



BUSINESS

## Court allows lawsuit against T-Mobile

Consumers can proceed with a class-action lawsuit against T-Mobile after a federal appellate court ruled that the wireless carrier's service contract compelling mandatory arbitration can't be enforced under state law.

Businesses, including credit card companies and cell phone carriers, routinely require consumers to sign service contracts agreeing to resolve their disputes through mandatory arbitration.

On Tuesday, the 9th U.S. Circuit Court of Appeals concluded that "T-Mobile's arbitration provision is substantively unconscionable and unenforceable under Washington state law."

"It means that the company cannot avoid consumer claims against it by forcing consumers to bring their claims in individual arbitration, rather than group litigation," said Daniel Johnson, a Seattle attorney representing the plaintiffs on appeal.

T-Mobile doesn't comment on pending litigation, a company spokeswoman said.

Customers Kathleen Lowden and John Mahowald sued T-Mobile in King County Superior Court in 2005, alleging the wireless carrier wrongly charged them for roaming, long distance, night time and other fees that should have been free. They said it also charged them for fees, such as "a universal service fund fee," that weren't advertised.

T-Mobile removed the case to federal district court and tried to compel mandatory arbitration, arguing that the customers had agreed to resolve their disputes in this manner.

Last summer, the state Supreme Court ruled that former Cingular Wireless, now AT&T, cannot enforce a waiver in its service contract prohibiting customers from pursuing a class action.

Citing that court's decision, the 9th Circuit Court concluded that T-Mobile's class-action waiver couldn't be enforced.

"What these cases are about are large, national and international companies using arbitration clauses to avoid class actions," Johnson said. "There are a lot of consumer claims that are just too small to pursue individually."

**P-I reporter Phuong Cat Le can be reached at 206-448-8390 or [phuongle@seattlepi.com](mailto:phuongle@seattlepi.com). Read the Consumer Smarts blog at [blog.seattlepi.com/consumersmarts](http://blog.seattlepi.com/consumersmarts).**