

No. 2017-1423

IN THE
Supreme Court of the United States

SIMPLY WIRELESS, INC.,
Petitioner,

v.

T-MOBILE US, INC., f/k/a T-MOBILE USA, INC.;
T-MOBILE USA INC.,
Respondents.

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

SUPPLEMENTAL BRIEF OF PETITIONER

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INTRODUCTION

This matter revolves, in part, around the application and validity of the “wholly groundless” exception in terms of resolution of questions of arbitrability. In the time since this appeal was submitted, this Court granted the Petition for Certiorari of the Petitioner in *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 138 S. Ct. 2678 (2018) (granting petition on June 25, 2018). *Henry Schein* also revolves around application and validity of the “wholly groundless” exception. Judicial economy, efficiency, and equity support the granting of certiorari in this appeal and hearing this matter in tandem with the *Henry Schein* or, alternatively, holding this matter in abeyance pending resolution of the *Henry Schein* matter.

ARGUMENT

I. The Court should grant and hear this appeal in tandem with *Henry Schein*.

Judicial prudence counsels granting the petition now and hearing this appeal in tandem with *Henry Schein* or, alternatively, holding this matter in abeyance pending resolution of the *Henry Schein* matter. This Court has often reviewed in tandem cases that present similar though perhaps not identical fact patterns concerning the same legal questions. More specifically, when “different cases presenting substantially the same issue come before the Court at the same time,” sometimes “the Court will grant review simultaneously in both cases” and

consolidate the cases for argument. Eugene Gressman et al., *Supreme Court Practice*, at 763 (9th ed. 2007). A “quite different situation is presented when the Court grants review of two similar cases coming before it at the same time[.]” *Id.* at 764. In that situation, the Court may “set[] the cases down for argument together, one immediately after the other, or ‘in tandem.’” *Ibid.* In tandem cases “are kept quite separate for briefing and oral argument purposes.” *Ibid.* Thus, the Court has not hesitated to hear together appeals that present related-but-different factual and legal permutations, either as consolidated cases or in tandem. *See, e.g., Ernst & Young LLP v. Morris*, 137 S. Ct. 809 (cert. granted Jan. 13, 2017) (Mem.) (three arbitration cases consolidated); *Kiobel v. Royal Dutch Petroleum Co.*, 565 U.S. 961 (2011) (Mem.) (ordering extraterritorial application of U.S. law case argued in tandem with *Mohamad v. Rajoub*, 565 U.S. 962 (2011) (Mem.)); *J. McIntyre Mach., Ltd. v. Nicastro*, 561 U.S. 1058 (2010) (Mem.) (ordering personal jurisdiction case argued in tandem with *Goodyear Luxembourg Tires, S.A. v. Brown*, 561 U.S. 1058 (2010) (Mem.)). And the Court has frequently heard appeals in tandem where certiorari was granted on different dates. *See, e.g., United States v. White Mountain Apache Tribe*, 535 U.S. 1016 (cert. granted Apr. 22, 2002) (Mem.) and *United States v. Navajo Nation*, 535 U.S. 1111 (cert. granted June 3, 2002) (Mem.) (“This case is set for oral argument in tandem with No. 01-1067, *United States v. White Mountain Apache Tribe*.”); *Nat’l Treasury Emps. Union v. Von Raab*, 485 U.S. 903 (cert. granted Feb. 29, 1988) (Mem.) and *Burnley v. Ry. Labor Execs.’ Ass’n*, 486 U.S. 1042 (cert.

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CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari and consider this case together with the already granted *Henry Schein* matter. In the alternative, the Court should hold this case in abeyance pending the resolution of *Henry Schein*.

September 7, 2018

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