



4510-29-P

**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2014-04, Northwestern Mutual Investment Services, Inc., D-11496; 2014-05, Liberty Media 401(k) Savings Plan, D-11756; 2014-06, AT&T Inc., D-11758; 2014-07, The Delaware County Bank and Trust Company Employee 401(k) Retirement Plan, D-11773; and 2014-08, The Home Savings and Loan Company 401(k) Savings Plan, D-11780.

**SUPPLEMENTARY INFORMATION:** A notice was published in the Federal Register of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption

and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR

Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011)<sup>1</sup> and based upon the entire record, the Department makes the following findings:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

---

<sup>1</sup> The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Northwestern Mutual Investment Services, Inc.

Located in Milwaukee, Wisconsin

[Prohibited Transaction Exemption **2014-04**;

Application No. D-11496]

#### EXEMPTION

#### SECTION I. TRANSACTIONS INVOLVING PLANS DESCRIBED IN BOTH TITLE I AND TITLE II OF ERISA

The restrictions of section 406(a)(1)(A), (B), and (D) and section 406(b)(1) and (2) of ERISA,<sup>2</sup> and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security (as defined in Section IV(b)) by a Plan (as defined in Section IV(h)) to the Sponsor (as defined in Section IV(g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security

---

<sup>2</sup> For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

by the Plan, from: (1) Northwestern Mutual Investment Services, Inc. or an affiliate (Northwestern Mutual); (2) an Introducing Broker (as defined in Section IV(f)); or (3) a Clearing Broker (as defined in Section IV(d)); where the loan is: (i) Repaid in accordance with its terms; and (ii) guaranteed by the Plan Sponsor.

## SECTION II. TRANSACTIONS INVOLVING PLANS DESCRIBED IN TITLE II OF ERISA ONLY

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in Section IV(i)) to the Beneficial Owner (as defined in Section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security by the Title II Only Plan, from: (1) Northwestern Mutual; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) Repaid in accordance with its terms and;

(ii) guaranteed by the Beneficial Owner.

### SECTION III. CONDITIONS

(a) Northwestern Mutual acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction described in Section I or II of this exemption;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by Northwestern Mutual for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is Independent (as defined in Section IV(e)) of Northwestern Mutual. Notwithstanding the foregoing, an employee of Northwestern Mutual who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in Section II, if all of the other conditions of this Section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the sale or loan as a condition of engaging in the above-described transaction;

(e) The Plan does not pay any fees or commissions in

connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in Section I(a) or Section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(h) With respect to an in-kind exchange described in Section (I)(a) or Section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in Section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and is a security that the Plan is otherwise permitted to hold under applicable law;<sup>3</sup> and

(5) The total value of the Auction Rate Security (i.e., par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in Section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

---

<sup>3</sup> The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivery Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with these types of transactions following disclosure by Northwestern Mutual of all relevant information.



- (A) The coupon rate for the Auction Rate Security;
- (B) The Federal Funds Rate; or
- (C) The Prime Rate;
- (3) The loan is unsecured; and
- (4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

#### SECTION IV. DEFINITIONS

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means: A member of a securities exchange that acts as a liaison between an investor

and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term "Independent" means a person who is: (1) Not Northwestern Mutual or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term "Introducing Broker" means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means: A plan sponsor as described in section 3(16)(B) of the Act and any Affiliates;

(h) The term "Plan" means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term "Title II Only Plan" means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA;

(j) The term "Delivered Security" means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted

securities); or (2) a U.S. Treasury obligation; or (3) A fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (e.g., a highly rated municipal bond or a highly rated corporate bond); or (4) A certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on April 9, 2014, at 79 FR 19642. All comments and requests for hearing were due by May 24, 2014. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file

(Application No. D-11496), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 9, 2014, at 79 FR 19642.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693-8561. (This is not a toll-free number.)

Liberty Media 401(k) Savings Plan (the Plan)

Located in Englewood, Colorado

[Prohibited Transaction Exemption **2014-05**;

Exemption Application No. D-11756]

## EXEMPTION

### SECTION I. TRANSACTIONS

The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,<sup>4</sup> shall not apply, effective August 9, 2012, until October 9, 2012, to:

(a) The acquisition by the individually-directed accounts (the Accounts) in the Plan of certain participants (the Invested Participants) of stock subscription rights (the Rights) pursuant to a stock rights offering (the Rights Offering) by Liberty Interactive Corporation (LIC), a party in interest with respect to the Plan; and

(b) The holding of the Rights by the Invested

---

<sup>4</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Participants' Accounts during the subscription period.

## SECTION II. CONDITIONS

(a) The receipt of the Rights by the Invested Participants' Accounts occurred in connection with the Rights Offering, and the Rights were made available by LIC to all shareholders of Series A Liberty Interactive common stock (the LIC Stock);

(b) The acquisition of the Rights by the Invested Participants' Accounts resulted from an independent corporate act of LIC;

(c) Each shareholder of LIC Stock, including each Invested Participant's Account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of the LIC Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Invested Participants' Accounts, all or a portion of whose Accounts in the Plan held the LIC Stock;

(e) The decision with regard to the disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights. Notwithstanding the above, if any

of the Invested Participants failed to give instructions as to the disposition of the Rights received in the Rights Offering, such Rights were sold on the Nasdaq Global Market System and the proceeds from the sale were distributed to such Invested Participant's Account; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan or by the Invested Participants' Accounts to any broker related to Fidelity Management Trust Company (Fidelity), the Plan trustee, or to Liberty Media Corporation (LMC) or LIC in connection with the acquisition, holding or sale of the Rights.

EFFECTIVE DATE: This exemption is effective for the period beginning August 9, 2012, through and including October 9, 2012.

#### WRITTEN COMMENTS

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within 45 days of the publication, on April 9, 2014, of the Notice in the Federal Register. In an email dated April 15, 2014, LMC's representative confirmed that the required notification was sent

to all interested persons via first class mail no later than April 14, 2014.

During the comment period, the Department received no requests for a hearing. In addition, the Department did not receive any written comments.

After full consideration and review of the entire record, the Department has decided to grant the exemption. The complete application file (D-11756) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the Federal Register on April 9, 2014 at 79 FR 19653.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department at (202) 693-8567. (This is not a toll-free number.)



AT&T Inc. (together with AT&T Inc.'s affiliates, AT&T)

Located in Dallas, TX

[Prohibited Transaction Exemption **2014-06**;  
Exemption Application No. D-11758]

## EXEMPTION

### SECTION I. COVERED TRANSACTIONS

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B), 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, shall not apply, effective September 9, 2013, to the following transactions, provided that the conditions described in Section II are satisfied:

(a) The one-time, in-kind contribution (the Contribution) by AT&T of 320 million series A Cumulative Perpetual Preferred Membership Interests (the Preferred Interests) of AT&T Mobility II LLC (the Issuer) to the SBC Master Pension Trust, which holds assets of the AT&T Pension Benefit Plan (the Plan) in accordance with the terms of the Contribution Agreement;

(b) The holding of the Preferred Interests by the Trust on

behalf of the Plan;

(c) The disposition of the Preferred Interests by the Trust in connection with the exercise of the Put Option by the Independent Fiduciary, in accordance with the terms of the Contribution Agreement;

(d) The disposition of the Preferred Interests by the Independent Fiduciary on behalf of the Trust in connection with the exercise of the Call Option, in accordance with the terms of the Contribution Agreement;

(e) The disposition, restructuring, adjustment, or recapitalization of the Preferred Interests resulting from a Change of Control of the Issuer, in accordance with the terms of the Contribution Agreement;

(f) The acquisition and holding by the Trust of shares in AT&T common stock (the AT&T Shares) received in connection with the exercise of the Put Option or the Call Option, in accordance with the terms of the Contribution Agreement, to the extent such acquisition and holding is not permitted by section 407(a) of ERISA; and

(g) The deferred payment by AT&T to the Trust of any amounts due under the Call Option or the Put Option, in accordance with the terms of the Contribution Agreement.

## SECTION II. CONDITIONS

(a) The Preferred Interests have a liquidation value of \$25 per Preferred Interest and carry distribution rights of \$1.75 per Preferred Interest, or \$560 million per year in cash payable to the Trust (the Distributions) in accordance with the terms of the Contribution Agreement;

(b) The Plan incurs no fees, costs or other charges in connection with the transactions described in paragraphs (a) - (g) of Section I, other than fees and expenses paid by the Plan to the Independent Fiduciary for duties required by this exemption;

(c) AT&T makes \$700 million in additional cash payments (the Additional Payments) to the Trust in the following manner:

(1) \$175 million paid at the time the Preferred Interests are contributed to the Trust; and

(2) \$175 million paid no later than the due date for AT&T's tax return for each of the next three years (i.e., 2014, 2015 and 2016);

(d) AT&T makes an additional cash contribution to the Trust, equal to the "Net Lookback Amount," no later than September 15, 2019. The Net Lookback Amount will be calculated as follows:

(1) Looking back from January 1, 2018, AT&T will recalculate the minimum required contribution to the Plan after application of any carryover balances (the Mandatory Funding Obligation) for each of the 2013 through 2017 Plan Years, subject to the following requirements:

(i) The calculation of each Mandatory Funding Obligation will use actuarial assumptions in effect for funding purposes as of the first day of the Plan Year for which such contribution is calculated, and the calculation of plan assets will assume each Mandatory Funding Obligation is contributed when required for the 2013 through 2017 Plan Years and earn actual Trust returns for each such year;

(ii) The value of the Preferred Interests will be disregarded;

(iii) Actual cash contributions to the Trust, including the Additional Payments and Distributions, will be disregarded; and

(iv) Earnings on all cash contributions, including any earnings on the Additional Payments and Distributions, will be included;

(2) The amounts described in Section (II) (d) (1) (i) - (iv), in the aggregate (the Gross Lookback Amount), shall be

reduced by the following items to arrive at the Net Lookback Amount:

(i) Actual cash contributions to the Trust, including the Additional Payments and the Distributions paid to the Trust prior to the date the Net Lookback Amount is paid to the Trust;

(ii) The value of the Preferred Interests as of January 1, 2018, that is not in excess of 10 percent of the total value of the Trust's assets, and for the purpose of this clause (ii), the determination of the total value of the Trust's assets includes the actual cash contributions to the Trust, such as cash contributions made in connection with the Additional Payments and Distributions (including contribution receivables); and

(iii) Any consideration paid to the Trust pursuant to any exercise of the Put or Call Options at any time prior to the date the Net Lookback Amount is paid to the Trust;

(e) An Independent Fiduciary, acting solely on behalf of the Plan and the Trust, represents the Plan's interests for all purposes with respect to the Preferred Interests, and determines, prior to entering into any of the transactions described in Section I (a)-(g), that each such transaction is in

the interest of the Plan.

(f) The Independent Fiduciary will have complete discretion regarding the disposition of AT&T Shares in accordance with the IMA and the Registration Rights Agreement;

(g) The Independent Fiduciary negotiated and approved, on behalf of the Plan and the Trust, the terms and conditions of the Contribution Agreement, including the terms of the Preferred Interests, the Call Option and the Put Option, as well as the terms of the IMA and Registration Rights Agreement;

(h) The Independent Fiduciary manages the holding and disposition of the Preferred Interests and takes whatever actions it deems necessary to protect the rights of the Plan with respect to the Preferred Interests or the AT&T Shares received in connection with the exercise of the Call Option or the Put Option;

(i) The Independent Fiduciary monitors the credit rating of AT&T Inc. for purposes of determining whether the Put Option is triggered due to AT&T Inc. being rated below investment grade for two consecutive calendar quarters by at least two of the following rating agencies: Standard & Poor's Ratings Services, Moody's Investor Services, Inc. or FitchRatings, Inc.;

(j) An Independent Appraiser, acting on behalf of the

Plan, determines the fair market value of the Preferred Interests contributed to the Trust on behalf of the Plan as of the date of the Contribution and while the Preferred Interests are held on behalf of the Plan, and for all purposes under this exemption, consistent with sound principles of valuation;

(k) The Preferred Interests rank senior to any other equity holders of the Issuer in respect of: the right to receive Distributions; and the right to receive Distributions or payments out of the assets of the Issuer upon liquidation of the Issuer, in accordance with the terms of the Contribution Agreement;

(l) In the event that the Distributions are in arrears, AT&T is restricted from making certain transfers of cash out of the Issuer or declaring dividends on and repurchasing shares of AT&T stock, in accordance with the terms of the Contribution Agreement;

(m) The Committee and the Independent Fiduciary maintain for a period of six (6) years from the date any Preferred Interests are contributed to the Trust, for a period of six (6) years from the date of any disposition of Preferred Interests by the Trust or the purchase of Preferred Interests by AT&T, and for a period of six (6) years from the last date that the Trust

holds AT&T Shares received in connection with the exercise of the Put Option or the Call Option in violation of section 406(a)(2) of ERISA, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (n)(1) below to determine whether conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (n) below; and

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to in paragraph (m) above shall be unconditionally available at their customary location during normal business hours to:

(i) any duly authorized employee or representative of the Department or the Internal Revenue Service;



(ii) AT&T or any duly authorized representative of AT&T;

(iii) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(iv) the Committee or any duly authorized representative of the Committee; and

(v) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (n)(1)(iii) or (v) shall be authorized to examine the trade secrets of AT&T or commercial or financial information that is privileged or confidential, and should AT&T refuse to disclose information on the basis that such information is exempt from disclosure; AT&T shall by the close of the thirtieth (30<sup>th</sup>) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

### III. DEFINITIONS

For purposes of this exemption:

(a) The term "Affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person;

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

For the purposes of clause (a)(1) above, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term "Committee" means the AT&T Inc. Benefit Plan Investment Committee, which has been delegated the power and authority to appoint and remove trustees and investment managers, and to enter into and amend trust agreements and other agreements relating to the management of Plan assets and, in respect of such power and authority, has been designated by AT&T Services, Inc. as a "named fiduciary" of the Plan.

(c) The term "Trust" means the SBC Master Pension Trust, established and maintained pursuant to an agreement between AT&T Inc. and JPMorgan Chase Bank, N.A., as amended and restated effective as of February 1, 2012.

(d) The term "IMA" means the Investment Management Agreement by and between AT&T Services, Inc., the AT&T Benefit Plan Investment Committee, AT&T Inc. and Brock Fiduciary Services LLC, effective on September 9, 2013.

(e) The term "Contribution Agreement" means the Contribution Agreement between Brock Fiduciary Services LLC, JPMorgan Chase Bank, N.A., as Directed Trustee of the Trust, AT&T Inc. and AT&T Mobility II LLC, dated August 30, 2013, which, among other things, sets forth the terms and conditions of the Contribution, the Put Option and the Call Option.

(f) The term "Registration Rights Agreement" means the Registration Rights Agreement by and among AT&T Inc., the SBC Master Pension Trust and Brock Fiduciary Services LLC, as Independent Fiduciary and investment manager with respect to the AT&T Pension Benefit Plan, a participating plan in the SBC Master Pension Trust, dated August 30, 2013.

(g) The term "Change of Control" means (i) the occurrence of any merger, reorganization or other transaction that results in AT&T, directly or indirectly, owning less than fifty percent of the capital or profits interests (where the Issuer remains taxable as a partnership), or equity (if the Issuer becomes taxable as a corporation), of the Issuer, exclusive of the

Preferred Interests, or (ii) a transfer of fifty percent or more of the Plan liabilities and Trust assets to an entity not under common control with AT&T Inc.

(h) The term "Independent Fiduciary" means Brock Fiduciary Services LLC and any other fiduciary who (1) is independent or unrelated to AT&T Inc. and its affiliates and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the covered transactions in accordance with the fiduciary duties and responsibilities prescribed by ERISA (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with ERISA), and (2) if relevant, succeeds Brock Fiduciary Services LLC pursuant to the terms of the Investment Management Agreement, Independent Fiduciary Agreement, or other relevant agreement. The Independent Fiduciary will not be deemed to be independent of and unrelated to AT&T Inc. and its affiliates if: (i) such fiduciary directly or indirectly controls, is controlled by or is under common control, with AT&T and its affiliates; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption other than for acting as an Independent Fiduciary in connection with the

transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from AT&T Inc. and its affiliates, exceeds two percent of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year. For the purpose of this Section III(h), the term "control" has the meaning set forth in Section III(a) above.

(i) The term "Put Option" means the right of the Independent Fiduciary to require AT&T to purchase the Preferred Interests from the Trust, pursuant to the terms and conditions set forth in the Contribution Agreement, at the Option Price per Preferred Interest at any time and from time to time on or after the earliest of: (1) the first date that the Issuer's debt-to-total-capitalization ratio (as defined in the Contribution Agreement) exceeds that of AT&T; (2) the date on which AT&T, Inc. is rated below investment grade for two consecutive calendar quarters by at least two of the following rating agencies: (x) Standard & Poor's Ratings Services, (y) Moody's Investor Services, Inc., or (z) FitchRatings, Inc.; (3) a Change

of Control; or (4) the seventh anniversary of the date on which the Preferred Interests are contributed to the Trust.

(j) The term "Call Option" means the right of AT&T to purchase all or any portion of the Preferred Interests from the Trust, pursuant to the terms and conditions set forth in the Contribution Agreement, at a price per Preferred Interest equal to the Option Price per Preferred Interest, at any time and from time to time: (1) during the twelve month period following the date AT&T issues an annual report reflecting that the Plan is fully funded as determined under U.S. GAAP and calculated by including the fair market value of the Preferred Interests; (2) on or after a Change of Control; or (3) on or after the fifth anniversary of the date on which the Preferred Interests are contributed to the Trust.

(k) The term "Trustee" means JPMorgan Chase Bank, N.A. or any successor trustee retained by the Trust to hold the assets of the Trust, acting solely as a directed trustee with no discretionary authority over the investment of Trust assets.

(l) The term "Option Price" means an amount equal to the greater of: (1) the fair market value of the Preferred Interest, determined by the Independent Fiduciary as of the last date of the calendar quarter preceding the date of notice of exercise of

a Call Option or Put Option, as the case may be, without regard to the occurrence of any prior event described in clauses (1) or (2) of the definition of Call Option or in clauses (1) through (3) of the definition of Put Option, or, for the portion of Preferred Interests that are not immediately purchased by AT&T pursuant to the Put Option because of the limitation on AT&T's obligation to purchase the Preferred Interests pursuant to the Put Option to no more than 106,666,667 Preferred Interests in any twelve month period, the fair market value of the Preferred Interest, determined by the Independent Fiduciary as of the last date of the calendar quarter immediately preceding the date such portion of the Preferred Interest is actually purchased by AT&T Inc., without regard to the occurrence of any prior event described in clauses (1) or (2) of the definition of Call Option or in clauses (1) through (3) of the definition of Put Option; and (2) the sum of \$25.00 (*i.e.*, \$8 billion in the aggregate) plus any accrued and unpaid Distributions.

(m) The term "Independent Fiduciary Agreement" means the Independent Fiduciary Agreement dated May 1, 2012, as amended, by and among AT&T Services, AT&T Inc. and Brock.

(n) The term "Independent Appraiser" means an individual or entity meeting the definition of a "Qualified Independent

Appraiser" under 25 CFR 2570.31(i) retained to determine, on behalf of the Plan, the fair market value of the Preferred Interests as of the date of the Contribution and while the Preferred Interests are held on behalf of the Plan. For avoidance of doubt, the Independent Appraiser may be the Independent Fiduciary, provided it qualifies as a Qualified Independent Appraiser.

EFFECTIVE DATE: This exemption is effective as of September 9, 2013.

## BACKGROUND<sup>5</sup>

AT&T Inc. (together with its affiliates, AT&T) is a provider of telecommunications services, including wireless communications, with its principal executive offices in Dallas, Texas. AT&T sponsors the AT&T Pension Benefit Plan (the Plan), a noncontributory qualified defined benefit pension plan whose assets are held in trust by the SBC Master Pension Trust (the Trust). The Plan covers substantially all U.S. bargained and non-bargained employees of the participating subsidiaries of

---

<sup>5</sup> The Background information is based on AT&T's representations and does not reflect the views of the Department, unless indicated otherwise.



AT&T. As of December 31, 2013, the Plan had 536,500 participants and assets with an approximate fair market value of \$56.45 billion, including the Preferred Interests with a value of \$9.21 billion. As of the same date, the Plan was underfunded by \$9.32 billion, excluding the Preferred Interests, and by \$113 million, including the Preferred Interests.<sup>6</sup>

On September 9, 2013, AT&T made an in-kind contribution (the Contribution) to the Trust of 320 million Series A Cumulative Perpetual Preferred Membership Interests (i.e., the Preferred Interests) of AT&T Mobility II LLC (the Issuer), an indirect wholly-owned subsidiary of AT&T Inc. The Applicant stated that the Contribution would provide the Plan with a valuable asset in the fastest growing part of AT&T's business and would be substantially in excess of the legally required Plan contributions and would allow AT&T to enhance the sound funding of the Plan.

The Preferred Interests will pay annual distributions of \$1.75 per Preferred Interest, or \$560 million, to the Trust (the

---

<sup>6</sup> Prior to the Contribution, as of December 31, 2012, the Plan had 551,187 participants and assets with an approximate fair market value of \$45.06 billion. As of the same date the Plan was underfunded by \$13.85 billion.

Distributions).<sup>7</sup> The liquidation value of the Preferred Interests equals \$25.00 per Preferred Interest (i.e., \$8 billion in the aggregate) plus any accrued and unpaid Distributions. In addition, the Preferred Interests will rank senior to any other class or series of equity interests in the Issuer upon voluntary or involuntary liquidation, dissolution or winding up of the Issuer.

The Preferred Interests are transferable to AT&T upon exercise of a call option (the Call Option) and a put option (the Put Option). The Call Option and the Put Option are exercisable upon the occurrence of certain events, including as of the 5 year and 7 year anniversaries, respectively, of the date of the Contribution. At the sole election of AT&T, Inc., payment of the Option Price may be made in: (i) shares of AT&T Inc. common stock (AT&T Shares); (ii) cash; or (iii) a combination of AT&T Shares and cash.

In connection with the Contribution, the Applicant is

---

<sup>7</sup> AT&T informed the Department that three Distributions have been made since the date of the Contribution. Specifically, AT&T represents that \$34,222,222 was paid to the Trust on November 1, 2013, for the 22 days the Trust held the Preferred Interests in the third quarter of 2013, \$140 million was paid to the Trust on February 3, 2014, for the fourth quarter of 2013, and \$140 million was paid to the Trust on May 1, 2014, for the first quarter of 2014.

committed to make additional cash contributions to the Trust, in order to approximate the minimum required contributions that would otherwise be payable to the Plan by AT&T in cash, computed as if the Contribution had never been made, for as long as relief under the proposed exemption is in effect, comprised of (i) lump sum cash payments totaling \$700 million (the Additional Payments); and (ii) a "lookback" payment (the Lookback Amount).

The Independent Fiduciary, a wholly-owned subsidiary of Brock Capital Group, was appointed by AT&T to serve as an independent fiduciary on behalf of the Plan and the Plan's participants and beneficiaries with respect to the Contribution, and was appointed to serve as the investment manager with respect to the holding, management and disposition of the Preferred Interests held by the Trust. Furthermore, the fair market value of the Preferred Interests at any point in time will be determined by the Independent Fiduciary in its sole discretion.

#### WRITTEN COMMENTS

In the Notice of Proposed Exemption (the Notice), published in the Federal Register at 78 FR 55103 (September 9, 2013), the Department invited all interested persons to submit written

comments and requests for a hearing on the proposed exemption. All comments and requests for hearing were due by November 3, 2013. During the comment period, the Department received a total of 44 comments from Plan participants (the Commenters). The Department also received a comment letter from AT&T (the AT&T Comment Letter) and a supplemental response (together with the AT&T Comment Letter, the AT&T Comment).<sup>8</sup> Due to a misunderstanding by AT&T regarding the date of the last day in the comment period, the Department agreed to grant AT&T a 3-day extension of the comment period, and received the AT&T Comment Letter on November 6, 2013. In the AT&T Comment, AT&T sought: (1) minor changes to Section II(b), Section II(d) and Section III(d) of the Notice; (2) clarifications to the Notice; and (3) changes to the effective date of the Notice.

#### PARTICIPANT COMMENTS

Seventeen of the Commenters raised issues beyond the scope

---

<sup>8</sup> On November 18, 2013, AT&T also forwarded to the Department a statement in support of the Contribution from the Communications Workers of America (the CWA) that the CWA had posted on its web site. AT&T represents that the CWA is the union that covers the vast majority of AT&T's collectively bargained employees.

of the exemption request. Five Commenters expressed support for the adoption of the proposed exemption. Twenty-two Commenters expressed opposition to the exemption and expressed concerns regarding the transactions described in the Notice. These concerns generally related to:

(a) the prudence of the Contribution and risk to the Plan; (b) Plan diversification; (c) fiduciary oversight; (d) the preference for a cash contribution; (e) the valuation of the Preferred Interests; (f) the benefits of the Contribution to AT&T; and (g) the accuracy of assumptions made in estimating AT&T's minimum funding contributions. The following summarizes AT&T's response to these concerns.

**(a) The Prudence of the Contribution and Risk to the Plan**

A number of the Commenters expressed concern regarding whether the Contribution was prudent, protective of the Plan, and in the Plan's best interest. Several of these Commenters also expressed concern that AT&T needed an exemption from certain restrictions imposed by ERISA, including the 10 percent limitation on employer securities imposed by section 407(a)(2) of ERISA. Other Commenters questioned whether the Contribution would be too risky, in particular because the Contribution would

result in the Trust holding a greater percentage of its equity holdings in AT&T securities. In addition, one Commenter suggested that AT&T be compelled to fully fund the Plan with assets that have a value unrelated to AT&T's earnings. Another Commenter questioned whether the Company's decision to contribute the Preferred Interests to the Plan, as opposed to cash, was indicative of financial instability within the Company.

(i) Prudence of the Contribution

In response to Commenters' prudence concerns, AT&T states that the Preferred Interests represent a better value and less risk than a cash contribution of an equal amount. In this regard, AT&T represents that the Preferred Interests will, pursuant to their terms, provide annual cash Distributions worth \$560 million to the Plan, so long as the Preferred Interests are held by the Trust. In connection with the Contribution, AT&T will additionally contribute the Additional Payments, worth \$700 million in cash, to the Plan (\$175 million was contributed on the date of the Contribution). AT&T states that over the course of the next five years, the Distributions and Additional Payments will total \$3.5 billion, which is more than AT&T currently projects as its required contributions during this

period if the Contribution had not been made. Further, AT&T represents that the Trust has approximately \$33 billion in publicly traded, relatively liquid assets which are sufficient to pay benefit claims for eight years without taking into account investment growth on those assets. AT&T represents that the Trust's annual rate of return over the past five years through 2013 has been approximately 12 percent, which is indicative of the continued growth potential of the Trust's assets.

AT&T states that in order to ensure that the Plan's acceptance of the Contribution was prudent, it retained Brock Fiduciary Services, LLC, (the Independent Fiduciary), to represent the Plan's interests as an independent fiduciary with regard to the acceptance, management and disposition of the Preferred Interests. AT&T represents that the Independent Fiduciary, after taking into account the features of the Preferred Interests as well as the percentage of Plan assets represented by such securities, concluded that it was prudent for the Plan to accept the Contribution and that the Contribution is in the best interests of the Plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries.

One Commenter indicated that the Contribution was not in the best interests of Plan participants because the Contribution would act as a poison pill preventing corporate transactions involving AT&T. In response, AT&T disagrees that the Contribution would have a deterrent effect on corporate transactions. AT&T states that even without the Contribution, the unfunded liability of the Plan could affect any potential corporate transaction. Moreover, AT&T represents that the Independent Fiduciary negotiated with AT&T for rights that protect the Plan's interests in the event of a significant corporate transaction involving AT&T.<sup>9</sup>

A Commenter expressed concern that existing shareholders of AT&T common stock would be penalized by a dilution of their shares and that the Plan would receive diluted shares of AT&T common stock. In response, AT&T states that the Contribution

---

<sup>9</sup> AT&T states that, pursuant to the Contribution Agreement, these types of transactions are comprised of (A) any merger, corporate reorganization or other transaction that results in AT&T, directly or indirectly, owning less than fifty percent of the capital or profits interests or equity of the Issuer, or (B) a transfer of fifty percent or more of the Plan liabilities and Trust assets to an entity that is not under common control with AT&T Inc. Thus, AT&T explains that the Independent Fiduciary has the authority to require AT&T Inc. to purchase the Preferred Interests if there is a significant (fifty percent or more) spin off of Plan assets/liabilities or if fifty percent or more of the Issuer is acquired or spun out of the AT&T Inc. family of companies.



did not, in fact, result in material dilution to its common stock. AT&T explains that there would, however, be dilution of AT&T common stock if the Preferred Interests were repurchased by AT&T using its common stock, and not cash. Nevertheless, AT&T suggests that any purchase of the Preferred Interests by AT&T would most likely be for cash, in order to avoid such dilution.

(ii) Plan Safeguards

In response to whether the Contribution is protective of the Plan, AT&T states that the Contribution Agreement between Brock Fiduciary Services LLC, JPMorgan Chase Bank, N.A., as Directed Trustee of the Trust, AT&T Inc. and the Issuer (the Contribution Agreement) will provide additional safeguards to the Trust. For example, AT&T represents that the Contribution Agreement provides the Trust with a Put Option that permits the Trust to cause AT&T to purchase the Preferred Interests with cash or unregistered, publicly-traded shares of AT&T common stock (such shares are referred to as the AT&T Shares), upon the occurrence of certain specified events, including a decline in AT&T Inc.'s credit rating by certain independent rating agencies.<sup>10</sup> AT&T represents that the terms of the Contribution

---

<sup>10</sup> AT&T notes that if it uses its common stock to purchase the Preferred Interests, the Trust, acting through the

Agreement also provide that AT&T may not pay dividends and the Issuer may not transfer any cash to AT&T or any of its affiliated owners if any quarterly cash Distributions payable on the Preferred Interests are in arrears. Furthermore, AT&T represents that the Preferred Interests rank senior to any other class or series of equity interests in the Issuer. Therefore, according to AT&T, upon voluntary or involuntary liquidation or dissolution of the Issuer, the Plan would have the right to receive payments or distributions equal to not less than the Preferred Interests' stated value, \$8 billion, plus any unpaid Distributions, out of the assets of the Issuer before AT&T and AT&T's creditors. Finally, in connection with the Contribution, the Preferred Interests will pay the Distributions pursuant to their terms at an "above-market" rate of return, and AT&T is obligated to make \$700 million in Additional Payments described above.

(iii) Preferred Interests Held by Plan in Excess of the 10 Percent Limit Imposed by ERISA

AT&T explains that because the Preferred Interests represent more than 10 percent of the Trust's assets, AT&T

---

Independent Fiduciary, can sell such shares in the public market pursuant to a Registration Rights Agreement between AT&T and the Trust, acting through the Independent Fiduciary.

agreed to make certain additional "lookback" payments equal to the Lookback Amount that provide protection to the Plan in the event that AT&T's projections regarding its required contributions turn out to be lower than the actual requirements. In this regard, AT&T explains that it agreed to make a cash contribution to the Trust equal to the Lookback Amount as of the end of 2017 in the event that the Plan's legally required contributions from 2013 through 2017, calculated as if the Preferred Interests had not been contributed, would have been larger than the cash actually received by the Trust through the Distributions and the Additional Payments. For purposes of calculating the Lookback Amount, AT&T may also offset a portion of the value of the Preferred Interests that is not in excess of the 10 percent limit contained in ERISA. Thus, AT&T contends that as of the end of 2017, in no event can the Trust be worse off than if the exemption had not been granted.

(iv) Risks to the Plan Related to the Contribution

With respect to the Commenters' concern regarding the risk posed by the Contribution to the Plan, AT&T represents that the Contribution provides to the Plan an asset with a value, as of the date of the Contribution, of approximately \$9.1 billion, that is well in excess of the amount AT&T was legally required

to contribute to the Plan for 2013 through 2017. Furthermore, AT&T states that the Contribution provides a future stream of cash flow on which the Plan can rely for benefit payments and other purposes. AT&T states that the unique features of the Preferred Interests that it negotiated with the Independent Fiduciary are otherwise unavailable in the current market.

In addition, AT&T represents that the Plan has always been in compliance with its legal funding requirements and AT&T cannot be compelled to immediately fund the Plan in full. AT&T observes that the Independent Fiduciary noted that the "voluntary contribution of valuable assets to the Plan ... will far exceed what [AT&T] represents it would contribute if it were to make only a cash contribution." AT&T asserts that the Contribution, together with the Additional Payments and the Lookback Amount discussed above provide the Plan and its participants with substantial assets in excess of its legal funding requirements that mitigate the risk to the Plan and protect their benefits now and in the future.

(v) Proposed Exemption and Risk of Bankruptcy

With respect to one Commenter's concern that AT&T's decision to contribute the Preferred Interests to the Plan, rather than cash, may be indicative of financial instability

within the company, AT&T represents that its financial condition, including the Issuer, is robust, as demonstrated by its "A" credit rating.

**(b) Plan Diversification**

Two Commenters conveyed a general concern that the Plan would lack adequate diversification due to the Contribution. In response, AT&T represents that the Committee is in the process of reassessing the allocation of the Plan's other investments, thereby taking into account diversification requirements. As discussed above, AT&T believes the Contribution represents a better value and less risk than a cash contribution of an equal amount, even after taking into account the higher proportion of Plan assets that will be invested in AT&T securities, including, potentially, AT&T common stock. AT&T notes that this belief is shared by the Independent Fiduciary. Furthermore, as discussed above, AT&T states that it has agreed to provide significant protections to the Plan in connection with the Contribution, and that such protections are intended to mitigate risks to the Plan related to the Contribution, including those related to diversification.

**(c) Fiduciary Oversight**

Five Commenters questioned whether the acceptance of the Contribution was in the interest of Plan participants and whether there was adequate fiduciary oversight. Three Commenters raised issues related to the qualification of the Independent Fiduciary and whether the Independent Fiduciary was sufficiently independent from AT&T. In a related comment, the Commenter expressed concern regarding the valuations because they were completed by the Independent Fiduciary, who was appointed by AT&T. A different Commenter stated that the Independent Fiduciary had a conflict of interest because it was coordinating the approval process of the Contribution.

In response, AT&T states that the Independent Fiduciary represents exclusively the interests of the Plan and its participants and accordingly, its duties are to the Plan rather than to AT&T. AT&T states that the Independent Fiduciary's responsibilities include, among other duties, determining whether the terms of the Contribution are prudent and in the interest of the Plan and the Trust. Furthermore, AT&T states that the Independent Fiduciary does not receive any compensation or other consideration from AT&T for its services to the Plan.

AT&T states that the Independent Fiduciary was separately engaged and compensated for its respective roles as Independent Fiduciary and as investment manager. Moreover, AT&T stresses that the Independent Fiduciary is independent of AT&T and its subsidiaries and has never provided services to AT&T or any of its subsidiaries. In addition, AT&T states that the Independent Fiduciary made its own determination of the prudence of the Plan's acceptance and holding of the Preferred Interests, and the Independent Fiduciary will have the exclusive authority to manage the Preferred Interests while held by the Plan.

AT&T represents further that the Independent Fiduciary has demonstrated that it is qualified to act as independent fiduciary and investment manager. For example, AT&T states that the Independent Fiduciary serves as the independent fiduciary for the Chrysler Group LLC (Chrysler) United Auto Workers voluntary employee beneficiary association (UAW VEBA), where, as independent fiduciary for the Chrysler UAW VEBA, it successfully challenged Fiat SpA's proposed purchase of the Chrysler interests held by the Chrysler UAW VEBA. AT&T has provided the following link for additional information regarding the qualifications of the Independent Fiduciary's personnel working

on this matter: <http://www.brockcapital.com/our-team/alphabetically>.

AT&T also represents that the Independent Fiduciary has extensive experience as an appraiser of non-publicly traded securities, including securities like the Preferred Interests. Further, AT&T states that the Independent Fiduciary is a wholly owned subsidiary of Brock Capital Group and therefore has the capability to call upon the members of Brock Capital Group if required to provide expertise in the appraisal of employer securities to be contributed.

One other Commenter requested that a rank and file employee be involved in the decision-making process with respect to the Contribution. In response, AT&T represents that the interests of Plan participants are in fact being represented by the Independent Fiduciary, which is qualified to represent their interests. In addition, AT&T states its belief that delegating investment authority to a rank and file employee would interfere with the ability of the Independent Fiduciary to carry out its duties. AT&T adds that the Communications Workers of America, a union that represents many Plan participants, has publicly expressed its support for the exemption.



**(d) The Preference for a Cash Contribution**

**(i) Contribution of Cash Compared to Contribution of Preferred Interests**

Many Commenters expressed a preference for a cash contribution rather than the Contribution of Preferred Interests. In response, AT&T notes that, in fulfillment of the conditions of the exemption, AT&T contributed \$175 million of the \$700 million in Additional Payments in cash in 2013 at the time of the Contribution, and it must provide \$525 million more in Additional Payments prior to 2018. AT&T represents that the Plan also will receive the Distributions, equal to \$560 million in cash, each year in which it holds the Preferred Interests. Therefore, according to AT&T, the Contribution in and of itself provides a significant source of cash to the Plan.

In addition, AT&T represents that, as described above, the Plan's decision to accept the Contribution is made by the Independent Fiduciary, in its sole discretion, and notes that the Independent Fiduciary, after taking into account the features of the Preferred Interests, concluded that it is prudent for the Plan to accept the Contribution and that the Contribution is in the best interests of the Plan and its

participants and beneficiaries and protective of the rights of the participants and beneficiaries.

As indicated elsewhere, AT&T believes that the Contribution represents a better value and less risk than a cash contribution of an equal amount.<sup>11</sup> In this regard, AT&T opines that a cash contribution would present its own investment challenges because cash must be invested. For example, AT&T argues that the Preferred Interests have a significantly better risk/return profile than would an investment of cash in the Trust's current, broad portfolio. According to AT&T, the Contribution provides to the Plan an asset with a value, as of the date of the Contribution, of approximately \$9.1 billion, which is an amount well in excess of the amount that AT&T was legally required to contribute to the Plan for 2013 and far exceeds the amount of cash that AT&T would voluntarily agree to contribute to the Plan.

(ii) Rate of Return on Preferred Interests and Cash Contribution

One Commenter questioned whether the rate of return on AT&T Shares would be lower than the Plan's projected returns on Plan

---

<sup>11</sup> The Department is expressing no view herein as to whether the Contribution represents better value and less risk than a cash contribution of equal amount.

assets based on performance in prior years. In response, AT&T notes that the securities contributed under the proposed exemption are Preferred Interests in the Issuer that pay a fixed rate of Distributions equal to \$1.75 per Preferred Interest, or an annual amount of \$560 million. AT&T explains that by comparison, the rate of return on the Plan's other equity investments are subject to market conditions, and will vary from time to time. AT&T explains further that the Preferred Interests include a minimum preferred liquidation value that mitigates generally applicable market valuation impacts, absent a reduction in the credit worthiness of AT&T Mobility. AT&T confirms that other Plan assets are, and will continue to be, invested in a variety of securities in compliance with the diversification requirements of ERISA. As discussed above, the Trust has approximately \$33 billion in publicly-traded, relatively liquid assets, which are sufficient to pay benefit claims for eight years, even assuming that the Trust earned nothing on its assets.

In a related comment, a Commenter expressed concern that the Contribution would limit future earnings of the Plan. However, AT&T responds that, as discussed above, the Preferred Interests would not limit future earnings, but would provide a

secure, above market rate of return for a portion of the Plan's investments.

Five Commenters expressed concern regarding AT&T's ability to meet its obligations to the Plan. One of these Commenters also noted that if AT&T is successful, it should be able to fund the Plan, which the Commenter asserted was frozen as to new participants as of 1999. In response, AT&T states that, in fact, the Plan has not been frozen and continues to cover newly-hired eligible employees. AT&T confirms that it is currently funding, and will continue to fund, the Plan. AT&T further states that it did not contribute the Preferred Interests because it lacks the capital to meet its minimum funding requirements; rather, AT&T represents that the purpose of the Contribution is to benefit the Plan and enhance the sound funding of the Plan while improving AT&T's standing in the capital markets.

(iii) Borrowing Money to Make Cash Contribution

Another Commenter suggested that AT&T borrow money to fund the Plan, rather than contributing the Preferred Interests. AT&T states that it would not consider using its borrowing capacity for pension funding purposes. AT&T believes that its borrowing capacity is important to support the capital

requirements of its business, which, in turn, strengthens the long-term viability of the company and ultimately the Plan.

(iv) Sale of Preferred Interests in Public Market

Three Commenters questioned why the Preferred Interests were being contributed to the Plan rather than sold in the public market to raise money for a cash contribution. AT&T notes that the Preferred Interests are limited liability company interests, and because of their design, there is no public market for the Preferred Interests or any other interests in the Issuer (AT&T notes that the value of the Preferred Interests was determined by the Independent Fiduciary, as explained in further detail below). AT&T represents that, as indicated above, it worked with the Independent Fiduciary to negotiate and design a security with unique features unavailable in the current market that represents a better value and less risk than a cash contribution of an equal amount, which in turn would have to be invested in other assets.

**(e) The Valuation of the Preferred Interests**

Two Commenters questioned how the Preferred Interests could be valued if they were not being sold in the public marketplace. Two other Commenters expressed concern that the valuations of

the Preferred Interests would change over time. Specifically, one Commenter stated its concern that the valuations in the industry, which is rapidly changing & being eroded by new forms of competition, are likely to change, while another Commenter worried that the Issuer has likely peaked & the valuation is mostly likely inflated and will decline.

In response, AT&T explains that private investments can be valued, even if they are not publicly traded. AT&T represents that the value of the Preferred Interests was, and will continue to be, determined by the Independent Fiduciary's highly qualified and experienced staff. AT&T states that in its valuation of the Preferred Interests, the Independent Fiduciary applied generally accepted valuation methodologies, reviewed relevant investment and financial studies and conducted other such analyses deemed appropriate.

AT&T represents that the value of the Preferred Interests is based on the fixed stated value of the Preferred Interests, i.e., their \$8 billion liquidation preference, the rate of return represented by the Distributions, and the financial viability of the Issuer. Thus, AT&T states that the valuation of the Preferred Interests was \$9.1 billion at the time of the Contribution. AT&T represents that, as of December 31, 2013,

the Preferred Interests were valued by the Independent Fiduciary at approximately \$9.2 billion, representing an increase in value of approximately \$100 million in under 4 months.

AT&T states further that it is bound by the conditions of the exemption to pay the Lookback Amount, which could require AT&T to make an additional cash contribution to the Trust in the event that the actual minimum required contributions (calculated as if the Preferred Interests had not been contributed) are greater than the cash actually received (i.e., the Distributions and the Additional Payments). AT&T represents that these "safeguards" provide additional protection to the value of the Preferred Interests.

**(f) The Benefits of the Contribution to AT&T**

One Commenter expressed concern that the Contribution would benefit AT&T at the expense of its shareholders. This Commenter indicated that the Contribution would create a false impression of profitability, which would result in increased bonuses to management employees. In response, AT&T represents that it proposed the Contribution for the purpose of enhancing the Plan's financial status, which, in turn, benefits Plan participants and the retirees, as well as AT&T. AT&T states

that it designed the terms of the Preferred Interests to represent a better risk/reward profile than the assets available in the public market in which a cash contribution would be invested. AT&T represents that any benefits the company would receive are incidental to the benefits to the Plan and its participants. Further, AT&T represents that any such benefits, including corporate tax deductions, are inherent in the maintenance of a pension plan such as the Plan. In addition, AT&T represents that the Contribution is not intended to, and does not have the effect of, increasing management bonus payments.

Another Commenter suggested that the Contribution was intended to provide a tax benefit to AT&T. In response to this comment, AT&T points out that its entitlement to tax deductions for its contributions is not limited to the Contribution of Preferred Interests, but is available for all its contributions.

Another Commenter expressed concern that the Contribution would enable AT&T to declare that the Plan was overfunded and withdraw assets from the Plan. In response, AT&T represents that it is not legally permitted to withdraw assets from the Plan in this manner.

Yet another Commenter indicated that the Contribution of



Preferred Interests was no different than borrowing money from the Plan. In response, AT&T states that the Commenter conflated equity and debt, and explains that unlike a typical borrowing situation, AT&T did not receive any cash from the Plan in exchange for the Contribution. AT&T further states that, in light of the fact that it contributed cash to satisfy its \$175 million minimum required contribution for 2013, the Contribution is not being used to satisfy any current mandatory funding obligation. AT&T states further that the Contribution involves the contribution of equity interests, not debt.

Two Commenters expressed concern that the Contribution might be related to AT&T's recent corporate transaction activity involving its failed merger with T-Mobile and money spent on various corporate marketing initiatives. In response, AT&T states that the Contribution is wholly unrelated to any corporate transaction that it has undertaken, including its failed merger with T-Mobile. In addition, AT&T represents that it would not be making this Contribution if it did not believe that the Contribution is in the best interests of the Plan participants and its stockholders.

**(g) The Accuracy of the Assumptions Made in Estimating AT&T's**

## **Minimum Funding Contributions**

One Commenter expressed concern about the accuracy of the assumptions used in the Notice to estimate AT&T's anticipated minimum funding contributions. Specifically, the Commenter stated that AT&T's assumptions regarding the annual returns (and related contribution amounts) on the Plan's assets for the years 2013 and 2014 of 12.0 percent and for the years 2015 through 2019 of 7.75 percent were of particular concern, as the Commenter believed these projected return levels to be too "optimistic." The Commenter suggested that the Department should require AT&T to revise downward its annual return assumptions consistent with current financial realities including current marketplace interest rate projections and equity returns. The Commenter further suggested that the Department should require AT&T to revise upward, as necessary, the required minimum contribution for the years 2013 through 2019 and also revise upward, as necessary, AT&T's \$700 million cash contribution payable over five years. The Commenter believed these suggested actions to be prudent given the uncertainties regarding current fiscal projections and the national debt level. In response, AT&T states that the assumptions that the Plan's assets will earn an annual return of

12.0 percent for 2013 and 2014 and 7.75 percent thereafter are based on the historical investment performance of the Plan's assets and estimates of future performance. AT&T represents that for calendar year 2012, the Plan's assets returned 12.1 percent, and for 2013, 12.9 percent (including the Preferred Interests), which can be indicative, but certainly not a guarantee, of future performance.<sup>12</sup> Further, AT&T states that, as discussed above, it agreed to contribute the Lookback Amount to provide additional protection to the Plan in the event that AT&T's projections regarding investment returns and its minimum required contributions turn out to be different than these assumptions.

#### THE AT&T COMMENT

---

<sup>12</sup> The Department is aware that the projections supplied by the Applicant cover a two-year period, and may not accurately reflect the actual rate of return that will be experienced by the Plan over the next five-year period. To address this, the exemption contains a make-whole provision, described above, designed to ensure that AT&T makes additional cash contributions to the plan equal to the "Lookback Amount," that take into consideration the Plan's actual investment performance over such five-year period. The Department notes further that the Independent Fiduciary has a duty to manage the Trust's holding of the Preferred Interests and to enforce the Plan's rights with respect to the terms of the Preferred Interests and the Contribution Agreement, including AT&T's obligations under such make-whole provisions and the calculation of the Lookback Amount.

1. Requested changes to Section II(b), Section II(d) and Section III(d) of the Notice. AT&T notes that a condition for relief in Section II(b) of the Notice requires that the Plan will not incur any fees, costs or other charges, in connection with the transactions described in the Notice, other than fees paid to the Independent Fiduciary. However, AT&T points out that, as provided in Representation 20 of the Notice at 78 FR 55108 and pursuant to the Independent Fiduciary Agreement dated May 1, 2012, the Plan can also pay the related expenses of the Independent Fiduciary, in addition to the specified fees. Therefore, AT&T suggests that the Department revise the relevant portion of Section II(b) of the Notice to read "The Plan incurs no fees, costs or other charges in connection with the transactions described in paragraphs (a)-(g) of Section I, other than fees and expenses paid by the Plan to the Independent Fiduciary." In response to this comment, the Department has revised Section II(b) of the exemption to read, "The Plan incurs no fees, costs or other charges in connection with the transactions described in paragraphs (a)-(g) of Section I, other than fees and expenses paid by the Plan to the Independent Fiduciary for duties required by this exemption."

In addition, AT&T represents that the phrase "Lump Sum

Payments," defined at Representation 38 of the Notice (78 FR 55110) and referenced in Section II(d)(2)(ii) of the Notice, Representations 37, 38 and 39 of the Notice at 78 FR 55110, and Footnote 19 of the Notice at 78 FR 55110, represent the "Additional Payments," defined at Section II(c) of the Notice, and referenced in Section II(d) of the Notice. For the avoidance of confusion, AT&T suggests replacing all references to "Lump Sum Payments" with "Additional Payments." In response to this comment, the Department has adopted the requested revision to Section II(d) of the Notice. The Department also notes corresponding modifications to Representations 37 through 39 and Footnote 19 of the Notice.

Further, Section III(d) of the Notice provides, in pertinent part, that the IMA is effective "on or about September 9, 2013." AT&T confirms that the IMA became effective on September 9, 2013, the date of the Contribution. Accordingly, the Department has changed the language in Section III(d) from "on or about September 9, 2013" to "on September 9, 2013" for the sake of clarity.

2. Clarification of Certain Information in the Notice. AT&T notes that Representation 5 of the Notice at 78 FR 55104 states that "[a]s of December 31, 2012, there were approximately

551,187 employees participating in the Plan." However, AT&T clarifies that 551,187 is the number of participants in the Plan and not just the number of participating employees, and suggests that the foregoing sentence be revised to read, "As of December 31, 2012, there were approximately 551,187 participants in the Plan." The Department notes the clarification to Representation 5 of the Notice.

In addition, AT&T notes that Representation 38 of the Notice, under the subsection "Additional Cash Contribution and 'Lookback' Calculation," at 78 FR 55110, indicates that AT&T will make cash contributions of "\$175 million paid no later than the due date for AT&T's tax return for each of the next three years (i.e., 2014, 2015 and 2016)." For the avoidance of doubt, AT&T would like to clarify that the payments will be made "no later than the due date for AT&T's tax return for each of the next three years (i.e., the due date for AT&T's tax returns for 2014, 2015 and 2016)." The Department notes the clarification to Representation 38 of the Notice.

3. Correction to the Effective Date. While the Notice states that the effective date of the exemption is September 1, 2013, AT&T confirmed in the AT&T Comment that the Contribution was actually made on September 9, 2013, and has agreed to change

the effective date to the date of the Contribution.

Accordingly, the effective date of the exemption has been changed to September 9, 2013.

#### CONCLUSION

The Department has carefully considered the issues expressed by the Commenters. After giving full consideration to the entire record, including the comments, the Department has determined to grant the exemption subject to the modifications and clarifications described herein. For further information regarding the comments and other matters discussed herein, Interested Persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11758) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption,

refer to the Notice published in the Federal Register on September 9, 2013, at 78 FR 55103.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

The Delaware County Bank and Trust Company Employee 401(k) Retirement Plan (the Plan)

Located in Lewis Center, OH

[Prohibited Transaction Exemption **2014-07**;  
Application No. D-11773]

#### EXEMPTION

##### Section I: Covered Transactions

The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a)(1)(A) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (the Code), by reason of section 4975(c)(1)(E) of the Code, shall not apply:**13**

---

**13** For purposes of this exemption, references to the provisions of Title I of ERISA, unless otherwise specified,



(a) To the acquisition of certain subscription rights (the Stock Rights) by the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of DCB Financial Corp (DCBF), a party in interest with respect to the Plan; and

(b) To the holding of the Stock Rights received by the Plan during the subscription period of the Offering; provided that the conditions set forth in Section II of this exemption were satisfied for the duration of the acquisition and holding.

#### Section II: Conditions

(a) The acquisition of the Stock Rights by the Plan was made pursuant to terms that were the same for all shareholders of DCBF Stock;

(b) The acquisition of the Stock Rights by the Plan resulted from an independent, corporate act of DCBF;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Stock Rights, and this proportionate number of Stock Rights was based on the number of shares of Stock held by each such shareholder;

---

refer also to the corresponding provisions of the Code.

(d) The Stock Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually directed investments of the accounts of the individual participants, a portion of whose accounts in the Plan held the Stock (the Invested Participants);

(e) The decisions with regard to the holding and disposition of the Stock Rights by the Plan were made by the Invested Participants who received the Stock Rights in their Plan accounts; and

(f) No brokerage fees, no subscription fees and no other charges were paid by the Plan with respect to the acquisition and holding of the Stock Rights, and no brokerage fees, no commissions and no other monies were paid by the Plan to any broker in connection with the exercise of the Stock Rights to acquire DCBF shares.

EFFECTIVE DATE: This exemption is effective from October 16, 2012, to November 26, 2012.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with

respect to the notice of proposed exemption published in the Federal Register on April 9, 2014 at 79 FR 19645 (the Notice), on or before May 24, 2014. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D-11773) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the Federal Register on April 9, 2014, at 79 FR 19645.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693-8352. (This is not a toll-free number.)

The Home Savings and Loan Company 401(k) Savings Plan (The Plan), United Community Financial Corporation (UCFC), and the Home Savings and Loan Company (Home Savings) Located in Youngstown, OH [Prohibited Transaction Exemption **2014-08**; Application No. D-11780]

#### EXEMPTION

##### Section I: Transactions

Effective for the period beginning April 30, 2013, and ending May 31, 2013, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,<sup>**14**</sup> shall not apply:

(a) To the acquisition of certain subscription right(s) (the Rights) by the individually-directed account(s) (the Account(s)) of certain participant(s) in the Plan (Invested Participants) in connection with an offering (the Offering) of

---

<sup>**14**</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

shares of common stock (the Stock) of United Community Financial Corporation (UCFC) by UCFC, a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering, provided that the conditions, as set forth in Section II, below, were satisfied for the duration of the acquisition and holding.

## Section II: Conditions

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by UCFC to all shareholders of the Stock other than the Employee Stock Ownership Plan sponsored by UCFC;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of UCFC;

(c) Each shareholder of Stock, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held the Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan to any related broker in connection with the exercise of any of the Rights, and no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with respect to the acquisition and holding of the Stock.

EFFECTIVE DATE: This exemption is effective for the period beginning on April 30, 2013, the commencement date of the Offering, and ending on May 31, 2013, the close of the Offering.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with

respect to the notice of proposed exemption, published in the Federal Register on April 9, 2014, at 79 FR 19649. All comments and requests for hearing were due by May 26, 2014. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D-11780), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the Federal Register on April 9, 2014, at 79 FR 19649.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

## GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not



dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions are subject to the express condition that the material facts and representations contained in the applications accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of July,  
2014.

---

Lyssa E. Hall  
Acting Director of Exemption

Determinations  
Employee Benefits Security  
Administration

U.S. DEPARTMENT OF LABOR

[FR Doc. 2014-17424 Filed 07/23/2014 at 8:45 am; Publication  
Date: 07/24/2014]