

While broadband caps are not inherently problematic, they carry the omnipresent temptation to act in anticompetitive and monopolistic ways. Unless they are clearly and transparently justified to address legitimate network capacity concerns, caps can work directly against the promise of broadband access," the groups wrote to the FCC.

The groups specifically called out AT&T, which on May 2 imposed a 150GB data cap for its DSL customers and a 250GB cap for U-Verse users.

AT&T users who exceed 150GB will be charged \$10 for every additional 50GB they consume. AT&T said it will notify customers when they have exceeded 60 percent, 90 percent, and 100 percent of their monthly data allowance. In announcing the decision, however, AT&T said that less than 2 percent of its customers will be affected because the average DSL customer uses about 18GB per month.

Public Knowledge and OTI said AT&T's caps are "particularly aggressive."

"Unlike competitors whose caps appear to be at least nominally linked to congestions during peak-use periods, AT&T seeks to convert caps into a profit center by charging additional fees to customers who exceed the cap," the letter said. "In addition to concerns raised by broadband caps generally, such a practice produces a perverse incentive for AT&T to avoid raising its cap even as its own capacity expands."

AT&T said its plan is intended to provide the best service to all customers.

"Our usage-based pricing plan is about offering a high-quality, fair and affordable broadband service for all of our customers. It is designed to protect the low-volume consumer and provide the high-volume consumer with the necessary information (at least six notifications) prior to being billed for overages," AT&T said in a statement. "It is narrowly tailored to ensure that only those who use the most bandwidth pay for it. In fact, 98 percent of our customers will not be impacted by our approach."

In 2008, Comcast announced that all its residential customers would be subject to a 250GB per month data limit. Comcast came under fire in 2007 for cutting off service to customers who consumed a large amount of bandwidth but refusing to provide those customers with information on how much bandwidth they were able to use. That led to accusations of Comcast cutting off access to P2P services like BitTorrent, an FCC enforcement action, and a net neutrality debate that continues today.

On Friday, the groups questioned why AT&T set its DSL caps at a level 100GB lower than the one established by Comcast two years ago. "These caps suggest either that AT&T's current network compares poorly to that of a major competitor circa 2008 or that there are non-network management

motivations behind their creation," they said.

As a result, the groups want the FCC to require AT&T and other ISPs to submit quarterly reports about their data caps. ISPs should also submit data about: which services are excluded from the cap; how often the cap is enforced; steps taken to warn customers; average penalties incurred; when and how often a penalty is waived; how enforcement relates to network congestion; and how data caps are set; how data caps are evaluated, according to the letter.

In its statement, AT&T stressed that usage is not determined by how much time you spend on the Web, but what type of services you use. To reach the 150GB cap, for example, you'd have to send 10,000 emails, download 2,000 MP3s, or watch 100 hour-long TV shows, AT&T said.