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No. 09-893

In The Supreme Court of the United States

AT&T MOBILITY LLC,

Petitioner,

v.

VINCENT AND LIZA CONCEPCION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF CTIA—THE WIRELESS ASSOCIATION® AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Blank Page

INTEREST OF THE *AMICUS CURIAE*[1]

CTIA—The Wireless Association® ("CTIA") is a non-profit organization representing a diverse array of participants in the Nation's wireless communications industry. CTIA's membership includes hundreds of service providers, manufacturers, wireless data and Internet companies, as well as other contributors to wireless services. On behalf of all sectors of the wireless communications industry, CTIA appears in regulatory proceedings before the Executive Branch, the Federal Communications Commission, Congress, and various state legislative bodies. CTIA also undertakes outreach efforts to the government and the public to raise awareness on issues of importance to the wireless communications industry. As part of those efforts, CTIA has repeatedly filed briefs as *amicus curiae* when this Court considers important arbitration issues. *See, e.g.*, *Stolt-Nielsen N.A. v. Animalfeeds Int'l Corp.* (2009); *Vaden v. Discover Bank*, 129 S. Ct. 1262 (2009); *Preston v. Ferrer*, 552 U.S. 346 (2008).

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[1] The parties have consented to the filing of this brief. Counsel for all parties have been given notice of the *amicus curiae*'s intention to file their brief as required by Supreme Court Rule 37.2(a). No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Many CTIA members enter nationwide service agreements with their customers. The agreements typically include requirements that customer complaints be resolved through arbitration rather than litigation, and often stipulate that arbitration must proceed on an individual rather than class-wide basis. By ensuring that disputes are resolved out of court through a streamlined, time-efficient, and cost-effective process, CTIA members are able to lower costs for wireless service to the benefit of their customers.

By conditioning enforcement of arbitration agreements on the availability of class-action procedures for complaining customers, the Ninth Circuit has effectively dictated the way in which arbitration must be conducted — by procedures that directly contradict the arbitration agreement as written. Nothing could more squarely subvert the federal policy favoring arbitration reflected in the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, and consistently espoused by this Court's precedents. Moreover, by allowing California law to dictate how arbitration is conducted, the Ninth Circuit's decision means that the enforceability of nationwide agreements for nationwide wireless service will vary from State to State and turn on the happenstance of where the customer resides and files suit. That anomaly undermines both the national policy of the FAA and the interests of CTIA and its members.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below poses a direct threat to the FAA and its policy favoring arbitration. By allowing a state policy preference for class actions to trump the FAA, the Ninth Circuit has defeated the federal policy favoring arbitration. Allowing arbitration only at the expense of agreeing to class treatment is not a mere condition on arbitration; it is an attack on arbitration. For the millions of companies that regard class certification and arbitration as a problematic combination that is not amenable to the "streamlined proceedings and expeditious results" that are the hallmarks of private arbitration agreements, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633 (1985), and have therefore limited arbitration agreements to individual claims, the Ninth Circuit's imposition of class-action procedures based on California law flouts the plain terms of their arbitration agreements. The FAA surely preempts States from upending the parties' agreement in this way.

For wireless carriers, the Ninth Circuit's decision has ripple effects that extend far beyond California and the Ninth Circuit. Although the decision involved California law, its interpretation of the FAA opened the door to an onslaught of unconscionability challenges to contracts in other jurisdictions within the Ninth Circuit and across the country. Nor is the decision's impact limited to California customers; out-of-state customers will invoke California law to invalidate arbitration agreements of California-based businesses.

Moreover, the impact of effectively exempting even California alone from the FAA cannot be gainsaid. The size of the California market may give plaintiffs' lawyers across the country reduced incentives to file anywhere else. California, however, is simply too big to be excepted from the federal policy embodied in the FAA. Nor does it make sense to have the arbitrability of disagreements about nationwide service under a nationwide contract turn on the happenstance of where suit is filed.

In sum, the Ninth Circuit's decision turns the FAA's policy in favor of arbitration on its head, conditioning enforceability on a state-law policy hostile to the arbitration of individual disputes. In the meantime, its decision calls into doubt the enforceability of millions of arbitration agreements. For all those reasons, this Court's immediate intervention is needed.

ARGUMENT

I. The Decision Allows A State Policy Preference To Trump The Terms Of An Arbitration Agreement And The FAA's Federal Policy In Favor Of Arbitration.

This Court should grant review because the Ninth Circuit's decision starkly illustrates the dangers of allowing States to superimpose particular procedures and policy preferences on private arbitration agreements. That result is inimical to the parties' bargain as written and usurps the federal policy in favor of arbitration as reflected in the Federal Arbitration Act and recognized by this Court.

The FAA was a direct response to the historic "hostility of American courts to the enforcement of arbitration agreements, a judicial disposition inherited from then-longstanding English practice." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001). To place arbitration contracts on equal footing with other contracts, section 2 of the FAA provides that arbitration agreements "*shall be valid, irrevocable, and enforceable*, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (emphasis added); *see also EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002). The "primary purpose" of the FAA, this Court has repeatedly explained, is to "ensur[e] that private agreements to arbitrate are enforced according to their terms." *Volt Info. Sciences, Inc. v. Bd. of Trs.*, 489 U.S. 468, 479 (1989).

This Court has consistently reinforced the FAA's "federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). When "the problem at hand is the construction of the contract language itself," the FAA "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 24-25. When there are "judicial policy concern[s]" about the implications of an arbitration agreement, those concerns cannot justify declining to enforce the agreement altogether. *14 Penn Plaza LLC v. Pyett*, 129 S. Ct. 1456, 1472 (2009). And since *Southland Corp. v. Keating*, 465 U.S. 1 (1984), the Court has made clear that the FAA's expansive policy

favoring arbitration applies "in state as well as federal courts" and bars "state legislative attempts to undercut the enforceability of arbitration agreements." *Id.* at 10, 16.

CTIA members have embraced the "simplicity, informality, and expedition of arbitration" on a massive scale. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985); *see also Preston v. Ferrer*, 552 U.S. 346, 357 (2008) ("prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results'") (quoting *Mitsubishi Motors*, 473 U.S. at 633). Wireless carriers have opted for arbitration, in part, to avoid the "delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation." Y2K Act of 1999, Pub. L. No. 106-37, § 2(a)(3)(B)(iv), 113 Stat. 185, 186. The wireless communications industry has also recognized that arbitration allows for the efficient resolution of even small-dollar disputes, enabling carriers to reduce dispute resolution costs in a competitive environment. CTIA members have opted for arbitration over the alternative of litigation, moreover, because it entails a less adversarial process that helps carriers maintain customer satisfaction and loyalty even in addressing complaints. For wireless carriers, that ability to retain customers through cost-effective and quality customer care has become increasingly critical as competition in the mobile phone industry has flourished in response to the "[r]elatively low prices" offered. *In re Annual Report and Analysis of Competitive Market Conditions With Respect to*

Commercial Mobile Services, FCC 08-28, WT Docket No. 07-71 ¶¶ 225, 290 (Feb. 4, 2008).

At the same time that the wireless communications industry has widely incorporated arbitration provisions, they have also limited the agreements to arbitrate to *individual* claims. Literally hundreds of millions of arbitration agreements expressly require that the arbitration proceed on an individual basis.

For carriers seeking the streamlining and efficiency benefits of traditional arbitration, class arbitration "import[s] collective action into the arbitration context" and thereby incorporates complex procedures and multiple parties in ways that frustrate those basic benefits. Kathleen M. Scanlon, *Class Arbitration Waivers: The "Severability" Doctrine And Its Consequences*, 62 DISP. RESOL. J. 40, 42 (2007). Dealing with a coordinated putative class of potentially hundreds or thousands of customers entails fundamentally different — and fundamentally more complex — proceedings than those in an individual arbitration. For example, the class question injects a host of additional steps into the dispute resolution process at the threshold: (1) discovery to determine whether the numerosity, typicality, commonality, and adequacy of representation requirements are satisfied for the class; (2) plenary briefing on class certification; (3) an evidentiary hearing; (4) a written ruling; and (5) a motion to vacate, and cross-motion to confirm, the arbitrator's class determination award in the district court. Class arbitration, meanwhile, is governed by procedures that substantially replicate the private judicial

system — the very system the carriers seek to bypass for a more streamlined alternative in arbitration. *See* American Arbitration Association (AAA), *Commercial Arbitration Rules and Mediation Procedures*, http://www.adr.org/sp.asp?id=22440; AAA, *Supplementary Rules for Class Arbitrations*, http://www.adr.org/sp.asp?id=21936 (almost completely mirroring the Federal Rules of Civil Procedure). Moreover, even when the defendant prevails in or settles a class arbitration, the arbitral award may not be final because uncertainty surrounds whether the award is binding on absent class members.[2] For these reasons, a class action ban is frequently the most valuable provision in an arbitration agreement from a carrier's perspective.

The Ninth Circuit's decision simultaneously invalidates those individual-claim-only arbitration agreements and dramatically undermines the federal policy in favor of enforcing and encouraging arbitration. The Ninth Circuit held, in essence, that a State-law policy — California's minority view that class-action waivers are unconscionable

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[2] Under *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), class actions "implicate the due process principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party." *Id.* at 846 (internal quotation marks omitted). Absent class members might contend, for example, that their due process rights were violated because they had no say in the selection of arbitrator. *See* Jean R. Sternlight, *As Mandatory Binding Arbitration Meets the Class Action, Will the Class Action Survive?*, 42 WM. & MARY L. REV. 1, 113 (2000).

— trumps the parties' bargain and section 2 of the FAA. The court's conditioning of the enforceability of private arbitration agreements on the availability of procedures expressly foreclosed in the arbitration agreements is flatly at odds with the very concept of arbitration — private parties bargaining around the procedural constraints of litigation. Nor does it comport with the FAA's "primary purpose" of "ensuring that private agreements to arbitrate are enforced according to their terms." *Volt Info.*, 489 U.S. at 479.

The Ninth Circuit's application of California's unconscionability doctrine attempts to reimpose the complex, costly, mass proceedings of class arbitration on carriers that have contracted to avoid those very procedures. The FAA, however, preempts States from mandating procedures for arbitration and frees parties "to structure their arbitration agreements as they see fit" and "specify by contract the rules under which that arbitration will be conducted." *Volt Info.*, 489 U.S. at 479 (citation omitted); *see also Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 586 (2008) ("procedure" is a "feature[] of arbitration" that "the FAA lets parties tailor . . . by contract"). The Ninth Circuit's decision thus subverts the express terms of the contract and fundamentally impedes "the accomplishment and execution of the full purposes and objective of Congress" in enacting the FAA. *United States v. Locke*, 529 U.S. 89, 109 (2000) (citations and internal quotation marks omitted).

II. The Decision Has Sweeping Ramifications That Extend Far Beyond California And Warrant This Court's Immediate Resolution.

The Ninth Circuit's decision, though premised on California's unconscionability law, has far-reaching and destabilizing consequences for the wireless communications industry well beyond California and the Ninth Circuit.

As the petition makes clear, the Ninth Circuit's decision conflicts with a number of other courts that have found that the FAA preempts any State law that prohibits enforcement of a class-action waiver. *See Gay v. CreditInform*, 511 F.3d 369, 395 (3d Cir. 2007); *Wince v. Easterbrooke Cellular Corp.*, No. 2:09-CV-135, 2010 WL 392391 (N.D. W.Va. Feb. 2, 2010); *Pyburn v. Bill Heard Chevrolet*, 63 S.W.3d 351, 365 (Tenn. Ct. App. 2001); *see generally* Pet. 17-25.

More fundamentally, however, the Ninth Circuit's decision perversely precludes nationwide contracts for nationwide service from being uniformly enforced across the Nation. Many States have not comparably invoked doctrines of "unconscionability" and so the FAA preemption issue wrongly decided below will not even arise. But as a practical matter, the enforceability of a nationwide arbitration agreement will now vary depending on which State's law applies. That scheme of State-by-State regulation will mean that the enforceability of nationwide arbitration agreements will vary from State to State — precisely the outcome that the FAA, as a national

policy favoring arbitration, was intended to prevent.

Indeed, the Ninth Circuit's decision does not even guarantee uniformity within the Ninth Circuit. States within the Ninth Circuit have different views on the enforceability of class-action waivers and the necessity of making class-wide procedures available. Accordingly, whether the terms of one arbitration agreement can be enforced will differ between States *within the Circuit* based on their respective unconscionability doctrines.

The Ninth Circuit's decision does mean that the other States within the Circuit now have free rein to adopt, like California, a fundamental policy against the enforceability of class-action waivers. Indeed, State law on unconscionability has widely emerged as a popular and potent tool for striking down arbitration agreements in recent years. "Where unconscionability challenges once appeared in less than 1% of all arbitration-related cases, more recently they have appeared in 15-20% of all cases involving arbitration." Aaron-Andrew P. Bruhl, *The Unconscionability Game: Strategic Judging And The Evolution Of Federal Arbitration Law*, 83 N.Y.U. L. REV. 1420, 1441 (2008); *see also* Steven J. Burton, *The New Judicial Hostility to Arbitration: Federal Preemption, Contract Unconscionability, and Agreements to Arbitrate*, 2006 J. DISP. RESOL. 469, 485-86 (2006) ("since 2000, many courts have been refusing to enforce arbitration agreements," with unconscionability as "the usual grounds for such refusals").

Commentators have attributed the increasing reliance of state courts on unconscionability to its flexible nature, which "provides opportunities for courts skeptical of arbitration to use the doctrine to evade the Supreme Court's pro-arbitration directives while simultaneously insulating their rulings from Supreme Court review." Bruhl, 83 N.Y.U. L. REV. at 1420; *see also id.* at 1449 (such decisions are "opaque to the reviewing court" because they require immersion in State law and the record, and it is "nearly impossible to tell if a court is applying state unconscionability doctrine evenhandedly"). In effect, the Ninth Circuit has given the state courts within its jurisdiction a green light to avail themselves of the "opportunities" of the unconscionability doctrine.

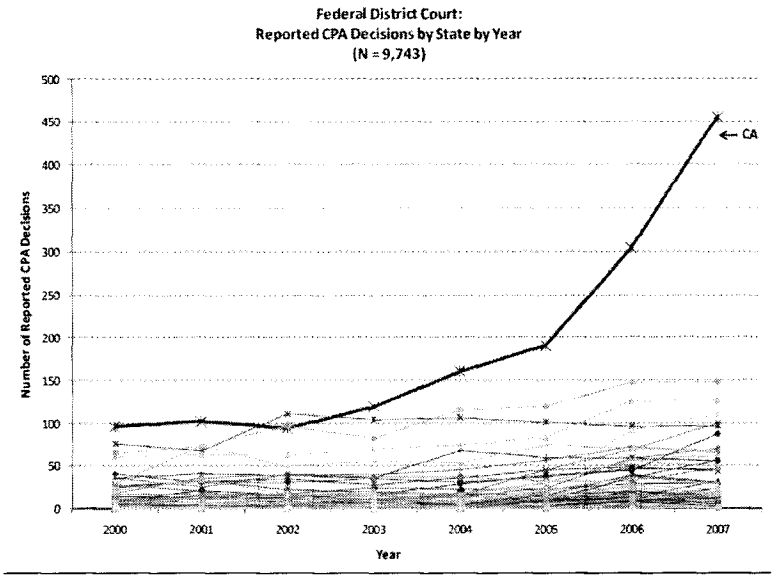
The Ninth Circuit, moreover, has made clear that its decision's impact is not restricted to residents of California. Rather, out-of-state residents may also challenge arbitration agreements as violating California law. In *Masters v. DirecTV, Inc.*, No. 08-55825, 2009 WL 4885132 (9th Cir. Nov. 19, 2009), the Ninth Circuit deemed it irrelevant that plaintiff customers hailed from Montana and Georgia. *See id.* at *1. Noting that the defendant company was based in California, that the claims were brought under California law, and that California had a "fundamental policy" against class-action waivers that was not limited to California residents, the court concluded that California law governed. *See id.* Under *Masters*, therefore, customers of California-based businesses may easily invoke California law — and thereby

circumvent the law of their home States — to test the enforceability of their contract provisions.

In any event, the sheer size of the California market means the impact of the decision below cannot be minimized. Plaintiffs' lawyers now have every incentive to forum-shop and bring suit in the Ninth Circuit to avoid adverse preemption rulings and trump the express language of their arbitration agreements. And given California's size, there is little reason to file suit elsewhere. As of June 2008, an FCC survey of mobile telephone subscribers indicated that of a reported 255.3 million subscribers nationwide, 31.9 million subscribers were in California alone. *See* FCC, *Local Telephone Competition: Status as of June 30, 2008*, at Table 14 (released July 23, 2009), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf. California's subscriber population was the highest among the States by a hefty margin, with Texas and New York at a distant second and third with reported totals of 20.4 and 17.3 million subscribers, respectively. *Id.*

Indeed, the center of gravity of consumer protection litigation already lies in the California courts. Back in 2002, three California court rulings deeming class-action waivers unconscionable led to cries that the State had triggered a "Gold Rush" and "ma[de] California the class action capital of the country for small consumer claims subject to arbitration agreements." Alan S. Kaplinsky & Mark J. Levin, *The Gold Rush of 2002: California Courts Lure Plaintiffs' Lawyers (But Undermine Federal Arbitration Act) By Refusing To Enforce*

"No-Class Action" Clauses In Consumer Arbitration Agreements, 58 BUS. LAW. 1289, 1289 (2003); *see also id.* at 1290 (decisions "invite plaintiffs' class action lawyers to forum shop by finding a basis for bringing suit in California with the hope of avoiding otherwise applicable no-class action arbitration clauses"). A recent comprehensive study of State Consumer Protection Act litigation from 2000 to 2007 observed that the number of reported federal decisions climbed the most substantially in California from 96 to a staggering 455. Searle Civil Justice Institute, *State Consumer Protection Acts: An Empirical Investigation of Private Litigation Preliminary Report*, at 21 (Dec. 2009), http://www.law.northwestern.edu/searlecenter/uploads/CPA_Proof_113009_final.pdf. That significant rise in consumer class actions in California, relative to other states, is reflected in the chart below:



Id. at 21-22 chart 4. Similarly, among state appellate courts, California displayed the greatest increase in reported decisions, growing from 35 to 254. *Id.* at 21. The Ninth Circuit's decision will only amplify those trends. There is little doubt that the decision will trigger substantial volumes of expensive and burdensome litigation in California — and that a significant portion of that litigation will be generated by forum-shopping parties from out of state.

Meanwhile, ATTM's arbitration agreement is far from the only contract ripe for challenge. The scheme of State-by-State regulation portended by the Ninth Circuit's decision will hit the entire wireless communications industry hard, because wireless carriers are typically national businesses that utilize a single nationwide contract for nationwide service. As the enforceability of agreements oscillates from State to State, wireless carriers will be forced to adopt different rules for different States. For example, Comcast has added a "Special Note Regarding Arbitration for California Customers" to its service agreement that carves out an arbitration enforcement exemption applicable only to California customers.[3] At the broadest level, then, allowing each State to determine the validity of nationwide arbitration

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[3] *See* Comcast Service Agreement, http://www.comcast.net/terms/subscriber/ ("IF YOU ARE A COMCAST CUSTOMER IN CALIFORNIA, COMCAST WILL NOT SEEK TO ENFORCE THE ARBITRATION PROVISION ABOVE UNLESS WE HAVE NOTIFIED YOU OTHERWISE.").

agreements defeats all the efficiencies, and indeed the whole purpose, of adopting one uniform contract to govern wireless service operations across the country.

Moreover, of the more than 240 million mobile telephone subscribers in the United States, a majority have service agreements that expressly provide for *individual* arbitration. For example, the nationwide service agreements of CTIA members such as Verizon Wireless, Sprint Nextel, and T-Mobile stipulate that arbitration must proceed on an individual rather than class-wide basis.[4] By ensuring that disputes are resolved out

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[4] *See, e.g.*, Verizon Wireless Service Agreement, http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp ("Except for small claims court cases that qualify, any dispute that results from this agreement or from the Services you receive . . . will be resolved by one or more neutral arbitrators . . . . This agreement doesn't allow class arbitrations even if the AAA or BBB procedures or rules would. The arbitrator may award money or injunctive relief only in favor of the individual party."); Sprint Nextel Service Agreement, http://nextelonline.nextel.com/en/legal/legal_terms_privacy_popup.shtml ("We each agree to finally settle all disputes [except those brought in small claims court or before a government agency] only by arbitration. . . . We each agree not to pursue arbitration on a classwide basis. We each agree that any arbitration will be solely between you and us . . . . TO THE EXTENT ALLOWED BY LAW, WE EACH WAIVE ANY RIGHT TO PURSUE DISPUTES ON A CLASSWIDE BASIS; THAT IS, TO EITHER JOIN A CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY, OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING."); T-Mobile

of court through a relatively simple, time-efficient, and less adversarial process, CTIA members have been able to lower their costs. Those lower costs in turn keep them competitive and maintain customer satisfaction.

However, if States impose class-wide arbitration procedures against the express terms of their agreements, many wireless carriers will elect for no arbitration at all. This is not speculation: Verizon's Service Agreement directly provides that "[i]f for some reason the prohibition on class arbitrations . . . cannot be enforced, then the agreement to arbitrate will not apply." Verizon Wireless Service Agreement, http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp. Likewise, Sprint Nextel's Service Agreement notes that "[i]f for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then

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Service Agreement, http://www.t-mobile.com/Templates/Popup.aspx?WT.z_unav=ftr__TC&PAsset=Ftr_Ftr_TermsAndConditions&print=true ("WE EACH AGREE THAT . . . ANY AND ALL CLAIMS OR DISPUTES BETWEEN YOU AND US IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, OUR SERVICES, DEVICES OR PRODUCTS, INCLUDING ANY BILLING DISPUTES, WILL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT. . . . WE EACH AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION.").

our agreement to arbitrate doesn't apply and the dispute must be brought in court." Sprint Nextel Service Agreement, http://nextelonline.nextel.com/en/legal/legal_terms_privacy_popup.shtml. As noted above, moreover, Comcast announced in the wake of the Ninth Circuit's ruling that it will not enforce its arbitration provision against customers in California. *See* Comcast Service Agreement, http://www.comcast.net/terms/subscriber/.[5]

All of this results in more complex, inefficient, and expensive dispute resolution processes, which can only increase costs for consumers. And given the prevalence of arbitration clauses in myriad other industries — credit card agreements, brokerage accounts, insurance policies, financial services, franchisor agreements, legal, accounting and health care services, and the like[6]

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[5] The risk that companies will abandon arbitration altogether when courts superimpose class-action procedures is not merely hypothetical: In *Kristian v. Comcast Corp.*, 446 F.3d 25 (1st Cir. 2006), for example, the First Circuit held a class-action waiver unenforceable. After deciding that plaintiffs' antitrust claims could proceed in a class arbitration, the court noted that Comcast, who had filed a motion to compel arbitration, could "seek to withdraw that motion to compel if it does not like the conditions that now apply to the arbitral forum." *Id.* at 63 n.25. To no one's surprise, Comcast immediately filed a motion to withdraw and abandoned the arbitration. *Kristian v. Comcast Corp.*, 469 F. Supp. 2d 1 (D. Mass. 2006).

[6] *See, e.g., Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 683 (1996); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477 (1989); *Winig v. Cingular Wireless LLC*, No. C 06 4297 MMC., 2006 WL 2766007 (N.D. Cal. Sept. 27, 2006); *Aguilar v. Lerner*, 88 P.3d 24 (Cal. 2004); *McNulty v.*

— the significant consequences for businesses in competitive industries cannot be understated.

Ultimately, when it comes to California, wireless carriers and their customers throughout the country have been deprived of the significant advantages of arbitration at the heart of their customer service agreements, and will effectively be forced into court — the very forum they sought to avoid. Those same arbitration agreements remain binding in other jurisdictions, with enforceability turning on the State law that governs a nationwide contract for nationwide service. That result makes no sense and offends the basic policy of the FAA, which Congress enacted to impose a national standard on arbitration and prevent these very inconsistencies. In light of the far-reaching practical ramifications of the decision below, this Court should not delay resolution of this critical issue any further.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

H&R Block, Inc., 843 A.2d 1267 (Pa. Super. Ct. 2004); *Szetela v. Discover Bank*, 118 Cal. Rptr. 2d 862 (Cal. Ct. App. 2002); *State ex rel. Dunlap v. Berger*, 567 S.E.2d 265 (W. Va. 2002); *Flores v. Transam. HomeFirst, Inc.*, 113 Cal. Rptr. 2d 376 (Cal. Ct. App. 2002); *Engalla v. Permanente Med. Group, Inc.*, 938 P.2d 903 (Cal. 1997).

Respectfully submitted,

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