



Office of Commissioner  
Rohit Chopra

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**STATEMENT OF  
COMMISSIONER ROHIT CHOPRA**  
*In the Matter of AT&T Mobility, LLC*  
*Commission File No. X150009*  
*November 5, 2019*

**Summary**

- AT&T baited subscribers with promises of unlimited data, trapped them in multi-year contracts with punishing termination fees, and then scammed them by choking off their access unless they moved to a more expensive plan.
- The AT&T throttling scandal is an important case study into how dominant firms operating without meaningful competition can easily renege on their contractual obligations and cheat consumers who have almost no recourse.

**AT&T's Nationwide Bait-and-Switch Scam**

When any business, big or small, offers an unlimited service for a fixed fee, that business is taking a risk. If customers use much more of the service than projected, the company will take a hit. Conversely, if customers use less than projected, the company will haul in even larger profits. This is how business works.

As detailed in the Commission's complaint, AT&T wanted the rewards without the risks, so it turned its offer of an "unlimited" data plan into a bait-and-switch scam that victimized millions of Americans. Subscribers were lured in with promises of unlimited data service for a fixed fee, trapped into multiple years of service by punitive termination fees, and then forced to switch to a more expensive tiered plan with overage fees to actually receive the unlimited data they were promised.

This scam went hand-in-hand with AT&T's early monopoly in the iPhone market. In 2007, Apple and AT&T inked a major deal that gave purchasers of the iPhone only one choice for a mobile carrier.<sup>1</sup> While data plans are now ubiquitous, they were nascent at the time of the introduction of the iPhone, which boasted many features requiring a lot of data. AT&T initially offered either unlimited data or per kilobyte plans. Then, starting with the iPhone 3G, AT&T began offering only unlimited plans, which cost \$30 per month.<sup>2</sup> In 2010, AT&T stopped offering unlimited plans, and began requiring new customers to sign up for tiered plans that capped data and charged expensive fees for any overages.<sup>3</sup>

---

<sup>1</sup> Compl. ¶ 10.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* ¶ 11.

Around this time, AT&T faced a major threat to its wireless business: the company was losing exclusivity over the iPhone.<sup>4</sup> Analysts warned that the company could be “demolished,” potentially losing millions of customers to Verizon.<sup>5</sup> To prevent this from happening, AT&T aimed to lock down existing subscribers into new long-term contracts by “grandfathering” them in to their unlimited plans when they upgraded their phones.<sup>6</sup> Since data usage can be unpredictable and hard to track, an unlimited plan without risk of overage fees created certainty for cost-conscious consumers.

AT&T is a sophisticated company. It knew it needed to invest in enough capacity to deliver service for subscribers who used a lot of data under their unlimited plans, especially since the company had claimed its network was the “fastest” in the nation.<sup>7</sup> Instead of living up to its promises, AT&T pulled a bait-and-switch.

First, to hold on to customers who might switch to the competition, AT&T marketed an unlimited data plan that was not actually unlimited. AT&T subscribers who signed up for newer phones with unlimited service were likely those who intended to use the most data. Instead, these subscribers were throttled the most, and ended up receiving the slowest, most unreliable data coverage.<sup>8</sup> According to the FTC’s complaint, roughly 3.5 million customers victimized by AT&T’s fraud saw their speeds go down by up to 95 percent.<sup>9</sup> The iPhone’s internet-intensive functions were practically unusable on AT&T’s network at the diminished speeds.<sup>10</sup> This Swiss-cheese service was not the unlimited deal that was promised. Americans in rural areas without broadband connections, as well as those who depended on the service for their livelihood, got a particularly raw deal.

Second, AT&T made it hard to walk away, trapping subscribers in contract terms. Until 2011, AT&T was the only carrier offering the iPhone and the only network the iPhone worked on. As the exclusive iPhone carrier, AT&T dictated the terms of access, which included signing long-term contracts with big penalties for leaving early.<sup>11</sup> After AT&T lost iPhone exclusivity, new carriers entered the market promising better coverage.<sup>12</sup> But most existing iPhone users were stuck with AT&T until their contracts ran out, unless they paid the expensive early termination fee. And when their contracts did run out, AT&T induced them to renew with false promises of “unlimited” service.<sup>13</sup>

Third, AT&T pushed subscribers into switching to more expensive plans. AT&T allocated the most data and most reliable service to capped data plans with overage fees,<sup>14</sup> while imposing arbitrary limits on subscribers in “unlimited” plans.<sup>15</sup> Unlimited data subscribers who wanted reliable service could pay a big fee to switch carriers, or they could switch for free to a capped data plan with no throttling. While these plans might have been cheaper upfront than the unlimited plan, their low data cap, the high cost of overages, and the expanding capabilities of smartphones made a service price hike inevitable for

---

<sup>4</sup> *Id.* ¶ 13.

<sup>5</sup> Sinead Carew, *Analysis: AT&T faces tough year after losing iPhone exclusive*, REUTERS (Jan. 10, 2011, 7:27 PM), <https://www.reuters.com/article/us-att-verizon/analysis-att-faces-tough-year-after-losing-iphone-exclusive-idUSTRE70A04I20110111> (quoting an analyst warning that Verizon’s entry into the iPhone market could mean “AT&T is going to get demolished,” and citing estimates that the company could lose up to 3.5 million customers).

<sup>6</sup> Compl. ¶ 12, 28.

<sup>7</sup> *Id.* ¶ 30.

<sup>8</sup> *Id.* ¶ 20.

<sup>9</sup> *Id.* ¶¶ 20, 27.

<sup>10</sup> *Id.* ¶ 20.

<sup>11</sup> *Id.* ¶ 33.

<sup>12</sup> *Id.* ¶ 13.

<sup>13</sup> *Id.* ¶ 34.

<sup>14</sup> *Id.* ¶ 29.

<sup>15</sup> *Id.* ¶ 26.

Americans who wanted what they signed up for. The only truly unlimited data service was therefore available solely through capped plans with expensive overages.

AT&T's bait-and-switch scam is a good window into the many harms that result from dominant companies operating without the discipline of meaningful competition. Their market power, financial resources, and one-sided information gives them license to ignore their own contractual obligations while aggressively enforcing every little clause in the fine print. Consumers can accept the bad deal, walk away, or fight it, but each choice carries a cost, with dominant firms prevailing almost every time.

In my view, AT&T profited by using its dominance to force customers to keep their end of the deal even as the company failed to deliver and then changed the terms.<sup>16</sup> AT&T's unlimited data subscribers could have kept paying for limited, unreliable service, paid the penalty to switch to a carrier with better service, or paid a price hike to get the unlimited data service they had been promised. But none of those are good options.

AT&T's broken promises were not inevitable. The company could have upheld its obligations to its customers by making the right infrastructure investments. It certainly had the money to do so. From 2011 to 2015, AT&T paid tens of billions of dollars in dividends and share buybacks. In 2012, as the company boasted to investors that customers were fleeing its unlimited plan for tiered plans,<sup>17</sup> it spent more on share buybacks than it invested in its wireless network.<sup>18</sup> The bottom line is that AT&T fleeced its customers to enrich its executives and its investors.

### **Scrutiny for Scammers of All Sizes**

The FTC sued AT&T in 2014, and an exceptional group of staff litigators racked up big wins in this case. Our staff even prevailed in the Ninth Circuit Court of Appeals, when AT&T tried to sidestep accountability for this massive fraud by claiming it was immune from the FTC's oversight. I am extremely grateful to our litigators and investigators who persisted, and I am glad to see money being returned to consumers.<sup>19</sup> No settlement is perfect. While I would have liked to see AT&T pay more for the company's scheme, I fully appreciate the risks and resources associated with litigation.

There are also important lessons from this matter that I hope the entire agency can learn.

*Scammers come in all sizes.* During my tenure as a commissioner, I have raised concerns about disparate treatment of small firms, where the agency is quick to call out their fraud and where resolutions can include crippling consequences and individual liability. In contrast, the agency is quick to deem large firms as "legitimate" and apply a more soft-touch approach. AT&T's massive scam is a reminder that we must focus on the practices of a business, rather than the size of a business.

---

<sup>16</sup> There is reason to believe AT&T's exclusive deal with Apple raised many other questions about potentially anticompetitive conduct. Consumers have also alleged that, even if they fulfilled the terms of their contracts, they were blocked from "unlocking" their iPhones for use on a competing wireless network. See Steven Musil, *Apple sued over deal locking iPhone to AT&T network*, CNET (Oct. 21, 2012, 2:00 PM), <https://www.cnet.com/news/apple-sued-over-deal-locking-iphone-to-at-t-network/>.

<sup>17</sup> *Q3 2012 Earnings Call*, AT&T (Oct. 24, 2012) (AT&T executive stating he is "thrilled" that 15% of unlimited subscribers have moved to other plans) (downloaded using Seeking Alpha).

<sup>18</sup> AT&T Inc., Annual Report (Form 10-K) (Feb. 22, 2013) at 22-23, (noting \$12.7 billion in share repurchases and \$10.7 billion in capital spending in the wireless segment, or 55% of \$19.47 billion in total capital spending).

<sup>19</sup> Staff in the Commission's Western Regional Office has repeatedly proven that it is unafraid to take the country's biggest and most politically connected corporations to court. Even when the outcome of a trial isn't favorable, litigation demonstrates a willingness to uncover the truth and achieve meaningful accountability for lawbreaking firms.

*Rigorous analysis yields better results.* The Commission must do more to support our litigators and investigators with rigorous analysis of the many ways that companies profit from illegal conduct. Commission economists typically develop estimates of consumer injury, but this is just one facet of the relief we can seek in court. Economic analysis of consumer injury is not a complete financial analysis,<sup>20</sup> so we must be wary of overly relying on this narrow methodological approach. To arm our litigators effectively, we must conduct rigorous financial analysis that goes beyond the out-of-pocket losses that consumers experience. We also need to ensure we conduct a comprehensive review of a firm's business model, which can allow us to assess what led to the wrongdoing in order to inform what injunctive relief we should pursue.

It will be critical for the Commission to closely scrutinize AT&T's moves under order. If the company violates any aspect of this settlement, the agency should seek a contempt judgment in federal court and hold both the company and any appropriate individuals responsible for flouting the order. Given AT&T's aggressive enforcement of arbitration clauses that ban consumers from taking the company to court,<sup>21</sup> it is critical to be vigilant in our oversight of AT&T under this order.

## **Conclusion**

If consumers don't pay up when a company fails to live up to its promises, they are often pummeled with late fees, collection calls, and negative credit reporting. Yet when dominant companies don't deliver on their end of the bargain, too often they can turn a profit, as their customers feel powerless to do anything about it. Cheating is not competing. Without effective government and private enforcement, we will not achieve all of the benefits that competitive markets can deliver.

---

<sup>20</sup> In our competition cases, the FTC frequently utilizes financial analysts in addition to economists in its investigations.

<sup>21</sup> AT&T Mobility famously fought its customers all the way to the Supreme Court to defend its use of forced arbitration clauses that ban consumers from taking the company to court. *See AT&T Mobility LLC v. Vincent Conception*, 563 U.S. 333 (2011).