



BROKEN NETWORK

**Workers Expose Harms of Wireless Telecom
Carriers' Outsourcing to “Authorized Retailers”**

FEBRUARY 2023

COMMUNICATIONS WORKERS OF AMERICA AND NATIONAL EMPLOYMENT LAW PROJECT



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Findings from a new worker survey and worker interviews reveal that AT&T, T-Mobile, and Verizon outsourcing of retail work to “authorized retailers” is associated with unstable wages, inadequate training, fraudulent sales practices, among other job and customer service issues, and often comes with various forms of carrier control over store operations.

INTRODUCTION

In 2022, Verizon Wireless employees in Washington, Oregon, and Illinois joined the wave of U.S. retail workers unionizing to demand better pay and working conditions.¹ Overcoming illegal union busting tactics by management, workers voted to form a union with the Communications Workers of America (CWA), uniting with fellow Verizon Wireless retail workers in New York who had unionized in 2014, and joining counterparts at AT&T Mobility who have unionized corporate stores nationwide.² Organizing and contract wins by Verizon and AT&T employees are turning tens of thousands of retail jobs in the wireless telecommunications industry into good jobs and ensuring that a well-trained workforce provides good quality service to customers in numerous communities across the country.

However, not all retail workers in the wireless telecommunications industry have the ability to form a union and bargain directly with the company that holds power over their wages and working conditions. The industry’s three dominant carriers—AT&T, T-Mobile, and Verizon—outsource most of their retail operations to third parties, referred to as “authorized retailers” or “authorized dealers.”³

Outsourcing in the wireless telecom industry is far from unusual in today’s economy. Millions of workers across industries and occupations, from workers at McDonald’s franchises to ride-hail drivers mislabeled as independent contractors by Uber to workers at AT&T authorized retailers, have been placed in work arrangements that shield their employers from liability for job quality and make union organizing and collective bargaining difficult to impossible. This pervasive “workplace fissuring” has played a central role in denying workers legal protections, undercutting wages and working conditions, and shielding large corporations from accountability for the treatment of the workers integral to the success of their businesses.⁴

What does the outsourcing of retail operations in the wireless telecom industry mean for workers and customers?

To learn about job and service quality issues at carrier-licensed retailers, CWA and the National Employment Law Project reached out to workers at AT&T Mobility, Verizon Wireless, and T-Mobile authorized retailers using online advertisements. Sharing their experiences through an online survey and a series of telephone interviews, 204 authorized retailer workers from 43 states provided a first-of-its-kind look at the effects of outsourcing in the wireless telecom industry.

KEY FINDINGS:

- **Unstable wages:** Almost 3 in 4 authorized retail workers surveyed reported that 25 percent or more of their pay was derived from commissions tied to sales, and about 4 in 5 workers worried about meeting basic financial responsibilities as a result of receiving less than their expected levels of commissions or bonuses.
- **Wage theft:** More than 9 in 10 authorized retail workers surveyed reported that an employer had stolen wages from them in at least one of four ways—paid them below the minimum wage rate, denied them overtime premiums, denied them due commissions or bonuses or incentive payments, or required them to work off the clock.
- **Exhausting schedules:** Nearly 2 in 3 authorized retail workers surveyed reported that they were unable to take meal or rest breaks during their shift. Nearly half of authorized retail workers surveyed reported that they were required to work overtime.
- **Inadequate job training:** More than half of authorized retail workers surveyed reported that they did not receive the training they needed to do their jobs effectively.
- **Retaliatory work environments:** More than half of authorized retail workers surveyed reported that they had experienced negative treatment from their employer for raising workplace issues.
- **Curtailed job mobility due to non-competes:** Almost 1 in 3 authorized retail workers surveyed reported that they were subject to a non-compete agreement preventing them from taking a job at a competing firm for a period of time. Another third were not sure whether they had signed such an agreement.
- **Fraudulent sale practices:** Workers at authorized retailers in survey comments and interviews described witnessing dishonest sales practices in their workplace and reported that these practices were acknowledged or encouraged by management.
- **Poor customer service quality:** Just over 4 in 10 authorized retail workers surveyed rated customer service provided by their store as somewhere between awful and adequate.
- **Carrier control:** About 9 in 10 authorized retail workers surveyed reported that the wireless carrier that licensed their direct employer played a role in setting policies and practices at their workplace, raising doubts about authorized retailers' status as independent employers.

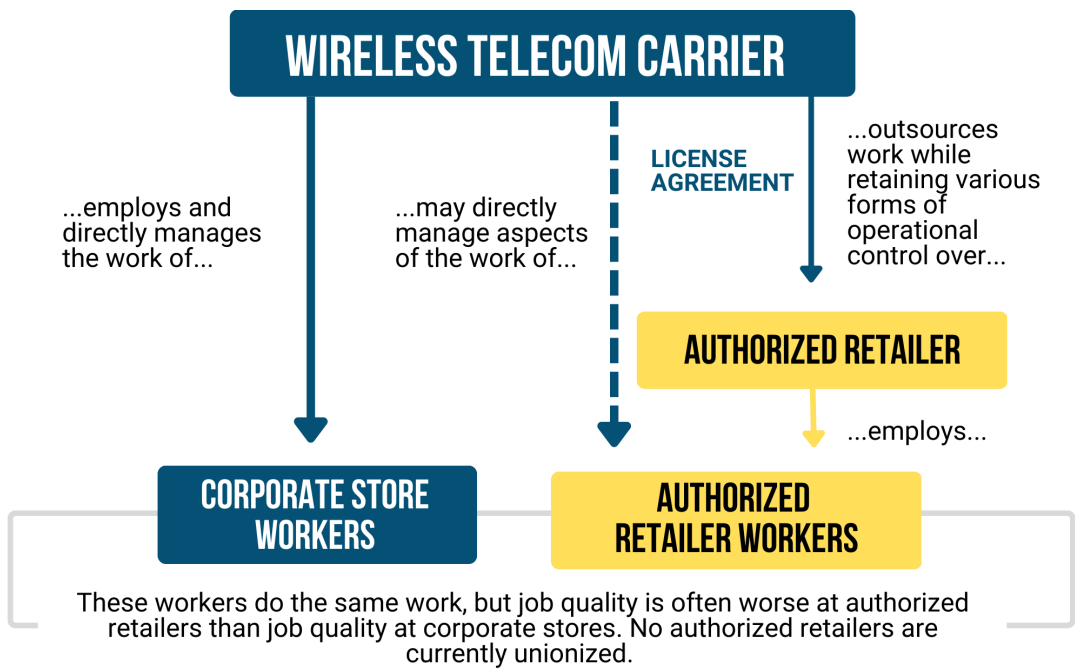
These findings point to the need for worker organizing, federal policies to expand organizing rights and other worker protections, and more resources for enforcement of labor and employment laws on the books.

THE WIRELESS TELECOMMUNICATIONS INDUSTRY AND AUTHORIZED RETAILERS

Smartphones have become an integral part of modern life, and just about everybody owns one.⁵ Indeed, smartphone sales and servicing is big business; the three carriers—AT&T, T-Mobile, and Verizon—that dominate the wireless telecommunications industry together took in \$337.1 billion in revenue in 2022.⁶

The workforce retailing smartphones and providing technical assistance to customers is large, numbering around 200,000, and is spread across 36,500 brick-and-mortar stores located in every corner of the country.⁷ While tens of thousands of these workers have unionized, carriers are increasingly outsourcing retail work in the wireless telecom industry, eliminating good union jobs and negatively impacting customer service quality.

As the diagram below illustrates, wireless telecom carriers sell products and services via both corporate stores and authorized retailers.



Carriers formalize their relationship with authorized retailers using license agreements. Unlike a franchise agreement, a license agreement does not require the payment of upfront fees by the licensee to the licensor.⁸ This legal difference enables licensors (the carriers) to avoid disclosures required under franchise laws.

Wireless carriers currently outsource the operation of between 60 to 80 percent of their branded retail locations to authorized retailers. AT&T's escalated use of authorized retailers in the last five years—from 61 percent of stores in January 2018 to 73 percent in December 2022—coincided with a loss of 10,000 union-represented jobs.

Authorized retailers range in size from mom-and-pop operations running a single store to large companies that operate thousands of stores—for example, AT&T's largest authorized retailer, Prime Communications, operates nearly 2,000 AT&T-branded stores nationwide.⁹

Stores run by third parties may look identical to corporate stores, aside from a small “Authorized Retailer” label on the storefront window. However, differences in job quality and customer service quality between corporate stores and authorized retailers can be stark.

In a telephone interview, one worker explained that she had recently been transitioned out of a unionized corporate store job by a carrier when her store was closed and converted to an authorized retailer. She noticed differences in job quality just weeks after the transition. She described differences in pay structure: “The commission structure is different. They don’t have six month raises.” About the transition, she said, “The company kind of threw us to the wolves. That’s how I feel.”

T-Mobile and Verizon, through trade group affiliation, support public policy change that facilitates “workplace fissuring.” The carriers are members (Verizon via a trade group called TechNet and T-Mobile via the Retail Industry Leaders Association) of a mega-lobby group called the Coalition for Workforce Innovation that is aimed at changing federal policy to lock workers across occupations, industries, and work arrangements into “independent contractor” or nonemployee status, stripping workers of fundamental labor rights and protections.¹⁰ To this end, the group backed legislation called the Worker Flexibility and Choice Act, which was introduced in the U.S. House of Representatives in July of 2022.¹¹ The Coalition for Workforce Innovation has also been a fierce opponent of the Protecting the Right to Organize (PRO) Act, which strengthens organizing and collective bargaining rights.¹²



COMMISSION-DRIVEN PAY AT AUTHORIZED RETAILERS CREATES UNSTABLE WAGES

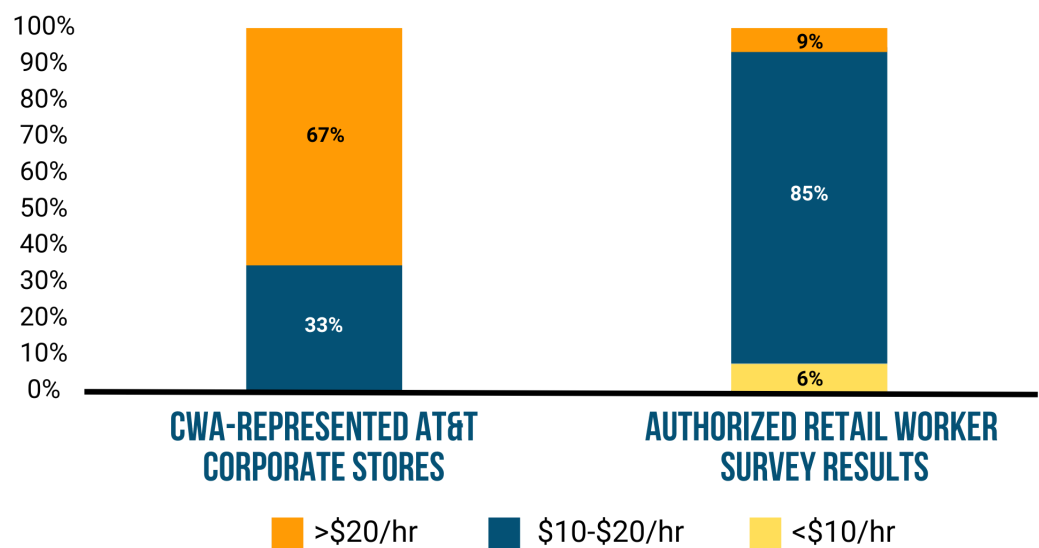
Wireless authorized retail workers in the survey were asked about their hourly base pay rates, excluding any commissions or bonuses that are “at-risk,” meaning they are dependent on successfully hitting individual or team sales goals.

Low Levels of Base Pay: Nearly three-quarters (150 of 204) of authorized retail workers surveyed reported making less than \$16 per hour in base pay. Nearly one-quarter (44 of 204) of workers surveyed reported making less than \$12 per hour. Less than 1 in 10 (18 of 204) workers surveyed reported making more than \$20 per hour.

THE UNION DIFFERENCE REGARDING HOURLY WAGES

Base pay rates for surveyed workers at authorized retailers are lower than the rates of union-represented retail store employees working directly for AT&T. CWA-represented Retail Sales Consultants across AT&T received an average hourly base wage of \$19.77 in December 2022. Approximately 67 percent of CWA-represented AT&T corporate store workers make more than \$20 per hour in base pay and only 11 percent make less than \$16 per hour.

Comparing the distribution of base pay rates between surveyed authorized retail workers and CWA-represented Retail Sales Consultants at AT&T corporate stores across the country shows that union bargaining significantly improves worker pay.



The carriers pay authorized retailers a commission on each sale and this business model is reflected in how workers are paid. We asked workers at authorized retailers about commission pay.

Receive Commissions: More than 9 in 10 authorized retail workers surveyed (192 of 204) reported receiving commissions or bonus payments in addition to hourly base pay.

Share of Pay in Commissions: Nearly 3 in 4 (142 of 192) authorized retail workers surveyed who responded that they receive commissions or bonus payments reported that commissions or bonus payments comprised more than a quarter of their take-home pay, and more than 2 in 5 (84 of 192) reported that such pay made up over half of their take-home pay.

The reliance on commission pay for workers at authorized retailers creates financial instability. They are vulnerable to fluctuations in the business and also changes in their employer's sales quotas.

Financial Insecurity: About 4 in 5 authorized retail workers surveyed (159 of 204) reported worrying about meeting basic financial responsibilities (for example, paying mortgage, rent, groceries) as a result of receiving less than their expected levels of bonuses, incentive payments, or commission.

One T-Mobile authorized retail employee in Kansas reported struggling with sales targets: "You can't get commissions if you can't make sales...There were sometimes times when we would get maybe three people in the door. Maybe. [Management's] solution for us not hitting the sales goal was that we should have pushed everything on those three people."

A worker at an AT&T authorized retailer in New Jersey reported that the company made "constant additions to sales quotas to decrease pay." This was an experience reported by other authorized retail workers as well. A worker at a T-mobile authorized retailer in Texas reported that monthly changes to the commission structure "made it nearly impossible to get paid out."

THE UNION DIFFERENCE REGARDING COMMISSIONS

Under labor agreements for retail store employees working directly for AT&T, minimum commission payments at 100% of sales targets make up just over 20% of the total compensation package. Union workers have bargained for more stable take-home pay, shifting a greater share of earnings into base pay rather than at-risk commissions. In 2017, AT&T members negotiated a new agreement that moved 25% of their at-risk commission payment into base hourly pay.

THE CARRIER ROLE IN SETTING PAY FOR WORKERS AT AUTHORIZED RETAILERS

More than 3 in 5 (124 of 204) authorized retail workers surveyed reported that carriers were involved in setting performance benchmarks, which determine payments from commission plans.

MANY WORKERS AT AUTHORIZED RETAIL STORES DO NOT RECEIVE ESSENTIAL WORKPLACE BENEFITS

Access to employment benefits is an important issue for retail workers. Workers in this survey were asked whether they received basic benefits from their employer: health insurance, retirement, paid vacation, and paid sick leave. Access to these benefits was not universal. In particular, less than half of respondents reported access to retirement benefits and paid sick leave.

Health Insurance: About 1 in 4 (56 of 204) authorized retail workers surveyed reported that they did not receive health insurance from their employer.

Retirement Benefits: More than half (108 of 204) of authorized retail workers surveyed reported that they did not receive a retirement benefit from their employer.

Paid Sick Leave: More than half of authorized retail workers surveyed (112 of 204) reported that they did not receive paid sick leave from their employer.

Paid vacation: About 1 in 3 (63 of 204) authorized retail workers surveyed reported that they did not receive paid vacation from their employer.

THE UNION DIFFERENCE REGARDING EMPLOYMENT BENEFITS

Union-represented AT&T retail workers have collectively bargained agreements guaranteeing each of the benefits above, as well as vision, dental, disability, and life insurance.

EMPLOYMENT BENEFIT	AUTHORIZED RETAIL WORKER SURVEY RESULTS	CWA-REPRESENTED AT&T CORPORATE STORES
Employer-subsidized health insurance	Fewer than 3 in 4 workers (148 of 204)	All workers
Retirement benefit	Fewer than 1 in 2 workers (96 of 204)	All workers - 401k match and Cash Balance Pension Plan ¹³
Paid sick leave	Fewer than 1 in 2 workers (92 of 204)	All workers - Up to 10 days per year based on service
Paid vacation	About 2 in 3 workers (141 of 204)	All workers - Up to 5 weeks per year based on service

WORKERS AT AUTHORIZED RETAILERS REPORT WIDESPREAD WAGE THEFT

Authorized retailers have come under legal fire for various forms of wage theft. A lawsuit involving 4,600 workers at Verizon retailer Cellular Connection and alleging unpaid off-the-clock work in violation of the Fair Labor Standards Act was settled for \$2.4 million in November 2020.¹⁴ The Verizon authorized retailer Victra settled a class action lawsuit involving 20,000 employees and alleging failure to pay overtime for \$1.86 million in December 2020.¹⁵ In January 2020, Prime Communications, an AT&T authorized retailer paid \$660,000 to settle a class action lawsuit alleging theft of commissions and overtime pay.¹⁶

"This company will steal your money and your time."

-T-Mobile Authorized Retail Employee in Louisiana

Workers at authorized retailers were asked whether they had experienced various forms of wage theft in the three months prior to the survey. Reports of wage theft were widespread.

Any form of wage theft: More than 9 in 10 (186 of 204) authorized retail workers surveyed reported that an employer had stolen wages from them in at least one of four ways—paid them below the

minimum wage rate, denied them overtime premiums, denied them due commissions or bonuses or incentive payments, or required them to work off the clock.

Required off-the-clock work time: More than 2 in 5 (86 of 204) authorized retail workers surveyed reported that they had been required to work off the clock.

Unpaid commissions: While commissions comprise a large share of workers' overall pay (as described above), more than a third (72 of 204) of authorized retail workers surveyed reported not being paid commissions, bonuses, or incentive payments owed to them.

Unpaid overtime premiums: Nearly a third (62 of 204) of authorized retail workers surveyed reported not receiving overtime pay owed to them.

A worker at a T-Mobile authorized retailer in Louisiana reported experiencing multiple forms of wage theft. With an hourly base pay rate of less than \$12, she relied heavily on commissions to make ends meet. However, she was regularly denied commission payments due to her. "They cheat you out of your commission," she said of the T-Mobile licensee employing her. Furthermore, she reported that her employer denied her overtime pay and required her to work off the clock. "This company will steal your money and your time," she said.

A Verizon authorized retailer worker in Alabama described how a faulty performance tracking system led to unpaid commissions daily, and no repair was offered. "Everyday [there] are system issues that are out of our control that goes against our metrics that they refuse to fix and our pay is affected."

THE CARRIER ROLE IN CREATING WAGE AND HOUR ISSUES FOR WORKERS AT AUTHORIZED RETAILERS

More than a third (76 of 204) of workers surveyed reported that carriers were involved in setting employee work schedules.

More than 3 in 5 (124 of 204) workers reported that carriers were involved in setting performance benchmarks. These performance benchmarks are informed by carrier-determined commission structures designed to drive sales and generate profits for authorized dealers and for carriers.

SCHEDULING ISSUES AT AUTHORIZED RETAILERS OFTEN LEAD TO OVERWORK AND UNPREDICTABLE SCHEDULES

Unstable and abusive scheduling practices are common across the retail and service industry.¹⁷ Workers at authorized retailers were asked about their work schedules. Most workers reported that the days and hours they were scheduled to work changed from week to week. Overwork was a common complaint, and a large share of workers also reported experiencing unexpected cuts to their work hours.

Fluctuating schedules: 4 in 5 (163 of 204) authorized retail workers surveyed reported that their hours or work days changed from one week to the next.

Working without breaks: Nearly 2 in 3 (134 of 204) authorized retail workers surveyed reported that they were unable to take meal or rest breaks during their shift. While meal and rest breaks are not required under federal law, many states require both.¹⁸

Forced overtime: Nearly half (96 of 204) of authorized retail workers surveyed reported that they were required to work overtime.

Unpaid on-call time: 1 in 3 (67 of 204) authorized retail workers surveyed reported that they were forced to remain on call without pay and without guaranteed hours. On-call hours hinder the ability of workers to balance work and life, and to do other paid work.

Last-minute cuts to scheduled work time: 1 in 4 (51 of 204) authorized retail workers surveyed reported that they had been sent home from work early without pay.

THE UNION DIFFERENCE REGARDING WORK SCHEDULES

Union-represented AT&T store employees have bargained protections around their work schedule that give them flexibility and predictability while keeping their income consistent, including:

1. Scheduling based on seniority
2. Two weeks advance notice of monthly schedules
3. Paid leave, including vacation, holidays, illness, and short notice “excused with pay” time
4. Quota relief which ensures that days off don’t come at the expense of sales goals and commissions.

In addition, before requiring overtime hours, AT&T must provide an explanation of emergency business needs to the local union and provide the expected duration of the temporary overtime schedules.

INADEQUATE JOB TRAINING CONTRIBUTES TO POOR CUSTOMER SERVICE AND HIGH TURNOVER

Employee training is an essential element of good customer service. Customers expect knowledgeable staff prepared to help them address technical issues and navigate complicated company policies and sales promotions. Workplace training has also been found to be correlated with reductions in workplace stress for customer service workers.¹⁹

Authorized retail workers were asked about the job training they received and about the level of customer service provided by their store.

Inadequate training: More than half (105 of 204) of authorized retail workers surveyed reported that they did not receive the training they needed to do their jobs effectively.

“No one in this company has been properly trained or know[s] what they are doing.”

-AT&T Authorized Retail Employee in Alabama

Customer service: Just over 4 in 10 (67 of 204) authorized retail workers surveyed rated customer service provided by their store as somewhere between awful and adequate.

An AT&T Mobility authorized retailer worker in Alabama who said that AT&T had a hand in providing training to workers said, “No one in this company has been properly trained or know[s] what they are doing.” She rated the customer service in her store as “awful.”

A worker at a T-Mobile authorized retailer in Texas said that there was “little to no training for new employees,” and attributed poor training to high turnover rates.

THE CARRIER ROLE IN TRAINING AUTHORIZED RETAILER WORKERS

More than half (108 of 204) of workers surveyed reported that carriers were involved in the job training they received.

WORKERS REPORT RETALIATORY WORKPLACES AND UNFAIR TERMINATIONS

Workers were asked whether they had experienced employer retaliation for raising workplace issues. And several workers reported being fired without just cause.

Retaliation for speaking up about workplace issues: More than half (108 of 204) of authorized retail workers surveyed reported that they had experienced negative treatment from their employer for raising workplace issues.

A worker at a T-Mobile authorized retailer in Oklahoma reported that her employment was imperiled when she raised concerns about cutbacks to her hours following a raise in her pay rate. “Since my hourly pay rate was raised, I have lost hours on my schedule. When I raised this issue to my boss, he threatened to fire me.”

Unfair termination: Several workers shared stories of being fired without warning or just cause.

An AT&T authorized retailer worker in Michigan described being terminated following a long bout of COVID-19. “I had COVID for 2 months and they fired me for it.”

A worker at a T-Mobile authorized retailer in Missouri described how he was fired “with ZERO write ups or verbal warnings,” his manager attributing his termination to his failure to meet “numbers.”

THE UNION DIFFERENCE REGARDING DISCIPLINE AND TERMINATIONS

Unionized retail workers have just cause protection under their contract from arbitrary or unfair discipline and dismissal. CWA agreements covering retail workers at Verizon and AT&T also have grievance and arbitration procedures designed to resolve workplace issues in a fair and equitable manner.

THE CARRIER ROLE IN DISCIPLINING AND TERMINATING AUTHORIZED RETAILER WORKERS

More than 4 in 10 (90 of 204) workers surveyed reported that carriers were involved in disciplining or terminating workers.

OBSTRUCTION OF JOB MOBILITY THROUGH NON-COMPETE AGREEMENTS IN EMPLOYMENT CONTRACTS

Nearly one in five U.S. workers is subject to “non-compete” agreements that prevent them from taking a job at a rival firm (which may be very broadly defined) for what may be an extended period of time.²⁰ Non-compete agreements can lock workers into bad jobs, weaken workers’ labor market and bargaining power, and force workers into underemployment and unemployment.

Workers were asked whether they had signed a non-compete agreement with their employer barring them from taking a job at another authorized retailer or at a carrier-run store during or after their current job.

Non-compete agreements: Almost a third (63 of 204) of authorized retail workers surveyed reported that, as a condition of employment, they were required to sign a non-compete agreement that would prevent them from taking a job at a store run directly by a wireless carrier or another competing outlet. Another third (66 of 204) of authorized retail workers surveyed were unsure if they had signed such an agreement.

INTENSE FOCUS ON UPSELLING LEADS TO FRAUDULENT SALES PRACTICES

The authorized retail business model is focused on sales and creates an environment that can incentivize store managers to engage in dishonest sales practices. A 2017 survey of more than 1,300 AT&T employees found widespread reports of customer issues related to fraudulent sales practices at third-party authorized retailers. Nearly two thirds of AT&T customer service employees (64%) had experiences of customers reporting

“[I was] forced to cram account... adding lines to unsuspecting victims in the guise of ‘bundling.’”

-AT&T Authorized Retail Employee in Oklahoma

third-party retailers who enrolled them in services that were not requested by the customer.²¹

This practice of adding additional services to a customer's account without their knowledge to hit sales goals is known as "cramming." Workers at authorized retailers in our survey and interviews described witnessing this practice in their workplace and reported that the practice was acknowledged or encouraged by management.

One AT&T authorized retail worker in Oklahoma reported that he was "forced to cram accounts...adding lines to unsuspecting victims in the guise of 'bundling'" and was subject to "insane sales metrics that only fraud can achieve." He reported that management e-mails containing references to "increases of zero usage activations" amounted to an admission that the authorized retailer was aware that the practice was occurring.

Another worker at an AT&T authorized retailer in New York reported that her district manager "tells us to take advantage of people's incompetence to make sales or hit quotas." A T-Mobile authorized retail worker in Kansas reported that "because of our low traffic, our manager was telling us just to put lines on people's accounts" and that the manager would "credit the account \$30 immediately so that way they wouldn't even see it on their bill."

CARRIER ROLE IN DETERMINING EMPLOYMENT AND WORKPLACE POLICIES AND PRACTICES AT AUTHORIZED RETAILERS

Workers at AT&T Mobility, T-Mobile, and Verizon Wireless authorized retailers we asked about carrier involvement in determining employment and workplace policies and practices.

More than 9 in 10 (184 of 204) authorized retail workers surveyed reported carrier involvement in some aspect of their employment or workplace policies or practices, such as hiring and promoting workers, setting performance benchmarks or metrics, setting work schedules, and training workers.

The control that carriers exert over authorized retailers is related to the job quality and customer service issues workers identified in our survey and interviews.

RECOMMENDATIONS

Fixes to corporate labor policy and to public policy can ensure that workers are empowered through collective bargaining rights and that the wireless telecommunications industry provides good jobs to workers and honest, high-quality service to communities.

AT&T Mobility, T-Mobile, Verizon Wireless, and other carriers should end their practice of outsourcing work to authorized retailers,

which produces negative outcomes for both workers and consumers. The proliferation of outsourcing creates a barrier to unionizing and a race to the bottom in wages and working conditions, and it promotes upselling and fraudulent sales practices that harm consumers. Carriers should directly employ workforces of well-trained, career technicians and customer service professionals to ensure high quality service, and insource work they have contracted out to authorized retailers.

“I would rather just not work for someone who is not held to the same standard as a corporate store.”

-T-Mobile Authorized Retail Employee in Kansas

Congress should pass the Protecting the Right to Organize (PRO) Act so that more workers in the U.S. have real negotiating power over the terms and conditions of their work. The PRO Act expands and strengthens organizing and collective bargaining rights under the National Labor Relations Act (NLRA) (1935). It also establishes a clear joint employer standard under the NLRA that will ensure all employers that exert control over workers are seated at the bargaining table and are held accountable for violations of organizing rights. Key provisions include new monetary penalties for violations of the NLRA, anti-retaliation protections for unionizing workers, and expanded protections against union-busting by employers.

Unionized wireless retail workers have shown that collective bargaining can be an effective tool to halt workplace fissuring in retail. In 2022, CWA-represented members at AT&T Mobility bargained a new agreement that included groundbreaking limits on AT&T’s ability to outsource corporate retail stores to authorized retailers.²²

The National Labor Relations Board should finalize a more expansive standard to determine joint-employer status under the NLRA, replacing a narrow standard established in 2020. The Board

“When the COVID-19 pandemic hit, corporate retail locations closed and the employees got hazard pay... [My employer] did not pay us extra for hazard pay and did not close locations besides Mall locations... Corporate retail gets paid more than authorized retail, why did they get to close and get a paid leave? When they get paid more and can do more. We worked throughout the entire pandemic risking our lives and still had metrics that had to be met.”

-AT&T Authorized Retail Employee in Georgia

initiated a rulemaking process in 2022. In determining joint-employer status under the NLRA, a new rule should consider both direct and indirect forms of control exercised by employers and reserved authority employers hold. Workers employed by labor-only subcontractors, especially those exclusively serving a single corporation, should be presumed to be jointly employed.

Congress must address decades-long disinvestment in federal agencies to improve enforcement of labor and employment laws, building on the 2023 Omnibus Appropriations bill that provided funding increases to the Department of Labor and the National Labor Relations Board. The chronic underfunding of regulatory agencies hampers workers' ability to seek recourse when their rights are violated. Congress should prioritize additional appropriations that are urgently needed to equip agencies with the resources they need to adequately protect workers' rights. In addition, interagency cooperation should be institutionalized to review and evaluate enforcement efforts, recommend rescission of harmful regulations and sub-regulatory guidance, and ensure that agencies are pooling resources where possible.

Congress should pass the Workforce Mobility Act, which prohibits the use of non-compete agreements by employers, except in the dissolution of a partnership or the sale of a business. The bill also provides a private right of action and grants enforcement power to the Federal Trade Commission (FTC) and the Department of Labor (DOL). Further, it would require employers to make their employees aware of the limitation on non-competes, as studies have found that non-competes are often used even when they are illegal or unenforceable. The law would also give the DOL authority to make the public aware of the limitation, and require the FTC and the DOL to submit a report to Congress on any enforcement actions taken.²³

The Federal Trade Commission should use its regulatory authority to ban non-compete agreements. President Biden's "Executive Order on Promoting Competition in the American Economy" in July 2021 directed the FTC to pursue federal rulemaking in this area to curtail the usage of agreements and clauses that may unfairly limit worker mobility.²⁴ The FTC is seeking public comment through March 10, 2023, on a proposed rule that would ban the use of non-competes by employers and entities engaging independent contractors, and nullify all existing non-compete agreements. **Worker groups and advocates should weigh in in support of the proposed rule.** The FTC's proposal is based on the agency's preliminary finding that non-compete clauses in employment contracts "constitute an unfair method of competition" in violation of Section 5 of the Federal Trade Commission Act, which the FTC is charged with implementing.²⁵

Congress should pass the Schedules That Work Act to ensure that workers have stable and predictable schedules and pay, the right to request scheduling changes, and anti-retaliation protections for making such requests for flexibility.²⁶

Congress should pass legislation to establish a just cause standard for employment termination to prevent unfair and retaliatory firings. Such legislation would prevent arbitrary terminations and prevent retaliatory firings of whistleblowers.²⁷ The U.S. lags behind many other wealthy democracies around the world, including the United Kingdom, Australia, and Japan, which require that employers provide workers with evidence-based just cause for termination, and a fair process surrounding termination that includes notice.²⁸

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