

**FTC SUES AT&T FOR THROTTLING UNLIMITED DATA SUBSCRIBERS**

On October 28, 2014, the Federal Trade Commission (“FTC”) filed a complaint in federal court against AT&T Mobility, LLC (“AT&T”) alleging that AT&T’s practice of “throttling” high-intensity users on unlimited mobile data plans violates Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a). Remedies for the claimed violations may go well beyond the monetary and injunctive relief typical to civil enforcement actions. The FTC seeks “rescission or reformation” of existing customer contracts in this case, which if granted could potentially free customers from long-term service agreements without early termination fees.

The complaint alleges that AT&T, after migrating from unlimited to tiered data plans in 2010, grandfathered millions of existing unlimited data customers to keep them from switching providers. Over the next few years, AT&T subjected high-intensity users to throttling programs that rendered “everyday applications” – which in the agency’s eyes includes “streaming video” and other data-intensive uses – “significantly slower” or “practically inoperable.” The FTC claims that once unlimited-plan customers hit specific data thresholds, AT&T reduced their speeds to 128 Kbps or 512 Kbps (depending on time period and type of device) for the remainder of that billing cycle.

The heart of the FTC’s complaint is a nearly literal view of the word “unlimited.” According to the FTC, these practices constitute “unfair or deceptive acts or practices” because AT&T functionally limited plans it advertised as “unlimited,” while its service agreements only allow it to “modify, diminish, or impair” service of customers who engage in impermissible activities.

While relief of network congestion might justify “throttling” in certain circumstances, the FTC implicitly took a very restrictive view of the issue. It faulted AT&T because its practices were not “determined by real-time network congestion at a particular cell tower.”

To support its allegations, the FTC drew heavily from documents within AT&T’s possession, suggesting that the lawsuit comes on the heels of a longer investigation. The FTC is not alone in investigating throttling. A spokesperson for the Federal Communications Commission noted that it “has been actively investigating throttling practices since this summer” and encouraged customers to contact it “if they are being throttled by AT&T or other cellular providers.”

The FTC’s action follows its complaint against T-Mobile this summer alleging that T-Mobile “crammed” consumers by placing unauthorized charges on their mobile phone bills. Together these actions signal the FTC’s interest exercising authority over mobile phone services and likewise may raise questions about the FTC’s authority over common carriers.

For more information regarding the lawsuit and other potential regulatory responses to network management practices, please contact **Brita Strandberg** at 202-730-1346 or [bstrandberg@hwglaw.com](mailto:bstrandberg@hwglaw.com) or **Pat O’Donnell** at 202-730-1312 or [podonnell@hwglaw.com](mailto:podonnell@hwglaw.com).

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