

## Request for Investigation of T-Mobile US, Inc.

### I. Introduction

T-Mobile US, Inc., the nation's third largest wireless phone provider and a rapidly growing company, is engaging in deceptive and unfair practices toward consumers in violation of federal law. This submission focuses on two company practices regulated by the CFPB: (1) T-Mobile's representations that it has no contracts when, in fact, T-Mobile has linked its month-to-month service contracts to two-year equipment financing plans, with the result that roughly 90% of customers enter into contracts with financial penalties for early termination; and (2) a pattern of abusive debt collection practices, including providing third party debt collectors with inaccurate information and customers with little or no notice of the alleged debt. T-Mobile's use of an arbitration clause in its wireless contracts exacerbates these problems by erecting significant barriers against injured customers seeking compensation. Change to Win asks the CFPB to undertake an investigation of T-Mobile's advertising and debt collection practices and enjoin the company's illegal conduct.

### II. Change to Win

Change to Win is a federation of labor unions that represent more than 5 million workers in the private and public sectors. CtW pursues initiatives to strengthen consumer protections and workers' rights as part of its goal to rebuild the American middle class. Since its creation in 2005, CtW has been a forceful advocate on a range of issues including shareholder rights, consumer issues, environmental regulations, and an array of workplace protections.

### III. Background on T-Mobile

T-Mobile US, Inc., which reported annual revenues of over \$29 billion last year,<sup>1</sup> is the third largest wireless carrier in the U.S.<sup>2</sup> and provides wireless voice, messaging, and data services in the U.S., Puerto Rico and the U.S. Virgin Islands under the T-Mobile and MetroPCS brands.<sup>3</sup> It is also the fastest growing wireless company in the U.S., based on total customer growth in 2014.<sup>4</sup> It describes itself as an industry disruptor offering "plans that are simple, affordable and without unnecessary restriction" to provide customers with the best value experience.<sup>5</sup> As of December 2014, T-Mobile sells its phones and service plans at

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<sup>1</sup> T-Mobile US, Inc., Annual Report (Form 10-K), at 26 (Feb. 19, 2015).

<sup>2</sup> Ryan Knutson and Chelsey Dulaney, *Sprint Falls Behind T-Mobile in Total Connections*, WALL STREET JOURNAL, August 4, 2015.

<sup>3</sup> T-Mobile 2015 Annual Report, *supra* note 1, at 51.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.*; Press release, T-Mobile US, Inc., T-Mobile US Reports First Quarter 2015 Results (Apr. 27, 2015).

approximately 10,000 T-Mobile and MetroPCS branded retail locations and 52,000 third-party and national retailer locations.<sup>6</sup>

Following several years of declining revenue,<sup>7</sup> T-Mobile has generated strong financial and operational results in the past two years, with total revenues increasing 17% from 2012 to 2014, excluding the revenue added through its acquisition of MetroPCS in 2013.<sup>8</sup> Statements from company executives suggest that T-Mobile's Un-Carrier branding and marketing strategy, which it introduced in March 2013, have been a central part of its turn-around.<sup>9</sup> The first phase – Un-Carrier 1.0 – introduced Simple Choice, which, according to the company, “eliminated annual service contracts and provided customers with affordable rate plans.”<sup>10</sup> The central tenet of the Un-Carrier initiative is that T-Mobile has done away with an aspect of wireless service that is highly disfavored by consumers: restrictive two-year service agreements that prohibit customers from switching carriers without paying large termination fees. At the same time that the company eliminated annual service contracts, it ceased providing new customers with discounts on their new phones and equipment and introduced the Equipment Installment Plan (EIP) – a two-year no-interest consumer loan for purchasing phones and other equipment – to help customers manage the increased costs of these purchases. The vast majority of T-Mobile customers—91%—take advantage of the EIP.

As discussed in detail below, T-Mobile's “no contract” marketing is misleading because a customer's cancellation of his wireless service before two years makes the amount remaining on the EIP immediately due—a fee that is often larger than the penalties associated with early termination of a traditional two-year service contract. A review of 5,500 customer complaints to federal regulators and the Better Business Bureau revealed that more than three hundred current and former customers were either unaware of the EIP fee or believed it to be unfair when they sought to cancel their T-Mobile service.

Compounding T-Mobile's deceptive marketing of its wireless service is evidence that T-Mobile engages in abusive debt collection practices. As discussed in detail below, almost 1,300 consumers complained to federal regulators or the Better Business Bureau about T-Mobile's

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<sup>6</sup> T-Mobile 2015 Annual Report, *supra* note 1, at 8.

<sup>7</sup> *Id.* at 23 (Feb. 19, 2015); T-Mobile US, Inc., Annual Report (Form 10-K), at 22 (Feb. 25, 2014).

<sup>8</sup> T-Mobile 2015 Annual Report, *supra* note 1, at 23; Press Release, T-Mobile US, Inc., T-MOBILE AND METROPCS COMBINATION COMPLETE - WIRELESS REVOLUTION JUST BEGINNING (May 1, 2013), *available at* <https://newsroom.t-mobile.com/news/t-mobile-and-metropcs-combination-complete--wireless-revolution-just-beginning.htm>.

<sup>9</sup> *E.g.* Press release, T-Mobile US, Inc., T-Mobile US Reports Fourth Quarter and Full-Year 2014 Results (Feb. 19, 2015) (“2014 was the best year of growth in company history,” said John Legere, President and CEO of T-Mobile. “Our Un-carrier moves helped us blow away the competition. The best is yet to come as the future looks bright in 2015.”), *available at* <https://newsroom.t-mobile.com/news/t-mobile-fourth-quarter-and-full-year-results-2014.htm>.

<sup>10</sup> T-Mobile 2015 Annual Report, *supra* note 1, at 4.

debt collection practices from January 2013 through September 2015.<sup>11</sup> The most common complaints were little or no notice before the debt was referred to a collection agency and incorrect information relayed to the collection agency. In a smaller sample of approximately 600 complaints about debt collection that were also coded for other issues, nearly sixty consumers who cancelled their T-Mobile service were then sent to collections due to debt stemming from the inadequately disclosed EIP fee.

T-Mobile's deceptive marketing and abusive debt collection practices are particularly harmful to low-income customers and customers with poor credit, groups that have been central to the company's growth strategy. Many of the company's advertisements inform customers that T-Mobile offers plans with no credit checks and no annual contracts, appealing to the financial instability of low-income customers.<sup>12</sup> As a result, T-Mobile reports that 48% of its subscribers who financed their phone have a subprime credit rating.<sup>13</sup> T-Mobile also has the highest number of prepaid customers of any carrier – 17.2 million, or 36.1 percent of its subscriber base.<sup>14</sup> Prepaid customers generally have worse credit quality than postpaid subscribers, making that figure a useful proxy for the number of customers considered to have subprime credit.

Change to Win's research consisted of a review of T-Mobile's website, online and broadcast advertisements, and in-store signage across the country, as well as analysis of thousands of consumer complaints about T-Mobile in the past two years. From April through June 2015, CtW researchers visited 176 stores in California, Maryland, Minnesota, and New York to document in-store signage related to its Un-Carrier initiative. Of the stores visited, 60.2% were corporate stores, and the remaining 39.8% were third-party-owned.<sup>15</sup> CtW also gathered advertisements

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<sup>11</sup> There were 598 debt collection-related complaints in the database of 5,516 complaints that we compiled and analyzed. We supplemented this with an additional 793 complaints obtained through a subsequent FOIA to the FTC for complaints that were solely focused on debt collection-related issues. We coded this set of data only for debt collection problems and did not code it for the other issues examined in our original database of 5,516 complaints, such as the "No Contract" complaints.

<sup>12</sup> See, e.g., T-Mobile, Single or family unlimited plans. NO annual contracts or credit checks., available at <http://www.t-mobile.com/offer/no-credit-check-cell-phone-plans.html> (last viewed Dec. 3, 2015). For additional examples of advertisements directed at consumers with low incomes or bad credit, see Appendix 1.

<sup>13</sup> Matt Scully & Scott Moritz, *IPhones Go From T-Mobile Loss Leader to New Source of Cash*, BLOOMBERG BUSINESS, Apr. 30, 2015.

<sup>14</sup> T-Mobile US, Inc., Quarterly Report (Form 10-Q), Oct. 27, 2015, at 29; AT&T Financial and Operational Results, Oct. 22, 2015, at 17, available at [http://www.att.com/Investor/Earnings/3q15/master\\_3q15.pdf](http://www.att.com/Investor/Earnings/3q15/master_3q15.pdf); Verizon 3Q 2015 Quarter Earnings: Financial Statements, Oct. 20, 2015, at 5, available at <http://www.verizon.com/about/investors/quarterly-reports/3q-2015-quarter-earnings-conference-call-webcast>; Sprint Fiscal Q2 Earnings Release, Nov. 3, 2015, at 6, available at [http://s2.q4cdn.com/578722565/files/doc\\_financials/quarterly/2015/Q2/Fiscal-2Q15-Earnings-Release-Final.pdf](http://s2.q4cdn.com/578722565/files/doc_financials/quarterly/2015/Q2/Fiscal-2Q15-Earnings-Release-Final.pdf).

<sup>15</sup> T-Mobile controls the advertising in its third-party-owned stores through its Retailer Services Agreement, which grants the third party a limited license to use and reproduce company trademarks only as the company authorizes in writing and requires the third party to get written consent from the company for all advertisements. See, e.g., Retailer Services Agreement between Wireless Now, Inc. and T-Mobile US, Inc., Exhibit D, ¶14 (effective date Apr. 1, 2011).

online and from other media sources. In addition, Change to Win analyzed more than 5,500 consumer complaints about T-Mobile filed from January 2013 to September 2015 with the Better Business Bureau, the Consumer Financial Protection Bureau, the Federal Trade Commission and the Federal Communications Commission. As explained below, CtW's research revealed that T-Mobile is engaging in deceptive marketing and abusive debt collection practices.

#### IV. T-Mobile's Deceptive and Unfair Practices

T-Mobile has engaged in unfair, deceptive and abusive practices in connection with a consumer financial product and its debt collection practices. These deceptive practices are detailed below.

##### *(a) Equipment Installment Plan*

In March 2013, T-Mobile eliminated its two-year service agreements in favor of a month-to-month service plan. At the same time that it did this, it stopped subsidizing the cost of phones and other equipment and instituted an Equipment Installment Plan (EIP)—24-month, no-interest financing agreement—to help customers manage the increased costs of these purchases. The vast majority of T-Mobile customers— 91%— have opted to pay for their phones and equipment by using an EIP.<sup>16</sup> T-Mobile maintains a lock on all phones that makes them incompatible with other wireless carriers until the phones are paid off. T-Mobile requires customers who take advantage of its phone upgrade program JUMP! to enroll in the EIP, which contributes to the very high percentage of customers in an EIP contract.<sup>17</sup>

Like the traditional two-year service agreement, T-Mobile's EIP is a two-year contract with a penalty for early termination. Customers who "choose to use the EIP option are required to enter into a 24-month financing agreement signed at the time of the activation or upgrade."<sup>18</sup> Termination of the month-to-month service contract prior to the expiration of the 24-month EIP results in all outstanding amounts on wireless phones and other equipment becoming due immediately. This fact is disclosed on the last page of the three-page EIP contract, which states: **"You agree to maintain a T-Mobile voice service plan for any device purchased under this contract and any termination of that voice service plan will be a substantial default under this contract and we may declare the remaining unpaid balance of the contract immediately due and payable."**<sup>19</sup> It is also disclosed in the in-store and website descriptions of each phone

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<sup>16</sup> Transcript of Earnings Call, T-Mobile US, Inc. – Q1 2015 (Apr. 28, 2015), *available at*

<http://seekingalpha.com/article/3113156-t-mobile-us-tmus-q1-2015-results-earnings-call-transcript>.

<sup>17</sup> T-Mobile, UPGRADE WHEN YOU WANT, NOT WHEN YOU'RE TOLD, <http://explore.t-mobile.com/phone-upgrades> (fine print states "**JUMP!**: Qualifying service with financed device req'd") (last visited Dec. 3, 2015).

<sup>18</sup> T-Mobile, Equipment Installment Plan (EIP), <https://support.t-mobile.com/docs/DOC-1674> (last visited Dec. 2, 2015); *see also* Appendix 2 for T-Mobile's informational web pages on EIPs.

<sup>19</sup> *See* Appendix 3.

offered by T-Mobile.<sup>20</sup> The effect of this contract term is that 90% of T-Mobile’s postpaid customers have entered into agreements to maintain wireless service with the company for 24 months or pay a lump sum of money to exit the contract.

Ending an agreement with T-Mobile may actually be much more expensive than leaving a traditional two-year carrier agreement. In recent years, ETFs at the other major carriers typically ranged from \$325-350 per line for users with smartphones and \$100-200 for all other phones, with some downward adjustment over time. At AT&T, it is \$325 minus \$10 for each full month of completed service for smartphones, and \$150 minus \$4 per full month of completed service for all other phones.<sup>21</sup> By comparison, a smartphone at T-Mobile can cost over \$700.<sup>22</sup> Thus, for many customers, there is no material difference between T-Mobile’s “no contract” service plan and a traditional service contract, except that for smartphone users—which constitute two-thirds of Americans<sup>23</sup>—it may be more expensive to break an EIP agreement with T-Mobile than it was to break a two-year service agreement.

Despite the linkage between the EIP contract and the monthly service agreement, T-Mobile has undertaken a multi-platform advertising and marketing campaign designed to convince consumers that it no longer has service contracts and thus deceives consumers into believing that they will face no penalty for early termination of their T-Mobile plan. T-Mobile’s stores bombard customers with advertisements containing the no-contract message: “No more 2-year service contract”; “No annual service contract”; “Break free from annual service contracts”; “Rewriting the rules of wireless . . . no annual service contract”; “Finally, a Family Plan that includes everything WITH NO ANNUAL CONTRACT.”<sup>24</sup>

T-Mobile’s broadcast advertisements reinforce the theme that T-Mobile is breaking ground in the wireless industry with its elimination of service contracts. One commercial aired on May 6, 2014, which critiques wireless contracts by comparing them to baseball player contracts, begins: “What if baseball had wireless rules?” while focusing in on a baseball player at bat as baseball commentators critique his contract for fining him for getting too many hits. The ad then states: “Switch to the Un-carrier: T-Mobile is doing things differently. No long-term service contracts. No ridiculous overages.”<sup>25</sup> Another commercial compares T-Mobile to Verizon, stating: “Verizon has 2-year contracts. T-Mobile has 0-year service contracts.

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<sup>20</sup> See, e.g., T-Mobile, Samsung Galaxy Note 5 (“If you cancel wireless service, remaining balance on phone becomes due.”) <https://t-mobile.com/cell-phones/samsung-galaxy-note5.html> (last visited Dec. 2, 2015).

<sup>21</sup> AT&T, Early Termination Fees, <http://www.wireless.att.com/learn/articles-resources/early-term-fees.jsp> (last visited Dec. 2, 2015).

<sup>22</sup> See, e.g., T-Mobile, Samsung Galaxy S6 Edge (full retail price is \$779.99), <http://www.t-mobile.com/cell-phones/samsung-galaxy-s6-edge-plus.html> (last visited Dec. 3, 2015); T-Mobile, Apple iPhone 6S Plus (full retail price is \$749.99), <http://www.t-mobile.com/cell-phones/apple-iphone-6s-plus.html> (last visited Dec. 3, 2015).

<sup>23</sup> Aaron Smith, *U.S. Smartphone Use in 2015*, PEW RESEARCH CENTER, Apr. 1, 2015, available at <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>.

<sup>24</sup> See Appendix 4.

<sup>25</sup> See Appendix 5.

#neversettleforVerizon.”<sup>26</sup> None of the advertisements reviewed by CtW includes the caveat that termination of the service contract triggers a requirement to immediately pay the EIP balance.

T-Mobile’s marketing misleads customers into believing that their wireless service has no early termination fee when, in fact, they will face a financial penalty if they cancel service before the two-year EIP loan is repaid. According to one consumer’s complaint to the CFPB, when she purchased a new T-Mobile phone, she was told that “there was no contract, it would be month to month, no early termination.” After the customer transferred two T-Mobile accounts to Verizon due to poor reception, she logged onto her T-Mobile account:

Imagine my surprise when I logged on to cancel the third [account] and saw a bill for \$474!!! . . . We spent well over 2 hours on the phone with [T-Mobile], got placed on hold multiple times, ended up with a supervisor, and they're sticking to their guns on the \$474. . . . Doesn't matter that the agent told us very directly (and in English, I might add) that we would move to a 'no contract, month to month, no early termination' plan. The supervisor repeated to us multiple times that we agreed to the contract and had to finish it out in its entirety, through October of this year, to avoid early termination fees. I reiterated that the agent who sold us the 'month to month, no contract, no early termination' never disclosed that we would be liable for the remainder of any prior contract. The supervisor looked at the notes of the call and told us that she would be unable to credit the fee because there were no notes stating that the agent did not disclose this information.<sup>27</sup>

Another consumer reported that, soon after switching from T-Mobile to another wireless provider, “I received another bill for \$748.97 on August 07, 2013 stating that there is an unpaid balance for equipment installments . . .” She called T-Mobile and told the representative that the phone under the equipment installment plan was defective and she wanted to return it; she was told that it was “non-returnable so to avoid collection agency I need to pay the \$748.97 by the due date of August 28, 2013!!”<sup>28</sup>

In April 2013, the Washington State Attorney General’s Office filed an Assurance of Discontinuance against T-Mobile, in which it disclosed that it had investigated the company for its advertisements touting “NO ANNUAL CONTRACTS.”<sup>29</sup> The Washington Attorney General concluded that the company had misrepresented “consumers’ ability to obtain services and telephone equipment without incurring a financial consequence for cancelling Respondent’s

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<sup>26</sup> *Id.*

<sup>27</sup> See Appendix 6.

<sup>28</sup> *Id.*

<sup>29</sup> *In re T-Mobile USA, Inc.*, Modified Assurance of Discontinuance (No. 13-2-17948-2 SEA) (King County Sup. Ct.) (June 19, 2014). See Appendix 7.

services” and failed “to adequately disclose the material fact that under Respondent’s telephone equipment installment plan, if a consumer cancels Respondent’s services prior to the expiration of the full term of the installment plan, the entire sum owing for the telephone equipment will become payable on the consumer’s final bill.”<sup>30</sup> Since then, the company has implemented some remedial actions focused on disclosure of EIP terms on sale pages for individual phones, but it has not changed its online and broadcast advertisements, which continue to claim that T-Mobile has no contracts without mentioning the EIP.

The company’s claims that it has no annual service contracts are deceptive practices under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) because they mislead consumers about the company’s EIP, a covered financial product. A deceptive act or practice is one in which: “(1) The representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) The consumer’s interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) The misleading representation, omission, act, or practice is material.”<sup>31</sup> T-Mobile’s marketing campaign promotes the notion that it has no contracts and, by extension, a consumer relying on these claims would reasonably believe there are no penalties or fees associated with terminating T-Mobile’s wireless service. These deceptive statements are material because they relate to the “costs, benefits or restrictions on the use or availability” of the EIP.<sup>32</sup>

The CFPB’s administrative action against Manufacturers and Traders Trust Company (“M&T”) for its deceptive marketing of its checking account is analogous to T-Mobile’s deceptive statements about its EIP. According to the consent order, M&T marketed its checking account as free and imposing “no monthly service charges” while nevertheless “requir[ing] customers to maintain a minimum level of account activity” or maintain an account balance of more than \$1,500 to avoid monthly fees.<sup>33</sup> The bank used advertisements to convey this message, saying things like: “Untangle yourself from monthly fees. Get a free checking account at M&T. No Strings attached.”<sup>34</sup> Upon signing up for a free checking account, customers were given a one page information sheet that disclosed the minimum activity requirement and that if the activity was not maintained, the account would be converted to a checking account with a minimum balance requirement.<sup>35</sup> The CFPB concluded that the bank’s advertisements were deceptive acts or practices in violation of the UDAAP provisions of the Dodd-Frank Act.<sup>36</sup>

T-Mobile, like M&T, has made claims about a financial product’s costs in its marketing materials without adequately disclosing crucial limitations and contingencies. T-Mobile has

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<sup>30</sup> *Id.* at 2.

<sup>31</sup> CONSUMER FINANCIAL PROTECTION BUREAU, SUPERVISION AND EXAMINATION MANUAL 2.0 (Oct. 2012), at UDAAP 5.

<sup>32</sup> *Id.*, at UDAAP 6.

<sup>33</sup> *Manufacturers and Traders Trust Co.*, No. 2014-CFPB-16, at 4 (Oct. 9, 2014)

<sup>34</sup> *Id.* at 5.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 6-7.

engaged in an extensive marketing campaign aimed at informing customers that it has no contracts and no termination fees yet, in reality, the company does impose early termination fees on the 91% of its customer base that enrolls in an EIP. The CFPB should investigate T-Mobile's misleading advertising claims and their impact on T-Mobile customers and bring an enforcement action to halt these practices in the future.

*(b) Debt Collection Practices*

CtW analyzed nearly 1,300 consumer complaints about T-Mobile's debt collection practices filed from January 2013 to September 2015 with the Better Business Bureau, the Consumer Financial Protection Bureau, the Federal Trade Commission and the Federal Communications Commission. Based on references found in these complaints, CtW believes T-Mobile has contracted with least eight third party debt collectors in the past three years.<sup>37</sup> The consumer complaints suggest that T-Mobile improperly sends bills to collections and engages in practices that make it difficult for customers to contest their debts. The company's deceptive marketing of its "no contract" service plans may exacerbate customers' confusion and vulnerability to delinquency, which makes T-Mobile's inadequate debt collection procedures and debt resolution process particularly troubling.

According to CtW's analysis, 70% of consumers faced with collection issues said that T-Mobile gave the third party debt collection agencies incorrect information. And 49% of consumers with collection issues reported little or no notice of the debt before it was referred to a collection agency. As one consumer reported,

I informed T-Mobile that I wanted to resolve the issue and have my balance cleared before anything went into collections. Little did I know I started getting calls from a collection agency in regards to tmobile. They told me that T-Mobile had transferred my account to the collection due to non payment. As stated before I paid the account in full and made sure I didn't owe them anything.<sup>38</sup>

Another consumer stated:

T-Mobile incorrectly billed my wife, Mary Reid, for wireless phone service in Sept. 2012 even though she cancelled T-Mobile's service on or about July 27, 2012. Consequently, T-Mobile has submitted Mary's bill to a collection agency . . . In so doing, T-Mobile has caused my wife's credit score to decline from

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<sup>37</sup> The third party debt collectors are: Midland Credit Management (otherwise known as Midland Agency, MCM Collections and Midland Funding LLC); Convergent Outsourcing; Alliance One; AFNI (formerly known as Anderson Financial Network); Diversified Consultants, Inc. (otherwise known as DCI Collections); West Asset Management; Sunrise Credit Services and Amsher Collection Services.

<sup>38</sup> See Appendix 6.



approximately 800 to the mid-600s, thus impacting her ability to secure a mortgage.<sup>39</sup>

After being notified of a T-Mobile bill in collections, many T-Mobile customers—15% of those with collection issues—also reported that they were locked out of their accounts or otherwise were not given access to their records to dispute the charges. One T-Mobile customer stated: “[T-Mobile has] sent us to collection and have conveniently deleted/lost all the notes regarding my account. When I contacted the collection agency they say that T-Mobile will not allow them to have a copy of the notes in my account and thus can’t give them to me either.”<sup>40</sup>

When attempting to resolve debt disputes, consumers report being met with obfuscation or conflicting information from T-Mobile. Thirty-seven percent of customers with collection issues reported that their inquiries to the company were met with conflicting information, and twenty-three percent said that T-Mobile customer service representative shifted the blame for the problem to the customer or a third party such as a debt collector. And, even when T-Mobile misrepresented the debt or the customer had already paid the bill, the most commonly used tactic by T-Mobile was to simply reiterate that the full balance was due.

The CFPB recently explained the negative impact of collections activity, reporting that nearly a third of Americans who have credit ratings have a collections item on their report,<sup>41</sup> and that this information is “incorporated as a derogatory factor in most credit scoring models,” harming the ability of consumers to obtain loans and other forms of credit.<sup>42</sup> In a 2013 study, the FTC expressed concern that debt collectors “may have insufficient or inaccurate information when they collect on debts, which may result in collectors seeking to recover from the wrong consumer or recover the wrong amount.”<sup>43</sup> While third party collectors are well known for abusive practices, the companies that send customers’ accounts to collections play a significant role in this broken system. The consumer complaints about T-Mobile paint a picture of a company without a consistent, clear or fair process to dispute billing issues and collections notices which, in turn, results in many debts unfairly turned over to collections.

T-Mobile’s debt collection practices are unfair and deceptive under Dodd-Frank. As the CFPB stated in a consent order against Chase Bank, “Respondents’ acts and practices of selling certain credit card Accounts to Debt Buyers that Respondents knew or should have known were unenforceable or selling such Accounts with inaccurate information or information inadequate to support the claims that Consumers owed the Debts and owed them in the amounts stated,

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER CREDIT REPORTS: A STUDY OF MEDICAL AND NON-MEDICAL COLLECTIONS, at 5 (Dec. 2014).

<sup>42</sup> *Id.* at 8-9.

<sup>43</sup> FEDERAL TRADE COMMISSION, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY, at i (Jan. 2013).

caused or were likely to cause substantial injury to Consumers that was not reasonably avoidable or outweighed by any countervailing benefit to Consumers or to competition. Thus, Respondents engaged in unfair acts and practices . . .”<sup>44</sup> Here, as well, T-Mobile appears to be knowingly or recklessly providing third party debt collectors with inaccurate information and enforcement action is needed to protect consumers from substantial injury.

*(c) T-Mobile’s Arbitration Clause*

T-Mobile’s use of an arbitration clause in its wireless contracts means that consumers injured by T-Mobile’s deceptive marketing and abusive debt collection practices will face barriers to compensation. T-Mobile’s terms and conditions provide that all disputes must be resolved by binding arbitration unless the customer opts out of the arbitration procedures within 30 days of purchasing a device from T-Mobile or activating a new line of service, whichever is earlier.<sup>45</sup> Because most consumers do not read the fine print where the arbitration clause is detailed, most do not know they are subject to an arbitration clause and thus will not take advantage of the opt-out provision.<sup>46</sup> Moreover, T-Mobile’s terms and conditions ban class actions, regardless of whether they are brought in court or through arbitration.<sup>47</sup>

Adkins v. T-Mobile USA, Inc. et al, 3:15-cv-258 (AWT) (M.D. Fla. Oct. 8, 2014), is illustrative of how T-Mobile’s arbitration clause may limit accountability for its abusive behavior. In that case, a former T-Mobile customer sued T-Mobile and Convergent Outsourcing, T-Mobile’s third party debt collector, for abusive debt collection practices. The complaint alleged that the customer cancelled his T-Mobile service in November 2012, paid his final bill, and was assured that there were no fees associated with early termination.<sup>48</sup> A month later, however, he began receiving phone calls from Convergent demanding payment for an alleged outstanding balance with T-Mobile.<sup>49</sup> The plaintiff reached out to T-Mobile to dispute the amount owed and request a copy of his last six months of billing statements, which T-Mobile agreed to send to him but never did.<sup>50</sup> The plaintiff continued receiving harassing phone calls from Convergent while, during the same time period, receiving inconsistent statements from T-Mobile about the amount owed.<sup>51</sup> T-Mobile invoked the arbitration clause to stay the proceedings against it, while the plaintiff’s claims against Convergent were

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<sup>44</sup> *Chase Bank, U.S.A, et al.*, No. 2015-CFPB-0013, at 13 (July 8, 2015).

<sup>45</sup> T-Mobile Terms & Conditions (effective as of Nov. 14, 2015), *available at* [http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr\\_Ftr\\_TermsAndConditions&print=true](http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true) (last visited Dec. 3, 2015).

<sup>46</sup> A CFPB survey found that three out of four consumers surveyed did not know if they were subject to an arbitration clause. CONSUMER FINANCIAL PROTECTION BUREAU, CFPB STUDY FINDS THAT ARBITRATION AGREEMENTS LIMIT RELIEF FOR CONSUMERS (Mar. 2015).

<sup>47</sup> T-Mobile Terms and Conditions, *available at* [http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr\\_Ftr\\_TermsAndConditions&print=true](http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true); *see also* Appendix 8.

<sup>48</sup> Compl. ¶16.

<sup>49</sup> *Id.* ¶18.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* ¶¶ 21-25.

consolidated in a multi-district litigation currently pending in the District of Connecticut in which Adkins is a named plaintiff.<sup>52</sup> T-Mobile's arbitration clause means that not only will aggrieved consumers have to individually undertake an expensive and uncertain arbitration process, but that the public may never know the prevalence and impact of T-Mobile's deceptive marketing and abusive debt collection practices. This makes the CFPB's investigation of T-Mobile even more crucial.

## **V. Conclusion**

T-Mobile has experienced significant growth in the past three years by marketing itself as an industry disruptor that offers customers the best value experience. T-Mobile's practices, however, are not nearly as customer-friendly as its marketing suggests. T-Mobile's "no-contract" advertising can mislead consumers into believing they will face no financial penalty for terminating their T-Mobile service. T-Mobile's inadequate and opaque debt resolution and debt collection processes, as documented by consumer complaints, exacerbate the misleading advertising by placing into collections consumers who had no knowledge of inadequately disclosed termination fees. And T-Mobile's arbitration clause means that consumers harmed by these deceptive practices may never be adequately compensated. For these reasons, CtW respectfully requests that the CFPB investigate the practices described in this complaint and bring enforcement action against T-Mobile so that it halts its deceptive advertising and abusive debt collection practices and puts in place procedures that will prevent such practices in the future.

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<sup>52</sup> The multi-district litigation is *In re Convergent Tel. Consumer Prot. Act Litig.*, 3:13-md-2478 (AWT) (D. Conn. 2013).

## Appendices

1. Advertisements directed at consumers with low incomes or bad credit
2. T-Mobile informational webpages about EIPs
3. T-Mobile's Retail Installment Obligation
4. "No Contract" advertisements
5. Broadcast and video advertisements (see enclosed CD)
6. Selected consumer complaints filed with the BBB, the CFPB, the FCC or the FTC
7. Documents from enforcement action brought by Washington State Attorney General
8. T-Mobile terms and conditions including its arbitration provision