



# Oregon

Theodore R. Kulongoski, Governor

## Government Ethics Commission

3218 Pringle Rd SE Ste 220

Salem, OR 97302-1544

503-378-5105

E-mail: [ogec.mail@state.or.us](mailto:ogec.mail@state.or.us)

Web Site: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

July 9, 2009

Brent Dow  
National Accounts Manager  
State Government  
T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, Washington 98006

Dear Mr. Dow:

At its July 9, 2009 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion:

### **OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 09A-1004**

**STATED FACTS:** T-Mobile USA, Inc. (T-Mobile) would like to make discounts available on personal wireless service plans to Oregon public officials.

Similar to other wireless service providers, The State of Nevada negotiated with T-Mobile 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. It appears T-Mobile has not offered discounts based on the WSCA agreement to Oregon public officials on their personal wireless service plans.

T-Mobile has offered discounts under a nationwide program that is known as T-Mobile's Corporate Discount Program. Under this program when any private company, association, government agency or any other entity has entered into a service agreement with T-Mobile the employees may be eligible for discounts on personal wireless service plans. This eligibility is based on the aggregate monthly charges to the employer for the services provided by T-Mobile. The discount offer to employees varies based on the recurring monthly service charges to the employer, but generally does not exceed 15%.



T-Mobile has determined that Oregon state and local government employees would qualify for the discounts currently offered under their Corporate Discount Program. T-Mobile indicates that the discounts offered to state and local government employees would be the same as those offered to employees of private employers, based on the level of recurring monthly service charges incurred by the governmental employer. The premise for offering discounts to government employees is the same as the premise for offering discounts to employees of private employers and generally do not exceed 15%.

T-Mobile's corporate discount program is available to approximately 300,000 employees of private employers in Oregon. Currently, there are approximately 16,000 employees of Oregon private employers that subscribe to T-Mobile services and receive discounts on personal T-Mobile wireless service plans. Additionally, T-Mobile estimates nearly 8,500 Oregon public officials are currently receiving T-Mobile discounts for personal wireless service plans through relatives who are employed by private employers that have wireless service agreements with T-Mobile.

The discount program offered to state and local government employees under T-Mobile's Corporate Discount Program would have the same or similar terms and conditions as those offered to private sector employees. The customer agreement entered into by public officials would be similar to the one used for employees of private companies that participate in wireless service agreements with T-Mobile.

T-Mobile has marketing plans to make both private company and government employees aware of the discounts that are available through the program 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. Private company employers generally provide T-Mobile with more opportunities to publicize the availability of discounts to their employee base than do government employers. The methods include the following:

- Direct communication with employees of participating employers through e-mail, flyers, payroll stuffers, and business cards.
- T-Mobile's website provides notice of discounts and offers an interactive tool that allows private or government employees to determine discount eligibility.
- T-Mobile store employees and retail partners are trained to inform and assist customers in learning of the discounts available to private or government employees.
- T-Mobile customer care representatives 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 T-Mobile discounts on personal wireless service plans that are available under the same terms and conditions as discounts offered through its national Corporate Discount 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 either the public official or relatives 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 similar to their Corporate Discount Program, T-Mobile would like to provide discounts to Oregon public officials who subscribe to a personal T-Mobile wireless service plan. If the Commission determined that T-Mobile 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. T-Mobile estimates that, in Oregon, there are approximately 300,000 employees from private employers that are eligible for discounts of up to 15%. Currently, approximately 16,000 employees of private employers receive discounts generally not exceeding 15% from T-Mobile for personal wireless service plans and another 8,500 Oregon public officials obtain this discount through relatives employed by private businesses.

According to T-Mobile, the availability of a discount on personal wireless service plans to state or local government employees in Oregon is not based on the fact that their employers are government agencies. The eligibility for a personal discount is based on the potential aggregate recurring monthly charges their government employer represents upon entering into a service agreement with T-Mobile. Such agreements would be based on the terms and conditions negotiated in the WSCA agreement. Similar discounts are offered to the employees of private companies under the same terms and conditions offered to public officials.

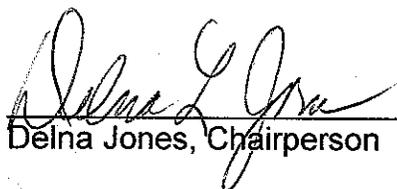
The stated facts indicate that T-Mobile could offer discounts on personal wireless service plans to state and local government employees under terms and conditions that are similar to terms and conditions that apply to discounts offered to employees of private companies. They also indicate that the customer agreement for state and local government employees would be similar to the agreement used for employees of private companies that participate in the Corporate Discount Program.

Based on the conditions placed on discount eligibility, as described by T-Mobile, Oregon public officials could accept the discounts T-Mobile 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 9th day of July 2009.

  
\_\_\_\_\_  
Delna Jones, Chairperson

  
\_\_\_\_\_  
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."