

Alabama woman sues AT&T over 'data throttling'



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A stack of pre-ordered iPhone 6 Plus models. (AP Photo/Julie Jacobson, File)

An iPhone customer in Huntsville today sued AT&T in federal court, arguing the telecommunications giant sold her a "so-called Unlimited Data Plan" and then throttled her data speeds when she crossed an undisclosed limit each month.

Shannon Lilienthal filed suit in U.S. District Court today, asserting that AT&T "was slowing (her) data speeds intentionally" and was doing this "for the simple purpose of making more money."

The attorneys seek to represent all affected customers in Alabama.

"Ms. Lilienthal brings this action representing not only herself, but also consumers across the country to compel AT&T to live up to the promises it made to its customers," reads the suit.

Tony Mastando, one of three Huntsville lawyers representing Lilienthal, said that there are 3.5 million effected customers nationwide, but that the attorneys are seeking class action status in Alabama. They would limit the suit to Alabama due to state laws regarding contracts, said Mastando.

The suit contends breach of contract, fraudulent/reckless misrepresentation, negligent misrepresentation and unjust enrichment.

The suit contends Lilienthal bought an iPhone in 2007 and the unlimited data plan became \$30 a month in 2008 when the 3G was released. In June of 2010, AT&T stopped offering the unlimited data plan to new customers, but allowed existing customers to renew the monthly plan.

The suit argues that in July 2011 AT&T began to throttle customers who exceeded a specific data limit, but that the service agreements did not state that use of more than a specified amount of data was prohibited.

The suit contends speeds dropped by anywhere from 60 to 95 percent, reducing the ability to use the phone for web browsing, GPS navigation or streaming video. Speeds went back to normal at the start of each monthly billing cycle.

"Since October 2011, Defendant has throttled its customers more than 25 million times, affecting more than 3.5 million unique customers," contends the suit.

The suit suggests AT&T could have instead forced unlimited plan customers to switch to a new tiered plan, but feared losing customers. Or AT&T could have explained the throttling program at point of sale, says the suit, but market researchers advised that the company say little about it. Mastando said the attorneys would pursue a refund for Lilienthal and for all similar Alabama customers, but have yet to determine how many people in Alabama were impacted. Lilienthal

paid \$30 a month for the unlimited data plan, meaning a full refund going back to 2011 would represent well under \$2,000.

The other attorneys representing Lilienthal are Eric Artrip and Doug Martinson Jr.

Late today, AT&T replied to a request from AL.com: "We have not had a chance to review the specifics of this suit, but assure you the FCC has specifically identified this practice as a legitimate and reasonable way to manage network resources for the benefit of all customers."

But the Federal Communications Commission has recently objected to AT&T practices. The FCC in 2010 adopted the Open Internet Transparency Rule, which requires broadband access providers disclose accurate information for consumers.

The Huntsville suit notes that five days ago the FCC released a **Notice of Apparent Liability** for Forfeiture, finding that AT&T used the misleading term "unlimited" for its data plan and failed to disclose the speed reductions.

The FCC on June 17 proposed fining AT&T \$100 million as a result.

The **FCC press release** about the proposed fine said: "Since 2011, the Commission has received thousands of complaints from AT&T's unlimited data plan customers stating that they were surprised and felt misled by AT&T's policy of intentionally reducing their speeds."

FCC Enforcement Bureau Chief Travis LeBlanc was quoted in the federal press release last week as saying: "Unlimited means unlimited."

The release said millions of customers were slowed for an average of 12 days each month.

AT&T offered a similar statement to numerous news outlets covering the federal fine last week:

"We will vigorously dispute the FCC's assertions. The FCC has specifically identified this practice as a legitimate and reasonable way to manage network resources for the benefit of all customers and has known for years that all of the major carriers use it. We have been fully transparent with our customers, providing notice in multiple ways and going well beyond the FCC's disclosure requirements."