

# United States Senate

WASHINGTON, DC 20510

# 343

April 28, 2016

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Received & Inspected

MAY 03 2016

FCC Mail Room

Dear Chairman Wheeler:

We are writing regarding the harmful impact of pre-dispute mandatory (“forced”) arbitration clauses in consumer contracts for telecommunications services. These clauses severely restrict Americans’ access to justice by stripping consumers of their legal rights and insulating corporations from accountability for any wrongdoing. Increasingly relied upon by telecommunications providers, forced arbitration requires consumers to sign away their constitutional right to have their claims heard in court in order to access modern day essentials like mobile phone, Internet, and pay-TV services. As the number of consumer complaints against telecommunications providers grows, we urge the Federal Communications Commission (FCC) to consider the impact of forced arbitration clauses in telecommunications contracts and use any available tools to secure access to justice for American consumers.

Forced arbitration provisions in telecommunications contracts have eroded Americans’ ability to seek justice in the courts by forcing them into a privatized justice system that is inherently biased towards corporations and offers no meaningful appeals process. These provisions also frequently include a class action waiver, meaning that consumers are unable to band together through collective action to address widespread wrongdoings by powerful corporations. These characteristics act in concert not only to discourage valid claims, but to suppress them entirely. As The New York Times recently reported, the majority of consumers lack the means or will to fight in arbitration as individuals, which is particularly troubling in the telecommunications context when damages claims are likely to be relatively small, but multiplied over a large base of affected customers. Indeed, The Times found that between 2010 and 2014, only 505 consumers went to arbitration over a dispute of \$2,500 or less. Verizon, which has more than 125 million subscribers, faced 65 consumer arbitrations in those five years, and Time Warner Cable, which has 15 million customers, faced seven.<sup>1</sup> Given what we hear from constituents, we believe these numbers are grossly disproportionate to the number of claims that would be brought against providers if consumers had meaningful access to redress.

Forced arbitration clauses stack the deck against telecommunications consumers facing a wide range of consumer protection violations. As the FCC recognized when it recently unveiled new consumer transparency and disclosure recommendations for mobile carriers and Internet service providers, consumers regularly complain about deceptive advertising by telecommunications providers that advertise one price but charge another. After ancillary – and often arbitrary – fees and taxes are added to a consumer’s bill, the actual price paid for

---

<sup>1</sup> See N. Y. Times, Nov. 1, 2015, p. A1, col. 5 (“By inserting individual arbitration clauses into a soaring number of consumer and employment contracts, companies [have] devised a way to circumvent the courts and bar people from joining together in class-action lawsuits, realistically the only tool citizens have to fight illegal or deceitful business practices.”)

telecommunications services can be significantly higher than what was advertised. We've also heard countless complaints from consumers facing erroneous or unauthorized charges for service equipment, such as cable boxes or modems, which might not even be in the customer's possession. As long as providers are insulated from any measure of accountability through the use of forced arbitration, these unfair and deceitful practices will persist.

Fortunately, however, the executive branch can play a critical role in addressing the injustices resulting from mandatory arbitration clauses. Many agencies and regulatory bodies have already recognized the need for reform and are currently working to address this issue through their various rulemaking and regulatory authorities – a step we strongly support. For example, the Centers for Medicare and Medicaid Services has recognized the need to revise the requirements for long-term care facilities participating in Medicare and Medicaid programs to include limitations on the use of forced arbitration. The Consumer Financial Protection Bureau has also announced plans to issue rules governing the use of forced arbitration in consumer financial services contracts. And most recently, the Department of Education has proposed limits on the use of forced arbitration clauses by schools receiving Title IV funding. As we work with these and other agencies to craft strong rules and secure access to justice for all consumers, we welcome action from the FCC on this important issue.

In today's world, affordable access to telecommunications services is vital to Americans' ability to communicate and successfully engage in our global economy. But consumers should not be forced to sign away their constitutional rights in order to achieve that access. As always, thank you for your consideration of our request, and we look forward to working with you to secure access to justice for American consumers.

Sincerely,



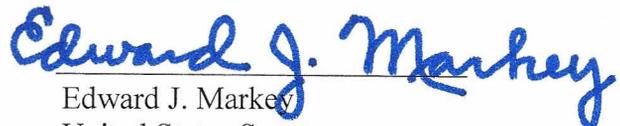
Al Franken  
United States Senator



Richard Blumenthal  
United States Senator



Sherrod Brown  
United States Senator



Edward J. Markey  
United States Senator



Bernard Sanders  
United States Senator



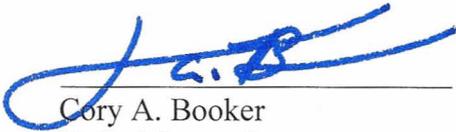
Sheldon Whitehouse  
United States Senator



Jeffrey A. Merkley  
United States Senator



Elizabeth Warren  
United States Senator



Cory A. Booker  
United States Senator



Tom Udall  
United States Senator



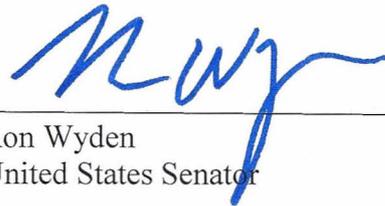
Mazie K. Hirono  
United States Senator



Richard J. Durbin  
United States Senator



Tammy Baldwin  
United States Senator



Ron Wyden  
United States Senator