No. 07-552

In the Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY L.P. & AT&T CORP.,

Petitioners

v.

APCC SERVICES, INC., *et al.*,

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

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PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners, defendants and appellants below, are Sprint Communications Company L.P. and AT&T Corp.

Respondents, plaintiffs and appellees below, are APCC Services, Inc.; Data Net Systems, L.L.C.; Davel Communications Group, Inc.; Jaroth, Inc. d/b/a Pacific Telemanagement Service; NSC Telemanagement Corp., n/k/a Intera Communications Corporation; and Peoples Telephone Co., Inc.

APCC Services, Inc., a Virginia corporation, is a for-profit subsidiary of the American Public Communications Council, Inc., a District of Columbia not-for-profit corporation that is not publicly traded.

Data Net Systems, L.L.C., is an Illinois Limited Liability Company that is not affiliated with any publicly traded company.

Davel Communications Group, Inc. is an Illinois corporation whose parent corporation, Davel Communications, Inc., is a wholly owned subsidiary of MobilPro Corp., which is a publicly traded corporation. No publicly traded corporation holds a 10 percent or greater ownership in MobilPro Corp.

Jaroth, Inc. d/b/a Pacific Telemanagement Services is a California corporation that is not affiliated with any publicly traded company.

NSC Telemanagement Corporation n/k/a Intera Communications Corporation is a Delaware corporation that is not affiliated with any publicly traded company.

Peoples Telephone Company, Inc. is a New York corporation whose parent corporation, Davel Communications, Inc., is a wholly owned subsidiary of MobilPro Corp., which is a publicly traded corporation. No publicly traded corporation holds a 10 percent or greater ownership in MobilPro Corp.

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BRIEF OF RESPONDENTS IN OPPOSITION

STATEMENT

In 1999, respondents sued petitioner AT&T for failure to pay payphone service providers (PSPs) amounts they were owed under FCC rules. After years of litigation, AT&T moved to dismiss the lawsuit on the ground that some plaintiffs lacked standing. The district court observed that "defendant failed to raise this jurisdictional defect during the four years that this case has been pending." *APCC Services, Inc.* v. *AT&T Corp.*, 254 F. Supp. 2d 135, 136-137 (D.D.C. 2003). The district court nevertheless granted the motion. *Id.* at 144. On reconsideration, however, the district court concluded that all respondents have standing. Pet. App. 83-106. The court relied on "a long line of cases and legal treatises that recognize a well-established principle that assignees for collection purposes are entitled to bring suit where the assignments transfer absolute title to the claims." *Id.* at 90. The respondents who are not themselves PSPs hold such assignments.[1]

Each of the approximately 1400 identical assignments gives respondents the authority to pursue this litigation as they see fit. But see Pet. 3 (asserting, with no citation to any opinion below, that "[t]he aggregators are not allowed to pursue the case as they see fit and in

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[1] Three of the six respondents have ownership interests in PSPs and therefore have standing without regard to whether assignees have standing. Pet. App. 10 n.**. Petitioners nevertheless assert without explanation that they challenge the standing of two of those three respondents. Pet. 5 n.1. Because all respondents have standing, the point is academic.

their own interests"). In particular, the assignments give respondents authority to sign

> settlement agreements, releases, or other documents relating to the settlement of [dial-around compensation] claims. [PSP] hereby agrees to be bound by any settlement, compromise or release reached by [aggregator] on its behalf and that any document executed in connection with any such settlement, compromise or release by [aggregator] on behalf of the [PSP] shall be binding on the [PSP].

C.A. App. 135. As the D.C. Circuit put it, petitioners "give us no reason to believe the assignment is anything less than a complete transfer to [respondents] of the PSP's dial-around compensation claim." Pet. App. 12; see also *ibid*. ("the assignment itself is plain: the PSP may not revoke it without the consent of the aggregator").[2]

On December 17, 2003, the district court certified for interlocutory appeal the question whether the non-PSP respondents have standing and the separate question – raised by petitioner Sprint in a lawsuit that was later consolidated for purposes of appeal – whether there is a private cause of action to enforce the FCC regulations. Pet. App. 45-63. The court observed that, "although plaintiffs argue correctly that they will be prejudiced by further delays, in the event that it is ulti-

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[2] Two judges – District Judge Huvelle, before reversing herself, and Circuit Judge Sentelle, dissenting in part – wrote opinions agreeing with petitioners that assignees-for-collection lack standing. *APCC Services, Inc.* v. *AT&T Corp.*, 254 F. Supp. 2d 135 (D.D.C. 2003) (omitted from petition appendix); Pet. App. 28-35. Neither judge agreed with petitioners' contention that respondents have anything less than complete control of the litigation.

mately found that this Court lacks jurisdiction to litigate these cases, it would be far better for all concerned * * * to have these matters resolved now, as opposed to sometime in the distant future." *Id.* at 61. The district court could not have imagined that the issues it certified for interlocutory appeal would still be pending in the appellate courts four years later.

On interlocutory appeal, the D.C. Circuit held that petitioners have standing but that there is no private cause of action to enforce the FCC regulations. Pet. App. 4-41. Judge Sentelle dissented with respect to standing. Chief Judge Ginsburg dissented with respect to a private cause of action based on 47 U.S.C. § 201(b).

In upholding the standing of respondent assignees, the majority observed that "[t]he assignments at issue here * * * transfer to the assignees the entire interest of the PSPs in their dial-around compensation claims." Pet. App. 14. The court noted that the main case on which petitioners relied to attack respondents' standing, *Connecticut* v. *Physicians Health Services*, 287 F.3d 110 (2d Cir. 2002), "is not helpful; it did not address the question whether an assignee that would otherwise have standing to sue loses its standing when it obligates itself to give the proceeds of the suit to another." Pet. App. 14. But "[c]ourts and commentators" – including the very same court that decided petitioners' flagship case – "agree that, if an assignment properly transfers ownership of a claim, then the assignee's interest 'is not affected by the parties' additional agreement that the transferee will be obligated to account for the proceeds of a suit brought on the claim.'" Pet. App. 15 (quoting *Advanced Magnetics, Inc.* v. *Bayfront Partners, Inc.*, 106 F.3d 11, 17 (2d Cir. 1997)).

The majority acknowledged that some of the authorities on which it relied addressed the question of who is the "real party in interest" for purposes of FED. R. CIV. P. 17(a). It also acknowledged that the proposition that standing and real-party-in-interest inquiries sometimes diverge is "true enough, as far as it goes." Pet. App. 15. "But standing also depends in part, as does a plaintiff's status as the real party in interest, upon having 'a personal interest in the controversy.'" *Ibid.* (quoting *Whelan* v. *Abell*, 953 F.2d 663, 672 (D.C. Cir. 1992)). The Rule 17 cases indisputably establish that respondents have a personal interest in the controversy as a result of the assignments.[3] And the D.C. Circuit saw "no basis for distinguishing the personal stake required under Rule 17(a) from the interest required for standing." Pet. App. 16.

After this Court decided *Global Crossing Telecommunications, Inc.* v. *Metrophones Telecommunications, Inc.*, 127 S. Ct. 1513 (2007), it was clear that Chief Judge Ginsburg's dissent had been correct and that the D.C. Circuit majority had been wrong to conclude that no private right of action existed. Following a remand from this Court, 127 S. Ct. 2094 (2007), the D.C. Circuit therefore affirmed the district court in its entirety. Pet. App. 1-3. Petitioners sought rehearing and rehearing en

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[3] Thus, the premise of petitioners' question presented – "[w]hether the assignment of a claim 'for purposes of collection' confers standing on assignees *which have no personal stake in the case* and which avowedly litigate only 'on behalf of' the assignors" (Pet. i (emphasis added)) – requires this Court to *assume* that the D.C. Circuit was wrong in concluding that respondents *do* have a personal interest in the controversy. The real question presented by the petition is not the one petitioners frame, but whether assignees-for-collection litigating on behalf of assignors *have* the requisite personal interest, which the D.C. Circuit held they do.

banc, arguing that somehow their position with respect to a private right of action had prevailed in *Global Crossing*, and that respondents lack standing. The court did not call for a response, and no judge of the D.C. Circuit – including Judge Sentelle, who had dissented on standing – called for a vote on rehearing en banc. Pet. App. 109-112.

REASONS FOR DENYING THE PETITION

The decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. Moreover, the petition raises an issue of no general importance. Further review is not warranted. And further review would be especially inappropriate to prolong what has already been an eight-year delay in resolving the preliminary issue of standing, an issue that has received appellate attention only because the district judge four years ago certified the issue for interlocutory appeal under 28 U.S.C. § 1292(b) in the hope that appellate resolution would materially advance the litigation.

1. This Court, speaking through Justice Scalia and without dissent on the relevant proposition, recently reaffirmed "the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor." *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U.S. 765, 773 (2000). In an assignment situation, this Court squarely held, the *assignor's* injury in fact is what matters. *Id.* at 774 ("*the United States'* injury in fact suffices to confer standing on respondent Stevens") (emphasis added). Attempting to draw a razor-thin distinction, petitioners argue that there is an exception to that doctrine – that the assignee *does not* have standing to assert the

assignor's injury in fact – when the assignee must return to the assignor the proceeds collected through litigation. See also Pet. App. 29 (Sentelle, J., dissenting) ("There are 'assignments,' and then there are assignments."). But no federal appellate court has accepted the argument petitioners make.

This Court said just the opposite 68 years ago: an assignment's "legal effect was not curtailed by the recital that the assignment was for purposes of suit and that its proceeds were to be turned over or accounted for to another." *Titus* v. *Wallick*, 306 U.S. 282, 289 (1939). Even earlier, this Court upheld the right of an assignee-for-collection to sue before a federal agency and in federal court:

> The assignments were absolute in form, and plainly their effect * * * was to vest the legal title in Spiller. What they did not pass to him was the beneficial or equitable title. But this was not necessary to support the right of the assignee to claim an award of reparation and enable him to recover it by action at law brought in his own name but for the benefit of the equitable owners of the claims; especially since it appeared that such was the real purpose of the assignments.

Spiller v. *Atchison, Topeka & Santa Fe Ry.*, 253 U.S. 117, 134 (1920).

The rule of *Titus* and *Spiller* was not explicitly couched in Article III terms, although federal courts of course have an obligation to assess their own jurisdiction.[4] But the decisions in those cases gave rise to the

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[4] Although *Titus* originated in state court, the assignee invoked the jurisdiction of this Court to obtain a reversal of the judgment of the Supreme Court of Ohio. Thus, this Court was required to deter-

widespread conclusion that an assignee-for-collection *may* bring a lawsuit in federal court, regardless of any obligation to return collected proceeds to the assignor, as long as the assignee has been assigned legal title to the claim.

The rule has been stated consistently in hornbooks[5] and cases.[6] If petitioners are correct, however,

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mine that the assignee had Article III standing. See ROBERT L. STERN, EUGENE GRESSMAN, STEPHEN M. SHAPIRO & KENNETH S. GELLER, SUPREME COURT PRACTICE § 18.1(b), at 814 (8th ed. 2002) ("[A] party who seeks entry into the federal court system for the first time must be able to satisfy the Article III standing requirements at that point. That is true even if the initial entry occurs at the Supreme Court level, as when a party seeks to invoke the Court's certiorari jurisdiction to review a state court judgment.").

[5] *E.g.*, 6A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARK KAY KANE, FEDERAL PRACTICE & PROCEDURE § 1545 (2d ed. 1990) ("[F]ederal courts have held that an assignee for purposes of collection who holds legal title to the debt * * * is the real party in interest even though the assignee must account to the assignor for whatever is recovered in the action."); 6 Am. Jur. 2d *Assignments* § 184 ("An assignee for collection or security only is within the meaning of the real party in interest statutes and entitled to sue in his or her own name on an assigned account or chose in action, although he or she must account to the assignor for the proceeds of the action, even when the assignment is without consideration.") (footnotes omitted).

[6] *E.g.*, *Advanced Magnetics, Inc.* v. *Bayfront Partners, Inc.*, 106 F.3d 11, 17 (2d Cir. 1997) (the ability of a plaintiff assigned ownership of the claim to bring suit "is not affected by the parties' additional agreement that the transferee will be obligated to account for the proceeds of a suit brought on the claim"); *Klamath-Lake Pharmaceutical Ass'n* v. *Klamath Medical Serv. Bureau*, 701 F.2d 1276, 1282 (9th Cir. 1983) (association assigned pharmacies' antitrust claims could sue even though the pharmacies "retained their interest in the outcome of the litigation"); *Pacific Coast Agricultural Export Ass'n* v. *Sunkist Growers, Inc.*, 526 F.2d 1196,

every litigant to contest the ability of an assignee-for-collection to bring suit, every court to address that question, and every treatise writer has simply overlooked an Article III defect and focused on the wrong legal question.

2. Petitioners' radical theory is incorrect for the reasons the D.C. Circuit majority gave (Pet. App. 14-16) – but, even if there were something to petitioners' radical theory, there would be time enough for this Court to address it after more than one litigant had raised it in more than one lower court. At present, *not one case* other than the decision below explicitly addresses a "standing" attack on the ability of an assignee-for-collection, which has been given legal title to the claim, to bring suit.

The cases that petitioners claim are in conflict with the decision below all address different questions. This Court's cases – on which petitioners rely for undisputed propositions such as the proposition that the plaintiff must have a personal interest in the lawsuit, see note 3, *supra* – do not address assignees-for-collection.[7] Those cases do not purport to disavow, for

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1207-1208 (9th Cir. 1975) ("[w]hile an association may not sue on its own to assert the rights of its members under the antitrust laws, it may sue as assignee of the legal rights of others"); *Gulfstream III Associates, Inc.* v. *Gulfstream Aerospace Corp.*, 995 F.2d 425, 437 (3d Cir. 1993) (Greenberg, J., concurring) ("it is commonplace for individual persons claiming antitrust injury to assign their claims to an association formed for the specific purpose of pursuing litigation").

[7] Petitioners claim that in *Vermont Agency* this Court "held that two elements of the relator's status were jointly critical to the existence of Article III standing." Pet. 19-20. This Court held no such thing. One can search the opinion of the Court in vain for *any* indication by this Court – let alone a holding – that those two

standing purposes, this Court's long-ago observation that ownership of beneficial (as opposed to legal) title to a claim is "not necessary to support the right of the assignee to claim an award of reparation and enable him to recover it by action at law brought in his own name but for the benefit of the equitable owners of the claims." *Spiller* v. *ATSF*, 253 U.S. at 134.[8]

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elements were jointly critical to Article III standing. The Court held that the relator's "bounty" did *not* suffice to confer Article III standing, 529 U.S. at 772, and held that "the assignee of a claim has standing to assert the injury in fact suffered by the assignor," *id*. at 773. Nowhere did the Court hint that there was any synergistic effect between the factor it deemed insufficient to confer standing and the factor – that "[t]he FCA can reasonably be regarded as effecting a partial assignment of the Government's damages claim," *ibid*. – that the Court deemed sufficient to confer standing.

[8] Chief Judge Ginsburg and Judge Randolph are particularly odd jurists to accuse of having lost sight of "[b]asic [t]enets of [t]his Court's [s]tanding [j]urisprudence" to favor payphone plaintiffs. Pet. 11. Each of those two judges has vigilantly enforced standing limitations announced by this Court. See, *e.g.*, *Florida Audubon Society* v. *Bentsen*, 94 F.3d 658 (D.C. Cir. 1996) (en banc) (standing denied in opinion by Judge Sentelle, joined by Judge Ginsburg, Judge Randolph, and others, over multiple dissenting votes); *J. Roderick MacArthur Foundation* v. *FBI*, 102 F.3d 600 (D.C. Cir. 1996) (standing denied for failure to show injury in fact, in opinion by Judge Ginsburg for partially divided panel); *Skaggs* v. *Carle*, 110 F.3d 831 (D.C. Cir. 1997) (standing denied for failure to show injury in fact, in opinion by Judge Ginsburg for divided panel); *Gottlieb* v. *FEC*, 143 F.3d 618 (D.C. Cir. 1998) (standing denied in opinion by Judge Randolph for failure to allege injury); *Franklin* v. *District of Columbia*, 163 F.3d 625, 633 (D.C. Cir. 1998) (standing denied in opinion by Judge Randolph for failure to establish actual injury at trial). And, as the panel's first opinion in this case shows by ordering dismissal based on a conclusion later rejected by seven Justices of this Court in *Global Crossing*, those judges have not been overly hospitable to payphone plaintiffs in general.

As for the decisions of lower courts (all of which arose in the ERISA context), none involved an assignee-for-collection with legal title, and the very same courts have made clear that they will allow such assignees to bring suit. Petitioners rely principally on *Connecticut* v. *Physicians Health Services*, 287 F.3d 110 (2d Cir. 2002), which both courts below correctly distinguished. Pet. App. 13-14, 100-103. The assignors in that case purported to give the State their right to "any cause of action" for "appropriate equitable relief." 287 F.3d at 112. They retained, however, their right to seek monetary relief. *Id*. at 115 n.6.

The Second Circuit recognized that there are situations "where, even though an assignee incurs no injury, expense, or loss in exchange for the assignment, a valid and binding assignment of a *claim* (or a portion thereof) – not only the right or ability to bring suit – may confer standing on the assignee." 287 F.3d at 117 (emphasis in original). The court was reiterating the distinction it enunciated in *Advanced Magnetics*, 106 F.3d at 17-18, between the standing of a plaintiff assigned complete ownership of the *claim* (as in this case) and the lack of standing of a plaintiff merely granted a power of attorney to bring suit (as in *Physicians Health*). The standing of a plaintiff assigned ownership of the claim "is not affected by the parties' additional agreement that the transferee will be obligated to account for the proceeds of a suit brought on the claim." *Advanced Magnetics*, 106 F.3d at 17. But the State was not within that rule, and lacked standing, because the assignments "divorce the equitable cause of action aimed at an alleged breach of fiduciary duty from the duty itself" and because "the assignments do not shift the loss suffered by individual enrollees from the alleged breach of such duty from the individuals to the

State." 287 F.3d at 116. The Second Circuit, thus, expressly distinguished cases like the present case – in which legal title to a claim has been assigned – from cases in which there is a purported assignment of only a right to sue.

Petitioners also rely (Pet. 29, 31) on *Connecticut* v. *Health Net, Inc.*, 383 F.3d 1258 (11th Cir. 2004). The Eleventh Circuit observed that the assignments in that case were "virtually identical to those at issue in [*Physicians Health*]" in that the "right to recover benefits or to seek money damages remains with the assignors." *Id*. at 1261. The Eleventh Circuit held that Connecticut lacked standing for "the reasons set out in Part II of [*Physicians Health*], 287 F.3d at 115-19." *Ibid*. Therefore, the Second Circuit's analysis and reasoning, distinguishing assignments of legal title for collection (like those in the present case) from assignment of only a right to sue, apply with equal force to *Health Net*. This case presents no conflict with the Eleventh Circuit.

Glanton ex rel. Alcoa Prescription Drug Plan v. *AdvancePCS Inc.*, 465 F.3d 1123 (9th Cir. 2006), cert. denied, 128 S. Ct. 126 (2007), did not involve an assignment at all. Rather, the plaintiffs – two unharmed individuals who sought to bring suit as *representatives* of an ERISA plan, 465 F.3d at 1125 – sought to *analogize* their situation to that of a *qui tam* plaintiff, who has standing under the *Vermont Agency* case. The Ninth Circuit "f[ou]nd the qui tam analogy inapt. Whereas qui tam actions have existed for centuries, there is no similar tradition of unharmed ERISA beneficiaries bringing suit on behalf of their plans." 465 F.3d at 1125.

Indeed, the Ninth Circuit followed the lead of the Second, Third, and Eighth Circuits in rejecting unharmed ERISA plan beneficiaries' standing to sue as

representatives of ERISA plans. See 465 F.3d at 1125 (citing *Central States Southeast & Southwest Areas Health & Welfare Fund* v. *Merck-Medco Managed Care*, 433 F.3d 181, 201 (2d Cir. 2005); *Horvath* v. *Keystone Health Plan East*, 333 F.3d 450, 455 (3d Cir. 2003); *Harley* v. *Minnesota Mining & Manufacturing*, 284 F.3d 901, 906 (8th Cir. 2002)). Two of those three courts have recognized the ability of assignees-for-collection to bring suit. *Advanced Magnetics*, 106 F.3d at 17 (2d Cir.); *Gulfstream III Associates, Inc.* v. *Gulfstream Aerospace Corp.*, *supra* (3d Cir.). So has the Ninth Circuit. See note 6, *supra*. If there is some theoretical inconsistency between those lower courts' recognition of assignee-for-collection standing and their refusal to recognize representative-of-ERISA-plan standing, the argument can be addressed to any of those courts, but it is hardly the kind of "conflict" calling for resolution by this Court.

There is, in any event, no inconsistency. Nothing purports to assign legal title to plans' claims to individual ERISA beneficiaries. There is simply no reason for the analysis in the ERISA cases involving beneficiaries attempting to sue as plan representatives to have anything to do with the analysis in the cases involving actual assignments of claims. It is not surprising that two distinct bodies of law for ERISA "representative" cases and for assignee cases have coexisted in the circuits. If any circuit ever uses its ERISA "representative" case law to deny assignee standing or uses its assignee case law to grant standing to ERISA beneficiaries bringing suit in a representative capacity, there will be ample opportunity for this Court to consider whether to review the issue then. Petitioners' extremely strained claim of conflict is no reason to review the issue now.

3. The decision of the court of appeals also completely lacks practical significance beyond this case, for two reasons. First, the proposition that assignees-for-collection may bring lawsuits in federal court has been accepted for at least 87 years. The D.C. Circuit's refusal to accept a novel argument that would have departed from that accepted proposition will hardly make the D.C. Circuit a magnet for litigation by assignees-for-collection, which appears to be relatively rare in any event. Second, even under petitioners' own theory, *any* retained interest by the assignees would give them standing. Thus, even if this Court granted certiorari and reversed, lawyers in the future would be able to avoid dismissals simply by drafting agreements that allowed the assignee to retain one penny of every dollar recovered – or one penny of every thousand dollars, or one penny of every million dollars. A decision by this Court accepting petitioners' theory thus would not save the federal courts the necessity of dealing with any lawsuits, but only require counsel to draft assignment agreements slightly differently than they have drafted them for the 87 years since this Court decided *Spiller* v. *ATSF*.[9]

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[9] Petitioners strain to ascribe practical significance to the decision below because it would supposedly "call into question significant aspects of federal class action practice, including particularly the utility of opt-in class actions." Pet. 34-35. That argument is strange, because there is nothing compulsory about Rule 23. It states: "An action *may* be maintained as a class action if the prerequisites * * * are satisfied." FED. R. CIV. P. 23(b) (emphasis added). As the leading treatise puts it, "[a]nyone with individual standing who satisfies Rule 23 criteria *may* bring a class action." HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS ACTIONS § 2.01 (3d ed. 1992) (emphasis added). To be sure, it is often more efficient to bring claims as a class instead of a group of individuals, but the decision to seek class certification is left to the plaintiff,

4. Finally, it deserves note that it has been eight years since respondents first sued AT&T, and four years since the district court certified for interlocutory review under 28 U.S.C. § 1292(b) a standing question that would not otherwise be reviewable at this stage of the litigation. In hopes of a quick and definitive appellate decision, Judge Huvelle entered her 1292(b) certification *despite* recognition that delay is prejudicial to the plaintiffs. Pet. App. 61. Had she known that appellate proceedings would delay this case for four years – on top of the four years AT&T waited to bring up an issue that it now claims is so urgent as to warrant this Court's resolution – it is doubtful that she would have certified the issue at all, rather than followed "the general rule * * * that a party is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of district court error at any stage of the litigation may be ventilated." *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994).

This Court, to be sure, has jurisdiction. But this Court has discretion as well. The issue petitioners raise is not even remotely certworthy. Even if it were certworthy, however, it would be appropriate to await another case to resolve it, and not reward petitioners

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and there is no cap on the number of claims a plaintiff can bring without it. Moreover, to the extent petitioners worry about the death of class actions – insincerely, one suspects – they need not. Courts first recognized standing for collectors nearly a century ago, and antitrust associations have sued on assigned claims for nearly thirty years, yet class actions are alive and well. Finally, petitioners' Rule 23 argument embodies the odd notion that a Federal Rule of Civil Procedure (promulgated in 1937) is relevant to the standing requirements of Article III of the Constitution (ratified in 1788).

for the number of years they have been able to drag this litigation out, first by failing to raise a jurisdictional issue for years and then by prolonging appellate proceedings.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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