

# In First Open Internet Enforcement Action, FCC Proposes \$100 Million NAL Against AT&T Mobile for Transparency Rule Violations

June 18, 2015

On June 17, 2015, the Federal Communications Commission (FCC or Commission) issued a [Notice of Apparent Liability against AT&T Mobile, Inc.](#) (AT&T) alleging that AT&T's failure to adequately and accurately disclose its throttling practices with respect to certain [unlimited data plans](#) violated the Commission's [2010 Open Internet Transparency Rule](#). The NAL proposes fines of \$100 million and mandates a series of compliance obligations that herald a new era of open Internet enforcement.

The practices at issue in the NAL involve AT&T's Maximum Bit Rate (MBR) policy. Under the MBR policy, subscribers to unlimited data plans experienced decreased broadband speeds after reaching a pre-determined amount of data within a single monthly billing cycle. For example, a subscriber to AT&T's unlimited 4G LTE plan would experience a bandwidth cap of 512 Kbps after reaching five gigabytes of data within a billing cycle, while non-LTE subscribers were capped at 256 Kbps after reaching three gigabytes of data within a billing cycle. The caps would remain in place until the new billing cycle began.

The NAL accuses AT&T of willfully and repeatedly misleading customers about its MBR policy in violation of the 2010 Open Internet Transparency Rule, which requires broadband providers to disclose accurate information sufficient to enable consumers to make informed choices regarding their use of the broadband services. Based on these apparent violations, the FCC proposes a \$100 million forfeiture, which it states is a "small fraction" of the maximum penalty authorized by law based on the millions of consumers allegedly affected. Moreover, the NAL requires AT&T to implement a number of steps to bring itself into compliance—e.g., correcting any inaccurate statements about the unlimited data plans, informing customers about the violation, and providing subscribers with an opportunity to opt-out. Finally, the NAL requires AT&T to file a report with the Commission within 30 days of the NAL detailing AT&T's progress in achieving compliance and the measures it has taken to do so.

This NAL is important for a number of reasons. First, it is the Commission's first blockbuster open Internet enforcement action, despite the fact that the rule at issue has been in effect for nearly five years. Second, the size of the proposed forfeiture suggests that the Commission will be active in [enforcing open Internet violations](#) now that the [2015 Open Internet Order](#) is in effect. As a result, BIAS providers should consider examining their open Internet practices to ensure compliance. Third, it demonstrates the Commission's continued shift (similar to its [YourTel/TerraCom NAL](#)) toward using NALs for policymaking purposes—imposing detailed compliance requirements not found within the Commission's rules and orders. For this reason, broadband providers should analyze the NAL

carefully and implement appropriate safeguards to mitigate risk of enforcement.

Next week, we will follow up with a more detailed client advisory on the AT&T NAL and what it means for broadband providers, edge providers, and consumers. In the meantime, feel free to reach out to the authors of this blog post or your traditional Kelley Drye contact for more information.