



Written by [Bob Adelman](#) on June 18, 2015

FCC Fines AT&T \$100 Million

In its ruling adopted on June 3 and [released for public viewing on June 17](#), the Federal Communications Commission (FCC) announced that it was not only fining AT&T \$100 million for violating its so-called “transparency rule” but also was going to mandate that AT&T install numerous “requirements to bring AT&T into compliance” with that rule.

At issue was AT&T’s repeatedly stated policy that at certain times and under certain specifically stated circumstances, subscribers to its “unlimited” data services would experience a slowdown (called either “congestion” by its supporters or “throttling” by its enemies such as Consumers Union) in connectivity. AT&T bent over backwards to make sure that every one of its customers was aware of the possibility, including



- Issuing a press release in 2011 to more than 2,000 news outlets;

- Including an insert in its bills explaining its policy;

- Posting an informational page on its website about it, with a link to its AT&T Wireless website for more information;

- Announcing the modification of its service contract in August 2012 to cover its response to potential congestion;

- Sending text messages to its “unlimited data” users months before it began to slow data transmission, warning of possible slowdowns;

- Sending text messages after it began slowing data transmission explaining when that slowing would begin and offering suggestions on how to switch to a different plan to avoid possible congestion in the future.

AT&T was not only explicit but painfully transparent in its public disclosures. This, from its “broadband information” link, should suffice:

In this document, we provide information about the network practices, performance characteristics, and commercial terms applicable to our mass market wired, mobile and Wi-Fi broadband Internet access services, consistent with the Federal Communications Commission’s Open Internet Rules....

As is common in the industry, we use network management practices and other tools to manage network resources for the benefit of all of our mobile broadband customers, especially during



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periods when network demand exceeds available network resources (also known as “congestion”). One such practice relates to a minority of smartphone customers who are on unlimited data plans. Specifically, if an unlimited data plan customer on a 3G, 4G, or 4G LTE smartphone exceeds a certain threshold of data usage in a billing period (3GB for 3G/4G and 5GB for 4G LTE), he or she may experience reduced data speeds and increased latency during periods of congestion as compared to other customers using the same cell site. Reduced speeds and increased latency may cause web sites to load more slowly or affect the performance of data-heavy activities such as high-definition video streaming or interactive gaming.

AT&T went further, explaining that it would notify affected users in advance of when they might expect slowing of data feeds:

All such customers can still use unlimited data without being subject to overage charges, and their performance will be restored when they are no longer in an area experiencing congestion and at the start of the next billing cycle.

We will notify customers during each billing cycle when they reach 75% of the applicable usage threshold (3GB for 3G/4G and 5GB for 4G LTE) so they can adjust their usage to avoid network management practices that may result in slower data speeds.

All of this was done in order to comply with the FCC’s “Open Internet Transparency Rule” issued in 2010 which says, in part,

The FCC’s Open Internet Transparency Rule empowers consumers to make informed choices about broadband services. The Rule requires that what providers tell you about their broadband service is sufficient for you to make informed choices — including choices about speed and price. The Rule also requires that providers’ information about their broadband service must be accurate and truthful.

Here’s the crux: The FCC has arrogated unto itself the authority to determine just what kind of disclosure is “sufficient” for the customer to keep from blundering into wasting time, energy, and money in buying a service that didn’t perform. It assumes that the free market doesn’t force companies, including AT&T, the second largest provider of wireless telephone services in the country, to provide that information as part of their effort to keep existing customers happy and invite new ones in to enjoy them in the future. It’s the anti-capitalist mentality in digital form.

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The rule goes on: “The FCC monitors how well providers disclose the broadband speed they give consumers, and at what price, and is concerned about providers who make false, misleading, or deceptive statements to consumers about the services they provide.”

There it is again: The nanny state is “concerned” about how well providers disclose the details of the services they provide, with the unstated underlying assumption being that those providers are liars, cheats, and thieves and are in the business primarily to deceive their customers into giving them their money under false pretenses, and that without government observers and enforcers, those customers would be totally at the providers’ mercy.

This is so far removed from the FCC’s original mandate that two of the five FCC commissioners issued strongly worded dissents. The FCC’s mission in the beginning (under the Communications Act of 1934) was to “make available so far as possible, to all the people of the United States ... rapid, efficient nation-



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wide and world-wide wire and radio communications services with adequate facilities at reasonable charges." Nothing was said about wireless communications, of course, but mission creep soon resolved that discrepancy. As to why such services must be provided to "all the people of the United States," that issue must be addressed elsewhere.

The FCC's mission was further elaborated in its 2006-2011 Strategic Plan:

All Americans should have affordable access to robust and reliable broadband products and services. Regulatory policies must promote technological neutrality, competition, investment, and innovation to ensure that broadband service providers have sufficient incentives to develop and offer such products and services.

Reasonable people would think this meant that a "light regulatory" touch on the newly emerging technology would serve Americans best, with the FCC's stated interest in promoting "competition, investment, and innovation" along with "sufficient incentives" to allow companies such as AT&T to continue making the billions of dollars of investments required to keep up with the competition and provide services that increasingly sophisticated consumers are demanding.

Dissenting Commissioner Ajit Pai unleashed this broadside against the ruling:

A government "rule" suddenly revised, yet retroactive. Inconvenient facts ignored. A business practice sanctioned after years of implied approval. A penalty conjured from the executioner's imagination.

These and more Kafkaesque badges adorn this Notice of Apparent Liability (NAL), in which the Federal Communications Commission seeks to impose a \$100 million fine against AT&T for failing to comply with the apparently opaque "transparency" rule the FCC adopted in its 2010 Net Neutrality Order.

He accuses the majority of ignoring AT&T's proven and diligent efforts to inform (and keep informed) its customers about the reality of life in the digital world, especially when special events (the Super Bowl, presidential debates, the retirement of David Letterman, etc.) load up the system beyond its present capacity:

Because the Commission simply ignores many of the disclosures AT&T made; because it refuses to grapple with the few disclosures it does acknowledge; because it essentially rewrites the transparency rule ex post by imposing specific requirements found nowhere in the 2010 Net Neutrality Order; because it disregards specific language in that order and related precedents that condone AT&T's conduct; because the penalty assessed is drawn out of thin air; in short, because the justice dispensed here condemns a private actor not only in innocence but also in ignorance, I dissent.

So does AT&T, which has announced it will fight the ruling from the FCC.

Photo: AP Images

A graduate of an Ivy League school and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.



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