



# Oregon

Theodore R. Kulongoski, Governor

Government Ethics Commission

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May 1, 2009

Paul Braunstein  
Government Account Manager  
AT&T Mobility  
19801 S.W. 72<sup>nd</sup> Avenue, Suite 200  
Tualatin, Oregon 97062

Dear Mr. Braunstein:

At its May 1, 2009 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion:

**OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 09A-1003**

**STATED FACTS:** AT&T Mobility (AT&T) has made discounts available on consumer wireless voice and data plans to state and local government employees in various states for many years. Some Oregon public officials have accepted discounts under AT&T discount programs.

The State of Nevada has negotiated with AT&T to set the rates, terms and conditions for wireless services and equipment on behalf of the governing bodies of states that are members of the Western States Contracting Alliance (WSCA). Each member state can negotiate modifications to the terms and conditions of the master agreement to satisfy the requirements of the laws and regulations of that member state. The State Procurement Office in the Oregon Department of Administrative Services negotiated a Participating State Addendum to the WSCA Master Price Agreement. Through this agreement and the participating addendum, Oregon state agencies acquire wireless services and equipment to be used for official state business. AT&T has not offered discounts based on the WSCA agreement to Oregon public officials on their personal wireless service plans.

AT&T has offered discounts to Oregon public officials under a nationwide program that is known as AT&T's Government Employee Offer. Public officials representing or employed by Oregon's state or local government agencies are eligible for a fixed 15% discount on personal wireless service plans under this program. The premise for

offering discounts to government employees is the same as the premise for offering discounts to employees of private employers.

AT&T has two nationwide corporate discount programs that are available to employees of approximately 339,000 private businesses, companies or corporations in Oregon. These programs offer discounts to employees of private employers if a private employer meets one of two standards. The employer must have five employees or subscribe to five or more lines of AT&T wireless service. The employees of these businesses, companies or corporations are eligible for discounts ranging from 5% to 25% on their personal wireless service plans. Currently, there are approximately 31,000 employees of Oregon private employers that subscribe to AT&T services, voice or data, and receive discounts of 15% or more. In addition, there are approximately 11,000 employees receiving discounts ranging from 5% to 14% on personal AT&T wireless service. The higher discounts are available to employees of larger companies or corporations. For example, there are approximately 12,000 employees of Nike Inc. that are eligible for a 25% discount on personal wireless service plans. Employees of national corporations who live in Oregon are eligible to participate in discount programs regardless of where the national corporation is located.

The discount programs offered to state and local employees under AT&T's Government Employee Offer program and to private sector employees are managed separately but bear many similarities. The customer agreement entered into by state and local government employees is the same agreement as the one used for employees of private companies that participate in wireless service agreements with AT&T.

AT&T has marketing plans to make both private company and government employees aware of the discounts that are available through the government and private programs discussed in these stated facts. The methods used to publicize the availability of discounts to private company employees are the same as those used to publicize the discounts to Oregon state or local government employees. The methods include the following:

- The AT&T website provides a notice of discounts and offers an interactive tool so a private or government employee can determine discount eligibility.
- AT&T store employees are trained to assist customers in learning of the discounts available to private or government employees.
- AT&T customer service employees are trained to inform and assist callers with discounts that are available to private or government employees.
- Targeted advertising to employees of specific companies.
- Displays in some stores highlight availability of employee discounts.

**QUESTION:** Would Oregon state and local public officials violate Oregon Government Ethics law by accepting AT&T discounts on personal wireless service plans that are available through the Government Employee Offer program?

**ANSWER:** ORS 244.040(1) prohibits public officials from using or attempting to use their official position or office to obtain a financial gain or to avoid a financial detriment that would not otherwise be available but for the public officials' holding an official position or office. This provision also prevents public officials from using their official positions to gain these same financial benefits for relatives or businesses with which they are associated.

The Oregon Government Ethics Commission has previously addressed questions as to the propriety of public officials accepting group discounts or other marketing incentives. When the discounts are unsolicited and offered with similar conditions as discounts offered to others who are not public officials the Commission has indicated that a public official may accept the offer without violating ORS 244.040(1). In applying the "but for" language of ORS 244.040(1), the Commission examines three conditions of a discount offer. First, an assessment is made of whether the discounts are offered to a significant portion of the general population. Second, the offer is studied to determine if it is an offer unique to public officials. Third, the Commission makes a judgment as to whether the offer is made only to public officials and excludes others who are not public officials.

Under a nationwide program known as the Government Employee Offer, AT&T provides discounts to Oregon public officials who subscribe to an AT&T wireless service plan. If the Commission determined that AT&T could offer discounted wireless service plans to state and local government employees in Oregon the number of eligible public officials is estimated to be 200,000. AT&T estimates that, in Oregon, there are over 300,000 private employers whose employees are eligible for discounts of 5% or more. Currently, 31,000 employees of private employers receive discounts of 15% or more from AT&T for wireless voice or data services.

According to AT&T, the availability of a 15% discount to state or local government employees in Oregon is not based on the fact that their employers are government agencies, but is based on the size of the population of the national demographic represented by the individual employees of state or local government agencies. The 15% discount is also offered to employees of private companies that represent to AT&T a similar employee demographic as represented by the state or local government employees. The size of the potential market for AT&T wireless services determines the size of the subscriber's discount, not whether the subscriber is employed by a private company or a government agency.

When AT&T offers discounts, those discounts are offered to state and local government employees under terms and conditions that are similar to terms and conditions that

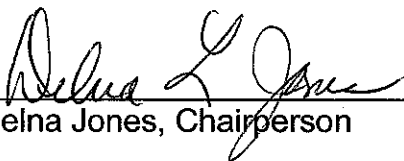
apply to discounts offered to employees of private companies. The customer agreement entered by state and local government employees is the same agreement as the one used for employees of private companies that participate in the national discount programs. The AT&T marketing plan includes affirmative methods to inform employees, public or private, of their eligibility for the discounted service plans.

Based on the conditions placed on discount eligibility, as described by AT&T, Oregon public officials could accept the discounts AT&T offers on personal service plans without violating ORS 244.040(1). This opinion is offered and based on the limited and specific facts in this opinion request and should not be applied to other discount offers that might be made to public officials.

The statutes relevant to issues addressed in this opinion are provided as an addendum to this Commission Advisory Opinion.

**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE COMMISSION MAY ALSO APPLY.**

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 1st day of May 2009.

  
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Delna Jones, Chairperson

  
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Lynn Rosik, Assistant Attorney General

## ADDENDUM

**RELEVANT STATUTES:** The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020(8) "Legislative or administrative interest' means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official."

244.020(13) "Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services."

244.020(14) "Relative' means:

- (a) The spouse of the public official;
- (b) The domestic partner of the public official;
- (c) Any children of the public official or of the public official's spouse;
- (d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;
- (e) Any individual for whom the public official has a legal support obligation; or
- (f) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment."

**244.040 "Prohibited use of official position or office; exceptions; other prohibited actions.** (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office."

244.040(2) "Subsection (1) of this section does not apply to:

- (a) Any part of an official compensation package as determined by the public body that the public official serves.
- (b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.
- (c) Reimbursement of expenses.
- (d) An unsolicited award for professional achievement.
- (e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.
- (f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.
- (g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020."