Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Solvable Frustrations, Inc. Petition to Amend Part 1 of the Commission's Rules to Specify Procedures for Class Action Complaints	)	RM-11675

OPPOSITION OF AT&T INC.

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I. INTRODUCTION AND SUMMARY

AT&T Inc. and its affiliated companies oppose the above-captioned petition filed by Solvable Frustrations, Inc. ("SFI" or "Petitioner"), which requests that the Commission establish procedures that will allow consumers to pursue class action complaints before the agency.[1] SFI attempts to portray its request as advancing the public interest, claiming that class actions will provide complainants with an "efficient tool to address unlawful acts by carriers."[2] In reality, however, the Petition appears to be little more than a self-serving vehicle for advancing SFI's private interests as an "online social network [that] aggregates customer complaints. . . ." Adopting SFI's proposal would require the Commission to ignore its longstanding precedent – which uniformly and unambiguously rejects agency class actions as inconsistent with the private remedy provisions of the Communications Act[3] – in order to implement an inherently complex and time-consuming process with which the Commission has no experience or expertise, that

[1] Solvable Frustration, Inc. Petition to Amend Part 1 of the Commission's Rules to Specify Procedures for Class Action Complaints (filed July 19, 2012) ("Petition"), at 1.

[2] Petition at 2.

[3] *See* 47 U.S.C. §§206-209.

would strain the Commission's already limited resources, and that ultimately would undermine the Commission's and the public's interests in the expeditious resolution of legitimate consumer complaints. SFI's Petition thus has no basis in either law or sound public policy.

Fundamentally, SFI seeks a rule that the Commission lacks any legal authority to adopt. In fact, "[t]he Commission has clearly stated that class action lawsuits are neither contemplated by, nor consistent with, the private remedies created under sections 206 through 209 of the [Communications] Act."[4] SFI's effort to portray this determination as a misreading of repeated prior Commission decisions lacks any support in that statute, the history of Fed. R. Civ. P. 23, and simple logic.

Nor is there any merit to SFI's claims that adding a class action process to the Commission's rules will benefit complainants and defendants.[5] In particular, SFI's contention that adoption of a class action procedure would promote "efficiency" is wishful thinking, as it ignores the significant additional burdens that class actions impose on adjudicators and litigants alike. And the requirements of due process preclude Petitioner from circumventing those problems through its patently deficient proposed regulation, which, although ostensibly based on Fed. R. Civ. P. 23, omits many of that rule's most important safeguards – such as the provision in class actions involving money judgments that permits members of the class to opt out of the proceeding.[6] Thus, even if the Commission possessed the authority to implement a class action process – which it does not – it could only do so through a rule that included all of the formalities of the class action process and ensured the due process rights of consumers and defendants.

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4 *Halprin, Temple, Goodman, & Sugrue v. MCI Telecommunications Corp.*, 13 FCC Rcd 22568, 22581 ¶29 (1998) ("*Halprin*").

5 Petition at 2-4.

6 *See* Fed. R. Civ. P. 23(c)(2)(B) (required notice to class members must "concisely and clearly state . . . that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded . . . .").

Even then the result likely would be a procedural morass that benefits no one, other than perhaps the Petitioner. Tellingly, SFI provides no evidence that consumers today, including those with small claims, have been unable to obtain redress from the Commission in the absence of a class action process. That is because the evidence is directly to the contrary. As the Commission's quarterly reports alone demonstrate, tens of thousands of consumers have availed themselves of the informal complaint processes, including online complaint procedures, that the Commission has put in place to facilitate access. Those procedures enable consumers to air their grievances at the Commission without counsel or legal training and with minimal cost and burden. Given the obvious success of the Commission's efforts, SFI's proposal is nothing more than a flawed "solution" to a non-existent problem.

For all of these reasons, SFI's petition must be denied.

II. DISCUSSION

A. The Communications Act Does Not Authorize The Use of Class Actions In Complaint Proceedings Before The Commission.

The Commission has definitively determined that an agency class action procedure not only is beyond the scope of the private remedies provisions of the Communications Act, but that it would be directly inconsistent with those remedies.[7] The Commission did not reach this conclusion just once. Rather, it has rendered this judgment repeatedly in cases dating back nearly 20 years.[8]

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[7] *Halprin*,13 FCC Rcd at 22581 ¶29 ("The Commission has clearly stated that class action lawsuits are neither contemplated by, nor consistent with, the private remedies created under sections 206 through 209 of the Act.").

[8] *See Gilmore et al. v. Southwestern Bell Mobile Systems*, 20 FCC Rcd 15079, 15082 ¶8 and n. 23 (2005) ("[T]he Commission cannot adjudicate complaints under Section 208 on a class action basis.") ; *Orloff v. Vodafone Airtouch Licenses LLC*, 17 FCC Rcd 8987, 8992 ¶11 and n. 33 (2002) (same); *Consumer.Net v. AT&T Corp.*, 15 FCC Rcd 281, 301 ¶43 and n. 97 (1999) (Complainant "has standing to recover damages only for harm to itself, not for harm suffered by others."); *Krause v. MCI Telecommunications Corporation*, 14 FCC Rcd 2770, 2775-76 ¶14 (1999) ("The Commission has clearly stated that class action lawsuits are neither contemplated by, nor consistent with, the private remedies created under sections 206 through 209 of the Act."); *Halprin*, 13 FCC Rcd at 22581 ¶29; *Black Radio Network, Inc. and News Transmission Services, Inc. v. New York Telephone Co. and AT&T Corp*., 12 FCC Rcd 13737, 13742 ¶8 and n. 39 (1997) ("A request for an accounting to a general body of ratepayers, in effect transforms a Section 208 complaint into a class action suit, a result neither contemplated by, nor consistent with, the private remedies created under Sections 206-209 of the Act."); *Allnet Communications Services, Inc. v. New York Telephone Co. et al.*, 8 FCC Rcd 3087, 3094 ¶29 (1993) ("Accepting defendants' flow through argument would, in effect, transform complainants' complaints into class action suits on behalf of their customers, a result neither expressly contemplated by nor consistent with the private remedy created under Sections 206-209 of the Act."); *Allnet Communications Services, Inc. v. Illinois Bell Telephone Co. et al.*, 8 FCC Rcd 3030, 3037 ¶34 (same); *American Telephone and Telegraph Company v. Cincinnati Bell Telephone Co and Walnut Hill Telephone Co.*, 8 FCC Rcd 1767, 1774 ¶37 (1993) (same); *US Sprint Communications Limited Partnership v. Pacific Northwest Bell Telephone Co. et al.*, 8 FCC Rcd 1288, 1295 ¶36 (1993) (same); *MCI Telecommunications Corporation v. Pacific Bell Telephone Co. et al.*, 8 FCC Rcd 1517, 1526 ¶32 (1993) (same).

SFI tries to downplay this authority, characterizing it as "some (unsubstantiated) language . . . in a few Commission decisions."[9] But it cannot point to any provision in any other decision, much less in the Communications Act itself, that explicitly authorizes the use of class action procedures in private complaints filed with the Commission. Instead, SFI contends that: (1) the Commission decisions rejecting agency class actions – and *Halprin* in particular – misread prior precedent,[10] and (2) agency class actions were in fact contemplated in the Act because Section 207 authorizes proceedings in either federal court or at the Commission, and class actions were available in federal courts when that statute was enacted.[11] Neither of these arguments withstands careful scrutiny.

Petitioner first claims that *Halprin* and the other Commission decisions rejecting agency class actions are based on a statement in another case – specifically, *MCI Telecommunications Corporation v. Pacific Bell Telephone Co. et al.*, 8 FCC Rcd 1517, 1526 ¶32 (1993) – that does not in fact support that conclusion. As the Commission put it in *MCI*:

> Accepting defendants' flow through argument would, in effect, transform MCI's complaints into class action suits on behalf of its customers, a result neither expressly contemplated by nor consistent with the private remedy created under Sections 206-209 of the Act.[12]

According to SFI, this statement did not mean that Commission found that class actions themselves fell outside the bounds of Sections 206-209, but only that the *transformation* of MCI's complaint into a class action was improper.[13]

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9 Petition at 4.

10 Petition at 5-6.

11 Petition at 6-8.

12 *MCI*, 8 FCC Rcd at 1526 ¶32.

13 Petition at 5.

SFI's interpretation does not square with the *MCI* decision. Indeed, if class actions had been available under the Act when *MCI* was decided, it would be reasonable to expect the Commission to have acknowledged the possibility of applying that procedure and explain why it could not be used in that case. There is no such discussion in *MCI*. To the contrary, the Commission emphasized in that decision that Section 208's private remedy involves "***individual actions*** for damages. . . ."[14] This distinction reinforces the conclusion that it was in fact the idea of a class action before the agency itself, and not simply the potential transformation of complainant's claims into a class action, that the Commission found to be "neither expressly contemplated nor consistent with the private remedy created under Sections 206-209 of the Act."

But even if that statement in *MCI* is ambiguous, which it is not, there is no shred of ambiguity in *Halprin* and subsequent decisions. As the Commission found in *Halprin*, the private remedies provisions of the Act do not contemplate class action procedures.[15] Instead, the remedy available to similarly situated customers "is to file their own section 208 complaints with the Commission.[16] The Commission reiterated this point even more directly in ensuing cases, squarely holding in its last decision on this point "that it is not permitted to adjudicate complaints under section 208 on a class action basis."[17] This holding is not susceptible to any confusion or misinterpretation, it is not based on a misreading of past precedent, and it compels the denial of SFI's Petition. [18]

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14 *MCI*, 8 FCC Rcd at 1521 ¶14 (emphasis added).

15 *Halprin*,13 FCC Rcd at 22581 ¶29.

16 *Id.*

17 *Gilmore*, 20 FCC Rcd at 15082 ¶8 and n. 23. *Accord Orloff*, 17 FCC Rcd at 8992 ¶11 and n. 33.

18 There is also no merit to SFI's conclusion that the Commission's decision in *Certified Collateral Corp. v. AllNet Communications Services*, 2 FCC Rcd 2171 (1987), means there is still an open question before the Commission as to its legal authority to entertain class action complaints. *See* Petition at 5. Although SFI makes much of the fact that the Commission noted in that decision that "our Rules do not

Undeterred by this unbroken line of decisions, SFI argues that the Act in fact does permit agency class actions. It primarily bases this conclusion on the following syllogism: (a) Section 207 of the Communications Act permits a person to pursue a claim for damages against a common carrier by filing a complaint with the Commission or by bringing suit in a federal district court; (b) when this provision was enacted, class actions were available in federal courts, and thus the ability to use that procedure was included in a complainant's right to sue in federal district court under Section 207; ergo, (c) "class actions are certainly contemplated by, and consistent with, the private remedies created under sections 206 through 209 of the Act."[19]

But each link in this chain of "logic" is broken. As an initial matter, Section 207 by its terms does no more than give a complainant a choice of forum in which to bring a grievance against a carrier.[20] It says nothing at all about the respective procedures the Commission and the courts must use to adjudicate those complaints, much less dictates that each forum must apply the same rules of procedure. Indeed, a complainant's choice of forum under Section 207 undoubtedly was intended to be informed by the procedural and substantive differences between the lawsuits in the federal courts and complaint proceedings before the Commission[21] – and, ultimately, the impact of these differences on the time it would take to get the grievance

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contemplate class action complaints," *id.* at 2173 ¶14, the Commission did not state, or even suggest, that class actions were permitted under the Act. To the contrary, the Commission stated emphatically that "we do not propose to accept such complaints for filing." *Id.*

[19] Petition at 7-8.

[20] 47 U.S.C. §207 provides:

> Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

[21] *See, e.g., Implementation of the Telecommunications Act of 1996*, 12 FCC Rcd 22497 ¶¶70, 81-82 (1997) (explaining, among other differences, that Commission complaints require "fact-based" pleadings, in contrast to the "notice" pleadings permitted under federal court rules).

resolved. The Commission itself has noted the "several significant differences" between itself and federal courts with respect to the choice presented by Section 207, stating that "[p]arties are free to weigh the advantages in bringing their claims in federal district court against the benefits of Commission resolution."[22]

And, of course, section 207 says absolutely nothing about requiring class actions in such agency proceedings. That comes as no surprise, because class actions for damages – at least as SFI envisions them, and as they currently are established in the Federal Rules of Civil Procedure – were not part of the landscape when the Communications Act was enacted. Although SFI cites a 1921 Supreme Court decision for the proposition that class actions existed before the Communications Act,[23] that decision underscores the fact that a class action, insofar as it was known in 1934, was a remedy only available from a court of equity.[24] The predecessor to the original version of Fed. R. Civ. P. 23 even was entitled "Equity Rule 38."[25] However, this Commission has long held that it possesses no equitable authority.[26] Congress clearly could not

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22 *Amendment of Rule Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, 8 FCC Rcd 2614 ¶69 (1993) (rejecting proposal to adopt formal sanction rules patterned after Fed. R. Civ. P. 11 and 37(a)(4)).

23 Petition at 8 and n. 13 (*citing Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356, 363 (1921)).

24 *Supreme Tribe of Ben Hur*, 255 U.S. at 363 ("For convenience, therefore, and to prevent a failure of justice, ***a court of equity*** permits a portion of the parties in interest to represent the entire body . . . .) (emphasis added).

25 *See* Fed. R. Civ. P. 23, Advisory Committee Notes to 1937 Adoption; *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997) (Fed. R. Civ. P. 23 "stems from equity practice . . . .").

26 *In re Application of Radio Station WSNT, Inc.*, 45 FCC 2d 377, 382 ¶18 (1974). *See American Telephone and Telegraph Co. v. FCC*, 487 F. 2d 865, 872 (2d. Cir. 1973) (Congress "intended that specific statutory authority, rather than general inherent equity power, should provide the agency with its governing standards.").

The FCC's general lack of inherent equitable power providers yet another reason to reject SFI's proposed regulation, which purports to give the "the administrative judge . . . authority to award attorney's fees under the Common Fund doctrine . . . ." Petition, Proposed Rule §[1.737(j)] (*citing Trustees v. Greenough*, 105 U.S. 527 (1882)). The Commission has held "that equitable jurisdiction in a court is essential to a common fund award and that, because the agency does not possess the requisite equitable powers, it may not make such an award unless it is given explicit statutory authority to do so."

have contemplated that a Commission whose powers flow entirely from its enabling statutes – none of which make any mention of class actions – nevertheless would be able to independently implement and entertain a procedure that was based entirely on the powers of a court of equity.

Moreover, the damages class action that SFI is seeking to interject into the Commission's procedures was not even part of the new Rule 23 when it was first adopted in 1937. Fed. R. Civ. P. 23(b)(3), which provided for the first time class actions for damages designed to secure judgments for all class members except those who affirmatively elected to be excluded, was not added to the federal rules until 1966.[27] Thus, contrary to SFI's revisionist history, the procedures for damages class action – which the Supreme Court has described as "the 'most adventuresome' innovation" in the 1966 amendments to the federal rules – were put in place ***more than three decades*** after the enactment of the private remedies provisions of the Act. This confirms what the Commission has said all along: the class action process SFI is trying to foist on the agency is

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Hill & Welch and Myers Keller Communications Law Group Request for Attorneys Fees, 22 FCC Rcd. 5271, 5275-76 ¶10 (2007) (*citing William E. Zimsky*, 9 FCC Rcd 3239, 3241 ¶20 (1994)). The courts also have found that the agency lacks the statutory authority to award attorney's fees. *Turner v. FCC*, 514 F.2d 1354, 1356 (D.C. Cir. 1975); *American Telephone and Telegraph Co. v. United Artists Payphone Corp.*, 852 F. Supp. 221, 224 (S.D.N.Y. 1994 ("§206 does not permit a party to recover for attorney's fees incurred before the FCC."). The Commission has repeatedly reached the same conclusion. *Staton Holdings, Inc. v. First Data Voice Service*, 18 FCC Rcd 12787, 12791 ¶13 (2003); *Implementation of the Telecommunications Act of 1996*, 12 FCC Rcd 22497 ¶37 (1997); *Implementation of the Telecommunications Act of 1996*, 11 FCC Rcd 20823, 20845 ¶54 (1996); *Erdman Technologies Corp. v. US Sprint Communications Co.*, 11 FCC Rcd 6339 ¶20 (1996); *Electric Plant Board of the City of Glasgow, Kentucky v. Turner Cable Network Sales, Inc.*, 9 FCC Rcd. 4855 ¶¶25-26 (1994); *William E. Zimsky*, 9 FCC Rcd 3239, 3241 ¶20 (1994); *Pan American Satellite Corporation v. Communications Satellite Corp.*, 8 FCC Rcd 4502 ¶16 (1993); *Allnet Communications Services, Inc. v. New York Telephone Co., et al.*, 8 FCC Rcd 3087, ¶36 (1993); *Amendment of Rule Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, 8 FCC Rcd 2614 ¶69 and n. 71 (1993); *Comark Cable Fund III v. Northwestern Indiana Telephone Co.*, 100 FCC 2d 1244, 1257 ¶31 and n. 51 (1985).

[27] *See Amchem Products*, 521 U.S. at 614-15 (*quoting* Kaplan, A Prefatory Note, 10 B.C. Ind. & Com. L. Rev. 497 (1969)).

not within the agency's statutory authority.[28] The Commission should deny the Petition on that ground.

B. Class Actions Would Impair the Commission's Ability to Efficiently and Expeditiously Adjudicate Consumer Complaints.

Even if the Commission possessed the authority under its enabling status to adopt a class action process for complaints filed with the agency – and as shown above, it does not – it should not exercise it. Contrary to SFI's claim,[29] class actions would hinder, not help, the agency in conducting its "business."

Although SFI touts the alleged "benefits" of class actions, especially in creating "judicial" efficiency,[30] it fails to mention any of the burdens the process creates. And those are extensive. The Supreme Court's recent decision in *AT&T Mobility LLC v. Concepcion* is instructive on this point.[31] *Concepcion* considered the effect of a California rule requiring the availability of class proceedings in arbitration and held that it conflicted with the Federal Arbitration Act ("FAA").[32] In reaching that conclusion, the Court determined that imposing

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[28] SFI's effort to pass off class actions as simply "a somewhat more sophisticated form of joinder" (Petition at 8) ignores critical distinctions between those procedures. Class actions are representative actions involving numerous members. In contrast, permissive joinder in Commission complaint proceedings involves a discrete, identifiable set of complainants, each of whom is required to plead and prove their respective causes of action. A review of the extensive procedural protections afforded by Fed. R. Civ. P. 23 — including court certification based on specific prerequisites, judicial appointment of class counsel, and judicial approval of settlements — illustrates the wholly unique nature of representative class actions. None of these extensive procedural protections is triggered by mere joinder of parties. *Cf.* Fed. R. Civ. P. 19-20, 23. That the Commission has permitted joinder, even as it has found that it lacks authority to adopt a class action process, shows that it understands that distinction.

[29] Petition at 6-7.

[30] Petition at 2.

[31] 131 S. Ct. 1740 (2011).

[32] 9 U.S.C. §§ 1-16.

class proceedings in arbitration conflicted with one of the principal purposes of the FAA: promoting the efficient resolution of disputes.[33]

The Court's analysis of the problems generated by class arbitrations is directly relevant to the Commission and its complaint process. Like arbitration, the Commission's complaint procedure is traditionally a bilateral process. And as *Concepcion* explains, the changes involved in a shift from bilateral to class proceedings are "fundamental:"

> This is obvious as a structural matter: Classwide arbitration includes absent parties, necessitating additional and different procedures and involving higher stakes. Confidentiality becomes more difficult. And while it is theoretically possible to select an arbitrator with some expertise relevant to the class certification question, arbitrators are not generally knowledgeable in the often-dominant procedural aspects of certification, such as the protection of absent parties.[34]

This description applies with even greater force to the Commission, which has absolutely no background, much less expertise, in administering class action complaints, nor the time and the resources to devote to developing and exercising that body of knowledge.

The same holds true for the *Concepcion* Court's determination that class arbitration "sacrifices the principal advantage of arbitration – its informality – and makes the process slower, costly, and more likely to generate procedural morass than final judgment."[35] Transforming the Commission's individualized dispute resolutions procedures into a class-wide mechanism would produce comparable difficulties. Indeed, before the Commission could address a class action on the merits, it would first have to decide whether the class itself could be certified, whether the named parties were sufficiently representative and typical, and even how discovery would be conducted. The addition of these required procedures would be profound.

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[33] 131 S. Ct. at 1747-53.

[34] *Id.* at 1750.

[35] *Id.* at 1751.

As *Concepcion* observed, the experiment with class proceedings in arbitration has generated substantial delays in claim resolution. As of the April 2011 *Concepcion* decision, not a single class arbitration of the nearly three hundred that had been filed with the American Arbitration Association since it adopted rules for such proceedings had resulted in a judgment in the merits. What is worse, the average time spent in litigation on the majority of those class arbitrations that were no longer active, whether because they had settled or been withdrawn, was 630 days.

SFI does not explain how such a result in a class action complaint case could remotely be considered efficient, much less comport with the statutory deadline the Commission is required to meet in private remedy complaints falling under Section 208(b)(1).[36] Indeed, SFI's own proposed solution shows that class complaints cannot be resolved expeditiously – much less within the time limits specified in this statute and other provisions of the Act – without the unacceptable sacrifice of important due process protections. Petitioner's proposed regulation silently eliminates many of the most critical provisions in Fed. R. Civ. P. 23. In particular, it contains no counterpart to Fed. R. Civ. P. 23(b)(3), the federal rule that permits members of the class to opt out of a class action for money damages.[37]

SFI does not highlight this omission, much less explain it. But it is clear that the Commission could not adopt a rule with this deficiency, or take some other shortcut in an effort

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[36] *See* 47 U.S.C. §208(b)(1) ("[T]he Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 5 months after the date on which the complaint was filed."). The Commission faces even stricter statutorily-imposed deadlines in other complaint proceedings, which also could be swept up in a proposed class action process. *See* 47 U.S.C. §260 (establishing 120 day limit for final determination on a complaint alleging that a local exchange carrier subsidized or discriminated in favor of its telemessaging service); 47 U.S.C. §271(d)(6) (requiring the Commission to act on complaints concerning failures of the Bell operating companies to meet the conditions for providing interLATA service within 90 days); 47 U.S.C. §275(c) (requiring the Commission to act on complaints alleging that a Bell operating company subsidized or discriminated in favor of its alarm monitoring service within 90 days).

[37] Fed. R. Civ. P. 23(c)(2)(B) (required notice to class members must "concisely and clearly state . . . that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded . . . .").

to make the procedure appear less onerous and time consuming. As the Court found in *Concepcion*, "class arbitration *requires* procedural formality."[38] This same requirement would apply to a class action before the Commission. "For a class action money judgment to bind absentees in litigation . . . absent members must be afforded notice, and opportunity to be heard, and a right to opt out of the class."[39] Due process would require no less in a class action proceeding before the Commission.

And therein lies the problem. Conducting a class action complaint proceeding before the Commission necessarily would entail the use of inherently complex and time-consuming procedures that would strain, if not break, the agency's limited resources, impose significant new burdens on the litigants themselves, and ultimately impair the Commission's ability to carry out its statutory responsibility to resolve consumer complaints expeditiously. This result could be considered "efficient" under only the most distorted definition of that term.[40]

SFI provides no good reason for the Commission to enter this morass. Although it theorizes that "the high price of litigation can discourage the bringing of legitimate claims," Petition at 2, Petitioner does not tie this purely conjectural concern to anything the Commission is, or is not, doing. SFI certainly provides no evidence that the Commission's current processes fail to provide consumers, including those with small claims, with an adequate means of obtaining redress for their grievances.

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[38] 131 S. Ct. at 1751; *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812 (1985).

[39] 131 S. Ct. at 1751. Given the Commission's precedent rejecting class actions before the agency, and the additional policy issues militating against the adoption of such a process, AT&T will not endeavor to address all of the deficiencies in SFI's proposed regulation that would need to be fixed before a class action complaint procedure could be implemented. Of course, any such rule would need to reflect the right under the Federal Arbitration Act to include provisions in consumer contracts that authorize the use of arbitration on an individual basis in place of any such class action procedures.

[40] Similarly, the *Concepcion* Court's analysis of the "greatly increase[d] risks" that class arbitration poses to defendants, particularly in the form of "in terrorem" settlements, undercuts SFI's claim (Petition at 3) that class complaints actions before the agency would benefit defendants. *See id.* at 1752.

In fact, the available evidence is to the contrary. Consumers looking to submit a grievance to the Commission have access to an easy to follow, step-by-step online process for raising complaints on a wide variety of issues.[41] As the Commission's reports demonstrate, they clearly are availing themselves of that procedure. The Commission's most recent summary of just the top five complaint subjects shows that in the first quarter of 2012 alone the FCC processed over ***89,000*** informal complaints and inquiries – and the Commission's report notes that this figure is not inclusive of all of the complaints handled by the FCC.[42]

Of course, these figures reflect informal complaints, and not the more formal complaint process into which SFI wants to interject a class action process. However, the Commission also previously has taken steps to adopt streamlined procedures for all formal complaints, with the goal of resolving all such complaints as expeditiously as possible.[43] Moreover, the data concerning informal complaints provides a real world counterpoint to SFI's academic musings. The fact is that consumers already have a readily available procedure for raising grievances of all types and sizes to the Commission, and they are making full use of it. There simply is no need to complicate that process, and irreparably impede the Commission's ability to efficiently resolve legitimate consumer complaints, by imposing on it an untested class action procedure.

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41 *See* http://www.fcc.gov/complaints.

42 Report of Consumer Inquiries and Informal Complaints, First Quarter, Calendar Year 2012 (June 1, 2012); http://www.fcc.gov/document/1st-quarter-2012-report-consumer-inquiries-and-informal-complaints.

43 *Implementation of the Telecommunications Act of 1996*, 12 FCC Rcd 22497 ¶29 (1997).

III. CONCLUSION

For the foregoing reasons, the Commission should deny the Petition.

Respectfully Submitted,

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October 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2012, I caused true and correct copies of the foregoing Comments of AT&T Inc. in Opposition to Petition on all parties and in the manner described as shown on the attached Service List.

Dated: October 9, 2012
Washington, D.C.

/s/ Robert C. Barber

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