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 three company practices regulated by the FCC: (1) T-Mobile's representations that it has no contracts when, in fact, customers' month-to-month service contracts are often linked to two-year equipment financing plans, with the result that a significant number of customers enter into contracts with financial penalties for early termination; (2) T-Mobile's representations that it pays customers' early termination fees (ETFs) from the previous carrier when in fact T-Mobile only reimburses eligible customers with a Visa prepaid card after those customers meet a number of requirements, and customers who satisfy these requirements may nevertheless face reimbursement delays or denials; and (3) a pattern of fraudulent enrollment practices that result in unanticipated charges for customers. Change to Win requests that the FCC undertake an investigation of the representations and practices described above and halt the company's illegal conduct.

II. Change to Win

Change to Win ("CtW") 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.

Change to Win conducted 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 the company's Un-Carrier initiative. Of the stores visited, 60.2% were corporate stores, and the remaining 39.8% were third-party-owned.[1] CtW also gathered advertisements 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

[1] 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.

2015 with the Better Business Bureau, the Consumer Financial Protection Bureau, the Federal Trade Commission and the Federal Communications Commission.

III. Background on T-Mobile

T-Mobile US, Inc., which reported annual revenues of over $29 billion in 2014,[2] is the third largest wireless carrier in the U.S. [3] 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.[4] It is also the fastest growing wireless company in the U.S., based on total customer growth in 2014.[5] 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.[6] As of December 2014, T-Mobile sells its phones and service plans at approximately 10,000 T-Mobile and MetroPCS branded retail locations and 52,000 third-party and national retailer locations.[7]

Following several years of declining revenue,[8] T-Mobile has generated strong financial and operational results in the past three years, with total revenues increasing 17% from 2012 to 2014, excluding the revenue added through its acquisition of MetroPCS in 2013.[9] This strong performance has continued in the first three quarters of fiscal year 2015.[10] Statements from company executives suggest that T-Mobile's Un-Carrier branding and marketing strategy, which it introduced in March 2013, have been an important part of its turn-around.[11] 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. The first phase of the initiative– Un-Carrier 1.0 – introduced Simple Choice, which, according to the

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[2] T-Mobile US, Inc., Annual Report (Form 10-K), at 26 (Feb. 19, 2015).

[3] Ryan Knutson and Chelsey Dulaney, *Sprint Falls Behind T-Mobile in Total Connections*, WALL STREET JOURNAL, August 4, 2015.

[4] T-Mobile 2015 Annual Report, *supra* note 2, at 51.

[5] *Id.* at 3.

[6] *Id*.; Press release, T-Mobile US, Inc., T-Mobile US Reports First Quarter 2015 Results (Apr. 27, 2015).

[7] T-Mobile 2015 Annual Report, *supra* note 2, at 8.

[8] *Id.* at 23; T-Mobile US, Inc., Annual Report (Form 10-K), at 22 (Feb. 25, 2014).

[9] T-Mobile 2015 Annual Report, *supra* note 2, 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.

[10] T-Mobile US Inc., Quarterly Report (Form 10-Q), Oct. 27, 2015, at 4.

[11] *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.

company, "eliminated annual service contracts and provided customers with affordable rate plans."[12] 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. 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. Many consumers have cited poor cellular coverage as their reason for cancellation of service, and these customers were either unaware of the EIP penalty until they cancelled service and received the bill for the balance of their phone or mistakenly believed that the lack of coverage exempted them from the EIP penalty.

In January 2014, the company introduced Un-Carrier 4.0, known as Contract Freedom, an offer to pay customers' early termination fees (ETFs) from their previous carrier if they switch to T-Mobile. What T-Mobile only discloses in fine print is that it does not pay the ETF to the previous wireless carrier, but rather reimburses qualified customers who follow the company's reimbursement procedures with a prepaid card. Although T-Mobile's fine print states that reimbursement can take up to eight weeks, consumers have reported that reimbursement can take significantly longer. And some have reported that they never received reimbursement at all even though they followed T-Mobile's requirements.

Consumer complaints also reveal a pattern of fraudulently enrolling customers in unrequested services. Consumers alleged that they were enrolled in add on services such as the JUMP! Insurance and Upgrade program or additional lines without their knowledge and consent. These consumers often said they did not realize they were enrolled in additional services until they received a higher than anticipated bill and called customer service to investigate. A number of customers also reported challenges when they sought to disenroll in these services. The prevalence of fraudulent enrollment complaints appears to be the consequence of T-Mobile's compensation structure and "add on" enrollment targets, which place enormous pressure on employees to enroll as many customers as possible in add-on services.

T-Mobile's deceptive marketing and consumer 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

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[12] T-Mobile 2015 Annual Report, *supra* note 2, at 4.

instability of low-income customers.[13] T-Mobile reports that 48% of its subscribers who financed their phone have a subprime credit rating.[14] T-Mobile also has the highest number of prepaid customers of any carrier – 17.2 million, or 36.1 percent of its subscriber base.[15] 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.

The combination of misleading "no contract" and ETF payment marketing, the problems associated with ETF reimbursement processing, and the pattern of fraudulent enrollment practices demonstrate that T-Mobile has failed to implement transparent, honest and clear procedures for marketing and customer service. As explained below, we believe these practices also violate Section 201(b) of the Communications Act.

IV. T-Mobile's Deceptive and Unfair Practices

T-Mobile has engaged in deceptive representations or practices in violation Section 201(b) of the Communications Act, which states that "any such charge, practice, classification, or regulation [in connection with communication service] that is unjust or unreasonable is hereby declared to be unlawful." Each deceptive misrepresentation or practice is discussed in detail below.

(a) *Misleading "No Contract" Advertising*

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) – a 24-month, no-interest financing agreement − to help customers manage the increased costs of these purchases. 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, a condition that essentially functions as a penalty for early termination of the service agreement. T-Mobile maintains a lock on all phones that makes them incompatible with other wireless carriers until the phones are paid off. Although T-Mobile has not disclosed the percentage of customers enrolled in the EIP, an executive has stated that 91% of postpaid subscribers are eligible and one industry analyst estimated that

[13] For examples of advertisements directed at consumers with low incomes or bad credit, *see* Appendix 1.

[14] Matt Scully & Scott Moritz, *IPhones Go From T-Mobile Loss Leader to New Source of Cash,* BLOOMBERG BUSINESS, Apr. 30, 2015.

[15] 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;
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.

66% of postpaid customers are enrolled.[16] And T-Mobile's marketing of its phones is designed to encourage customers to enroll in the EIP. T-Mobile's website and in-store descriptions of individual phones state in large print just below the full retail price: "$0 upfront"—a reference to the 24-month financing option through the EIP. T-Mobile also requires customers who take advantage of its phone upgrade program JUMP! to enroll in the EIP.[17]

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 annual contracts"; "NO MORE 2-year 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."[18]

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 T-Mobile commercial begins: "Wireless contracts suck. You know it. And we at T-Mobile know it. So we killed the long-term contract."[19] Another commercial compares T-Mobile to Verizon, stating: "Verizon has 2-year contracts. T-Mobile has 0-year service contracts. #neversettleforVerizon."[20] 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.

Despite the "no contract" marketing, T-Mobile's EIP is a two-year contract with a penalty for early termination, similar to the traditional two-year service agreement. 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."[21] 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**

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[16] T-*Mobile US (TMUS) Q1 2015 Results – Earnings Call Transcript*, SEEKING ALPHA, Apr. 28, 2015**,** *available at:* http://seekingalpha.com/article/3113156-t-mobile-us-tmus-q1-2015-results-earnings-call-transcript?part=single; Coral Garnick, *T-Mobile's Phone Financing Plan Draws Complaint*, SEATTLE TIMES, Dec. 11, 2015.

[17] 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 Jan. 25, 2015).

[18] For examples of "no contract" advertisements, *see* Appendix 2.

[19] For examples of "no contract" broadcast advertisements, *see* Appendix 3.

[20] *Id.*

[21] T-Mobile, Equipment Installment Plan (EIP), https://support.t-mobile.com/docs/DOC-1674 (last visited Jan. 25, 2016); *see also* Appendix 4 for T-Mobile's informational web pages on EIPs.

balance of the contract immediately due and payable."[22] It is also disclosed in the in-store and website descriptions of each phone offered by T-Mobile.[23] The effect of this contract term is that a large percentage 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. By comparison, a smartphone at T-Mobile can cost over $700.[24] 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[25]—it may be more expensive to break an EIP agreement with T-Mobile than it was to break a two-year service agreement.

T-Mobile's marketing has misled many customers into believing that they faced no financial penalty for terminating their service when in fact they were billed for the balance of the EIP. Of the nearly 5500 consumer complaints about T-Mobile, 315 reported misleading marketing about T-Mobile's no contracts claims or misunderstanding about the EIP penalty associated with termination of service.

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 and realized she owed nearly $500 for the EIP balance. Her complaint states:

> 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

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[22] *See* Appendix 5 for T-Mobile's EIP contract.

[23] *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 Jan. 25, 2016).

[24] *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 Jan. 25, 2016); 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 Jan. 25, 2016).

[25] 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/.

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.[26]

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!![27]

Many of the customers charged with the EIP penalty had cancelled their T-Mobile service because of poor coverage. Of the 315 consumer complaints about T-Mobile's no contract claims, 71 – 23% of the total – also reported coverage problems. Many of the customers who cancelled service due to coverage issues were unaware of the EIP penalty until they received their final bill or they mistakenly believed that the coverage problems exempted them from paying the EIP penalty. For example, one complaint submitted to the FCC on June 10, 2015 states:

Hello. We are having trouble with our T-Mobile service. We have been trying very hard to keep our service even after continued dropped calls not to mention not having a signal to make a call in our home. We have been on them for seven months in regard to these same issues and have done everything they have asked us to do, to the signal boosters, to the wi-fi monitors, and got newer phones to have wi-fi calling in hopes of having better service and nothing is changing. We are within the T-Mobile coverage so we are not sure why this is an issue. We need our phones. I work in a hospital and there have been times they cant get ahold of me and this isn't acceptable. We have no family here and my son has had a hard time getting ahold of us as well. After our continued efforts to stay with t-mobile we need reliable service and T-Mobile is telling us we cant give back the phones and we are going to have to pay them $1700 if we leave them. Please help us. Thank you for your time.

Another complaint submitted to the FCC on May 13, 2015 states:

I joined T-Mobile 3 months ago. My service has since stopped working properly. They won't allow me to return our phones to cancel out the balance we have on the equipment. They want me to pay over $1k for equipment that is essentially worthless. I've experienced dropped calls, poor quality calls where I can't hear the person or they can't hear me, calls that go straight to voicemail without the phone ringing, text messages that are received hours or days later, and texts that aren't received at all. After multiple calls, their technical people have been unable to fix the issue. They want to replace my phone with a refurb, but want me to continue to pay the new phone price. They don't want to

[26] *See* Appendix 6 for additional consumer complaints about "no contract" advertising.
[27] *Id.*

> give any kind of discount off the original price of the equipment and they want me to pay $5 warranty fee. Also, my husband is having issues with his phone as well. I highly doubt it's the phones, I think it's their service. I contacted their customer relations department. . . . They simply cited their 14 day buyer's remorse policy and told me to call the tech department again. It's not buyer's remorse. Their service simply doesn't work. . . . They shouldn't be allowed to charge us for equipment for service that doesn't work.

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."[28] 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 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."[29] 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 FCC has found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under section 201(b). In Touch-Tel USA, Inc.,[30] for example, the Commission found that a prepaid calling card company violated section 201(b) by deceptively representing that card buyers could use hundreds of minutes to make calls to foreign countries for just a few dollars when in fact buyers could only use only a fraction of those minutes for calls due to a variety of fees and surcharges that quickly depleted the card. The fees and surcharges, which were disclosed in fine print, contradicted the express and much more prominent claims in the main portion of the marketing materials. The FCC held that the marketing claims were deceptive because the fee and surcharge disclosures were not clear or conspicuous in relation to the claim of total available minutes displayed in large print in marketing materials.[31]

Here, as well, T-Mobile advertising is aimed at convincing customers that it has no contracts and, by extension, no termination fees, when in fact a large percentage of its customers will face an EIP balance larger than the typical termination fee if they cancel service. T-Mobile's fine print disclosures about its EIP do not remedy its deceptive advertising campaign. The FCC should investigate T-Mobile's misleading "no contract" claims and their

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[28] *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.

[29] *Id*. at 2.

[30] Touch-Tel, USA, LLC *Notice of Apparent Liability for Forfeiture,* FCC 11-132 (2011), ¶¶ 6-9.

[31] *Id.* ¶ 9.

impact on T-Mobile customers and bring an enforcement action to halt these practices in the future.

(b) Misleading ETF Payment Advertising and Unfair ETF Payment Practices

In January 2014, T-Mobile announced Un-Carrier 4.0, known as Contract Freedom, a permanent offer to pay ETFs charged by other carriers if customers switched to T-Mobile. In March of 2015, T-Mobile extended the offer to pay customers' ETFs or any balances on their EIPs with other carriers and remains the only wireless carrier in the industry with this standing offer. The company has attributed a significant amount of its growth since January 2014 to the ETF and EIP buyout offers and the program has become a central component of the company's marketing.[32]

The company has aggressively promoted its offer to pay off other carriers' ETFs or EIPs, using hashtags (#DitchandSwitch) and catchy phrases ("Switch without a Hitch"), and directing consumers to a website, ditchandswitch.com.[33] But advertisements highlighting the ETF payment mislead customers about both the method of payment and what is required of customers to receive the benefit of the offer. Advertisements across various media platforms tout the offer to pay customers' ETFs without disclosing that it is actually an offer to reimburse the payment. A Facebook advertisement, which is typical of the company's messaging, has a picture of a fist bump and reads: "Switch to us, trade in your device from those other guys and we'll pay your break-up fees. We got you."[34] In a broadcast advertisement, the company announces, "Now T-Mobile will pay off your phone. Stuck in a contract? We've got you covered there, too."[35] The company also promotes the program heavily on Twitter with tweets like the following: "Last year, we gave you #ContractFreedom. As of last month, we've paid 1.8M ETFs for customers. BUT…We Won't Stop."

In-store advertisements also suggest that customers can switch to T-Mobile without having to pay their previous carrier's termination charges. Of the 176 stores surveyed by Change to Win, 97.2% had signs or displays advertising T-Mobile's offer to "buy out" or pay customers' ETFs or EIPs. One typical sign, which was displayed in a T-Mobile store window in in Roseville, Minnesota in June 2015, states: "SWITCH WITHOUT A HITCH WE'LL PAY OFF YOUR PHONE" with small print at the bottom stating "with a trade-in credit and VISA Prepaid Card

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[32] *Transcript of Earnings Call, T-Mobile US, Inc. – Q1 2014*, SEEKING ALPHA, May 1, 2014, *available at* http://seekingalpha.com/article/2182423-t-mobile-us-management-discusses-q1-2014-results-earnings-call-transcript ("Q1's adjusted EBITDA of $1.1 billion reflects strong business momentum from the investment we have made in significant customer growth in the ETF offer. We believe this tradeoff is clearly in our favor, given the high quality of these new customers and the benefit of adding them in Q1 for the full 2014 EBITDA.").

[33] *See* Appendix 8 for T-Mobile's informational webpages about the ETF.

[34] For examples of ETF payment advertisements, *see* Appendix 9.

[35] *See* Appendix 3 for this broadcast advertisement and additional examples of T-Mobile's ETF buyout broadcast advertisements.

when you trade-in your device." Similar advertisements await customers inside the stores. A T-Mobile store in Los Angeles displayed a sign in June 2015 with the following text: "WE'LL BUY OUT YOUR SERVICE CONTRACTS" with similar fine print at the bottom.[36]

T-Mobile imposes a numbers of requirements for ETF reimbursement. Customers must purchase a new device from T-Mobile, then submit their final bill from the previous carrier to T-Mobile and trade in their old phone within two months of signing up for service with T-Mobile. T-Mobile then processes the reimbursement which, according to T-Mobile's fine print, can take up to eight weeks, and reimburses the customer with a prepaid Visa card, which is not redeemable for cash and expires after one year.

T-Mobile has also limited eligibility for the reimbursement, another fact that is not adequately disclosed. Only in small print does the ETF and EIP buyout website (ditchandswitch.com) disclose that "qual'g credit, qual'g service" are required; further digging on the website reveals that customers "must be switching from a postpaid plan on a contract with another carrier" and must "purchase a new device with T-Mobile on a qualifying postpaid Simple Choice plan."[37]

Employees in both retail stores and call centers have expressed concern that the company's practices on reimbursement make their jobs more difficult and in some cases make it hard to achieve metrics that impact compensation. According to Change to Win's interviews with T-Mobile store employees, T-Mobile's misleading marketing about its ETF payment program is often not corrected at the point of sale. Employees have reported that T-Mobile does not require employees to explain the ETF payment program to new customers.[38] Nor does T-Mobile require employees to provide a written explanation of the ETF payment process when they sign up for wireless service in the store.[39] The employees' accounts are supported by Change to Win's own shopping experiences at T-Mobile, during which we requested written ETF reimbursement information, were told that none was available, and were directed to the website switch2tmobile.com, which explains the requirements for requesting ETF reimbursement from T-Mobile. Store employees also report that many customers are confused about the ETF payment process or complain in the stores when they have not received full reimbursement.[40]

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[36] For additional examples of advertisements claiming that T-Mobile will pay its customers' ETFs or EIPs, *see* Appendix 9.

[37] T-Mobile, Switch Carriers without Early Termination Fees, *available at* http://www.t-mobile.com/offer/switch-carriers-no-early-termination-fee.html (last visited Jan. 25, 2016). This is the landing page for www.ditchandswitch.com. *See* Appendix 8 for a copy of this webpage.

[38] Interview with T-Mobile retail employee on August 26, 2015. To preserve employees' confidentiality, employee names and locations are not included in this submission.

[39] Interview with T-Mobile retail employee on August 26, 2015.

[40] Interview with T-Mobile retail employee on August 26, 2015; interview with T-Mobile retail employee on July 3, 2015.

Call center employees likewise reported to Change to Win that customers are frequently confused or simply wrong about how the ETF payment program works; some mistakenly believe that T-Mobile makes a direct payment to their previous carrier while others do not understand what is required to qualify for reimbursement.[41] Call center employees believe that sales representatives may not explain the ETF reimbursement program to new customers.[42] They also report that the two-month deadline for customers to submit their final bill from the previous carrier represents an additional obstacle to reimbursement for customers who do not understand the program in the first place.[43]

Change to Win's analysis of over 5,500 consumer complaints indicates that some consumers do in fact feel misled about the terms of the ETF payment program. Two hundred and eighty-two of the consumer complaints−nine percent of the total reviewed for the period when Carrier Freedom existed−were about the ETF payment program. And 60 percent of customers with ETF payment program complaints said they received conflicting information from T-Mobile about their problem, while 35 percent encountered delays in receiving a response to their problem, either because their complaint was transferred to multiple departments or because it was not resolved with one phone call. One consumer, for example, thought her ETF had been paid directly to her previous carrier until she received a delinquency notice from the previous carrier. The complaint states:[44]

> upon activating service with tmobile I was told that my termination fee with previous carrier would be paid. On May 1st, 2015 a letter, from the [previous carrier], was sent to me stating that my delinquent account, with [previous carrier], has been turned over to the collections agency. When I called [previous carrier] to see what the charge was I was told it was for the early termination fee that was never received. Then I called tmobile and spoke with a rep and she said that the sales person I made the purchases with was supposed to inform me that I had to go online and input information then take a bill to tmobile and then they would pay it. however the sales person ,PJ, failed to tell me this information. he said once my number was ported over they would receive my early termination fee amount and pay it off. the rep from tmobile also said that since the information was not done that day for that termination fee there was nothing she could do.

In addition to the deceptive ETF advertising, customers have complained that T-Mobile has unreasonably delayed reimbursement or denied it improperly even when they followed the ETF reimbursement procedures. Given the dollar value of customer ETFs and EIPs – often over $200 per line – the stakes are high for consumers who face delays or are denied

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[41] Interview with T-Mobile call center employee on June 18, 2015; interview with T-Mobile call center employee on June 16, 2015.

[42] Interview with T-Mobile call center employee on June 16, 2015.

[43] Interview with two T-Mobile call center employees on June 18, 2015.

[44] *See* Appendix 6 for additional consumer complaints about ETF advertising or ETF reimbursement problems.

reimbursement. The following complaint made to the Better Business Bureau on June 15, 2015 is typical:

> I have submitted materials for the reimbursement for early termination fees and keep getting messages that my request is denied because the charges are not clear. I have sent perfectly legible copies (via certified mail, which was received) of my [previous carrier's] wireless bill with the charges clearly visible. I am certainly not the only one who has switched from [previous carrier] and I'm sure T-Mobile is familiar with their paperwork. I have been given the run around to the extreme and I want my fees reimbursed NOW.

Another complaint to the Better Business Bureau on May 11, 2015 states:

> As part of changing to T-Mobile from [previous carrier], T-Mobile promotion was to pay termination fees. The store on Main street in Buffalo filed paperwork for the ETF at [previous carrier], same week I changed. it was supposed to take 4-6 weeks. it is now 5 months later and I am still getting a run around.

And yet another complaint to the FCC in May 2015 states:

> On November 28, 2014 my husband and myself . . . decided to take advantage of an ad by TMobile to have our disconnection fees with Verizon paid and switched from Verizon to T- Mobile with the promise of lower bills and our contract fees for getting out of the Verizon contract being paid by T-Mobile in the form of reimbursement. We were told to wait for our final bill from Verizon then submit a copy of it for the reimbursement. We did so when we received the final bill with disconnection charges in December of 2014 via the T-Mobile site that requires you to upload a scanned image of the document to their site rather than emailing.

The consumer then reported that she and her husband had called T-Mobile several times over a six month period to inquire about the reimbursement and were told that it was still being processed. Finally, in May 2015, a T-Mobile representative told her the company had not received the required reimbursement documentation from her and that "it is passed the time frame where they can refund the money, but for months every time we called they said it was on the way and did not tell us that they had no record of it being submitted . . ." The consumer also reported that the early termination fee from Verizon was negatively affecting her credit.

The requirement to purchase a new phone from T-Mobile to qualify for reimbursement undoubtedly increases the number of customers who enroll in the EIP to finance the new phone purchase, thus locking them into a long-term contract, as described above. If a customer later finds out she does not qualify for reimbursement of the early termination fee from her previous carrier, she must bear the cost of paying off her previous carrier while also continuing service with T-Mobile.

The misrepresentations about ETF and EIP reimbursement payments fall hardest on low-income consumers, for whom the substantial wait time for reimbursement, the inconvenience of being paid by prepaid Visa card, and the possibility that they may not qualify for reimbursement or may be unfairly denied reimbursement after incurring large expenses may create a major burden.

T-Mobile's representations about and procedures for ETF reimbursement violate Section 201(b) of the Communications Act because they are unreasonable and unjust practices. In particular, T-Mobile's advertising about the ETF payment process is misleading because it suggests that the ETF will be paid directly to the previous carrier and does not adequately disclose the various requirements for and limitations on reimbursement. And the ETF reimbursement process is unjust because it has resulted in unreasonable reimbursement delays or unfair denials for several consumers. For these reasons, the FCC should investigate T-Mobile's representations about and procedures for ETF reimbursement and take enforcement action to halt these deceptive representations and unfair consumer practices.

(c) Fraudulent enrollment

The consumer complaints also point to a practice of fraudulently enrolling customers in services without their consent. Over ten percent of the 5500 complaints reviewed by Change to Win were about fraudulent enrollment. Forty-five percent of these complaints alleged unauthorized enrollment in add-on services, such as the JUMP insurance plan or an unlimited data plan. And ten percent of the fraudulent enrollment complaints related to activation of an account without the customer's consent. Several customers also reported encountering problems when attempting to disenroll from these services.

In a complaint to the FCC on May 26, 2015, one customer stated:[45]

> Trouble started from the beginning. I asked for cheapest possible rate for up to 5 line[s] and least expensive smartphones. I insisted I did not want to finance them, but sales rep said I won't qualify for discount / rebate which is not true. Not only did he put me on higher than I wanted plan, he also added insurance to the lines without asking me. I had to call 3 times to get it sorted out and adjusted, only to find out that I have been overpaying and could have paid less for the phones if I paid up front.

Two other customers note that they had been enrolled in JUMP insurance without their authorization on more than one occasion. A complaint to the FCC on March 8, 2015 states:

> T-Mobile signed me up for JUMP! Insurance & Warranty without my permission. I called last month to have the service stopped and the charges refunded. The charge were refunded this month, but the service has continued. I have dealt with this exact issue before with T-Mobile, and it took months of calls to T-Mobile customer and a complaint to the FCC to finally end the JUMP! service. Now that we purchased a new phone, the process is repeating itself.

[45] *See* Appendix 6 for additional consumer complaints about fraudulent enrollment.

In another complaint, the customer notes that not only has he dealt with fraudulent enrollment in JUMP insurance on more than one occasion but that his friends have complained of the same conduct. The complaint to the FCC on May 8, 2015 states:

> I went to add a line to my existing account through T-Mobile. Before activating a line, I clearly told the representative that I don't want any type of insurance/jump plan or additional data on the line. Even after mentioning that the representative added jump plan and additional 4.5 GB data and it costs $10 for each feature. The representative didn't even tell me that she had added that. I reviewed the paper work and I saw those features on the line. I told the representative to remove those and she told me I won't be charged for this and I clearly knew that I'll be charged for this. I had to talk to T-Mobile customer care to remove those additional features. This has happened before and they won't just stop doing unauthorized changes on the account. It happened to my friends also and to me like 3-4 times already. Please do something about this. They always do stuff without our acknowledgement.

We believe that the prevalence of these complaints suggests that the problem stems from corporate policies that incentivize enrolling customers in services without their consent. In particular, retail sales representatives face significant pressures to boost add-on sales, in the form of commission structure and evaluation metrics. First, employees report that the majority of their commission (60 to 75 percent) is based on the sale of Value Added Services (VAS), while only 25 to 40 percent is based on the sale of rate plans for postpaid customers.[46] Second, the company requires retail employees to hit very high metrics for the percentage of customers who sign up for various add-on features. Employees reported targets for features, such as insurance, paid data and international calls, of between 80 percent and 90 percent of all postpaid activations.[47] Employees are also expected to meet a specific dollar value in sales of added features, from $18-20 of monthly recurring charges per line, on average.[48] If they do not meet these targets, employees face discipline and the possibility of being fired.[49] These targets likely increase the pressures to enroll customers in services they do not request or need, and some employees report explicit instructions from their management to enroll customers in service without their consent or knowledge.[50]

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[46] **Interview of retail employee on Sept. 22, 2015 (p.23**); interview of retail employee on July 16, 2015; interview of retail employee on August 26, 2015.

[47] Interview of retail employee on July 14, 2015; interview of retail employee on August 26, 2015; interview of retail employee on July 3, 2015; interview of retail employee on September 22, 2015.

[48] Interview of retail employee on July 3, 2015; interview of retail employee on June 23, 2015; interview of retail employee on Sept. 22, 2015.

[49] Interview of retail employee on July 3, 2015; interview of retail employee on September 22, 2015; interview of retail employee on July 14, 2015.

[50] Interview of retail employee on July 14, 2015; interview of retail employee on September 22, 2015.

Call center employees also report that they receive calls from many customers who have been enrolled in add-on services without their knowledge or consent. One employee said:

> People often thought they were getting 1GB plan but end up with 3GB plan. Stores say "we had to add this" or say "it's free." Both 3G and JUMP are added deceptively or without customer permission – get these calls about 3-4 times per day. With 3G add[itions], stores say it is "promotional – you can get two months for free" (which is a lie). With JUMP, it is often added without the customer's knowledge.[51]

Other call center employees reported similar patterns and believe that this conduct is tied to the commission structure in retail stores.[52] Employees also report activation of lines without customer knowledge, with one long-time call center worker stating she receives one to two calls per day "where a dealer activated [the] line when they checked credit, then set up paperless billing. The customer is unaware of the line's existence. It closes for nonpayment after 2.5 months, then the customer gets a paper bill and calls up angry. They think they're signing a document to check credit but they're actually opening an account."[53]

A corporate policy that results in "unreasonable charges" violates Section 201(b) of the Communications Act. "The Commission has found that the inclusion of unauthorized charges and fees on consumers' telephone bills − or 'cramming' − is an 'unjust or unreasonable' practice under Section 201(b)."[54] In other contexts, the Commission has also expressed its disapproval of employee compensation structures that incentivize conduct that fraudulently inflates payments to the provider. For example, in a rulemaking designed to detect and prevent fraud and abuse in the provision of video relay services, the Commission prohibited video relay service provider arrangements that involved tying minutes or calls processed by a communications assistant to the compensation paid to the communications assistant, because such an arrangement incentivized inflating the number and length of calls and thereby fraudulently increasing payments to the provider.[55] Here, as well, T-Mobile's compensation structure incentivizes conduct that fraudulently increases its customers' bills; the large number of consumer complaints about fraudulent enrollment suggest that this compensation structure is working as intended. For these reasons, the FCC should investigate T-Mobile's policies and practices for add-on services enrollment and bring enforcement action so that the company halts its deceptive practices in the future.

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[51] Interview of call center employee on June 18, 2015.

[52] Interview of call center employee on June 16, 2015; interview of call center employee on June 17, 2015; interview of call center employee on July 18, 2015.

[53] Interview of call center employee on June 16, 2015.

[54] Net One International, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 14-100, 29 FCC Rcd 9046 ¶ 5 (2014).

[55] Structure and Practices of the Video Relay Service Program*, Report and Order and Further Proposed Notice of Rulemaking,* FCC 11-54 26 FCC Rcd 5545 ¶ 23 (2011).

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. Additionally, its advertising about ETF payments misleads consumers into believing that T-Mobile pays the fee directly to the previous carrier and fails to adequately disclose the various limitations on and requirements for ETF reimbursement. And even when customers follow T-Mobile's ETF reimbursement requirements, many face delays or denials. Finally, T-Mobile's sales metrics and commission policies for retail employees incentivize fraudulently enrolling customers in add-on services, resulting in hundreds of consumer complaints about charges for unauthorized services.

The deceptive and unfair consumer practices described in this submission suggest that T-Mobile has adopted certain corporate policies that prioritize sales growth and profit over adherence to the law. For these reasons, CtW respectfully requests that the FCC investigate the practices described in this complaint and bring enforcement action against T-Mobile so that it halts its deceptive and unfair consumer practices and puts in place procedures that will prevent such practices in the future.

Appendices

1. Advertisements directed at consumers with low incomes or bad credit
2. “No Contract” advertisements
3. Broadcast and video advertisements about “no contract” and ETF buyout [flash drive]
4. T-Mobile informational webpages about EIPs
5. T-Mobile’s “Retail Instalment Obligation”
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 informational web pages about the ETF buyout offer (“ditchandswitch.com” and “switch2tmobile.com”)
9. ETF buyout advertisements
10. Terms of prepaid Visa card used as ETF reimbursement