

SBC sued over high-speed connection / Customers complain after company cuts back on Net download time

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SBC Communications has been sued by a group of Houston residents who allege the company's practice of slowing its high-speed Internet connection in certain cases constitutes fraud, breach of contract and theft.

The suit, filed in a Nueces County district court in Corpus Christi, seeks class-action status and also names the Internet subsidiaries associated with SBC Communications telephone companies - Southwestern Bell, Pacific Bell, Nevada Bell, Ameritech and Southern New England Telephone Co.

The plaintiffs - four Houston residents and a business owned by one of them - all subscribe to Southwestern Bell's DSL service. Bell advertises the service with a minimum download speed of 384 kilobits a second. But in May, the company slowed the speed at which users connect to its e-mail and Usenet news group computers to 128 kilobits a second.

"DSL customers are paying for something we are not getting, and Southwestern Bell's attitude is they don't care," said Thomas McLaughlin, one of the plaintiffs in the suit. "I've never been involved in a lawsuit before, but I am very upset with Southwestern Bell."

SBC spokesman Michael Coe confirmed the Usenet servers have been throttled back to 128 kilobits, but said the e-mail servers do not have that limitation.

Coe said the speed at which the Usenet servers deliver content to customers is not the same as the DSL connection itself, which remains at the advertised minimum 384 kilobits.

"It is important to understand that SBC's DSL service delivers the speeds as guaranteed, which covers the connection rate between a customer's computer and the SBC central office," Coe said in a written statement. "(The) speeds at which people access different Web sites, including public news servers, may vary based on the performance characteristics established by the service provider or Web site operator."

SBC is in the middle of a \$6 billion initiative called Project Pronto to increase customer access to DSL. At the same time, it and other DSL providers are locked in a competitive battle both with each other and cable TV providers who offer Internet access via cable

modems.

Coe said Bell may eventually replace the Usenet servers with more powerful computers and faster connections, but for now the throttling is in place "to make sure that everyone enjoys a high-quality experience."

Internet service providers usually offer different features, including the World Wide Web, electronic mail and Usenet news groups. The latter are a collection of tens of thousands of discussion forums, each dealing with a specific topic.

Each feature requires a separate computer called a server that dispenses content to users on demand. The computer that feeds Usenet news groups to consumers is usually not the same machine that stores and sends e-mail.

The suit alleges that SBC is throttling back the speeds at which users can connect to e-mail and Usenet in order to conserve network bandwidth, rather than spending money for more powerful machines or faster links to the servers. It is, in effect, reselling that bandwidth when it signs up more customers, according to the filing.

In its statement, Bell denied it is trying to free up bandwidth to sign up other customers, but rather is trying to balance the load on its Usenet servers.

The suit maintains that SBC does not disclose the slower Usenet or e-mail speeds in its marketing materials, referring only to the 384-kilobit download speed for its basic service. Customers are charged a starting rate of \$39.95 a month for this level of service.

SBC initiated the cap in May, but made no general announcement except to its Pacific Bell customers. One Southwestern Bell customer posted a note to a news group, houston.internet.providers, that he received from a Bell technician indicating the cap was implemented to "stabilize" its news servers.

McLaughlin, the lead plaintiff in the suit, became a DSL subscriber last summer, according to the filing. He previously had used Bell's ISDN-based Internet service.

When McLaughlin learned the speed of the news and Usenet servers were capped at 128 kilobits in May, he tried to cancel his service and change Internet providers. But Bell insisted on charging a \$200 cancellation fee, according to the suit, and refused to waive the fee when McLaughlin argued he was not getting the speed he was promised.

McLaughlin owns Net Help Solutions, a technical support company he runs out of his house. The other plaintiffs are Jennifer Fisher, a Net Help employee; Mark Jacobs; and James Jackoviak.

The suit accuses SBC and its subsidiaries of breach of contract, fraud and misrepresentation. monopolistic trade practices. unjust enrichment. theft by fraud and

gross negligence.

Geoffrey Berg, an attorney with the Houston law firm of **Berg & Androphy**, which is handling the case, said the suit was filed in Nueces County because SBC is making a "big push" to sell DSL services there.

"It's a big focus of their business right now," **Berg** said.

The suit does not specify a damage amount. **Berg** said he'll let the jury decide damages.

Most of the content delivered via e-mail and Usenet is text-based, and thus does not require high speeds for comfortable delivery. But large files also can be transferred through both features. E-mail can contain attached files, and many of the Usenet groups include what are known as binary files - pictures, movies, sound and even whole computer programs.

Coe said only 1 percent of Bell's Internet customers use the Usenet server.

SBC's DSL service has been the subject of complaints by consumers and Internet service providers.

The Texas Public Utility Commission has dozens of complaints about poor customer service and problems with installation. SBC recently launched a program that lets customers do much of the DSL installation themselves.

SBC and a group of Texas Internet providers recently settled a complaint filed with the commission. The Texas Internet Service Providers Association had accused Bell of deliberately dragging its feet when establishing DSL connections for competitors to its own Internet service, and in some cases stealing customers who were on competitors' waiting lists.