

United States Senate

WASHINGTON, DC 20510

343

April 28, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th 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.¹ 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

¹ 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,



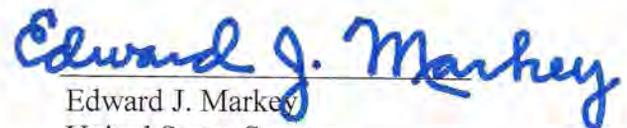
Al Franken
United States Senator



Richard Blumenthal
United States Senator



Sherrod Brown
United States Senator



Edward J. Markey
United States Senator



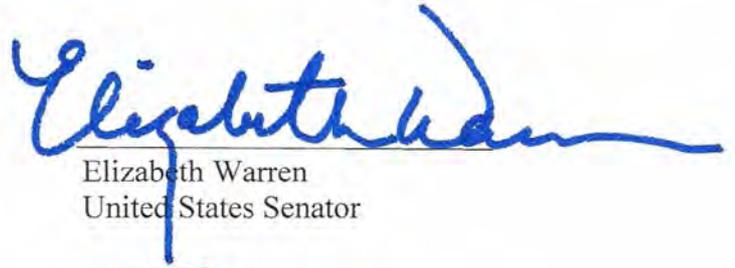
Bernard Sanders
United States Senator



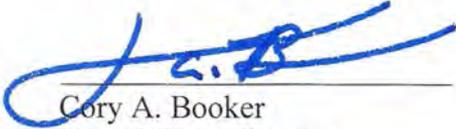
Sheldon Whitehouse
United States Senator



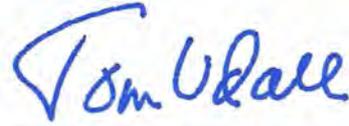
Jeffrey A. Merkley
United States Senator



Elizabeth Warren
United States Senator



Cory A. Booker
United States Senator



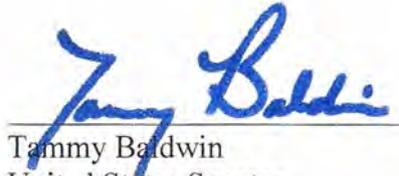
Tom Udall
United States Senator



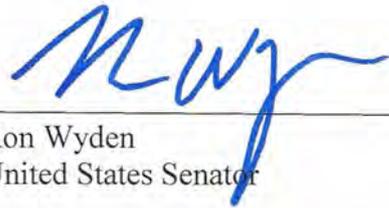
Mazie K. Hirono
United States Senator



Richard J. Durbin
United States Senator



Tammy Baldwin
United States Senator



Ron Wyden
United States Senator



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Tammy Baldwin
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Baldwin:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

In the *2015 Open Internet Order*, we decided not to require arbitration as part of our open internet dispute resolution process and agreed with concerns expressed by stakeholders that mandatory arbitration more frequently benefits the party with greater resources and better understanding of dispute resolution procedure.¹ For example, we agreed with commenters who stated that, “[i]n most cases, consumers must pay filing fees and the arbitrator’s costs, which can amount to thousands of dollars.”² The same commenters also pointed out that the broadband internet access service provider would be able to select the arbitration location, making the process even costlier, and that arbitrated decisions are not reviewable and often not public, precluding consumers from uncovering potential biases in the process.³

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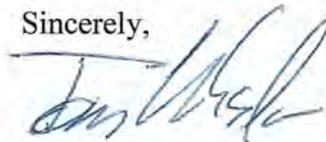
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Page 2—The Honorable Tammy Baldwin

I appreciate your interest in this matter. Your views will certainly be taken into account as the Commission continues to review comments on the NPRM. Please let me know if I can provide further assistance.

Sincerely,

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Blumenthal:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Cory Booker
United States Senate
359 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Booker:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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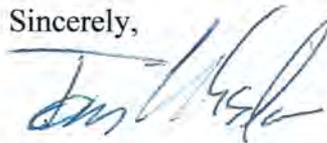
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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Sherrod Brown
United States Senate
713 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Brown:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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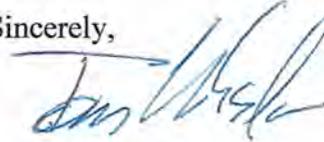
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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Durbin:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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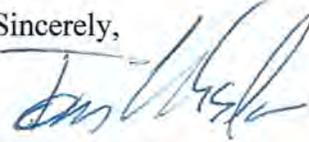
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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Al Franken
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Franken:

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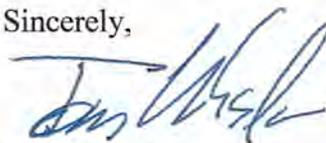
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Page 2—The Honorable Al Franken

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Mazie K. Hirono
United States Senate
330 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Hirono:

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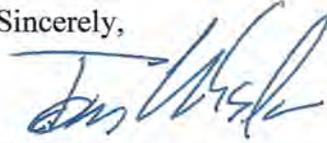
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Page 2—The Honorable Mazie K. Hirono

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THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Markey:

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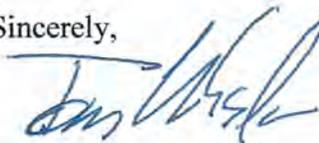
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September 7, 2016

The Honorable Jeff Merkley
United States Senate
313 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Merkley:

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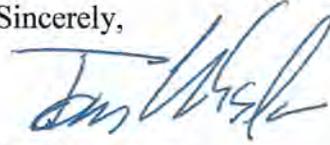
⁴ *Broadband Privacy NPRM* at 88, para. 274 (2016).

⁵ *Id.*

Page 2—The Honorable Jeff Merkley

I appreciate your interest in this matter. Your views will certainly be taken into account as the Commission continues to review comments on the NPRM. Please let me know if I can provide further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler". The signature is fluid and cursive, with a prominent horizontal stroke across the top.

Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Sanders:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

In the *2015 Open Internet Order*, we decided not to require arbitration as part of our open internet dispute resolution process and agreed with concerns expressed by stakeholders that mandatory arbitration more frequently benefits the party with greater resources and better understanding of dispute resolution procedure.¹ For example, we agreed with commenters who stated that, “[i]n most cases, consumers must pay filing fees and the arbitrator’s costs, which can amount to thousands of dollars.”² The same commenters also pointed out that the broadband internet access service provider would be able to select the arbitration location, making the process even costlier, and that arbitrated decisions are not reviewable and often not public, precluding consumers from uncovering potential biases in the process.³

More recently, in the Commission’s Broadband Privacy Notice of Proposed Rulemaking (NPRM), we sought comment on whether to prohibit broadband providers from compelling arbitration in their contracts with customers.⁴ The Commission reiterated concerns brought up by stakeholders in the *2015 Open Internet Order* record, and noted that “[j]ust as customers should not be forced to agree to binding arbitration and surrender their right to their day in court in order to obtain broadband Internet access service, they should not have to do so in order to protect their private information conveyed through that service.”⁵

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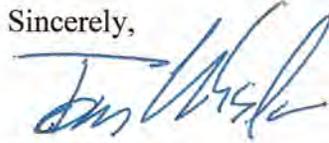
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Page 2—The Honorable Bernard Sanders

I appreciate your interest in this matter. Your views will certainly be taken into account as the Commission continues to review comments on the NPRM. Please let me know if I can provide further assistance.

Sincerely,

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Tom Udall
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Udall:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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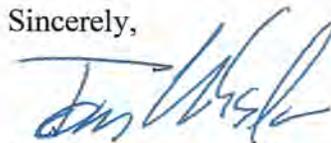
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Page 2—The Honorable Tom Udall

I appreciate your interest in this matter. Your views will certainly be taken into account as the Commission continues to review comments on the NPRM. Please let me know if I can provide further assistance.

Sincerely,

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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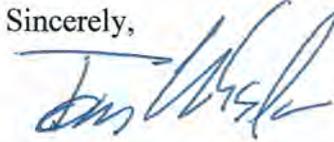
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Page 2—The Honorable Elizabeth Warren

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Sincerely,

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Sheldon Whitehouse
United States Senate
530 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Whitehouse:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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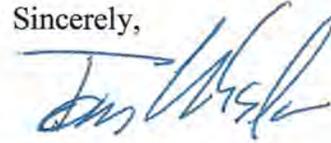
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Page 2—The Honorable Sheldon Whitehouse

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Sincerely,

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Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 7, 2016

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your letter expressing concern about the harmful impact of pre-dispute mandatory (forced) arbitration clauses in consumer contracts for telecommunications services. I share your commitment to consumer protection, and appreciate you raising this important issue. While arbitration can be a useful tool in the dispute resolution toolkit, I agree that it is not suitable for all situations.

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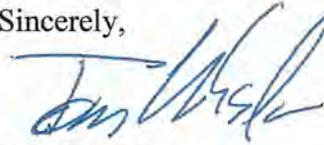
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Page 2—The Honorable Ron Wyden

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Sincerely,

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Tom Wheeler