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January 11, 2017

Honorable Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Submitted via email to: solutions2020@fcc.gov

Re: Draft #Solutions2020 Call to Action Plan

Dear Commissioner Clyburn,

Thank you so much for the opportunity to offer comments on the forward-looking plan that you released late last year outlining your vision for enhancing communications for all Americans. Public Citizen writes to strongly support Section 4(a) of your Draft #Solutions 2020 Call to Action Plan (or Plan) regarding the elimination of forced arbitration. (These comments do not address the broader policy proposals included in the Plan.) In particular, we agree that the Federal Communications Commission (FCC or Commission) should use its authority to ban the use of forced arbitration clauses in all contracts that fall under its regulatory purview.¹

Public Citizen has a long history of working to uphold consumers' access to the courts, including leading several of the coalitions and campaigns that have worked to stop the use of forced arbitration clauses in consumer contracts via rulemakings before federal agencies² and through congressional advocacy.³ The rights to court access, due process, and jury trials are constitutional protections guaranteed to all citizens, and our organization is committed to reinstating all consumers' right to their day in court.

As you know, forced arbitration clauses are hidden in the fine print of standard take-it-or-leave-it contracts, and they lock consumers into resolving their future legal disputes through private arbitration. These forced arbitration clauses are extremely pervasive in the

¹ See Also Group Comments to the Federal Communications Commission In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106 (May 26, 2016), <http://bit.ly/2jwE50Y>.

² See Comments from Public Citizen Litigation Group to CFPB re: Proposed Regulations to Implement the Dodd-Frank Act Sect. 1028(b), Docket No., CFPB-2016-0020 (Aug. 22, 2016), <http://bit.ly/2iEYe9T>; Comments from 21,287 Public Citizen Members and Supporters re: Centers for Medicare Medicaid Services Proposed Rule: Medicare and Medicaid Programs: Reform of Requirements for Long-Term Care Facilities (Oct. 14, 2015), <http://bit.ly/2ihnyUp>; Comments from 9,825 Public Citizen Members and Supporters re: Department of Education Proposed Rule: Student Assistance General Provisions, FR Docket ED-2015-OPE-0103-10088, <http://bit.ly/2ihqB8L>.

³ See, for example, Group Letter to U.S. Senate in Support of the Justice for Telecommunications Consumers Act (April 28, 2016), <http://bit.ly/1qGu4Si>.

telecom sector⁴—as your Plan correctly highlighted, “[t]he Consumer Financial Protection Bureau estimates that 99.9% of mobile wireless customers have no option and are forced to give up their day in court, when they sign up for connectivity.”⁵ Evidence also shows that consumers are unaware of or confused as to the import of these clauses in their contracts.⁶

As the FCC has publicly recognized,⁷ forced arbitration is a rigged system that “may more frequently benefit the party with more resources and more understanding of dispute procedure”⁸ and is deeply unfair for consumers. Forced arbitration contract terms require consumers to adjudicate claims in forums that do not have the protections of the legal system—the rules of evidence and discovery do not apply, there is no requirement that arbitrators follow the law, there are no juries, and there is little to no opportunity for witness depositions. Moreover, arbitration proceedings are secretive and the findings of arbitrators are seldom appealable. And, because arbitration firms rely on repeat customers for their profits, it is unlikely that arbitrators will find for a consumer over the corporation likely to provide additional business in the future.

The majority of these contracts that contain forced arbitration clauses also contain terms that prohibit customers from banding together in a class action to seek remedies for shared wrongs. Class actions allow claims of widespread harm to be efficiently adjudicated, and in many instances they are the only way that small dollar claims can be brought because the harm suffered by each individual is less than the cost associated with bringing a claim to hold a company accountable for its wrongdoing. *AT&T Mobility v. Concepcion* is an excellent example of a case in which customers were kept from bringing claims as a class action regarding widespread use of disputed surcharges on cell phone bills.⁹

Class action bans contained in forced arbitration clauses amount to a get-out-of-jail-free card for lawbreaking corporations because corporations know they can rip-off consumers with impunity when consumers are not able to band together to bring claims. Government studies show that very few individuals bring arbitration claims for small amounts as compared to the large numbers of consumers eligible for damages from settlements of claims brought in federal court.¹⁰

Your recommendation that the FCC eliminate the use of forced arbitration in contracts subject to its jurisdiction would put the FCC squarely in line with the actions of numerous other administrative agencies tasked with protecting consumers that are addressing the use of these clauses in contracts for consumer financial products and services, nursing home admission contracts, and student enrollment agreements in the for-profit education

⁴ Public Citizen, *Forced Arbitration: Unfair and Everywhere*, at 16 (2009), <http://bit.ly/1dnu9fP>.

⁵ *Public Notice, Request for Comments on Commissioner Mignon Clyburn's Draft #Solutions 2020 Call to Action Plan*, FEDERAL COMMUNICATIONS COMMISSION, citing CONSUMER FINANCIAL PROTECTION BUREAU, *Arbitration Study: Report to Congress 2015*, Section 2, at 26, <http://1.usa.gov/1scU6hl> (hereinafter CFPB STUDY).

⁶ CFPB STUDY, Section 3.

⁷ *See* 2015 Open Internet Order, 30 FCC Rcd at 5718, para. 267.

⁸ *Id.*

⁹ *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740 (2011).

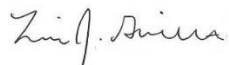
¹⁰ CFPB STUDY, Section 8.

sphere.¹¹ We agree that the FCC should eliminate predispute arbitration clauses in contracts for all telecommunications services under its jurisdiction, including mobile services, cable and other multichannel video services, and common carriers under the Communications Act. These clauses should be eliminated regardless of whether they apply to individual or to class-action claims. A consumer should retain the right, though, to enter into voluntary arbitration agreements after a dispute arises with his or her telecommunications provider.

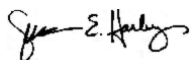
Public Citizen thanks you for your work on this issue, including your insightful *TIME* opinion piece with U.S. Sen. Al Franken (D-Minn.),¹² and we wholeheartedly applaud your recommendation in the #Solutions 2020 Call to Action Plan to eliminate the use of forced arbitration clauses in communications-related contracts.

We look forward to working with you to help make possible this and other needed policy improvements to better protect consumers of communications products and services.

Respectfully submitted,



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¹¹ See Comments from Public Citizen Litigation Group to CFPB re: Proposed Regulations to Implement the Dodd-Frank Act Sect. 1028(b), Docket No., CFPB-2016-0020 (Aug. 22, 2016), <http://bit.ly/2iEYe9T>; Comments from 21,287 Public Citizen Members and Supporters re: Centers for Medicare Medicaid Services Proposed Rule: Medicare and Medicaid Programs: Reform of Requirements for Long-Term Care Facilities (Oct. 14, 2015), <http://bit.ly/2ihnYUp>; Comments from 9,825 Public Citizen Members and Supporters re: Department of Education Proposed Rule: Student Assistance General Provisions, FR Docket ED-2015-OPE-0103-10088, <http://bit.ly/2ihqB8L>.
¹² Sen. Al Franken and FCC Commissioner Mignon Clyburn, *Al Franken and Mignon Clyburn: How Your Internet Provider Restricts Your Rights*, *TIME* (Oct. 23, 2016), <http://ti.me/2e0hMyY>.