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 Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit**

REPLY BRIEF OF PETITIONERS

THOMAS C. GOLDSTEIN
PATRICIA A. MILLETT
AKIN GUMP STRAUSS
HAUER & FELD, LLP
1333 New Hampshire
Avenue, N.W.
Washington, D.C. 20036
(202) 887-4000

DAVID P. MURRAY
RANDY J. BRANITSKY
WILLKIE FARR &
GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000

Counsel for Petitioner Sprint

CARTER G. PHILLIPS*
DAVID W. CARPENTER
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

WAYNE WATTS
AT&T INC.
SENIOR EXECUTIVE VICE
PRESIDENT & GENERAL
COUNSEL
175 E. Houston Street
San Antonio, TX 78205
(210) 821-4105

Counsel for Petitioner AT&T

April 9, 2008

* Counsel of Record

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INTRODUCTION

The question presented in this case is straightforward. Do plaintiffs who have been assigned claims *only* "for purposes of collection" have standing to bring federal district court damages actions on behalf of third parties who are fully capable of bringing suit themselves? The answer is no. Such claims are barred by Article III as well as by settled principles of prudential standing.

First, it is axiomatic that Article III requires a plaintiff to have a personal stake in the outcome of litigation it initiates. Respondents do not dispute that Article III bars suits by agents who are obliged to remit the proceeds of litigation to their principals. In contending that they have Article III standing, respondents are reduced to arguing that they are not such mere collection agents and must be deemed the owners of the PSPs' claims because the "assignment" and the obligation to remit proceeds to the PSPs were purportedly contained in separate contracts.

But respondents' "two contract" theory is legally and factually baseless and was rejected by both lower courts. Equally misguided is respondents' reliance on *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U.S. 765 (2000), which does not remotely support Article III standing for assignees-for-collection-only. Respondents' related historical arguments fare no better. There was no tradition of such suits at the time of the framing of the Constitution, and the only assignments this Court has ever held sufficient to confer Article III standing are complete or partial assignments of entire claims, including the right of recovery. When this Court has addressed assignments-for-collection-

only, it has stated that the assignee has no interest in the outcome of the lawsuit.

Second, whether or not there is Article III standing, settled principles of prudential standing bar this lawsuit. Respondents admit that individual PSPs are fully capable of suing in their own names, and respondents have not advanced a single legitimate reason why this action was not jointly brought by the 1400 PSPs – with respondents acting as the PSPs' attorney and witness, not as a "plaintiff-for-hire" collection agent.

Had respondents proceeded in this way, there would have been no issues about petitioners' entitlement to discovery, no impediments to asserting and litigating counterclaims, no risk that individual PSPs could later claim not to be bound by the judgment, and no possibility that the nominal plaintiffs who brought this action would be unable to develop the facts required to litigate individualized damages claims on behalf of 1400 absent third parties. But all these problems arise when claims are brought by assignees-for-collection-only. It is for this reason that this Court has held that, absent contrary direction by Congress, damages suits cannot be brought on behalf of third parties in circumstances like these.

I. RESPONDENTS LACK ARTICLE III STANDING.

As respondents state, "[t]his case is about hard cash." Resp. Br. 43. Their problem is that there is not a penny in this litigation for respondents. Respondents have brought their action against petitioners solely on behalf of 1400 absent PSPs, and respondents conceded below that they are required to channel any cash received from petitioners into the

hands of these PSPs.[1] As respondents candidly state, this lawsuit is merely an extension of the preexisting agency relationship in which respondents have acted as "aggregators" who are responsible for "tracking dial-around compensation owed by inter-exchange

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[1] Respondents assert in their brief (at 8-9) that they have "a contingent interest" in the outcome of the case because, if a PSP hypothetically ceased funding the litigation, respondents would claim the right to keep the proceeds of that PSP's claim. But, when the factual issues relevant to standing were litigated in the district court below, respondents made no such argument, and they also made no such claim in their brief in opposition to certiorari in this Court. Rather, the first time this claim was raised in the district court in this case was when respondents moved to amend their complaint to add that allegation *after* certiorari was granted. For this reason, the district court then held that, even if this claim were meritorious and were relevant to respondents' standing, it has been waived. *See* Tr. of Hr'g at 51-54, *APCC Servs.* v. *AT&T Corp.*, No. 99-696 (D.D.C. Jan. 28, 2008); *see also* Sup. Ct. R. 15.2.

In any event, the argument lacks merit. The letter accompanying the assignment explains that, if a PSP ceases contributing to the litigation fund, the PSP will be withdrawn as a plaintiff and may pursue *its* claims on its own. Pet. App. 126 ("If a PSP refuses to permit the above deductions or withdraws his/her agreement to allow these deductions prior to conclusion of the suits, APCCS will drop that PSP from the plaintiff's list and will have no obligation to represent the PSP ...."). Respondents rest their contrary position on the unsubstantiated assertion of a single APCC officer set forth in a declaration that is not part of the record in this case, Resp. Br. 8, and which, as the district judge made clear, is contrary to the position respondents took in this case.

Finally, respondents concede that this new allegation has no pertinence to this Court's review. They acknowledge that the lower courts decided the case on the "assumption" that respondents must "pass back to PSPs all proceeds of the litigation" and this Court "may properly" decide this case on the same assumption. *Id.* at 9 (emphasis omitted).

carriers (IXCs) and collecting it on behalf of PSPs." *Id.* at 1.[2] These are concessions by respondents that they are mere collection agents with no personal stake in this litigation.

But time and again, this Court has held that Article III requires that the plaintiff have a "personal stake in the outcome" of his suit. *Baker* v. *Carr*, 369 U.S. 186, 204 (1962); see Pet. Br. 18-21. Unless principles of associational standing are met – and they are not here, Pet. Br. 52-53 – a plaintiff cannot bring suit solely to redress injuries to absent third parties. A plaintiff has suffered no "redressable" injury, and hence lacks constitutional standing to sue, if he does not seek to protect his own interests, *Warth* v. *Seldin*, 422 U.S. 490, 515-16 (1975), and does not "stand to profit in some personal interest" from the litigation, *Simon* v. *E. Ky. Welfare Rights Org.*, 426 U.S. 26, 39 (1976). *Accord Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 91 (1998); *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 101 (1983); *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 616-17 (1973).

As this Court has held, the requirement that a plaintiff have a "personal stake in the outcome of the controversy" is essential to ensure "concrete adverseness" between the parties, thereby "sharpen[ing] the presentation of issues upon which the court so largely depends for illumination." *Baker*, 369 U.S. at 204. By contrast, if lawsuits could be brought by mere agents of the claimant, the court would not have before it those whose interests are

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[2] Contrary to respondents' suggestion, Resp. Br. 4, it is because aggregators have this contractual role that AT&T has insisted that it deal with them in resolving disputed bills. But that is irrelevant to the question of who must bring collection lawsuits.

most directly affected and who will be the most committed and engaged advocates. Similarly, the defendant will be denied the opportunity to confront its true accuser. See Pet. Br. 46-48.

Respondents do not dispute these fundamental principles.[3] Indeed, they appear to acknowledge that Article III denies standing to a plaintiff who has been assigned a damages claim solely for purposes of litigation and who is a mere collection agent with no stake in the outcome of the case. Resp. Br. 19. Respondents' argument is that these principles are inapplicable here because of the sheerest of formalisms – the claim that their obligation to the PSPs was defined in two separate contracts. They further contend that use of such formalisms to confer standing was endorsed by *Vermont Agency*, was accepted at the time of the framing of the Constitution, was assumed by this Court and lower courts thereafter, is required by Federal Rule of Civil Procedure 17, and is essential to other commercial arrangements. Each of these claims is baseless.

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[3] Respondents do argue that "[t]he nine years respondents have now litigated against AT&T" "bespeak concrete adverseness in full measure." Resp. Br. 43. However, this reflects no more than respondents' *contractual* commitment to pursue the PSPs' claims "on [their] behalf." Pet. App. 115. Beyond that, they do not explain why nine years is any more indicative of standing than the five years that the Eastern Kentucky Welfare Rights Organization spent litigating the rights of indigents to health care in *Simon*, *see* 426 U.S. at 32, or the fact that any lawyer or other agent is motivated vigorously to pursue claims on behalf of their principals. "[M]otivation" simply "is not a substitute" for satisfying the requirements of standing that "focus litigation efforts and judicial decision making." *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 226 (1974).

A. Respondents' Two-Contract Theory Is Factually And Legally Erroneous And Irrelevant To Article III.

Although respondents admit that they brought this case on behalf of 1400 PSPs and are contractually required to remit all proceeds of the litigation to the PSPs, they contend that courts are required to treat them not as collection agents, but rather as the "own[ers]" both of the PSPs' claims and of any recoveries in this action. Resp. Br. 5-7, 17-24. They base these arguments on a formalistic "two contract" theory. They contend that they were assigned unencumbered legal title to the claims of the PSPs in one contract (the "APAO" or "Assignment Agreement") and that it is a purported "subsequent" and "entirely separate document" (the "Compensation Agreement Amendment") that requires the remission of all damages recovered in the litigation to the PSPs. *Id.* at 17. Because the Assignment Agreement purportedly made them owners of the claims, they argue that the "subsequent" Compensation Agreement Amendment is merely a "collateral" contract and is to be ignored in assessing their standing, just as the court would ignore a contract in which an injured party agreed to donate all proceeds of litigation to charity. *Id.* at 24.

These claims are baseless, root and branch. They rest on misrepresentations of the record, ignore basic contract law, and are refuted by the contrary findings of both lower courts. In all events, even if there were the two separate contracts that respondents allege, this Court has repeatedly held that the bedrock requirements of Article III cannot be evaded through such formalism.

First, respondents have misrepresented the two documents. The obligation to remit the proceeds of

the litigation is contained in the Assignment Agreement, *not* in the purportedly "subsequent" and "separate" Compensation Agreement Amendment. The Compensation Agreement Amendment says nothing about the treatment of any damages award, Pet. App. 116-21,[4] and respondents do not even purport to cite to a provision of this agreement that does so. Compare Resp. Br. 6-7. The court of appeals did not even address the Compensation Agreement Amendment.

Rather, it is the Assignment Agreement that requires that any and all damages be passed through to the PSPs. It provides that each PSP has assigned "title" to its claims solely "for purposes of collection," Pet. App. 114, and states that this assignment means that respondents will bring suit "on behalf of" the PSPs and seek to "collect[] DAC [dial-around compensation] *due the Company*" – *i.e.*, the PSP – and "owed to the Company." *Id.* at 114-15 (emphasis added). Indeed, respondents' accompanying cover letter explained that the provision "assign[ing]" the PSPs' claims "for purposes of collection" "will allow APCCS to prosecute the litigation *on your behalf*." *Id.* at 127 (emphasis added). The court of appeals thus found that this provision of the Assignment Agreement reflects "the aggregator's promise to pass back to the PSP whatever it is able to collect," *id.* at 12, and concluded that the Assignment Agreement contains "the aggregators' promise to hand over any

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[4] Rather, the Compensation Agreement Amendment established a mechanism for the funding of the litigation by PSPs, and, in this connection, it provided only that, if the aggregator "recovers *attorneys fees and/or costs* in connection with any lawsuit APCCS may bring to collect PSP's [dial-around compensation] Claims, it will remit *such* recoveries." Pet. App. 120 (emphasis added).

recovery." *Id.* at 14. The district court had also so found. *Id.* at 86 ("The assignments do not give plaintiffs the right to retain or share in any proceeds of the litigation.").

Second, even if the Compensation Agreement Amendment had addressed the treatment of any damages recovery, it is not a "subsequent" and "separate" agreement. As respondents admit, the two documents were presented to the PSPs as an integrated package that, when signed together, would entitle respondents to enforce a PSP's claim. "The APOA and Compensation Agreement were sent to PSPs with a cover letter from an official of APCC Services." Resp. Br. 7. That cover letter stated that "[a]ttached are the documents that you ***must execute and return*** if you wish to be a part of APCC Services' (APCC) litigation efforts" and told the PSP that it must sign both "**immediately to assure inclusion in the suits to collect unpaid dial around compensation**." Pet. App. 122 (emphases in original).

Under black letter contract law, the Assignment Agreement and the Compensation Agreement Amendment comprised a single, unitary contract. Even in the absence of an express statement of incorporation, "instruments executed at the same time, by the same contracting parties, for the same purposes, and in the course of the same transaction will be considered and construed together, since they are, in the eyes of the law, one contract or instrument." *Crowe* v. *Bolduc*, 334 F.3d 124, 137 (1st Cir. 2003); *accord W. United Assurance Co.* v. *Hayden*, 64 F.3d 833, 842 (3d Cir. 1995); 11 *Williston on Contracts* §§ 30:25-30:26 (4th ed. 1990 & Supp. 2007).

Third, respondents' arguments would be spurious even if their two-contract theory were not unsustainable both factually and legally. Because Article III standing enforces fundamental constitutional limitations on the judicial power, standing turns on the actual substance of a plaintiff's interest, not the form of the paperwork on which the plaintiff sues. This Court has repeatedly confronted the question whether assignments or similar "for collection only" transfers of interest give rise to original federal court jurisdiction. In each case, it has looked beyond the formalities, examined the substance of the legal relationship, and held that federal jurisdiction cannot be invoked by a plaintiff when, as here, it never was entitled to receive any of the relief awarded in the case.[5]

Respondents' only answer to that wall of authority is to contend that, while the Court scrutinizes the substance of a plaintiff's interest in a case for purposes of diversity or original jurisdiction, the Constitution should blindly yield to formalism when Article III's case-or-controversy requirement is at stake. Resp. Br. 41-42. That cannot be right. Article III injury must exist "in fact," see *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), and so too must redressability. See *Steel Co.*, 523 U.S. at 106. Article III "is not a kind of gaming device." *ASARCO*

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[5] *See* Pet. Br. 28-31, 34 & n.4 (citing, *inter alia, Oklahoma ex rel. Johnson* v. *Cook*, 304 U.S. 387 (1938); *Oklahoma* v. *Atchison, Topeka & Santa Fe Ry.*, 220 U.S. 277 (1911); *Woodside* v. *Beckham*, 216 U.S. 117 (1910); *Lehigh Mining & Mfg. Co.* v. *Kelly*, 160 U.S. 327 (1895); *New Hampshire* v. *Louisiana*, 108 U.S. 76 (1883)); *see also Navarro Sav. Ass'n* v. *Lee*, 446 U.S. 458, 465 (1980) (noting that diversity jurisdiction would be lacking over suit brought by plaintiffs "who act as mere conduits for a remedy flowing to others") (internal quotations omitted).

Inc. v. *Kadish*, 490 U.S. 605, 615 (1989) (plurality opinion).

For each of these reasons, respondents' two-contract theory does not give them Article III standing. Respondents never have had independent legal control over any proceeds that might result from the claims they seek to enforce. From the moment the contracts were executed, all the money from any settlement or judgment was legally obligated to pass through respondents' hands and directly into the PSPs' pockets. See Resp. Br. 14 (noting that the PSPs could enforce their claim to the proceeds in a breach of contract action). There is no merit to respondents' assertion that the putative division of their arrangement between two separately stapled documents gave them some fleeting "legal authority to dispose of those proceeds as they see fit." *Id.* at 21.

Respondents are also simply wrong in analogizing themselves to "an *original* owner of a claim" who agrees "to donate every penny she recovers in litigation" to a charity. *Id.* Such a party had a clear entitlement to the proceeds of the claims and the legal authority to re-direct the proceeds to a third party, and she entered into an independent agreement to pay over any judgment to a third party to satisfy some personal obligation or interest. Because her personal interests are redressed by a favorable judgment, she has standing. By contrast, respondents never have had any entitlement to the proceeds of this litigation, and a favorable judgment would redress no personal interests of theirs.[6]

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[6] Contrary to respondents' assertion, petitioners are not claiming that redressability and standing "depend on what the plaintiff plans to do with any recovery." Resp. Br. 40. Rather, petitioners claim only that Article III turns on whether the

B. *Vermont Agency* Does Not Support Article III Standing For Assignees-For-Collection-Only.

Contrary to respondents' argument, Resp. Br. 24-30, nothing in *Vermont Agency* supports the existence of Article III standing for assignees of claims for-purposes-of-collection-only. Petitioners have explained that such assignments cannot allow assignees to assert the injury in fact of the assignor. Pet. Br. 32-37. But, even if they did, *Vermont Agency* made it explicit that an assignee cannot have Article III standing unless it also has a concrete personal stake in the outcome of the case – that is, an interest that would be redressed by a favorable judgment. In particular, this Court reiterated that redressability is one of the three invariable requirements of constitutional standing. 529 U.S. at 771. The Court then specifically discussed the bounty that the relator would receive, explaining that, because of "the bounty he will receive if the suit is successful," "a *qui tam* relator has a 'concrete private interest in the outcome of [the] suit.'" *Id.* at 772 (alteration in original) (quoting *Lujan*, 504 U.S. at 573).

Respondents counter with a strained reading of *Vermont Agency* that rests on extrapolations from the parties' briefs in that case and not on this Court's opinion. Resp. Br. 25-30. The thrust of respondents' argument is that *Vermont Agency* categorically

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plaintiff has an objectively cognizable legal interest in the outcome of the litigation because it has or had an independent legal right to the remedy – that is, the legal authority to receive and determine the disposition of any legal relief awarded. Because respondents never had that right, they do not have a personal stake in the litigation that a court can redress, regardless of how they subjectively intend to dispose of the proceeds.

approved "assignee standing" based solely on the assigned injury, and that the Court's discussion of the relator's bounty and redressability was mere dicta directed at an unrelated argument of the petitioner in that case. Thus, on respondents' view, *Vermont Agency* actually holds that a *qui tam* relator would have Article III standing even if Congress provided no bounty whatsoever. *Id.* at 29.

That assertion lacks merit. The Court held that a bounty *alone* could not confer standing because Article III also requires an injury traceable to the defendant's conduct. *Vermont Agency*, 529 U.S. at 772-73. But the Court treated the *qui tam* statute as effecting a partial assignment of the injuries as well as the rights of recovery of the United States, and it held that the assignment of the United States' injury satisfied injury in fact and thus provided an "adequate basis for the relator's suit *for his bounty*." *Id.* at 773 (emphasis added). Nothing in the opinion suggested that the assignment of the United States' injury could establish Article III standing if there were no bounty and if the *qui tam* relator had no personal stake in the outcome of the case that would be redressed by a favorable judgment.

Contrary to respondents' assertion, *Vermont Agency* thus establishes only that an assignee has Article III standing when there has been a complete or partial assignment of the entire right, title, and interest of the assignor, including critically the right to the proceeds of the claim. Those were the facts in each of the assignment cases discussed by the Court in *Vermont Agency*; indeed, each case appears to have involved complete conveyances of the entire claim

(the chose in action). *Id.* at 774.[7] Not one of those assignments was for-collection-only. But respondents have legal "title" to the "claim" of the assignor PSPs for-purposes-of-collection-only, and respondents never had an independent legal right to the proceeds of that claim.

C. Suits By Assignees-For-Collection-Only Were Not Recognized At The Time Of The Constitution's Ratification.

In *Vermont Agency*, the Court also relied on the fact that there had been "a long tradition" of "*qui tam* actions in England and the American Colonies" at the time of the Constitution's framing, holding that Article III is "properly understood" to confer standing to bring cases "of the sort" that were then "amenable to, and resolved by, the judicial process." *Id.* at 774-77. But, contrary to respondents' claims, there is no such history of suits by assignees-for-collection-only.

Respondents state that the right of certain "assignees to sue was well established when the Constitution was ratified." Resp. Br. 31. That is true, but those assignees had been transferred the entire *chose in action* – *i.e.*, not merely the claim, but also the right to the proceeds. In this regard, respondents cite (at 31-32) a line of this Court's decisions from *Turner* v. *Bank of North America*, 4 U.S. (4 Dall.) 8 (1799), through *Ambler* v. *Eppinger*, 137 U.S. 480 (1890), but ignore that each involved an

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[7] *Poller* v. *Columbia Broad. Sys., Inc.*, 368 U.S. 464, 465 (1962), *rev'g* 174 F. Supp. 802 (D.D.C. 1959); *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, 829 (1950), *aff'g* 77 F. Supp. 493 (D. Mass. 1948); *Hubbard* v. *Tod*, 171 U.S. 474, 495, 498, 500 (1898); *Vimar Seguros y Reaseguros, S.A.* v. *M/V Sky Reefer*, 515 U.S. 528, 531 (1995); *Musick, Peeler & Garrett* v. *Employers Ins. of Wausau*, 508 U.S. 286, 288 (1993).

assignment of the entire chose in action – both the claim and the proceeds. By contrast, respondents offer no evidence that courts at the time of the framing had *ever* entertained claims that had been assigned for-collection-only, much less that they had done so routinely or even occasionally.

D. Decisions Over The Last Century Do Not Establish That Assignees-For-Collection-Only Have Article III Standing.

Respondents ultimately acknowledge that suits by assignees-for-collection-only were not even brought until the end of the 19th Century. Resp. Br. 38. But they contend that courts have tacitly recognized standing in such suits on a "massive scale" ever since. *Id.* This, too, is both wrong and irrelevant.

Respondents state that "this Court's first encounter with an assignee-for-collection" case was *Williams* v. *Nottawa,* 104 U.S. 209 (1881), where the Court held that the assignment was an illicit attempt to manufacture diversity jurisdiction and ordered dismissal of the federal court action. See Resp. Br. 33 n.5. The Court later encountered suits in which assignments-for-collection-only were relied upon to establish controversies between states that are within this Court's original jurisdiction as well as controversies between citizens of different states, but (after examining the substance of the assignments) the Court held that these assignments created no such controversies. See *supra* p. 9 & n.5.

Respondents argue that these decisions implicitly support their claim of standing because the actions were dismissed on the ground that the assignments were insufficient to establish diversity or original Supreme Court jurisdiction and purportedly did not contain "even a hint" that a suit by an assignee-for-

collection-only might not be a case or controversy if it were brought in federal district court under federal question jurisdiction. Resp. Br. 41-42 (emphasis omitted); see *id.* at 33 n.5. That is simply wrong. While the Court required dismissal of these claims on the ground that the assignments evaded other jurisdictional limitations, it also stated that an assignee-for-collection-only has no interest in the litigation and that the assignor is the "real party in interest." See, *e.g.*, *New Hampshire* v. *Louisiana,* 108 U.S. 76, 88-91 (1883); *Kansas* v. *United States,* 204 U.S. 331, 340-41 (1907). These statements were made long before there was a Federal Rule of Civil Procedure 17 and long before the development of the modern law of standing. But the statements represented this Court's recognition that assignees-for-collection-only have no personal stake in the outcome of the case. The Court then had no reason to address standing because there were other, narrower grounds for dismissing these suits.[8]

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[8] Respondents also assert that these decisions implicitly establish that assignees-for-collection-only can bring an action in federal district court when, as here, the assignor of the claim could do so. Resp. Br. 41-42. Respondents are confused. In many of these cases, the Court was applying the (since-repealed) section of the Judiciary Act of 1789 that prohibited any assignee of a claim from bringing a suit in federal district court unless the court would have had jurisdiction over the case if no assignment had been made. *See Williams,* 104 U.S. at 210. Where the latter condition did not exist, this statute barred an action by *any* assignee, including assignees of the entire chose in action. Conversely, this statute could not and did not grant federal courts jurisdiction over claims by assignees whenever the assignors could maintain them. Plainly, Article III prohibits any assignee from bringing an action unless it independently demonstrates its standing.

Respondents next rely on *Spiller* v. *Atchison, Topeka & Santa Fe Railway*, 253 U.S. 117 (1920), and *Titus* v. *Wallick*, 306 U.S. 282 (1939). They concede that the Court did not address the federal claimants' standing in either case, but they argue that standing could not have existed in either case "under petitioners' own theory." Resp. Br. 35 (emphasis omitted). That is wrong. As petitioners have demonstrated, in both these cases, the assignee-for-collection-only had already fully litigated the claims and obtained a favorable judgment in forums (a state court and an administrative agency) that are not subject to Article III's case or controversy requirement but that had provided fair procedures. Pet. Br. 38-42. The federal court action was brought on the prior judgment, not on the assignment, and the defendants' failure to adhere to the judgment had caused injuries to the claimant that a favorable federal court ruling could redress. Thus, any "drive-by jurisdictional" ruling in these cases was in no way inconsistent with petitioners' position on Article III standing here.

Respondents' remaining historical arguments have even less substance. They claim that the ability of assignees-for-collection-only to bring suits was well established in other courts "[b]y the early 20th century." Resp. Br. 32. But, to support this assertion, they cite only secondary sources that discuss the practice in state courts where Article III has no application. Charles E. Clark & Robert M. Hutchins, *The Real Party in Interest*, 34 Yale L.J. 259, 264 (1925) (focusing on state court decisions and never discussing Article III jurisdiction); John Norton Pomeroy, *Code Remedies* § 70, at 96-99 (4th ed. 1904) (addressing only whether, under state law, such assignees were the real party in interest).

Respondents also contend that lower federal courts have "frequently entertained suits by assignees-for-collection." Resp. Br. 34. But here they cite exclusively antitrust cases brought by associations. *Id.* Standing was not addressed in any of these cases, and appears to have rested on principles of associational standing that respondents do not even pretend they can meet.

In short, there is no substance to respondents' claim that petitioners' argument "assumes blindness to supposed jurisdictional defects on a massive scale." *Id.* at 38. There is no great body of decisions that even arguably assumes that assignments-for-collection confer standing to bring suit in federal court. The scattered rulings on which they rely are either supportive of petitioners, applications of associational standing principles, or, at most, "drive-by" jurisdictional rulings of lower courts that have no precedential value. Compare *Steel Co.*, 523 U.S. at 91 (even such rulings by Supreme Court lack precedential value).

E. Decisions Under Federal Rule of Civil Procedure 17(a) Are Irrelevant.

Respondents also rely on lower court decisions holding that assignees-for-collection-only are the "real party in interest" for purposes of Federal Rule of Civil Procedure 17 and claim that these decisions provide "support for the proposition that suits by such assignees are cases and controversies." Resp. Br. 38. But, as explained in petitioners' opening brief (at 42-43), the "real party in interest" inquiry "address[es] party joinder, not federal-court subject-matter jurisdiction." *Lincoln Prop. Co.* v. *Roche*, 546 U.S. 81, 90 (2005). Indeed, "elements of the standing doctrine are clearly unrelated to the rather simple proposition set out in Rule 17(a), and plaintiff must

both be the real party in interest and have standing." 6A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1542, at 330 (2d ed. 1990) (emphasis added). Here, as noted above, this Court recognized that assignees-for-collection-only have no personal stake in the outcome of a case long before there was a Rule 17(a), and it is the absence of this interest that bars standing by such mere collection agents.

Petitioners have never disputed that there may be some overlap between the legal interests that give rise to real-party-in-interest status and standing. Certainly, a plaintiff that has standing will very often also be the real party in interest. But the problem for respondents is that the comparison does not work as well in the other direction. Not uncommonly, the interest that makes a plaintiff a real party in interest – whether through statutory authorization or contractual arrangements like those in *New Hampshire*, *Woodside*, *Lehigh*, and here – will fall short of the Article III mark. See Pet. Br. 43. Thus, the court of appeals was simply wrong in concluding that Rule 17 status somehow fills in the redressability gap in respondents' claim to Article III standing. See Pet. App. 14-16.

F. Petitioners' Proposed Ruling Would Have No Effect On The Rights Of Trustees.

Finally, respondents assert that a parade of asserted horrors will ensue if they are denied Article III standing. According to respondents, such a ruling would deny standing to trustees and have broad ramifications for the law of trusts and estates, bankruptcy, and ERISA. Resp. Br. 40-41. These contentions are makeweights.

Trusts, like corporations, are legal persons. Trusts can act only through trustees who hold title to the trust assets for all purposes (subject to fiduciary duties to the trust's beneficiaries). "In most cases, a trustee has exclusive authority to sue third parties who injure the beneficiaries' interest in the trust, including any legal claim the trustee holds in trust for the beneficiaries." *Chauffeurs Local No. 391* v. *Terry*, 494 U.S. 558, 567 (1990) (plurality opinion) (citing Restatement (Second) of Trusts (1959); 4 W. Fratcher, *Scott on Trusts* (4th ed. 1987)). A trustee is not assigned claims for purposes of collection, and a ruling in petitioners' favor under Article III could not call into question the settled rule that a "trustee can maintain such actions at law or suits in equity or other proceedings against a third person as he could maintain if he held the trust property free of trust." Restatement (Second) of Trusts § 280 (1959). Beyond that, suits by trustees are "of the sort traditionally amenable to, and resolved by, the judicial process," *Vermont Agency*, 529 U.S. at 774, while suits by assignees-for-collection-only are not.

II. IN ALL EVENTS, PRINCIPLES OF PRUDENTIAL STANDING COMPEL DISMISSAL OF RESPONDENTS' SUIT.

Alternatively, whether or not there is Article III standing, well-settled principles of prudential standing bar respondents from prosecuting this federal court damages action on behalf of 1400 absent PSPs. Petitioners devoted nearly 15 pages of their opening brief to a detailed showing that principles of prudential standing foreclose respondents' suit. Pet. Br. 43-57. Respondents have literally made no attempt to respond. Rather, they have randomly responded to only a handful of subsidiary points

embodied in petitioners' argument, but, even as to these points, respondents are not persuasive.

The doctrine of prudential standing is a set of "judicially self-imposed limits on the exercise of federal jurisdiction," *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 11 (2004), that have been developed to protect the institutional interests of the federal courts, *FW/PBS, Inc.* v. *Dallas,* 493 U.S. 215, 231 (1990) (plurality opinion), and to maximize "convenience and efficiency" in litigation, *United Food & Commercial Workers Union* v. *Brown Group*, 517 U.S. 544, 557 (1996). Because these rules are not required by Article III, the doctrine does not apply where Congress has authorized suits by particular parties on behalf of third parties. *Id.*

But the doctrine unquestionably applies in this case. Respondents are aggregators, and, as petitioners demonstrated in their opening brief (at 51-52), aggregators do not fall within the "zone of interests" protected by the relevant provisions of the Communications Act or of the implementing regulations that the Federal Communications Commission has adopted. Respondents do not argue otherwise. To the contrary, they correctly state that "the FCC developed a compensation plan to ensure *that PSPs* are compensated for dial around calls[, and that t]he plan required IXCs such as AT&T to compensate *PSPs* for calls that the IXC 'completes.'" Resp. Br. 2 (emphasis added); see also Pet. Br. 51-52.

Where, as here, the doctrine of prudential standing applies, it is well settled that a plaintiff ordinarily "cannot rest his claim to relief on the legal rights or interests of third parties." *Maryland* v. *Joseph H. Munson Co.*, 467 U.S. 947, 955-56 (1984); see Pet. Br. 45 (collecting cases). A court can exercise jurisdiction over suits that are brought to vindicate the rights of

third parties only where the third parties are "unable" to do so, *Diamond* v. *Charles,* 476 U.S. 54, 65-66 (1986), or there is at least some "genuine obstacle" to their doing so, *Singleton* v. *Wulff,* 428 U.S. 106, 116 (1976). See Pet. Br. 49. Here, respondents' brief has confirmed that the PSPs were fully capable of bringing this lawsuit in their own names, that allowing respondents to sue for the PSPs creates all the evils that the Court's general rule discourages, and that there are additional compelling reasons to prevent such abuses of the federal court system and of the defendants to this action.

A. The 1400 PSPs Were Fully Able To Bring This Action In Their Own Names.

Under the principles of prudential standing, suits brought on behalf of third parties are impermissible when the third parties are fully capable of bringing suit themselves. Here, there is no question that the instant action could have been brought by the PSPs, with the respondents serving as their attorneys or witnesses and not as putative plaintiffs. One of the plaintiffs to this case is a PSP, and there is no reason why the other 1400 PSPs could not have sued as plaintiffs as well.

Respondents' only answer to this indisputable fact is to erect strawmen. First, they argue that, because many PSPs are small businessmen who do not have large claims, many would not pursue their claims if each was required to hire counsel and to institute a separate action. Resp. Br. 50. Even if that were true (but see Qwest Br. 24 & n.17), it is irrelevant. Litigating 1400 separate lawsuits is patently not the only alternative to this lawsuit. Instead of obtaining assignments-for-collection-only from the 1400 PSPs, respondents could have obtained authorizations to file this lawsuit in the names of the 1400 PSPs. That

would have afforded the PSPs all the claimed efficiencies of a single action that would be prosecuted by a single set of lawyers and that would use the data that respondents have collected in their role of aggregators in calculating the amounts, if any, that IXCs owed to, or were owed by, each of the individual PSPs. But, as further explained below, such a suit would have avoided the discovery problems, impediments to counterclaims, issues of finality, and threat to the court that are inherent in a suit in which respondents are acting as assignees-for-collection of the damages claims of 1400 absent non-party PSPs. See also Qwest Br. 25 & n.19 (PSPs could have joined together in groups to file consolidated lawsuits that would be coordinated through multi-district litigation procedures).

Second, respondents argue that the instant lawsuit is a fairer and more efficient vehicle than would be a class action or a suit based on associational standing. Resp. Br. 44-48. But this is not a remotely relevant comparison, and respondents are intentionally missing the point. As petitioners have demonstrated, respondents patently could not have brought a claim for damages on behalf of 1400 individuals under associational standing principles. Pet. Br. 52-53. Similarly, it is petitioners' position that a class action would be impermissible under Federal Rule of Civil Procedure 23 even if the named plaintiff were a PSP because, among other things, the issues are individualized. *Id.* at 54-57; see Qwest Br. 18-19; *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 622 (1997). If respondents could recover individualized damages for 1400 PSPs as an assignee-for-collection-only, they would be evading two different sets of procedural rules – class action and associational standing – that *prohibit* such actions on behalf of

absent third parties in federal district courts. That fact vividly underscores that this action is barred by principles of prudential standing.

B. If This Action Is Not Dismissed, The Adverse Consequences That The Rules Of Prudential Standing Are Designed To Prevent Will Occur On A Massive And Unprecedented Scale.

As was explained in detail in petitioners' brief, the general rules that bar actions to enforce the rights of third parties foster interests of efficiency, convenience, finality, and fairness and protect other institutional interests of the federal courts – in myriad ways, large and small – that this Court has identified. Pet. Br. 45-49. While respondents ignore most of the adverse consequences that are inherent in departures from these rules, they try, at various points in their brief, to minimize some of the ill effects that will arise here if this case is not dismissed for lack of standing. But, rather than supporting respondents' position, their arguments merely underscore the inefficiencies, inconveniences, and threats to the integrity of the judiciary their lawsuit will engender, and all for no legitimate reason whatever.

For example, petitioners noted that, because respondents have not been assigned the PSPs' liabilities to petitioners, and because the PSPs are not parties, petitioners cannot assert counterclaims against the PSPs merely by listing the counterclaims in an answer to a complaint. Respondents seek to minimize this issue by suggesting that respondents should try to interplead the 1400 PSPs by locating, serving, and attempting to establish personal jurisdiction over each of them! Resp. Br. 55-56. Similarly, while respondents agree that the PSPs do

not have the obligations of a party to provide discovery, they rely on the fact that a magistrate has developed an alternative arrangement that permits discovery to be served on the PSPs through respondents. *Id.* at 48-51. But, as respondents do not dispute, the responses of the PSPs to the defendants' discovery have been nonexistent, woefully inadequate, or otherwise contemptuous, see Qwest Br. 12-13 – which could not happen if the PSPs were parties.[9] For each of these foregoing reasons, the non-party status of the PSPs has already imposed inefficiencies, substantial costs, and needless inconveniences on the defendants.

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[9] Respondents attempt to minimize the need for discovery from PSPs by purporting to refute Qwest's showing that there are at least four categories of information that PSPs know, that IXCs may not, and that is critical to litigation of dial-around compensation. Resp. Br. 51-54. But respondents offer no substantial response to Qwest's showing. First, it is irrelevant that the FCC regulations require PSPs to provide "lists" of their payphone lines and that LECs verify those lists. *Id.* at 52-53. As Qwest demonstrated, only the PSPs know what kind of phones are connected to these lines and whether devices have been attached that permit false and fraudulent claims for dial-around compensation. Qwest Br. 8 & n.9. Second, contrary to respondents' claim, an IXC cannot obtain "payphone coding digits" unless PSPs direct the LECs to provide this information. *Compare id.*, *with* Resp. Br. 53. Third, while respondents admit that Qwest was in fact unaware that a large PSP had entered into a contract that precluded its substantial dial-around compensation claims, respondents make unsupported assertions that this situation was unique. *Compare* Resp. Br. 53-54, *with* Qwest Br. 9 & n.10. Fourth, while respondents are correct that IXCs would know if they had entered into contracts in which particular PSPs waived claims to dial-around compensation, they ignore that discovery from the PSPs still would be necessary to negate any defenses the PSPs might have under such contracts. Qwest Br. 9-10 & n.11.

In addition, while respondents now argue that the Assignment Agreement should be construed differently, Resp. Br. 20, it plainly provides that each PSP is bound only by a "final determination" of claims that are prosecuted by respondents in that PSP's "interests." This inherently creates the potential for a PSP to claim that it is not bound by a final judgment because respondents did not act in its interests. Pet. Br. 47-48. Similarly, because the PSPs are not parties, respondents can respond to a failure of the PSPs to provide necessary information by revoking the assignments before any determination is made of the PSPs' rights or liabilities. Compare *Brown,* 517 U.S. at 556 (when damages action is brought on behalf of absent third parties, there is a risk that the court and parties will invest resources in litigating the case "only to find the plaintiff lacking [necessary] detailed … evidence"). Because there would be no "final determination" of the PSPs' claims, those PSPs would then be free to pursue their claims in another forum.

Because this case involves claims brought on behalf of 1400 individual PSPs, the adverse consequences that the rules of prudential standing are intended to avoid would arise on a massive and unprecedented scale if this action were allowed to proceed. And there is simply no reason for the Court to accept any of these risks here. As explained above, these 1400 PSPs can be, and should be, the named plaintiffs. And, if they were, there would be no impediments to discovery, no impediments to asserting and litigating counterclaims, no risk that a PSP could later claim not to be bound by an adverse judgment, and no possibility that the lawsuit could be abandoned because factual information was not produced and a second lawsuit later instituted on the same claim.

These are among the reasons for the rule that, unless Congress so authorizes, the doctrine of prudential standing categorically bars damages actions on behalf of absent third parties where, as here, the absent third parties are fully capable of bringing suit in their own names.

Finally, this is also a singularly inappropriate case for creating an exception to the settled principles of prudential standing that ensure the integrity of federal courts. Even if there were legitimate reasons for allowing suits to be brought by an assignee-for-collection-only on behalf of the 1400 PSPs, there are other forums in which such actions can be brought. As respondents state, "aggregators have brought myriad cases before the FCC" to recover dial-around compensation on behalf of PSPs. Resp. Br. 4. The FCC is not subject to case or controversy requirements and has developed nonjudicial procedures for adducing the relevant facts, and assignees-for-collection can enforce the FCC's orders in federal court proceedings. See *supra* pp. 16, 20.

In this regard, the FCC has never stated that aggregators play "an indispensable role" in collecting compensation for dial-around calls in any forum, compare Resp. Br. 4, and the only circumstance in which aggregators have played any role at all is in FCC complaint proceedings where rules of Article III and prudential standing do not apply. The fact that aggregators have this alternative remedy underscores the impropriety of here creating an exception to principles of prudential standing that would allow these third-party claims to be brought in federal district court.

In short, respondents' effort to litigate as mere assignees-for-collection-only does not satisfy Article III. But, even if it did, principles of prudential

standing require dismissal of respondents' federal court damages action.

CONCLUSION

For the foregoing reasons, as well as those set forth in petitioners' opening brief, the judgment should be reversed.

Respectfully submitted,

THOMAS C. GOLDSTEIN
PATRICIA A. MILLETT
AKIN GUMP STRAUSS HAUER & FELD, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 887-4000

DAVID P. MURRAY
RANDY J. BRANITSKY
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000

Counsel for Petitioner Sprint

CARTER G. PHILLIPS*
DAVID W. CARPENTER
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

WAYNE WATTS
AT&T INC.
SENIOR EXECUTIVE VICE PRESIDENT & GENERAL COUNSEL
175 E. Houston Street
San Antonio, TX 78205
(210) 821-4105

Counsel for Petitioner AT&T

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* Counsel of Record