

Judge awards iPhone user \$850 in throttling case

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This Feb. 10, 2012 photo shows screen on a smartphone showing a text message to an AT&T customer, in New York. An AT&T subscriber heads to small claims court Friday, Feb. 24, 2012, in Simi Valley, Calif., to sue the company for slowing his iPhone's data service to the point where it hardly works. (AP Photo/Mark Lennihan)

(AP) -- When AT&T started slowing down the data service for his iPhone, Matt Spaccarelli, an unemployed truck driver and student, took the country's largest telecommunications company to small claims court. And won.

His award: \$850.

Pro-tem Judge Russell Nadel found in favor of Spaccarelli in Ventura

Superior Court in Simi Valley on Friday, saying it wasn't fair for the company to purposely slow down his [iPhone](#), when it had sold him an "unlimited data" plan.

Spaccarelli could have many imitators. AT&T has some 17 million customers with "unlimited data" plans who can be subject to throttling. That's nearly half of its smartphone users. AT&T forbids them from consolidating their claims into a class action or taking them to a jury trial. That leaves small claims actions and arbitration.

Late last year, AT&T started slowing down data service for the top 5 percent of its smartphone subscribers with "unlimited" plans. It had warned that it would start doing so, but many subscribers have been surprised by how little data use it takes for throttling to kick in -often less than AT&T provides to those on limited or "tiered" plans.

Spaccarelli said his phone is being throttled after he's used 1.5 gigabytes to 2 gigabytes of data within a new billing cycle. Meanwhile, AT&T provides 3 gigabytes of data to subscribers on a tiered plan that costs the same - \$30 per month.

When slowed down, the phone can still be used for calls and text messaging, but Web browsing is painfully slow, and video streaming doesn't work at all.

AT&T spokesman Marty Richter said the company is evaluating whether to appeal.

"At the end of the day, our contract governs our relationship with our customers," he said.

AT&T area sales manager Peter Hartlove, who represented the company before Nadel, declined to comment on the ruling. He argued in court that

his employer has the right to modify or cancel customers' contracts if their data usage adversely affects the network.

Companies with as many potentially aggrieved customers as AT&T usually brace themselves for a class-action lawsuit. But last year, the Supreme Court upheld a clause in the Dallas-based company's subscriber contract that prohibits customers from taking their complaints to class actions or jury trials.

Arbitration and small-claims court cases are cheaper and faster than jury trials, but they force plaintiffs to appear in person and prepare their own statements. In a class-action suit, the work can be handled by one law firm on behalf of millions of people.

That means thousands - and possibly hundreds of thousands - of people who feel abused by AT&T's policy could seek to challenge the company, one by one, in arbitration or small claims court. The customer contract specifies that those who win an award from the company in arbitration will get at least \$10,000. Spaccarelli picked the same amount for his claim, though AT&T's stipulation about a minimum award doesn't apply in small claims.

Nadel looked instead at the remaining 10 months in Spaccarelli's two-year contract with AT&T and estimated that he might pay \$85 a month on average for using additional data. AT&T charges \$10 for every extra gigabyte over 3 gigabytes.

Nadel said it's not fair for AT&T to make a promise to Spaccarelli when he buys the phone while burying terms in his contract that give the company the right to cut down data speeds.

Spaccarelli, 39, researched his case for a few months, and then spent three days putting together a binder of documents to bring to court.

"I need the money, but for me, this case is not about money at all," Spaccarelli. "You don't tell somebody 'you have unlimited' and then cut them off."

Spaccarelli didn't quite uphold his side of the customer contract, and that's one reason his data usage was high. He used the iPhone to provide a link to the Internet for his iPad tablet, a setup known as "tethering." AT&T doesn't allow tethering unless customers pay extra for it, which Spaccarelli didn't do. It detected his tethering last year, and switched him from the "unlimited" plan to a limited one. He complained, and got his "unlimited" plan reinstated.

Even with the tethering, Spaccarelli's data usage wasn't excessive, he said - about 5 gigabytes per month. AT&T's Hartlove told Nadel about the tethering, and Spaccarelli admitted to it.

Earlier this month, a Southern California woman won a small-claims action against Honda over the gas mileage she got out of her Civic hybrid car. She was awarded \$9,867. Meanwhile, a pending class action against Honda over the same issue would net Civic owners a few hundred dollars each. The plaintiff, Heather Peters, is an ex-lawyer who had opted out of the settlement.

AT&T's throttling of "unlimited" data comes as it tries to deal with limited capacity on its wireless network. When the iPhone was new, AT&T had ample capacity on its network, and wanted to lure customers with the peace of mind offered by unlimited plans. Now, a majority of AT&T subscribers on contract-based plans have smartphones, and the proportion is growing every month. That's putting a big load on AT&T's network.

Verizon Wireless and T-Mobile USA also throttle users, but their policies are gentler. Verizon only throttles if the specific cell tower a

"heavy user" subscriber's phone is communicating with is congested at that moment. T-Mobile's throttling levels are higher for the same price, and the levels are spelled out ahead of time. AT&T subscribers have no way of knowing if they'll be throttled before a warning message drops in. If they keep using their phones, throttling kicks in a few days later.

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