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US court rules T-Mobile arbitration unenforceable

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LOS ANGELES, Jan 22 (Reuters) - A class action lawsuit filed against cell phone carrier T-Mobile USA Inc can go forward because the company's arbitration clause is not enforceable under Washington state law, a federal appeals court ruled on Tuesday.

The ruling, by the Ninth U.S. Circuit Court of Appeal, follows others by U.S. courts that found that some arbitration clauses go too far in protecting companies from consumer claims of unfair practices, said Seattle attorney Daniel Johnson, who represents the plaintiffs.

"The majority of the courts around the country have lined up in the same way as the Ninth Circuit," Johnson said. "There is a limit to what you can require consumers to give up in terms of protecting their rights."

A spokeswoman for Deutsche Telekom (DTEGn.DE: [Quote](#), [Profile](#), [Research](#))-owned T-Mobile USA had no immediate comment.

Two T-Mobile USA customers, Kathleen Lowden and John Mahowald, sued the company for breach of contract and violating the state of Washington's Consumer Protection Act. Lowden and Mahowald said in the suit that T-Mobile USA charged them improper fees for services that should have been free and billed calls during the wrong billing cycle.

T-Mobile USA asked a federal court to compel the plaintiffs to arbitration, citing a clause in their service agreements that prohibit class action litigation and limit punitive damages.

The Ninth Circuit upheld the district court in ruling that those provisions were "substantively unconscionable and unenforceable" under state law.

The appellate court also rejected T-Mobile's argument that the Federal Arbitration Act, which validates contractual arbitration agreements, pre-empts state law.

The Washington Supreme Court recently ruled in a case involving Cingular, now AT&T (T.N: [Quote](#), [Profile](#), [Research](#)), that its class action waiver clause was "an unconscionable violation of (the state's) policy to protect the public and foster fair and honest competition" because it forestalled attempts to vindicate consumer rights. (Reporting by Gina Keating; Editing by Tim Dobbyn)

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