

April 28, 2016

United States Senate
Washington, DC 20510

Dear Senator:

The undersigned organizations write in strong support of the Justice for Telecommunications Consumers Act, legislation that would prohibit the use of pre-dispute binding arbitration clauses – or forced arbitration -- in contracts between consumers and providers of telecommunications services, mobile services, cable and other multichannel video services, and common carriers under the Communications Act of 1934, including internet broadband service providers. The bill, sponsored by Senator Richard Blumenthal (D-Conn.) and Senator Al Franken (D-Minn.), would restore the rights of telecommunications customers to access the court system.

Millions of American consumers purchase telecommunications services, including cell phone service, cable, satellite and internet broadband services. Most companies that provide these services insert forced arbitration terms into their take-it-or-leave-it standard-form service contracts that require customers to surrender their right to take legal disputes to court, requiring instead that they take them to private and secret arbitration proceedings.¹

Among cellular phone companies alone, seven of the eight largest facilities-based mobile wireless providers, covering 99.9% of subscribers, used forced arbitration clauses in their 2014 customer contracts.² Of those customers subject to forced arbitration, 99.7% of them were prohibited from banding together in joint actions or class actions to seek remedies.³

The use of arbitration clauses and class action bans shields companies from being held effectively accountable for wrongful and illegal actions that deceive or cheat their customers. For example, forced arbitration clauses shield providers from accountability for privacy violations, data breaches, and unfair and deceptive practices, such as misleading customers about services and terms.

Further, we are concerned that some providers engage in deceptive billing practices that potentially violate state and federal consumer protection laws. Many have been accused of tacking unauthorized charges on customer bills for services that consumers did not choose and do not want, known as cramming. Telecom customers have been unable to challenge the legality of numerous line-item charges on their bills, such as “Internet Cost Recovery Fees,” administrative fees, early termination fees and other surcharges because the corporate contract terms prohibit customers from banding together to pursue remedies for these small-dollar charges, and it is not feasible to pursue these losses on an individual basis.

¹ See, Appendix A with excerpts of telecom companies’ forced arbitration provisions.

² Consumer Financial Protection Bureau, *Arbitration Study, Report to Congress, pursuant to Dodd–Frank Wall Street, Reform and Consumer Protection Act § 1028(a)*, Section 2, at 8 <http://1.usa.gov/19cVrvE>. The Consumer Financial Protection Bureau had examined forced arbitration in wireless provider contracts because these companies authorize third parties to charge consumers for services on their cell phone bills.

³ *Id.*, Section 2, at 45.

It was in a case involving a telecom provider that the U.S. Supreme Court, in a 5-4 decision, expanded its interpretation of the Federal Arbitration Act of 1925 to permit companies to prohibit their customers from participating in class actions. In that case, *AT&T Mobility v. Concepcion* (2011), the provider buried a class-action ban in its customer cell phone contracts and required customers to arbitrate on an individual basis. AT&T customers had alleged that the company included an undisclosed \$30 charge for phones that it had advertised as “free.” The \$30 charge, multiplied across millions of customers, would amount to millions of dollars in allegedly wrongful gains for the provider. Yet customers were barred from banding together to seek potential remedies.

In a more recent case, *DirectTV Inc. v. Imburgia* (2015), the Supreme Court enforced a class action ban against consumers who alleged that the multichannel pay TV provider had wrongly charged customers costly early-termination fees. In her dissent, Justice Ruth Bader Ginsburg wrote: “These decisions have predictably resulted in the deprivation of consumers’ rights to seek redress for losses, and turning the coin, they have insulated powerful economic interests from liability for violations of consumer protection laws.”

We wholeheartedly agree with Justice Ginsburg, and applaud Senators Blumenthal and Franken for seeking to right this wrong. We urge your support for this legislation, which would restore the ability of wronged telecom customers to effectively vindicate their legal rights in court.

Please contact Christine Hines at Christine @ consumeradvocates.org and George Slover at gslover @ consumer.org with any questions.

Sincerely,

Alliance for Justice
American Association for Justice
Center for Justice & Democracy
Committee to Support the Antitrust Laws
Consumers for Auto Reliability and Safety
Consumers Union
Consumer Watchdog
Consumer Federation of America
CPD Action
DC Consumer Rights Coalition
Electronic Frontier Foundation
Homeowners Against Deficient Dwellings
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Consumer Voice for Quality Long-Term Care
Public Citizen
Public Knowledge
Reinvestment Partners
US PIRG
Woodstock Institute
Workplace Fairness

Appendix A: Excerpts of Forced Arbitration Clauses in Certain Telecommunications Contracts

AT&T WIRELESS CUSTOMER AGREEMENT ("Agreement")

"(1) AT&T and you agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising); claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and claims that may arise after the termination of this Agreement. References to "AT&T," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Agreement, you and AT&T are each waiving the right to a trial by jury or to participate in a class action. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement."

<https://m.att.com/shopmobile/legal/terms.wirelessCustomerAgreement.html>

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CenturyLink® High-Speed Internet and Internet Access Services Residential Terms and Conditions

"B. Mandatory arbitration of disputes. Instead of suing in court, you and Company agree to arbitrate any and all claims, controversies or disputes Of any kind ("claims") against each other. This includes but is not limited to Claims arising out of or relating to this agreement, as well as claims Arising out of or relating to company's services or software, billing or advertising, or arising out of or relating to equipment you or company may Use in connection with company's services. The requirement to arbitrate applies even if a claim arises after your services have terminated; applies to all claims you may bring against company 's employees, agents, affiliates or other representatives; and applies to all claims that company may bring against you. The Federal Arbitration Act, not state law, applies to this agreement and its provisions and, governs all questions of whether a claim is subject to arbitration. This provision does not prevent either you or company from bringing appropriate claims in a small claims court having valid jurisdiction, or before the Federal Communications Commission or a state public utilities commission.

You and company further agree that neither company nor you will join any claim with a claim or claims of any other person(s) or entity(ies), whether in a lawsuit, arbitration, or any other proceeding. You and company agree that no claims will be asserted in any representative capacity on behalf of anyone else, that no claims will be resolved on a class-wide or collective basis, that no arbitrator or arbitration forum will have jurisdiction to accept or determine any claims on a class-wide or collective basis, and that no rules for class-wide or collective arbitration will apply. This paragraph and each of its provisions are integral to, and not severable from, this section on mandatory arbitration of disputes."

http://www.centurylink.com/legal/docs/HSI_Subscriber_Agreement_LCTL_ENG.pdf (as of April 28, 2016).

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Comcast Agreement for Residential Services

"13. BINDING ARBITRATION

"a. Purpose. Any Dispute involving you and Comcast shall be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court." <http://www.xfinity.com/Corporate/Customers/Policies/SubscriberAgreement.html>" (as of April 28, 2016).

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Cricket Wireless Terms and Conditions of Service

"Please read these terms and conditions carefully and make sure that you understand each provision as they contain important information about the services provided to you. These terms and conditions require the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions. These terms and conditions limit our liability and the remedies available to you in the event of a dispute." <https://www.cricketwireless.com/terms> (as of April 28, 2016).

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DirectTV Residential Customer Agreement

"(b) Formal Resolution. Except as provided in Section 9(d), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the "JAMS Rules") and under the rules set forth in this Agreement. If there is a conflict between JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern. ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL. You may, in arbitration, seek any and all remedies otherwise available to you pursuant to your state's law. If you decide to initiate arbitration, we agree to pay the arbitration initiation fee and any additional deposit required by JAMS to initiate your arbitration. We also agree to pay the costs of the arbitration proceeding. Other fees, such as attorney's fees and expenses of travel to the arbitration, will be paid in accordance with JAMS Rules. The arbitration will be held at a location in your hometown area unless you and we both agree to another location or telephonic arbitration.

(c) Special Rules. (i) In the arbitration proceeding, the arbitrator has no authority to make errors of law, and any award may be challenged if the arbitrator does so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. (ii) Neither you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. A court may sever any portion of Section 9 that it finds to be unenforceable, except for the prohibition on class, representative and private attorney general arbitration." http://www.directv.com/DTVAPP/content/legal/customer_agreement (as of April 28, 2016).

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MetroPCS Terms And Conditions

"Important: Read this agreement carefully. It requires the use of individual arbitration rather than jury trials or class actions to resolve disputes. Arbitration is more informal than litigation because it uses a neutral arbitrator instead of a judge or jury and allows for less discovery and less appellate review than in court ...

Class action waiver. We each agree that any dispute resolution proceedings, whether in arbitration or court, will be conducted only on an individual basis and not in a class or representative action or as a member of a class, consolidated or representative action. If a court or arbitrator determines in an action between you and us that this Class Action Waiver is unenforceable, the arbitration agreement will be void as to you. If you choose to pursue your claim in court by opting out of the arbitration provision as specified above, this Class Action Waiver provision will not apply to you. Neither you, nor any other

customer, can be a class representative, class member, or otherwise participate in a class, consolidated or representative proceeding without having complied with the opt out requirements above.”
<https://www.metropcs.com/terms-conditions/terms-conditions-service.html> (as of April 28, 2016).

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Sprint - Terms & Conditions

“The Service Agreement

These Ts&Cs are part of your service agreement with us (the "Agreement") and constitute a contract under which we provide you Services under terms and conditions that you accept. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION WITH A CLASS WAIVER, A REPRESENTATIVE ACTION WAIVER, AND A JURY WAIVER PROVISION. In addition to these Ts&Cs, there are several parts of the Agreement, which includes but is not limited to the following: (i) the subscriber agreement and transaction materials that you receive and accept; (ii) the plan(s) that you chose as set forth in our written services and transaction materials that we provide or refer you to during the sales transaction, including on-line and telephone transactions- (if your service plan is not specifically set forth in any in-store brochure or printed materials, the requirements and terms set forth in the current written Agreement and transaction materials apply);(iii) any confirmation materials and invoices that we may provide to you; and (iv) the terms set forth in the coverage map brochures. It is important that you carefully read all of the terms of the Agreement.”

https://shop2.sprint.com/en/legal/os_general_terms_conditions_popup.shtml (as of April 28, 2016).

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Time Warner Cable Residential Services Subscriber Agreement

“(a) Arbitration or Small Claims Court. Our goal is to resolve Disputes fairly and quickly. However, if we cannot resolve a Dispute with you, then, except as described elsewhere in Section 15, each of us agrees to submit the Dispute to the American Arbitration Association for resolution under its Commercial Arbitration Rules or, by separate mutual agreement, to another arbitration institution. As an alternative, you may bring your claim in your local “small claims” court, if its rules permit it. If you bring an action in small claims court, you waive (unless local law prohibits such a waiver) discovery in that proceeding (in other words, unless local law prohibits you from doing so, you agree you will not be able to depose TWC witnesses or seek non-public documents) ...

b) Types of Claims. Each of us may bring claims against the other only on their own behalf, and not on behalf of any official or other person, or any class of people, and neither of us may bring claims against the other alongside or with claims, whether similar or not, brought by other people. Only claims for money damages may be submitted to arbitration; claims for injunctive orders or similar relief must be brought in a court (other than claims relating to whether arbitration is appropriate, which will be decided by an arbitrator, not a court). You may not combine a claim that is subject to arbitration under this Agreement with a claim that is not eligible for arbitration under this Agreement.”

https://help.twcable.com/twc_sub_agreement.html (as of April 28, 2016).

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T-Mobile Terms & Conditions

“*HOW DO I RESOLVE DISPUTES WITH T-MOBILE?

“By accepting these T&Cs, you are agreeing to resolve any dispute with us through binding arbitration (unless you opt out) or small claims dispute procedures, and to waive your rights to a class action suit and jury trial. Your complete arbitration agreement, including opt-out instructions, is available here, and the opt-out website is available here. For additional terms and conditions governing a dispute between

us, including how to dispute Charges on your bill, choice of law, disclaimers of certain warranties, limitations of liabilities, and your indemnification obligations, click here." http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true (as of April 28, 2016).

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U.S. Cellular Terms And Conditions Of Agreement

"Arbitration. Any controversy or claim arising out of or relating to this agreement shall be resolved by binding arbitration at the request of either party pursuant to the wireless industry arbitration rules as modified by this agreement and as administered by The American Arbitration Association ("AAA"). We shall be fully responsible for filing, administration and arbitrator fees and we will advance, or reimburse you for, any reasonable filing, administration and arbitrator fees for any arbitration initiated in accordance with this paragraph. We will reimburse you for your reasonable attorneys' fees and costs if the arbitrator awards you an amount equal to or greater than the amount you have demanded in such arbitration. The American Arbitration Association shall administer the arbitration and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. Both parties acknowledge that this agreement is a transaction involving interstate commerce, and is therefore governed by the federal arbitration act. By agreeing to arbitration, both parties are waiving their right to litigate in court including any right to a jury trial. Unless you and we otherwise mutually agree, all hearings under such arbitration shall take place in the county of your billing address. At your option, you may bring an action against us in small claims court, notwithstanding this agreement. The parties agree that all claims, whether in arbitration or in small claims court, shall be treated individually and there shall be no consolidation of claims, class actions, representative actions or private attorney general actions. U.S. Cellular expressly rejects and does not consent to any consolidation of claims or class action in the arbitration. This arbitration agreement survives the termination of this service agreement. For additional information on commencing arbitration and how the arbitration process works, you may call the American Arbitration Association at 800-778-7879 or visit their website at www.adr.org." <http://www.uscellular.com/site/legal/customer-service-agreement.html> (as of April 28, 2016).

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Verizon Wireless

"You and Verizon wireless both agree to resolve disputes only by arbitration or in small claims court. You understand that by this agreement you are giving up the right to bring a claim in court or in front of a jury. While the procedures may be different, an arbitrator can award you the same damages and relief, and must honor the same terms in this agreement, as a court would. If the law allows for an award of attorneys' fees, an arbitrator can award them too:...

(3) This agreement doesn't allow class or collective arbitrations even if the AAA or BBB procedures or rules would. Notwithstanding any other provision of this agreement, the arbitrator may award money or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. No class or representative or private attorney general theories of liability or prayers for relief may be maintained in any arbitration held under this agreement. Any question regarding the enforceability or interpretation of this paragraph shall be decided by a court and not the arbitrator." <http://www.verizonwireless.com/b2c/support/customer-agreement> (as of April 28, 2016).