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 that likely violate Washington's Consumer Protection Act and a Modified Assurance of Discontinuance entered into with your office.

This submission focuses on four company practices: (1) T-Mobile's no contract marketing, the subject of your office's prior enforcement action, which is deceptive because T-Mobile has linked its month-to-month service contracts to two-year equipment financing plans, with the balance on the financing plans becoming immediately due if customers cancel service; (2) T-Mobile's early termination fee pay off advertising, which is misleading because T-Mobile does not pay termination fees directly to the previous carriers but rather reimburses qualified customers who follow its reimbursement procedures with a prepaid credit card up to eight weeks after the reimbursement paperwork is submitted, and the early termination fee program's poor implementation, which has resulted in unfair reimbursement delays and denials; (3) a pattern of fraudulently enrolling customers in additional paid services, such as an insurance plan or an unlimited data plan; and (4) a pattern of unfair debt collection practices, such as giving customers little or no notice before referring a debt to collections and providing collections agencies with inaccurate information. T-Mobile's use of an arbitration clause in its wireless contracts exacerbates these problems by erecting significant barriers against injured customers seeking compensation.

T-Mobile's deceptive consumer practices have caused harm to consumers nationwide, including consumers residing in Washington state. Our review of consumer complaints about T-Mobile collected by the Federal Trade Commission and Federal Communications Commission revealed that over one hundred Washington state residents have been injured by the deceptive practices described above and took the initiative to seek the aid of regulators. And, according to data received from your office, the number of complaints filed with the Washington State Attorney General's Office against T-Mobile in the past few years far exceeded the number of complaints filed against its three largest competitors.

Your office has held T-Mobile accountable in the past for its deceptive consumer practices. Change to Win requests that your office once again investigate T-Mobile's injurious consumer practices and take enforcement action against the company to halt its 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 $32 billion last year,[1] is the third largest wireless carrier in the U.S.[2] 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.[3] It is also the fastest growing wireless company in the U.S., based on total customer growth in 2015.[4] 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.[5] As of December 2015, T-Mobile sells its phones and service plans at approximately 12,000 T-Mobile and MetroPCS branded retail locations and 68,000 third-party and national retailer locations.[6]

Following several years of declining revenue, T-Mobile has generated strong financial and operational results in the past three years, with total revenues increasing 23 percent from 2013 to 2015.[7] Statements from company executives suggest that T-Mobile's Un-Carrier branding and marketing strategy, which it introduced in March 2013, has been a central part of its turn-around.[8] The first phase – Un-Carrier 1.0 – introduced Simple Choice, which "eliminated annual service contracts and simplified the lineup of consumer rate plans . . ."[9] A subsequent phase introduced in January 2014 as Un-Carrier 4.0, otherwise known as Contract Freedom, is an offer to pay customers' early termination fees (ETFs) from their previous carrier when they switch to T-Mobile. As discussed in detail below, T-Mobile's marketing of both Un-Carrier initiatives is misleading and harmful to consumers.

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[1] T-Mobile US, Inc., Annual Report (Form 10-K), at 23 (Feb. 17, 2016).
[2] Ryan Knutson and Chelsey Dulaney, *Sprint Falls Behind T-Mobile in Total Connections*, WALL STREET JOURNAL, August 4, 2015.
[3] T-Mobile 2016 Annual Report, *supra* note 1, at 48.
[4] *Id.* at 3.
[5] *Id.*; Press release, T-Mobile US, Inc., T-Mobile US Reports First Quarter 2015 Results (Apr. 27, 2015).
[6] T-Mobile 2016 Annual Report, *supra* note 1, at 7.
[7] *Id.* at 23.
[8] *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 (last visited June 3, 2016).
[9] T-Mobile 2016 Annual Report, *supra* note 1, at 6.

Compounding T-Mobile's deceptive marketing of its wireless service is evidence that T-Mobile engages in deceptive and unfair consumer practices after customers have enrolled in service with the company. Change to Win's review of consumer complaints collected by the Federal Trade Commission and the Federal Communications Commission revealed a pattern, both nationwide and in Washington state, of enrolling customers in service without their consent and sending customers to collections with little or no prior notice or based on inaccurate information. The large number of consumer complaints in these areas suggests that T-Mobile's corporate policies and practices are to blame for the harm to consumers.

T-Mobile's deceptive and unfair consumer practices are particularly harmful to low-income customers and customers with poor credit, population 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.[10] As a result, T-Mobile reports that 48 percent of its subscribers who financed their phone have a subprime credit rating.[11] T-Mobile also has the highest number of prepaid customers of any carrier – 17.2 million, or 36.1 percent of its subscriber base.[12] Prepaid customers generally have worse credit quality than postpaid subscribers, making that figure another measure of the company's reliance on customers with subprime credit.

As discussed in detail below, we believe T-Mobile's misleading marketing of its Un-carrier initiatives, as well as the pattern of fraudulent enrollment and unfair debt collection practices, demonstrate that T-Mobile has failed to implement transparent, honest and clear procedures for marketing and customer service, and that these failures have resulted in real harm to consumers.

IV. Summary of Evidence and Data Analysis

Change to Win has conducted extensive research on T-Mobile's advertising practices over the past year and a half. This research consisted of a review of T-Mobile's website and online advertisements, as well as in-store signage from over two hundred stores. In 2015, CtW researchers visited 176 stores in California, Maryland, Minnesota, and New York to document in-store signage related to its Un-Carrier initiative. CtW supplemented this work with visits to 36 of the 90 T-Mobile stores in Washington state in May and June of this year. Our review of advertising, the results of which are described in detail in the following section, revealed that T-Mobile's advertising of Un-carrier 1.0 ('no contract' advertising) and Un-carrier 4.0 ('ETF payoff'

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[10] For examples of advertisements directed at consumers with low incomes or bad credit, *see* Appendix 1.
[11] Matt Scully & Scott Moritz, *IPhones Go From T-Mobile Loss Leader to New Source of Cash,* BLOOMBERG BUSINESS, Apr. 30, 2015.
[12] 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.

advertising) is ubiquitous across all of its advertising platforms and misleads consumers about material aspects of both programs. In each of the 36 stores visited, we found at least one no contract or ETF payoff advertisement.

In addition to our review of T-Mobile's advertising practices, we collected and analyzed three different sets of Washington-specific data to determine whether T-Mobile's consumer practices are causing consumers harm: (1) a dataset of consumer complaints, which were provided by the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC); (2) data on consumer complaints by category provided by the Washington State Attorney General's Office; and (3) an online survey that targeted Washington residents.

The first set of data is an aggregation of thousands of consumer complaints about T-Mobile filed since January 2013 and collected by the FTC and FCC.[13] The data set aggregates data from both these agencies over slightly different time frames:

1. FTC: This agency collected 111 consumer complaints by Washington residents about T-Mobile over the time period January 2013 through March 3, 2016 from several sources, including complaints submitted directly to the agency as well as complaints the agency was forwarded from the Consumer Financial Protection Bureau (CFPB), some local offices of the Better Business Bureau (BBB), and some state Attorneys General offices.[14]
2. FCC: This agency compiled 227 complaints it received about T-Mobile over the time period January 2013 through June 18, 2015.

Of the more than 9,500 complaints received nationwide from these sources about T-Mobile from January 2013 through March 3, 2016, we identified 338 complaints as coming from Washington state residents. Figure 1 below provides the complaint counts per year for 2013 through 2015 as well as for the first two months of 2016. The number of complaints from Washington state residents increased dramatically in 2015, more than doubling the number in 2014.

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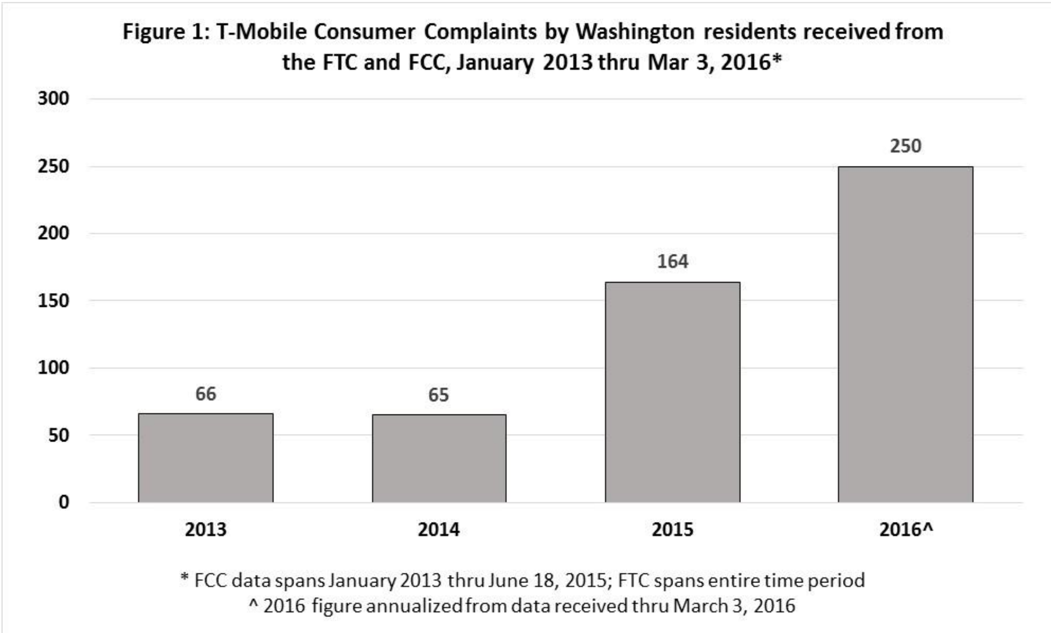
[13] We received this data by submitting FOIA requests to the FCC and the FTC. We chose these two federal agencies because the FCC regulates wireless providers and the FTC regulates advertising.

[14] Over the January 2013 to March 3, 2016 time period, in addition to the complaints received by the agency itself, the FTC received complaints by Washington residents from the following regulatory and other entities: the Consumer Financial Protection Bureau, the California Attorney General, the Washington State Attorney General, and the local BBB offices in Saint Louis, MO and DuPont, WA.



Further, if the pace of complaints in the first two months and three days of 2016 continues through the end of the year, T-Mobile will end the year with an estimated 250 complaints filed against it, which would be a nearly four-fold increase from just three years earlier. This number is even starker considering that the 2016 figures do not include complaints received by the FCC. Several of the complaints from Washington state residents are summarized or quoted in the following section.

Our second set of data consists of the number and category of complaints filed with the Washington State Attorney General's office from January 2013 through May 10, 2016 about T-Mobile or one of its three largest competitors: AT&T, Verizon and Sprint.[15] As shown in Figure 2 below, your office received 1,849 complaints about T-Mobile over the nearly three and a half year time period, significantly more than each of the three other wireless carriers and thirty percent more than Verizon, the carrier with the second largest number of complaints (1419). The large number of complaints against T-Mobile is especially concerning when one considers that T-Mobile has significantly fewer customers than Verizon or AT&T nationwide.[16]

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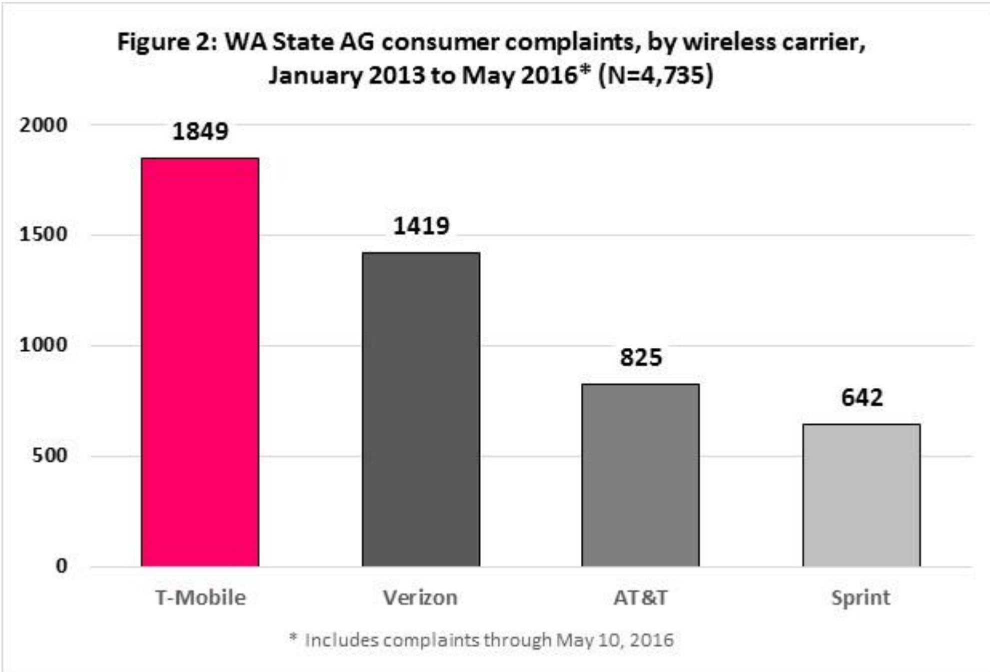
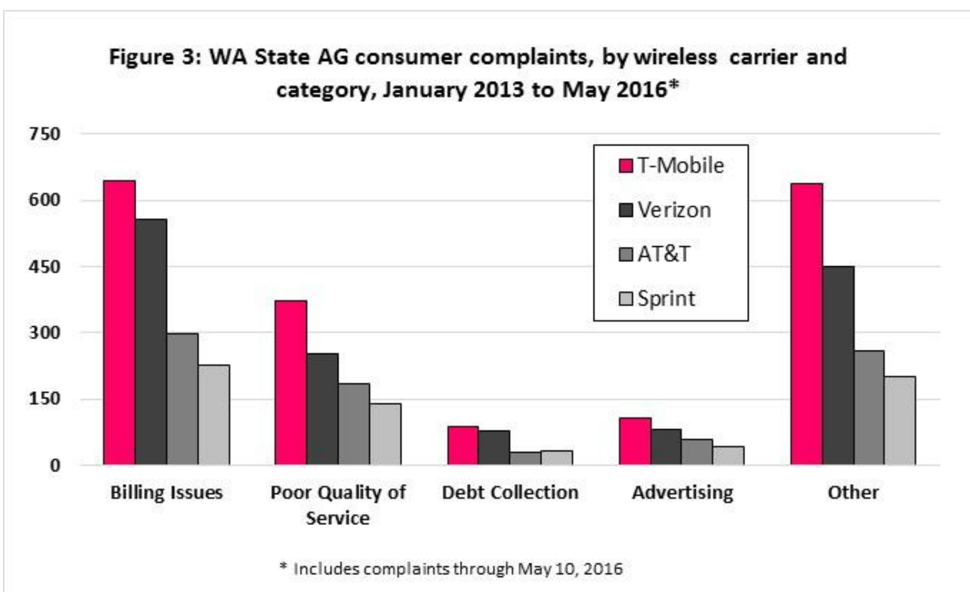
[15] A single complaint can be categorized in a maximum of two categories, which means that we cannot calculate the precise number of complaints. Due to the data structure, our analysis treats the data as if each complaint count under each category is unique; we use the term 'complaint' using this assumption. There is no a priori reason to believe that this necessary assumption biases the data in any way among the different carriers.

[16] T-Mobile reports that its national market share increased from 10% in 2012 to 17% at the end of 2015. AT&T's market share was 33% in 2012 and 34% at the end of 2015, while Verizon's was 33% in 2012 and 32% at the end of 2015. Rich Karpinski, *Un-carrier at three years: assessing T-Mobile's disruptive impact*, 451 RESEARCH, Mar. 28, 2016, *available at*: https://newsroom.t-mobile.com/content/1020/files/NEWImpactReport.pdf.



In addition to analyzing the total number of complaints for each wireless carrier, we analyzed the number of complaints by category. Based on the descriptions of the 61 categories of complaints provided by your office, we aggregated the categories into the following five larger categories: advertising; billing issues; debt collection; poor quality of service; and other.[17] Similar to the pattern for all complaints, T-Mobile has the most complaints in every single category, as shown in Figure 3 below.

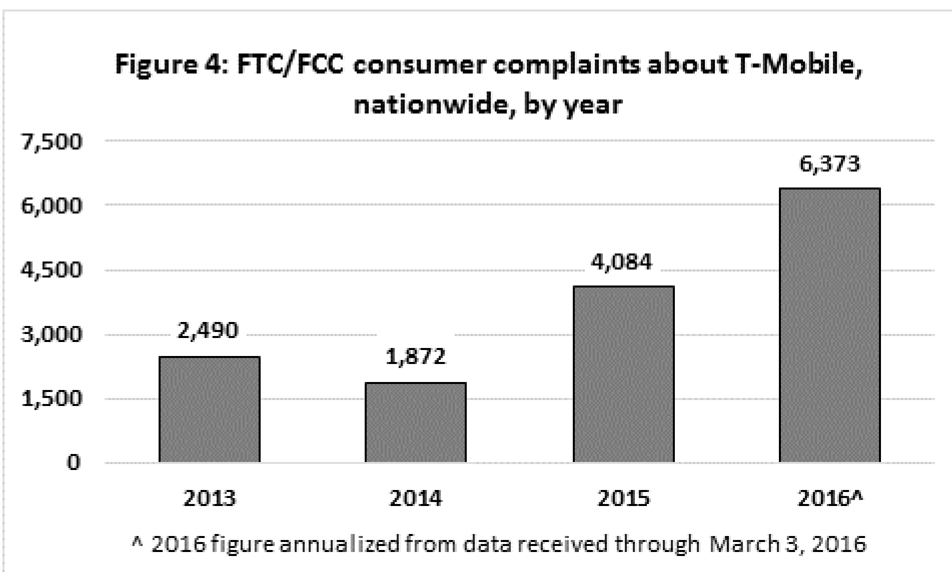


[17] For a table outlining our aggregation, *see* Appendix 2.

Analyzing the complaints about T-Mobile, billing issues are the most common with one in three complaints (35%) focused on these issues. And one in five complaints were about poor quality of service. The proportion of T-Mobile complaints on advertising and debt collection were five and six percent, respectively. Other issues constituted one-third of complaints (34%).

Our third set of data is the results of an online poll we conducted from May 9 through May 27, 2016 of former or current T-Mobile customers. The respondents were solicited through Facebook ads that targeted Washington state residents. The poll's questions focused on wireless service issues, including data speed and quality, and billing issues. Over 500 respondents answered our questions on billing issues, and a majority (54%)[18] of them indicated that they had received at least one T-Mobile bill that was higher than they were told it would be, while nearly a majority (45%) said that they had disputed at least one bill.[19]

In addition to the Washington-specific data described above, we have received over 9,500 consumer complaints dated January 2013 through March 3, 2016 about T-Mobile nationwide from the FTC and the FCC. As shown in Figure 4 below, the number of consumer complaints against T-Mobile more than doubled from 2014 to 2015. Furthermore, if the pace of consumer complaints in the first two months and three days of 2016 remains constant through the year, the number of consumer complaints in 2016 will be 50 percent higher than in 2015.



[18] 521 respondents answered the question: "Since joining T-Mobile, has your monthly bill differed from what you were told it would be?" 281 (54%) responded: "Yes, my bill was more expensive."
[19] 519 respondents answered the question: "Have you ever had to dispute a bill with T-Mobile?" 235 (45%) responded yes.

V. T-Mobile's Deceptive and Unfair Practices

This section describes the deceptive and unfair consumer practices that we believe contribute in large part to the significant number of consumer complaints about T-Mobile described in the previous section.

(a) No Contract Marketing and Equipment Installment Plan

In March 2013, T-Mobile introduced the Un-Carrier initiative, the central tenet of which is that T-Mobile has eliminated two-year service contracts, which prohibit customers from switching carriers without paying substantial early termination fees, and replaced them with month-to-month service plans. At the same time that it did this, T-Mobile 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 larger non-subsidized costs of these purchases. A significant percentage of T-Mobile customers take advantage of the EIP to finance their phone equipment.[20]

Like the traditional two-year service contract, T-Mobile's EIP is a two-year contract with a penalty for early termination of service. 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.**"(bold in original).[21] The effect of this contract term is that a substantial number 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 service contract. According to some customers, T-Mobile maintains a lock on phones that makes them incompatible with other wireless carriers until the phones are paid off, which further inhibits customers from switching to other carriers during the term of the EIP.

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

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[20] The company does not disclose the percentage of its subscribers who are enrolled in an EIP, but it states that 91% are eligible. One analyst estimates that 66% of T-Mobile postpaid subscribers are enrolled in an EIP. *See* 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; Coral Garnick, *T-Mobile's Phone Financing Plan Draws Complaint*, SEATTLE TIMES, Dec. 11, 2015, *available at* http://www.seattletimes.com/business/t-mobiles-phone-financing-plan-draws-complaint/.

[21] *See* Appendix 3 for an example of the EIP contract, which is entitled a Retail Instalment Obligation. Appendix 4 has the terms of the EIP contract described on T-Mobile's website.

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.[22] By comparison, a smartphone at T-Mobile can cost over $700.[23] 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[24]—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 has trademarked the phrase "Un-contract" to describe its agreement with consumers. T-Mobile's website states: "We'll guarantee your rates as long as you're our customers, all without the restrictions of signing a long-term contract. . . We call this approach Un-contract."[25]

T-Mobile's stores also bombard customers with advertisements containing the no contract message. The following signs were found in T-Mobile stores throughout the country, including Washington state: **"**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."[26] Another common sign contains a person using a blowtorch to set on fire the word "CONTRACT." [27] Of the 36 stores in Washington state that were visited in May or June of this year, 92% had at least one no contract sign similar to those described above.

In April 2013, your office entered into an Assurance of Discontinuance with T-Mobile due to the deceptive no contract marketing. The Assurance of Discontinuance found that T-Mobile 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

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[22] AT&T, Early Termination Fees, http://www.wireless.att.com/learn/articles-resources/early-term-fees.jsp (last visited June 3, 2016).
[23] *See, e.g.,*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 June 3, 2016).
[24] 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/.
[25] 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 June 3, 2016). This is the landing page for www.ditchandswitch.com.
[26] *See* Appendix 5 for examples of no contract in-store advertisements from Washington and other states.
[27] *Id.*

term of the installment plan, the entire sum owing for the telephone equipment will become payable on the consumer's final bill."[28]

Since entering into the Assurance of Discontinuance, T-Mobile has implemented some remedial actions focused on disclosure of EIP terms below the in-store and website descriptions and prices of individual phones offered by T-Mobile, but it has not changed its online and broadcast advertisements, which continue to claim that T-Mobile has no annual contracts without mentioning the EIP at all or only mentioning it in very fine print. In Washington state, in particular, we encountered no contract advertisements without any mention of the EIP penalty associated with cancellation of service.

Our review of consumer complaints revealed that Washington consumers have been harmed by T-Mobile's deceptive no contract marketing. In the FTC/FCC data, we analyzed the number of complaints from Washington residents from April 2013, the month after the Un-carrier program was initiated, through March 3, 2016 and found that four percent of consumer complaints alleged that the consumer faced a significant charge upon service cancellation due to the EIP or otherwise misunderstood the financial penalty associated with cancellation of service.[29] One consumer, who left T-Mobile after paying what she thought was her final bill, was later told by a T-Mobile representative that she owed $460 on her phone and $120 on her mother's phone and that the phones would be locked until she paid the balance.[30] Another consumer, who renewed service in March 2013 under the no contract Un-carrier initiative, cancelled service in June 2013 and later received a $700 bill.[31]

Your office previously found that T-Mobile's no contract marketing violated Washington's Consumer Protection Act because it misled consumers about the financial penalties associated with cancellation of service. Despite entering into a Modified Assurance of Discontinuance with your office, T-Mobile continues to engage in no contract advertising that we believe misleads consumers about the material limitations on its no contract contracts.

(b) ETF Marketing and Implementation

In January 2014, T-Mobile announced Un-Carrier 4.0, known as Contract Freedom, a permanent offer to reimburse ETFs charged by other carriers when customers switch to T-Mobile. In March of 2015, T-Mobile extended the offer to include reimbursement of the balance on customers' outstanding equipment financing plans with their previous 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 equipment

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[28] *In re T-Mobile USA, Inc.*, Assurance of Discontinuance (No. 13-2-17948-2 SEA) (King County Sup. Ct.) (Apr. 13, 2014). *See* Appendix 6.

[29] There were 13 no contract complaints of 307 total complaints received between April 2013 and March 3, 2016. We excluded complaints with no explanatory details about the topic from the analysis.

[30] Consumer complaint on November 5, 2015 from Spokane, WA. *See* Appendix 7.

[31] Consumer complaint on March 26, 2014 from Marysville, WA. *See* Appendix 7.

reimbursement offers and the program has become a central component of the company's marketing.[32]

T-Mobile has aggressively promoted its offer to reimburse other carriers' ETFs and equipment financing plans, 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] T-Mobile 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 T-Mobile will pay early termination fees and related equipment charges directly to the previous carrier. The following advertisements were found in several stores, including in Washington state: "SWITCH WITHOUT A HITCH WE'LL PAY OFF YOUR PHONES & YOUR ANNUAL SERVICE CONTRACTS" with small print at the bottom stating "with a trade-in credit and VISA Prepaid Card when you trade-in your device;" "WE'LL PAY OFF YOUR PHONE", and "WE'LL BUY OUT YOUR ANNUAL SERVICE CONTRACTS."[35] Of the 36 stores surveyed in Washington state in May and June, 89 percent had one or more ETF payment signs similar to those described above.

Along with giving the impression that the program is a direct payment rather than a reimbursement, T-Mobile's marketing does not adequately disclose the significant limitations on and requirements for ETF reimbursement. Only in small print does the ETF and equipment reimbursement 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."[36] In addition to these limitations,

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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] *Id.*

[36] 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 June 3, 2016). This is the landing page for www.ditchandswitch.com. *See* Appendix 8 for a copy of this webpage.

customers must 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 the frequently asked questions on T-Mobile's website, can take up to eight weeks, and reimburses the customer with a prepaid credit card, which is not redeemable for cash and expires after one year.

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 their 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 them to explain the ETF payment program to new customers.[37] 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.[38] 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.[39]

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.[40] Call center employees believe that sales representatives may not explain the ETF reimbursement program to new customers.[41] 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.[42]

[37] Interview with T-Mobile retail employee on August 26, 2015. To preserve employees' confidentiality, employee names and locations are not included in this submission.
[38] Interview with T-Mobile retail employee on August 26, 2015.
[39] Interview with T-Mobile retail employee on August 26, 2015; interview with T-Mobile retail employee on July 3, 2015.
[40] Interview with T-Mobile call center employee on June 18, 2015; interview with T-Mobile call center employee on June 16, 2015.
[41] Interview with T-Mobile call center employee on June 16, 2015.
[42] Interview with two T-Mobile call center employees on June 18, 2015.

Eight percent of the complaints in the FTC/FCC database from Washington state residents alleged deception in or implementation problems with the ETF program.[43] One Washington consumer, for example, believed T-Mobile when it said it would "pay for our early termination fees if we left our old carrier" and submitted his last bill to T-Mobile's website, just as he claims he was instructed. According to his complaint:

> They told us exactly at the store to just send in your last bill. They didn't give us any description of what it had to have they just said 'send us your last bill.' So, I do so and send in my last bill on the website that they want you to do so on. The website said to wait 4 weeks to process your early termination fees. By around that time my old carrier had put a late fee for not paying. Then, we called T-mobile and they said 'they would cover the late fee.' At this point we were trusting everything T-Mobile was saying to us. But finally we get a message saying our early termination fee. I sent my bill in twice all rejected. Then we go into the store and they said 'oh it needs to be itemized.' Why didn't they tell us this in the beginning? Obviously if it was going to cost us so much time and hassle we would have never done this in the first place. Finally my early termination and late fees go to collections and I end up paying for everything. Let me remind you that we STILL haven't received our refund of paying off our early termination fees.[44]

Customers have also 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 reimbursement. According to one consumer from Edmonds, Washington, she submitted her last bill from Verizon to T-Mobile several times and each time was told that the paperwork had not been received. Her complaint states in part:

> [A]ccording to t-mobile['s] process, i applied for the ETF using their webpage by uploading the last bill from Verizon which shows only the ETF nothing else (4 pages). It appeared t mobile denied my application without telling me, and after a while i called their customer service who told me to email the papers (Verizon bill) again to belcustomerecaresupport@t-mobile.com so they can look at it and then override the decision to pay me the reimbursement immediately. i emailed the papers about four times and i called last week to follow up, which every time they told me to call next day to follow up. Today i called and i spoke with their supervisor , Manuel, who insist to go back and resubmit with a different customize page from Verizon and he said they have no emails to receive those papers and he did not see any notes on the system about my calls but later he said yes there are some notes but insist to reapply with a customize paper. I asked him for a manager, which said normally they can not bring them on call.

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[43] There were 21 ETF complaints of 253 total complaints received between February 2014, the month after the program's implementation, and March 3, 2016. We excluded complaints with no explanatory details about the topic from the analysis.

[44] Consumer complaint on September 16, 2015 from Tacoma, WA. *See* Appendix 7.

> they have to call me back. Please help me as this [is] a misleading process and they are trying to not comply with their promotion by denying my submittal.[45]

Another consumer, who thought T-Mobile "would take care of all switching fees" when she submitted her final statement with cancellation fees from Verizon, realized that the fees had not been paid when she started receiving "threatening letters from Verizon." She contacted T-Mobile, who told her she would be receiving a Visa prepaid card as reimbursement. Despite following up with T-Mobile several times over the next few months, she never received reimbursement. Her complaint states in part:

> After 2 more months we still hadn't received anything so I called them back and we were told that the fees had been denied because we hadn't sent them the paper work. So I went back to verizon to get a copy of the charges and we were told that because the lines had been ported to another company that the phone numbers were no longer associated with the account number. So after talking to tmobile about the issue with the phone numbers they said that would be fine. After 1.5 months I called about the status and we were told that it had been denied because the numbers were not shown on the statement. Since June I have been in contact with t mobile at least 8 times and still get the same answer. 'please resend us the paperwork and we will get it taken care of and call you back. No one at T mobile has ever called me back and after paying $1421.64 to Verizon all I have received from t mobile is a card for $242.91. If there is any way you can help it would be much appreciated. I am so fed u[p] with the lies and deceit that I have received from t mobile over the last 7 months . . .:[46]

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

(c) Pattern of fraudulent enrollment

Change to Win's review of 338 FTC/FCC complaints from Washington residents revealed a pattern of enrolling customers in services without their consent. Over eight percent of these complaints were about fraudulent enrollment.[47] Several customers also reported encountering problems when attempting to disenroll from these services.

Many of the consumer complaints involve fraudulent enrollment in add-on services that increase the monthly bill between five and fifteen dollars. According to one complaint from a Washington customer, the customer received a bill with "two equipment charges of 5 dollars

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[45] Consumer complaint on October 13, 2015 from Edmonds, WA. *See* Appendix 7.
[46] Consumer complaint on November 25, 2015 from Tacoma, WA. *See* Appendix 7.
[47] There were 27 fraudulent enrollment complaints of 326 total complaints for which a complaint category could be discerned; we excluded complaints with no explanatory details about the topic from the analysis.

with a description call[ed] 'SCORE,'" charges that the consumer had never consented to.[48] Another Washington customer reported being charged $12.99 per month over the past year for MobiTV despite calling T-Mobile customer service each month to try to cancel the service.[49] Other complaints involved enrollment in JUMP insurance, which costs approximately ten dollars per month. According to a complaint to the FCC, the customer "[s]pecifically told [the] T-mobile rep we did not want their 'Product Protection' called Jump Assurance. When our bill showed up all three numbers on the account had it added."[50] Another customer similarly told the FCC that JUMP insurance had been added to his account without his consent and that, despite his complaints to T-Mobile, the "fraudulent billing" for JUMP continued.[51]

The data from the online poll of Washington residents and from the Washington State Attorney General also indicate that billing problems are prevalent among T-Mobile customers. Although fraudulent enrollment is one of many types of billing problems that wireless customers can encounter, the significant number of T-Mobile customers with billing issues indicates that fraudulent enrollment may be partly to blame. In the online poll targeting Washington state residents, over 500 respondents answered our billing questions, and a majority (54%)[52] of them indicated that they had received at least one T-Mobile bill that was higher than they were told it would be, while nearly a majority (45%) said that they had disputed at least one bill.[53] Similarly, according to the data received from your office, the Washington State Attorney General received 643 billing-related complaints about T-Mobile, 15 percent more than Verizon, the company with the second highest number of billing issue complaints.

The prevalence of fraudulent enrollment and other types of billing 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, because of the company's 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.[54] 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

[48] Consumer complaint on December 10, 2015 from Newcastle, WA. *See* Appendix 7.
[49] Consumer complaint on October 21, 2015 from Port Orchard, WA. *See* Appendix 7.
[50] Consumer complaint on March 13, 2014 from Mount Vernon, WA. *See* Appendix 7.
[51] Consumer complaint on December 18, 2014 from Lynwood, WA. *See* Appendix 7.
[52] 521 respondents answered the question: "Since joining T-Mobile, has your monthly bill differed from what you were told it would be?" 281 (54%) responded: Yes, my bill was more expensive."
[53] 519 respondents answered the question: "Have you ever had to dispute a bill with T-Mobile. 235 (45%) responded yes.
[54] Interview of retail employee on Sept. 22, 2015; interview of retail employee on July 16, 2015; interview of retail employee on August 26, 2015.

80 percent and 90 percent of all postpaid activations.[55] 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.[56] If they do not meet these targets, employees face discipline and the possibility of being fired.[57] 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.[58]

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.[59]

Other call center employees reported similar patterns and believe that this conduct is tied to the commission structure in retail stores.[60] 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."[61]

The prevalence of fraudulent enrollment complaints−coupled with commission and evaluation metrics that put enormous pressure on employees to boost add-on sales−suggest that corporate policies are causing customers to be enrolled in services without their consent.

(d) Unfair Debt Collection Practices

The data we analyzed also revealed a pattern of unfair debt collection practices. Of the 338 consumer complaints in our FTC/FCC database from Washington residents, 14 percent

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[55] 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.

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

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

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

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

[60] 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.

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

claimed that T-Mobile had engaged in improper debt collection practices.[62] Based on references found in these complaints and in complaints from consumers in other states, CtW believes T-Mobile has contracted with at least eight third-party debt collectors in the past three years.[63] The complaints most commonly allege that T-Mobile gave one or more of these third-party debt collection agencies incorrect information, or that the customers were given little or no notice of the debt before it was referred to a third-party collection agency.

Further evidence of unfair debt collection practices is found in the data obtained from the Washington State Attorney General's office. According to that data, 87 complaints were filed about T-Mobile's debt collection practices, the largest number among the top four wireless carriers. T-Mobile had 13 percent more complaints than Verizon, the carrier with the second highest number of debt collection complaints.

According to consumer complaints in our FTC/FCC database, several customers reported facing significant obstacles in resolving their debt collection issues with T-Mobile. Some reported being placed on hold for long periods of time or being transferred several times when calling T-Mobile's customer service, while others reported receiving inconsistent statements from representatives about the debt owed. The following are illustrative examples:

- According to one Washington customer, he cancelled his T-Mobile service and authorized a final debit payment in February 2013, then one month later received a letter notifying him that a T-Mobile bill for $178.95 was being sent to collections. He called T-Mobile customer service, spending hours on the phone while being placed on hold or being transferred to several different representatives, yet did not receive a resolution to his problem.[64]

- Another Washington customer cancelled his account after two weeks because of poor service. Three weeks after cancellation, he received a letter from a collections agency indicating that he owed $73.35, even though this was his first notice of the debt owed. Upon calling T-Mobile's customer service, he was told that the letter was in error and that he had zero balance, yet he received a second letter about the alleged $73.35 balance owed a month later. He called customer service again and "got transferred over and over again between Billing and Finance departments for as many as 6 times . . ." with no resolution to his problem.[65]

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[62] There were 47 debt collection complaints of 326 total complaints for which a complaint category could be discerned; we excluded complaints with no explanatory details about the topic from the analysis.
[63] 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.
[64] Consumer complaint on March 4, 2013 from Mill Creek, WA. *See* Appendix 7.
[65] Consumer complaint on December 20, 2015 from Issaquah, WA. *See* Appendix 7.

- Yet another customer, who signed up for only one month of service while visiting the United States from abroad, was told when she activated service that "I had paid everything and did not owe anything else." When she called T-Mobile at a later date to inquire about reactivating service during her next visit to the United States, she was told that she owed over $300. After spending over an hour speaking to customer service representatives in various departments, she was told that "they could not reduce the charges and that I was not allowed to dispute the charges until after [they were] assigned to a collections agency."[66]

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,[67] 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.[68] 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."[69] 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.

VI. 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, suggest that the company has prioritized growth over fair consumer practices and responsive customer service.

Our research on T-Mobile uncovered unfair and deceptive practices at many facets of the company's interactions with consumers—from its marketing to prospective customers to its dealings with current customers. T-Mobile's no contract advertising can mislead consumers into believing they will face no financial penalty for terminating their T-Mobile service. Its ETF reimbursement advertising misleads customers about the nature of the program and what is required to receive reimbursement; this confusion is exacerbated by T-Mobile's poor implementation of the program, which has resulted in many reimbursement requests being unfairly delayed or denied. And a pattern of consumer complaints suggests that corporate policies cause or contribute to fraudulently enrolling customers in unrequested services, as well as prematurely and unfairly referring their bills to collections. Even worse, T-Mobile's use of an

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[66] Consumer complaint on July 2, 2013 from Seattle, WA. *See* Appendix 7.

[67] CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER CREDIT REPORTS: A STUDY OF MEDICAL AND NON-MEDICAL COLLECTIONS, at 5 (Dec. 2014).

[68] *Id.* at 8-9.

[69] FEDERAL TRADE COMMISSION, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY, at i (Jan. 2013).

arbitration clause in its wireless contracts means that consumers injured by its practices may never be adequately compensated. This makes regulatory action against T-Mobile essential.

For these reasons, CtW respectfully requests that the Washington State Attorney General's Office investigate the practices described in this complaint and bring enforcement action against T-Mobile so that it halts its unfair and deceptive consumer practices and puts in place procedures that will prevent such practices in the future.