the following:

> The 1998 Release identified two central considerations that underlie this policy. Id. The first of those considerations 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." Id. The Commission stated that examples of tasks that implicate the ordinary business standard include "the management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers" (emphasis added).

However, the Proposal does not improperly interfere with the Company's management of its supply chain for the following reasons.

- The Proposal Focuses on Discrimination Risks, Not Direct Management: The proposal does not seek to directly manage supplier retention. Instead, the proposal requests an evaluation and report on how the Company's DEI requirements for contractors impact AT&T's risks related to discrimination against individuals. This is a critical distinction: the proposal is about the *potential consequences* of certain policies, not the policies themselves, or the daily management of the Company.
- Shareholders' Right to Information on Discrimination Risks: While the cited passage states that management should handle the day-to-day business, shareholders have a right to understand potential risks associated with Company policies, especially those concerning discrimination. Asking for an assessment of discrimination risks is not equivalent to taking over the management of supplier relationships; it is a request for transparency and accountability.
- The proposal does not seek to influence the Company's ordinary business: The proposal asks for an evaluation of the risks associated with DEI policies, not to change or interfere with the Company's ordinary business. The Company may implement or manage its DEI policies as it sees fit; the proposal seeks only to understand whether those policies may create risks relating to discrimination.
- Management decisions vs. policy assessment: The Company's decisions regarding supplier relationships may be complex and require the expertise of management, but that complexity does not negate the fact that the Company has an obligation to avoid discriminatory practices. The proposal asks for an assessment of potential discriminatory impacts, not to direct management decision making.
- The Company's Justifications Do Not Address Discrimination: The Company states that DEI practices are utilized for responsible sourcing standards, regulatory compliance, and to satisfy investment community expectations. While these may be legitimate business concerns, they do not address the potential for discrimination that the proposal seeks to evaluate. A Company might implement DEI policies for valid reasons that *also* have discriminatory effects.

In summary, while the cited passage from the 1998 Release establishes that certain day-to-day tasks should remain under management's purview, the proposal does not seek to interfere with those tasks directly. It seeks to evaluate the potential risks of discrimination arising from the Company's DEI policies.

The Company cites several no-action letters to support its argument, claiming that these letters establish a precedent for excluding proposals related to supplier relationships. However, those cited cases are distinguishable based on the specific focus of each proposal:

- *Duke Energy Corp.* (avail. Jan. 24, 2011): This letter dealt with a proposal about purchasing "Made in USA" goods. The focus was on the origin of products, not on the impact of specific company policies on discrimination risks. The proposal was about a preference for domestic products, not about evaluating the company's DEI requirements.
- *PG&E Corp.* (avail. Mar. 7, 2016): This proposal requested a policy banning discrimination in hiring vendor contracts or customer relations. While related to

discrimination, it did not specifically concern the discriminatory impact of DEI initiatives imposed by the company as a condition of doing business. It was a broader request for a non-discrimination policy, not an evaluation of existing DEI policies. In particular, it sought to add protected grounds for discrimination not already covered by law (on the basis of "donations"), which was not, in the Staff's determination, a socially significant policy issue.

- *Foot Locker, Inc.* (avail. Mar. 3, 2017): This case focused on monitoring overseas apparel suppliers' use of subcontractors. The issue was about supply chain monitoring and labor practices, not about the potential discriminatory outcomes of DEI policies. It was about ensuring suppliers complied with labor standards, not about evaluating the impact of DEI requirements on discrimination.
- *Kraft Foods Inc.* (avail. Feb. 23, 2012): The proposal concerned the assessment of water risk to the agricultural supply chain. This is a matter of environmental risk management and resource management, and does not address the specific impact of DEI requirements on potential discrimination. The proposal sought a report on environmental impact, not an assessment of DEI policies.
- *Corrections Corp. of America* (avail. Feb. 28, 2014, recon. denied Mar. 25, 2014) and *The GEO Group, Inc.* (avail. Feb. 24, 2014, recon. denied Mar. 25, 2014): These letters were about inmate telephone service contracts. These proposals focused on the terms of specific contracts, not on how DEI requirements imposed by the company could create discrimination risks. These proposals dealt with specific contractual services, not with an evaluation of the discriminatory impact of DEI policies.

Unlike these cited letters, the Proposal does not simply address general supplier relationships, but rather focuses on the specific impact of the company's DEI requirements. The Proposal seeks an evaluation of the risks of discrimination that may arise from these DEI requirements imposed on the company's contractors. The proposal is not dictating how to manage the supply chain, but asking for an assessment of how the DEI requirements for contractors are impacting AT&T's risks related to discrimination.

The Company argues that the proposal is about the company's specific use of DEI policies and metrics in its supplier relationships, characterizing the Proposal as seeking "to influence AT&T's supplier relations policies by characterizing Diversity, Equity, and Inclusion ('DEI') practices as 'increasingly unpopular' and as 'the politicization of corporate culture.'" However, this characterization of DEI practices is relevant to the risk assessment being sought because the more unpopular and politicized corporate behavior is perceived to be, the more likely it is to generate lawsuits and other forms of backlash. Thus, the Company's argument here amounts to an attempt to avoid the core issue of the Proposal, which is to evaluate the company's potential discrimination risks due to DEI requirements.

The Proposal's aim is to ensure that AT&T is not creating discriminatory outcomes through its DEI policies, a matter that should be of interest to shareholders. The potential for discrimination, which has legal and reputational consequences, elevates this matter beyond day-to-day operational decisions. The company's assertion that its management is best suited to manage these relationships does not preclude shareholders from requesting an evaluation of potential

discrimination risks associated with those practices. AT&T's supplier network is crucial, but the specific implications of DEI requirements must also be evaluated.

The proposal's specific focus is on the potential for discriminatory impacts from DEI requirements imposed on contractors, which distinguishes it from proposals addressing general supplier relationships. The proposal is not merely about supply chain management but about the evaluation of a specific set of policies and their potential for causing discriminatory outcomes. The focus on the discriminatory impacts of the DEI requirements is not about general operational matters, but on a specific set of policies with potentially discriminatory results.

II. The Proposal Focuses on A Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations

AT&T argues that the Proposal should be excluded because, despite referencing discrimination, it does not focus on a significant social policy issue that transcends the company's ordinary business operations. AT&T claims that the Proposal's focus is on the company's management of its supply chain, particularly its DEI policies and metrics, and not on the broader issue of discrimination. However, this argument mischaracterizes the proposal, which specifically asks for an evaluation of the discriminatory risks arising from the company's DEI requirements for contractors, a matter that goes beyond the company's day-to-day operations. The transcendent social significance of the Proposal is made clear by the recent legal cases and other relevant data set forth in the Proposal itself, which Proponent will not repeat here but encourages the Staff to review.

AT&T cites several no-action letters to support its position, but these are distinguishable from the current proposal. A troubling theme becomes apparent as one reviews the issues in many of these letters that the Company apparently considers on par with the civil rights of citizens.

- *PetSmart, Inc.* (avail. Mar. 24, 2011): The proposal requested suppliers certify they had not violated animal welfare laws. The staff granted no-action relief because the scope of the laws covered was broad, ranging from animal abuse to administrative matters. However, the AT&T proposal is focused on a narrower, specific issue: the discriminatory impacts of DEI requirements. Unlike the *PetSmart* proposal, the Proposal does not concern violations remotely ranging as broadly as animal abuse to administrative matters.
- *Walmart Inc.* (avail. Apr. 8, 2019): This proposal requested a report evaluating the risk of discrimination resulting from the company's policies for hourly workers taking absences. The staff concurred with exclusion because it related to the company's management of its workforce, not an evaluation of the discriminatory impacts of specific DEI policies on contractors. The Proposal does not concern the company's employees, but its contractors and therefore differs in the nature of its focus. In addition, whether "paid sick leave" constitutes a transcendent social policy issue may be debatable while the discrimination implicated by the Proposal unquestionably does.
- *Apple Inc. (D. Rahardja)* (avail. Jan. 3, 2023): The proposal requested a report assessing the effects of the company's return-to-office policy on employee retention and competitiveness. This relates directly to employee management, whereas the Proposal is concerned with the treatment of contractors. And, again, whether return-to-office policies

constitutes a transcendent social policy issue may be debatable while the discrimination implicated by the Proposal unquestionably does.

- *Amazon.com, Inc. (AFL-CIO Reserve Fund)* (avail. Apr. 8, 2022): The proposal requested a report on workforce turnover rates and labor market changes from the COVID-19 pandemic. This was about general workforce management and market changes not the discriminatory impacts of specific DEI policies imposed on contractors. The resolved clause made clear the focus was on workforce turnover rates and the effects of labor market changes.
- *Amazon.com, Inc. (McRitchie)* (avail. Apr. 8, 2022): This proposal requested an annual report on the distribution of stock-based incentives throughout the workforce. While this proposal references wealth inequality, a societal issue, its primary focus was on employee compensation practices, not on the discriminatory impacts of DEI requirements on contractors.
- *Intel Corp.* (avail. Mar. 18, 2022): The proposal requested a report on the impact of displaying the pride flag on employee views of the company as a desirable place to work. This was about employee morale and company image, not about discriminatory impacts of DEI requirements on contractors. The focus of the proposal was on the public display of a pride flag.
- *Fox Corp.* (avail. Sept. 19, 2024): The proposal requested a report on the social impact of distinguishing between news and opinion content. The focus was on content and public perception, not the discriminatory impacts of DEI requirements on contractors. Does inadequately distinguishing between news content and opinion content have the same social significance as discrimination that implicates civil rights having recently been vindicated by the highest court in our land?
- *Shake Shack Inc.* (Apr. 23, 2024): The proposal requested details about the company's claims that its chicken products were hormone-free. This proposal was about product marketing and advertising, not the discriminatory impacts of DEI requirements on contractors. And, again, the theme of the Company essentially mocking the civil rights of citizens by comparing them here to hormone-free chicken products is telling.
- *The Coca-Cola Co.* (avail. Mar. 6, 2024): The proposal questioned the company's approach to addressing public health concerns. This focused on the company's strategy for addressing public health concerns, whereas the Proposal focuses on discriminatory impacts of DEI requirements. In terms of social significance, a request that a company adopt an enterprise-wide policy to move toward more healthy products is a far cry from a request to evaluate a company's risks associated with potentially purposeful discrimination on the basis of protected categories.

AT&T's claim that the proposal is focused on its "management of its supply chain" rather than discrimination, is a mischaracterization of the Proposal. The Proposal specifically requests an evaluation of the risks of discrimination arising from DEI requirements for contractors. The proposal's language and focus are clearly on the potential discriminatory impact of specific policies imposed by AT&T.

The assertion that the potential risk of discrimination is "secondary to the Proposal's central objective of limiting the Company's ability to utilize DEI policies" is a distortion of the Proposal's aim. The Proposal does not seek to limit the company's ability to use DEI policies but to evaluate the risks associated with these policies, specifically the risk of discrimination.

The Proposal does not improperly focus on ordinary business operations but on the potential for discriminatory impacts based on race, color, religion, sex, national origin, or political views and arising from specific DEI requirements imposed on contractors. This kind of discrimination has long been recognized as a quintessential significant social policy issue regardless of whether it occurs in the workforce, among customers, *see JPMorgan Chase & Co. (Bahnsen)* (avail. Mar. 21, 2023), or elsewhere. *See generally*, Letter from State Financial Officers to Fortune 1000 Executives re DEI Letter from Members of Congress (Oct. 24, 2024) ("They commend DEI to you, claiming it is 'good for business' and 'benefits employees, customers, and the bottom line.' Significant evidence is mounting that precisely the opposite is true.").[1] *Cf.* Editors, *Trust the Science: DEI Is Dangerous*, National Review (Nov. 29, 2024) ("a compelling new study confirms that DEI fosters racial and group animosity, not tolerance").[2]

Staff have understood that this translates to vendor and supplier issues as well, which is why they have recently protected proposals dealing with the "financial, reputational, and human rights risks from the use in the Company's supply chain and distribution networks." *The TJX Companies, Inc.* (avail. Apr. 15, 2022); *Lowe's Companies, Inc.* (avail. Apr. 7, 2022). *Cf.* Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release") ("proposals relating to such matters [as retention of suppliers] but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote").

The Company's cited precedents do not concern the specific issue of evaluating discriminatory impacts of DEI requirements. The Proposal therefore should not be excluded under Rule 14a-8(i)(7).

III. Conclusion

In conclusion, the arguments presented by the Company for excluding the Proposal are not convincing. The Proposal should be included in the proxy materials for the 2025 annual meeting.

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at spadfield@nationalcenter.org.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with

[1] https://adfmedialegalfiles.blob.core.windows.net/files/StateFinancialOfficersLetter2024.pdf
[2] https://www.nationalreview.com/2024/11/trust-the-science-dei-is-dangerous/

respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

Sincerely,

Stefan Padfield
FEP Executive Director
National Center for Public Policy Research

cc: Thomas J. Kim

GIBSON DUNN

Thomas J. Kim
Partner
T: +1 202.887.3550
TKim@gibsondunn.com

January 10, 2025

VIA ONLINE PORTAL SUBMISSION

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

Re: *AT&T Inc.*
Stockholder Proposal of National Center for Public Policy Research
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

In a letter dated December 23, 2024, we requested that the staff of the Division of Corporation Finance concur that our client, AT&T Inc. (the "Company"), could exclude from its proxy statement and form of proxy for its 2025 Annual Meeting of Stockholders a stockholder proposal and statement in support thereof received from the National Center for Public Policy Research (the "Proposal").

Enclosed as Exhibit A is email correspondence from the Proponent withdrawing the Proposal. In reliance thereon, we hereby withdraw the December 23, 2024 no-action request relating to the Company's ability to exclude the Proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

Please do not hesitate to call me at (202) 887-3550 if you have any questions.

Sincerely,

/s/ Thomas J. Kim

Thomas J. Kim

Enclosures

cc: Bryan Hough, AT&T Inc.
Moni DeWalt, AT&T Inc.
Stefan Padfield, National Center for Public Policy Research

Exhibit A

From: Stefan Padfield [redacted]
Sent: Friday, January 10, 2025 7:18 AM
To: LAKE, CHARLENE F [redacted]
Cc: [redacted]; PORTER, JASON [redacted] LEIKER, JASON J [redacted]
Subject: Re: ATT-NCPPR Agreement

Please find attached a signed copy of our agreement.

I hereby confirm that I am withdrawing the proposal on behalf of NCPPR.

We thank you for your constructive engagement, and believe this agreement promotes shareholder value.

Do you have any objection to us announcing the withdrawal today?

Best,
Stefan

Stefan J. Padfield, JD
Executive Director
Free Enterprise Project
National Center for Public Policy Research
https://nationalcenter.org/ncppr/staff/stefan-padfield/