IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL INZA, *et al.*

Plaintiffs,

v.

AT&T, INC., et al.,

Defendants.

Civil Action No. 24-cv-03054(RDM)

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO STAY AND IN SUPPORT OF CROSS-MOTION TO RESOLVE ARBITRATION AS A THRESHOLD ISSUE

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COME NOW Rich Inza, Michael Inza, and VoIP-Pal.com, Inc. ("VoIP-Pal"), individually and on behalf of themselves and all others similarly situated (collectively the "Named Plaintiffs"), and oppose Defendants' Motion to Stay Proceedings, stating:

PREAMBLE

1. The Enforceability of the Arbitration Clauses Should Be Resolved as a Preliminary Matter of Jurisdictional and Judicial Economy

This Court is presently confronted with a dispositive threshold issue: whether the arbitration clauses embedded in Defendants' subscriber agreements are valid and enforceable. The resolution of this question governs the course of these proceedings and affects not only the present action, but three parallel federal complaints and a putative nationwide class of over 373 million mobile subscribers.

Defendants introduced the arbitration issue through their joint motion to stay proceedings. While their purpose was ostensibly to pause litigation, they have opened the gateway to precisely the inquiry that must now be addressed: whether the Class's claims may proceed before this Court at all. The arbitration question is therefore properly before the Court and ripe for adjudication. As the Supreme Court has consistently held, "a court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate that dispute." *Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 561 U.S. 287, 297 (2010). Arbitration enforceability is thus a gateway issue that must be decided *before* substantive litigation may proceed.

The rationale is both procedural and pragmatic. If the arbitration clauses are enforceable, then the Class Action may not proceed in this forum. Conversely, if the clauses are void due to fraudulent inducement, structural unconscionability, or deployment as part of a racketeering scheme—as Plaintiffs allege under RICO §§ 1962 (c) and (d)—then the matter should proceed to litigation in full without further delay. Addressing arbitration now avoids the unnecessary expenditure of judicial resources on matters that may ultimately be rendered moot.

This bifurcation is consistent with established federal doctrine. As the Supreme Court stated in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006), "[u]nless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance." The court in discussing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U. S. 395 (1967), reiterated their holding that "if the claim is fraud in the inducement of the arbitration clause itself—an issue which goes to the making of the agreement to arbitrate—the federal court may proceed to adjudicate it. See also *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70–71 (2010) (when a party challenges the enforceability of the agreement to arbitrate itself, the court—not the arbitrator—must decide).

The Class here asserts that such grounds exist: fraudulent inducement, concealment of an enterprise scheme, and contractual provisions that violate public policy by barring statutory remedies under RICO and the Sherman Act. Courts have consistently held that arbitration cannot be enforced where its very function is to shield unlawful conduct from judicial scrutiny. See *Nino v. Jewelry Exchange, Inc.*, 609 F.3d 191, 203–06 (3d Cir. 2010) (invalidating arbitration clause that operated to suppress federal statutory rights).

Moreover, the equities support immediate resolution. Plaintiffs do not object to a limited pause in proceedings for the purpose of deciding arbitration. Rather, they seek to focus the Court's attention on the determinative issue, rather than engage prematurely in motion practice on matters such as Rule 12(b) dismissals, class certification, or discovery protocols. Each of these steps may be rendered unnecessary by a single ruling on arbitration.

Critically, this matter implicates not merely private rights, but statutory causes of action under both the Sherman Act and RICO. If the arbitration clauses were embedded in contracts that falsely marketed Wi-Fi Calling as "free," while imposing a bundled-payment requirement and foreclosing competitive access to infrastructure, then the contracts themselves are legally infirm. As *Buckeye* explains, when a plaintiff challenges the validity of the arbitration clause itself, the Court must resolve that issue as a threshold matter. *546 U.S. at 445*.

In sum, the enforceability of the arbitration clauses is not a tangential issue—it is the legal hinge upon which all subsequent litigation turns. Deciding that issue at the outset, as numerous Supreme Court decisions instruct, promotes judicial economy, respects party autonomy, and upholds the integrity of the federal forum. See *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (court must compel arbitration where enforceable but must first decide arbitrability).

Accordingly, Plaintiffs respectfully request that the Court deny Defendants' Joint Motion to Stay to the extent it seeks to indefinitely defer adjudication of arbitration, and instead grant Plaintiffs' Cross-Motion to resolve the arbitration issue as a threshold matter of jurisdiction and statutory consequence.

To facilitate orderly resolution of the arbitration issue and avoid premature engagement in ancillary motion practice, Plaintiffs respectfully suggest that the Court may, at its discretion, consider convening a limited case management conference under Federal Rule of Civil Procedure 16. Such a proceeding could provide a structured forum for coordinating the submission of responsive pleadings and setting a focused schedule for briefing on arbitration enforceability. This recommendation is not intended to delay proceedings but rather to preserve efficiency and consistency across four related cases involving materially identical legal questions.

2. *Stare Decisis* from This Court's Precedents Mandates Judicial Review, Negating Arbitration

I. Arbitration Would Circumvent *Stare Decisis*—and Deny the Court Its Own Supervisory Role.

This case arises within a jurisdiction that has adjudicated three of the most consequential Sherman Act § 2 precedents in American antitrust law. In each instance, this District and its reviewing Circuit held that monopolization by tying, bundling, and exclusion through infrastructure control or platform defaults violates § 2:

- *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982): tying of local and long-distance calling and exclusion of interconnection competitors;
- *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001): tying of Internet Explorer to Windows and exclusion of rival browsers through OS-level control;
- *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. 2023) (pending decision): allegations of monopolization through search defaults and exclusionary pre-installation contracts.

Each of these cases rests squarely on Sherman Act § 2, and each condemned the use of technical control points—whether physical switches, OS platforms, or system defaults—to suppress otherwise viable market entrants.

The Class Action before this Court alleges materially indistinguishable conduct: tying Wi-Fi Calling to bundled cellular plans, excluding VoIP competitors from SIM provisioning, dialer APIs, and entitlement infrastructure, and enforcing firmware/platform restrictions that foreclose market entry. This is not novel conduct—it is a modern instantiation of the very exclusionary patterns this Court has repeatedly struck down under § 2.

Federal law recognizes that arbitration cannot override the enforcement of public interest statutes—particularly where systemic market harm is alleged. While private arbitration is favored under the FAA, it may not be used to circumvent the application of federal antitrust law or extinguish judicial remedies. As the Supreme Court has cautioned, "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985). The Court went on to note that arbitration of antitrust claims is permissible only if the arbitral forum allows for effective vindication of those rights. *Id*. at 637.

That standard is not satisfied here. Arbitration clauses are alleged to have been strategically deployed to shield the very exclusionary conduct this Court's own precedents prohibit. As such, referral to private arbitration would not simply risk inconsistent treatment—it would abandon this Court's supervisory authority over a monopolization scheme it is institutionally suited to adjudicate.

II. The Class Alleges a RICO Enterprise Under §§ 1962(c) and (d) That Renders the Arbitration Clauses Void *Ab Initio.*

The arbitration clauses challenged in the Class Complaint are not peripheral terms. They are alleged to be central instruments in an ongoing RICO enterprise, used to conceal a dual-payment scheme and suppress judicial redress in violation of 18 U.S.C. §§ 1962(c) and (d).

Specifically, the Complaint alleges that:

- The clauses were embedded in subscriber contracts that falsely marketed Wi-Fi Calling as "included at no additional charge," while requiring bundled mobile service;
- Consumers were never offered a standalone Wi-Fi Calling option, despite its technical viability;
- The arbitration clauses were enforced to suppress litigation and deny discovery into the structural exclusion;
- Corporate officers continued enforcing these clauses after formal notice of their fraudulent nature, extending the pattern of enterprise conduct.

Under *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006), when the validity of the arbitration clause itself is challenged—particularly for fraud in the inducement or illegality "the federal court may proceed to adjudicate it*Id.* at 445–46. This principle is reinforced in:

- *Nino v. Jewelry Exchange, Inc.*, 609 F.3d 191, 205–06 (3d Cir. 2010): arbitration invalid where clause operates to suppress public statutory remedies;

In this case, the Class alleges that the arbitration clauses were not merely defective—but deployed as racketeering tools to shield anticompetitive conduct, deceive consumers, and suppress enforcement of both RICO and antitrust statutes.

When arbitration clauses are used as continuing predicate acts of wire and mail fraud, and when they form part of the enterprise mechanism itself, they are not severable nor enforceable. See *Williams v. Eaze Sols., Inc.*, 417 F. Supp. 3d 1233, 1246–48 (N.D. Cal. 2019) (arbitration clause void where part of broader fraudulent enterprise; issue reserved to court)

III . Sherman Act § 2 Claims Based on Systemic Market Exclusion Are Not Arbitrable.

The claims at issue are not contractual or individualized—they allege systemic, infrastructure-level exclusion from a clearly defined market: standalone Wi-Fi Calling, a broadband-based voice service that is technically separable from bundled mobile plans. The Class alleges that:

- AT&T, Verizon, and T-Mobile require purchase of bundled voice/SMS/data subscriptions to activate Wi-Fi Calling;
- SIM provisioning, entitlement servers, and dialer APIs are withheld from unaffiliated VoIP providers;
- Platform vendors Google and Apple enforce API restrictions and certification requirements that bar third-party apps from system-level access;
- Device manufacturers including Samsung, Apple, and Google (Pixel) implement firmware-level rules that prioritize carrier-integrated software and limit fallback or background VoIP integration.

These allegations, if proven, establish monopolization by denial of infrastructure access—a form of structural exclusion that fits squarely within the holdings of this Court in *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), and the D.C. Circuit in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001). The same principle was recently reaffirmed in *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. 2023) (alleging unlawful preservation of monopoly through default platform control).

Arbitration is not an appropriate forum for resolving such claims. As the Supreme Court held in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 n.19 (1985):

> "In the event the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue statutory remedies for antitrust violations, we would have little hesitation in condemning the agreement as against public policy."

And further:

> "So long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function."

Id. at 637. That safeguard—effective vindication—is not met here. The arbitration clauses were not neutral procedural devices. They are alleged to have been strategically embedded in subscriber contracts to suppress exposure of monopolistic conduct and foreclose public enforcement under the Sherman Act.

When arbitration is used not to resolve a dispute, but to entrench a structural exclusion, courts have refused to compel it. See, e.g.:

- *In re National Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1248 (9th Cir. 2020) (antitrust claims implicating market-wide structure are not suited for fragmented arbitration).

In this context, the arbitration clauses are not severable from the conduct alleged—they are part of the very exclusionary architecture the Class seeks to challenge.

IV: The Class Action Pleadings Meet the *Twombly* Standard for Sherman Act § 2 and RICO Claims.

Under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), a complaint must include "enough factual matter (taken as true) to suggest that an agreement was made" and must state a claim to relief that is plausible on its face. That plausibility standard governs claims brought under Sherman Act § 2, and where fraud is involved—such as in RICO claims—Rule 9(b) further requires that the plaintiff "state with particularity the circumstances constituting fraud."

The Class Complaint meets both standards.

- Market definition is plausibly and clearly pled: Standalone Wi-Fi Calling is alleged as a broadband-based voice service that is technologically separable from bundled mobile subscriptions, satisfying the requirement of a relevant antitrust market under *United States v. Microsoft Corp.*, 253 F.3d 34, 51–52 (D.C. Cir. 2001).

- Monopoly power is well-supported by factual allegations: The Complaint alleges that AT&T, Verizon, and T-Mobile control over 97% of mobile voice subscriptions, while Apple and Google control over 95% of the smartphone OS market, and Apple, Samsung, and Google (Pixel) collectively dominate the device layer.

- Exclusionary conduct is specifically described: including tying of Wi-Fi Calling to bundled cellular plans, refusal to grant SIM provisioning and entitlement access to unaffiliated VoIP providers, and firmware-level restrictions that foreclose core telephony integration.

- Parallel conduct is supported by "plus factors" as required under *Twombly*, 550 U.S. at 556: all Defendants adopt identical exclusionary policies despite acting against independent economic self-interest; the market is highly concentrated; there are no deviations among Defendants, and prior government actions (e.g., the DOJ's review of the T-Mobile/Sprint merger) warned against post-merger collusion—a classic plus factor under antitrust law.

- Consumer harm is measurable and clearly pled: The Complaint alleges that U.S. consumers pay inflated monthly prices ($70–$150) for mobile bundles that include Wi-Fi Calling, while lower-cost VoIP options (~$6.50/month) are structurally blocked. This constitutes "antitrust injury" under *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977).

- Factual specificity meets both Rule 8 and Rule 9(b): The Complaint details the who, what, when, where, and how of the exclusionary scheme: who the Defendants are, what exclusion occurred, which APIs and infrastructure were denied, when such conduct occurred, and how it was concealed via arbitration clauses embedded in subscriber contracts.

- Enterprise liability under RICO is properly pled: The Complaint sets forth a pattern of racketeering activity involving predicate acts of wire fraud, including misrepresentation of service charges, use of arbitration clauses to suppress discovery, and continued enforcement of the scheme after notice, supporting both § 1962(c) (operation of an enterprise) and § 1962(d) (conspiracy to operate).

Together, these allegations surpass the plausibility threshold under *Twombly* and meet the heightened fraud pleading requirements for RICO.

Where claims under Sherman Act § 2 and RICO are plausibly pled and supported with concrete factual allegations, arbitration must yield to judicial review, particularly where arbitration clauses are alleged to be tools of concealment within the enterprise itself.

V: Arbitration Would Result in Improper Claim Fragmentation and Deny Class-Wide Relief.

Permitting arbitration in this matter would lead to fragmented, inconsistent adjudication of a single, coordinated scheme involving six Defendants acting jointly across multiple layers of mobile voice infrastructure—networks, platforms, and devices. Arbitration would improperly split claims that arise from a unified monopolization enterprise, thereby:

- Contravening Federal Rule of Civil Procedure 23(b)(3), which requires that common questions of law or fact predominate over individualized issues in classwide adjudication;
- Violating the spirit of Rule 42(a), which encourages consolidation where actions involve "a common question of law or fact," and discourages inefficient claim-splitting that risks inconsistent results.

This Court addressed such fragmentation directly in *Jung v. Association of American Medical Colleges*, 300 F. Supp. 2d 119 (D.D.C. 2004) holding that claims under Sherman Act § 1 and § 2 based on system-wide conspiracy could not be severed or compartmentalized for arbitration when the alleged conduct constituted a cohesive antitrust scheme involving shared infrastructure and collective decision-making.

That principle applies here. The alleged conduct—tying, bundling, and platform/device-level exclusion—is not divisible across parties. It depends on joint enforcement of exclusionary restrictions, and it implicates shared control over SIM provisioning, entitlement access, dialer APIs, firmware behavior, and subscriber contracts.

Moreover, non-signatory co-conspirators—including Google, Apple, and Samsung—are not parties to the arbitration clauses at issue. Under *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631–32 (2009), a nonsignatory cannot invoke an arbitration clause unless traditional state-law principles of contract or agency permit it. That bar is not met here, and arbitration cannot be used by these parties to avoid public judicial scrutiny of a shared antitrust and RICO conspiracy.

The use of arbitration in this setting would not merely delay resolution—it would undermine the Court's Article III authority to adjudicate matters of national competition policy. The structure of Sherman Act § 2 enforcement—especially in systemic exclusion cases—requires centralized judicial review. Fragmented, confidential arbitration is incompatible with that purpose.

The Class Action alleges coordinated monopolization of the standalone Wi-Fi Calling market by six Defendants, through exclusionary conduct already condemned in this Court's own precedents: *United States v. AT&T* (1982), *United States v. Microsoft* (2001), and *United States v. Google* (2023). It further pleads a RICO enterprise in violation of 18 U.S.C. §§ 1962(c) and (d), wherein arbitration clauses were used as instruments of concealment and racketeering.

To compel arbitration under these facts would:

- Contravene binding precedent governing structural monopolization under Sherman Act § 2;
- Frustrate the enforcement purposes of the Sherman Act and RICO, both of which exist to protect public markets and deter enterprise-level misconduct;
- Conflict with Supreme Court limitations on arbitrability where clauses are fraudulently procured or function to suppress statutory rights (*Mitsubishi Motors*, *Paladino*);
- Undermine class wide adjudication, in violation of Rules 23(b)(3) and 42(a), by forcing artificial compartmentalization of a shared monopolistic scheme.

For these reasons, the arbitration clauses should be declared unenforceable as a matter of law, and this case should proceed in federal court for judicial resolution of the Class's claims under Sherman Act § 2 and RICO §§ 1962(c)–(d).

This opposition begins with Section A—because it addresses the most urgent and foundational issue: whether a systemic pattern of racketeering conduct renders the arbitration clauses void ab initio. Resolving this threshold question first would allow the Court to:

- Establish jurisdictional clarity,
- Set direction for all related proceedings,
- And preserve judicial economy in light of four overlapping complaints, all pleading identical legal claims.

Addressing the arbitration issue first is not merely procedural—it is strategically necessary to safeguard public antitrust enforcement in a market that affects over 373 million mobile subscribers

A . The Arbitration Clauses Are Invalid and Unenforceable as a Matter of Public Policy

Introduction: Resolving Arbitration at This Stage May Expedite Adjudication Across Four Related Cases and Serve Judicial Economy

Without presupposing how the Court may ultimately resolve the merits of the claims at issue, the Class respectfully submits that a ruling on the enforceability of the arbitration clauses—based on (1) Sherman Act § 2 exclusion, (2) predicate RICO conduct under §§ 1962(c) and (d), and (3)satisfaction of the *Twombly* standard—would likely provide clarifying guidance across four related actions currently pending before this Court.

All four actions—two putative class actions and two individual complaints—allege:

- Monopolization of the standalone Wi-Fi Calling market through bundled mobile service, in violation of Sherman Act § 2;

- Enterprise-level concealment of exclusionary conduct, fraud, and denial of redress, in violation of RICO §§ 1962(c) and (d);
- Use of arbitration clauses not for neutral dispute resolution, but as instruments to evade judicial scrutiny and suppress statutory enforcement.

While Plaintiffs do not seek consolidation, coordination, or prejudgment of the related cases, resolving arbitration in this lead action would:

- Prevent duplicative briefing and inconsistent rulings on identical threshold issues;
- Clarify the procedural posture across interrelated cases with overlapping legal and factual foundations;
- Facilitate coordinated case management under Federal Rule of Civil Procedure 42(a);
- And, if the clauses are found unenforceable, potentially streamline adjudication of liability and remedies.

A.I . The Arbitration Clauses Are Void *ab Initio* as Instruments of Enterprise Fraud under RICO §§ 1962(c) and (d)

At the core of this dispute lies a materially false representation central to Defendants' commercial enterprise: the repeated claim that Wi-Fi Calling is "included at no additional charge." This representation, made uniformly by AT&T, Verizon, and T-Mobile through national advertising, account portals, and billing disclosures, conveyed to consumers that the service involved no incremental cost. In reality, that assertion was false.

Access to Wi-Fi Calling required subscribers to purchase and maintain full-price mobile plans—including voice service—even though the underlying call traffic was routed over Wi-Fi networks funded and maintained by the consumers themselves. Consumers paid twice: once for a bundled cellular plan they often did not use for Wi-Fi Calling, and again for home broadband services that carried the actual traffic.

This dual-payment structure formed the basis of a deceptive, exclusionary, and strategically designed billing model. It is not an incidental misstatement, but rather a foundational fraud underpinning a coordinated enterprise scheme actionable under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1962(c) and (d).

The Complaint alleges that the carriers:

- Engineered entitlement servers, fallback routing logic, and mobile app integration to enforce this bundle;
- Marketed the product using deceptive pricing language;
- And embedded arbitration clauses in subscriber contracts to conceal the scheme and suppress redress.

These arbitration provisions were not disclosed as neutral dispute resolution tools. Instead, they were deployed as contractual weapons to preclude judicial oversight, prevent collective litigation, and entrench profits from a misrepresented billing regime.

Federal courts have consistently held that arbitration clauses procured through fraud or functioning as instruments of concealment are unenforceable:

- *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444–45 (2006): where a plaintiff challenges the arbitration clause itself, rather than the contract as a whole, the court—not the arbitrator—must decide its enforceability.
- *Nino v. Jewelry Exch., Inc.*, 609 F.3d 191, 202 (3d Cir. 2010): clauses are unenforceable where procured by fraud or used to immunize misconduct.
- : arbitration may not be compelled where plaintiffs allege no meaningful agreement to arbitrate at all.

Here, Plaintiffs allege that the arbitration clauses were not merely fraudulently induced—they were integral components of a racketeering enterprise, functioning as:

- Structural tools to eliminate access to courts;
- Instruments to block discovery of the deceptive billing system;

- Mechanisms to extend the fraudulent scheme, even after formal legal notice of its existence.

As a matter of public policy and statutory interpretation, such clauses are void.

Congress enacted RICO not merely to redress harm, but to dismantle entrenched structures of commercial fraud. As the Supreme Court stated in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496-497 (1985):

> "But the statute requires no more than this. Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise. Those acts are, when committed in the circumstances delineated in § 1962(c), "an activity which RICO was designed to deter." Any recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the predicate acts."

If arbitration clauses may be embedded within fraudulent contracts and then used to bar RICO enforcement, the statute's core remedial purpose is undermined.

Accordingly, the Court should find that the arbitration provisions are void *ab initio* as a matter of law and public policy, and should decline to compel arbitration of any claims arising from an enterprise-wide scheme that:

- Originated in misrepresentation;
- Operated through fraudulent infrastructure and billing logic;
- And concealed its effects through contractual suppression of judicial redress.

A.II. The RICO Elements Are Satisfied in Full—Rendering the Arbitration Clause Legally Infirm and Weighing in Favor of Efficient Judicial Coordination

This case does not concern a routine breach of contract. It alleges a cognizable civil RICO claim under 18 U.S.C. §§ 1962(c) and (d), supported by detailed allegations of predicate fraud, systemic market exclusion, and widespread consumer injury.

Federal courts have long held that arbitration clauses that are drafted, maintained, or invoked as part of a broader racketeering enterprise are unenforceable as a matter of law. See:

- *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851, 855 (11th Cir. 1992);
- *Nino v. Jewelry Exch., Inc.*, 609 F.3d 191, 202 (3d Cir. 2010).

To prevail under § 1962(c), a plaintiff must plead:

1. The existence of an enterprise affecting interstate commerce;
2. That the defendant was employed by or associated with the enterprise;
3. That the defendant conducted or participated in the affairs of the enterprise through a pattern of racketeering activity; and
4. That the plaintiff suffered injury to business or property as a result.

See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985).

The Class Complaint satisfies all four of these elements.

1. Enterprise: Plaintiffs allege a well-defined association-in-fact enterprise composed of AT&T, Verizon, and T-Mobile—nominal competitors who jointly enforced SIM-level restrictions, entitlement protocols, and billing frameworks to prevent standalone access to Wi-Fi Calling.

2. Association and Participation: Defendants allegedly maintained shared infrastructure logic, uniform marketing language, and parallel billing structures, all tied to the misrepresentation that Wi-Fi Calling was "included at no additional charge." In practice, this required consumers to pay twice: once for broadband and again for mobile voice services routed over that broadband.

3. Pattern of Racketeering Activity: The Complaint alleges a sustained pattern of wire and mail fraud, including:

    - False representations of zero-cost Wi-Fi Calling;
    - Use of technical gating (e.g., entitlement servers and SIM provisioning) to enforce exclusion;
    - Strategic deployment of arbitration clauses to suppress legal redress.

These actions constitute a pattern of predicate acts under 18 U.S.C. § 1961(1), carried out through enterprise-controlled infrastructure and consumer contracts.

4. Injury: Plaintiffs and the Class were directly injured by:

    - Exclusion from competitive VoIP markets;
    - Inflated service costs due to forced bundling;
    - Misappropriation of consumer-funded broadband infrastructure.

The arbitration clauses embedded in subscriber contracts here were deployed as functional instruments of enterprise concealment thouroughly plead Plaintiffs complaint—each drafted and enforced to avoid discovery, suppress litigation, and preserve revenues flowing from an exclusionary dual-payment model.

Under federal law, such clauses are void *ab initio* where they are used to sustain a racketeering scheme. See:

- *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444–45 (2006) (challenge to arbitration clause validity must be decided by the court if the clause itself was fraudulently induced);
- *Nino*, 609 F.3d at 202 (arbitration not enforceable where "fraud infects the formation or enforcement of the agreement").

Beyond enforceability, invalidating the arbitration clauses also serves broader procedural efficiency. Two of the four pending cases—VoIP-Pal's individual action (1:24-cv-03051) and this Class Action (1:24-cv-03054)—assert overlapping claims under RICO, Sherman Act § 2, and Telecommunications Act § 251.

All four actions arise from the same factual nucleus:

- Exclusion of standalone Wi-Fi Calling;
- Denial of API/SIM access;
- Fraudulent billing requiring simultaneous broadband and cellular subscriptions.

If arbitration is deemed invalid in this lead matter, judicial economy supports coordinated management under Federal Rule of Civil Procedure 42(a), which allows for consolidation of cases involving common questions of law or fact. This would:

- Eliminate duplicative briefing;
- Prevent inconsistent rulings;
- Avoid discovery fragmentation;
- And ensure structural coherence in adjudication.

Moreover, Rule 23(b)(3) strongly favors classwide resolution, where common questions (e.g., the use of arbitration to insulate enterprise fraud) predominate over individualized ones.

To split these structurally identical actions—by sending some to arbitration and retaining others in federal court—would not only waste judicial resources, it would undermine the integrity of the Court's supervisory role in enforcing federal statutory protections.

Defendants cannot:

- Invoke arbitration to immunize themselves from enterprise liability;
- Enforce contract clauses that were tainted by fraud at inception;
- Or isolate claims that arise from a single, continuous, and unlawful enterprise-wide course of conduct.

The Court should find that the arbitration clauses are unenforceable under federal law and deny Defendants' motion to compel arbitration. In doing so, the Court would:

- Uphold the remedial purpose of RICO;
- Prevent structural manipulation of federal adjudication through contract clauses used for concealment;
- And facilitate efficient, coordinated resolution of four related matters arising from the same exclusionary and deceptive conduct.

A.III. Defendants' Conduct Satisfies Each Element of a Civil RICO Violation Under §§ 1962(c) and (d)

To state a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(c), a plaintiff must plead the following four elements:

(1) the existence of an enterprise;

(2) that the defendant was employed by or associated with the enterprise;

(3) that the defendant conducted or participated in the affairs of the enterprise through a pattern of racketeering activity; and

(4) that the plaintiff suffered injury to business or property as a result of the racketeering conduct.

See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985); *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). Each of these statutory elements is fully satisfied on the face of the Class Action Complaint.

<u>1. Existence of the Enterprise</u>

Plaintiffs allege the existence of an association-in-fact enterprise among Defendants AT&T, Verizon, and T-Mobile. Rather than acting as independent competitors, the Defendant carriers coordinated their conduct to establish a shared infrastructure, deploy uniform billing frameworks, and enforce identical network configurations designed to market and deliver Wi-Fi Calling. Critically, this network was built in part upon VoIP-Pal's patented DID-based telephony architecture, allegedly used without authorization or compensation.

The Complaint further details that this coordination extended beyond ordinary market alignment—it involved deliberate misrepresentation, concealment of infrastructure costs, and a collective refusal to allow access to third-party VoIP competitors, all in service of maintaining their control over the voice services market.

<u>2. Association and Operation by the Defendants</u>

Each Defendant is alleged to have been directly associated with the enterprise and to have played an active operational role in its ongoing affairs. This includes:

- Uniform public claims that Wi-Fi Calling was "included at no additional charge";
- Integration of this false representation into digital account portals, mobile applications, and subscriber billing statements;
- Development of shared entitlement and fallback routing systems used to implement and enforce bundled mobile service plans.

Such conduct, as described in *Reves*, satisfies the "operation or management" test required to impose liability under § 1962(c), as each Defendant contributed to the direction and control of the enterprise's fraudulent course of conduct.

3. Pattern of Racketeering Activity

The Complaint alleges a continuous pattern of racketeering activity through repeated violations of 18 U.S.C. §§ 1341 and 1343—mail and wire fraud, respectively. These predicate acts were carried out through:

- Systematic dissemination of false advertising and promotional materials across digital channels;
- Electronic issuance of billing statements falsely representing the cost structure of Wi-Fi Calling;
- Use of automated disclosures and electronic contracts delivered through carrier-managed mobile platforms;
- Ongoing concealment of the true cost mechanics of the service, even after formal legal notice.

This conduct was neither sporadic nor isolated. Rather, it constituted a deliberate, coordinated effort to deceive consumers and exclude competitors over a multi-year period—hallmarks of a RICO-qualifying pattern. See *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 240–42 (1989).

4. Injury to Business and Property

The resulting injury is twofold:

- Consumers were induced to pay for full-price mobile subscriptions—including voice plans they did not use—while simultaneously funding the broadband infrastructure that made Wi-Fi Calling possible.
- VoIP-Pal, and similarly situated competitors, were foreclosed from market entry despite possessing lawful and technically viable alternatives. The exclusion of VoIP-Pal resulted in the uncompensated use of its telephony systems and the elimination of its competitive position.

These injuries are concrete and particularized. They flow directly from the fraudulent scheme and satisfy the statutory standing requirement under *Sedima*, 473 U.S. at 496.

<u>Conclusion of A.III</u>

Defendants' conduct falls squarely within the scope of §§ 1962(c) and (d). They jointly directed and perpetuated a coordinated scheme of fraud, exclusion, and concealment—resulting in measurable harm to both consumers and competitors. The arbitration clauses were not neutral devices; they were deployed as instruments of enterprise protection.

Accordingly, the Court should find that all elements of civil RICO liability are met and that any contractual provision—including arbitration clauses—used to facilitate or shield this enterprise is void as a matter of law and public policy.

A.IV. The "No Charge" Representation Constitutes Predicate Fraud and Grounds for Invalidation of Arbitration Provisions

Central to Plaintiffs' RICO allegations is the materially false and misleading claim that Wi-Fi Calling is "included at no additional charge." This representation, repeated by Defendants AT&T, Verizon, and T-Mobile across digital account interfaces, subscriber billing statements, and marketing materials, formed a uniform inducement to enter contractual arrangements that concealed the actual costs borne by the consumer. While superficially innocuous, the statement constituted a deceptive billing construct and satisfies the statutory elements of wire and mail fraud under 18 U.S.C. §§ 1343 and 1341, respectively.

In operational reality, Wi-Fi Calling does not utilize the Defendants' licensed spectrum or carrier-owned infrastructure for voice traffic transport. Instead, the calls are transmitted over broadband networks paid for and maintained by consumers themselves—through residential subscriptions, workplace networks, or public access points. Despite incurring no transport or switching costs for these calls, Defendants require that consumers subscribe to full-priced mobile voice plans as a precondition to accessing Wi-Fi Calling functionality. There is no technical justification for this requirement.

This dual-payment arrangement—requiring payment for unused carrier infrastructure and consumer-supplied data transport—constitutes a deliberate concealment of service mechanics and pricing logic. It is not merely a marketing distortion; it is a revenue-preservation scheme that relies on false representations about cost neutrality, enforced through layered contractual design and technical provisioning. By representing the service as "included at no extra charge," Defendants materially misled consumers and induced acceptance of contract terms—including arbitration clauses—under false pretenses.

Such conduct satisfies the requirements of predicate fraud under RICO § 1961(1), triggering liability under § 1962(c) when repeated as part of a pattern. The fraud was transmitted through interstate communications and digital interfaces, satisfying the jurisdictional and conduct elements of wire fraud. Moreover, as the Supreme Court confirmed in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 647–48 (2008), the victims of RICO predicate fraud need not have relied on the falsehood directly—only to have been injured by its deployment as part of a broader scheme.

The arbitration provisions embedded in the resulting subscriber contracts are thus legally infirm. As held in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006), where a contract is fraudulently induced in its entirety, and where the arbitration clause is part of that same inducement, the validity of the arbitration agreement must be resolved by the court. This principle has been reaffirmed by multiple circuits where the clause itself was used as a means to conceal, perpetuate, or protect the underlying fraud. See *Nino v. Jewelry Exch., Inc.*, 609 F.3d 191, 202 (3d Cir. 2010); *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851, 854–55 (11th Cir. 1992).

Defendants' conduct meets that threshold. The "no charge" representation was material, repeated, and false. It concealed the actual cost structure of the service and misled consumers into waiving judicial recourse through arbitration provisions hidden in digital contracts. The arbitration clauses were not presented as optional, nor meaningfully disclosed, nor separable from the overarching fraud. They were implemented to suppress challenge, not resolve disputes.

Notably, Defendants continued to enforce these clauses even after receiving formal legal notice in June 2024 of the alleged fraud and market exclusion. This post-notice conduct constitutes additional racketeering activity under § 1962(d), supporting the allegation of a continuing RICO conspiracy. Courts have recognized that predicate acts like hiding or destruction of evidence, misrepresentation to regulators, or suppression of information with intent to deceive can be used to prove continuity.

The repeated and uniform claim that Wi-Fi Calling is "included at no additional charge" constitutes predicate fraud under RICO, supporting liability under §§ 1962(c) and (d). It misrepresents both the source of service infrastructure and the necessity of bundled mobile subscriptions. The arbitration clauses—embedded in contracts induced by that deception—cannot survive judicial scrutiny. They are not enforceable under federal law and may not be used to insulate a nationwide enterprise scheme from public accountability.

This Court must therefore invalidate the arbitration provisions as void ab initio, permit the RICO and antitrust claims to proceed in open court, and reject Defendants' attempt to launder structural market fraud through the appearance of private agreement. The "no charge" representation was not harmless—it was the keystone of an unlawful enterprise designed to suppress both legal challenge and market competition.

Section A.V: The Technical and Economic Reality of Wi-Fi Calling Confirms a Fraudulent Billing Model and Renders Arbitration Clauses Legally Infirm

The foundation of Defendants' alleged enterprise-level fraud lies in the technical design and economic structuring of Wi-Fi Calling. Despite public representations to the contrary, calls made using Wi-Fi Calling do not traverse carrier-owned cellular towers, switches, or licensed spectrum. Instead, they are transmitted entirely over broadband networks paid for, installed, and maintained by consumers—whether via home routers, workplace infrastructure, or public Wi-Fi access points.

Yet, Defendants require that consumers purchase and maintain full-price mobile subscriptions, inclusive of traditional voice services, simply to access Wi-Fi Calling functionality. There is no technical justification for this requirement. The bundling of Wi-Fi Calling with conventional cellular voice constitutes a commercially manufactured dependency, structured to:

- Protect existing revenue streams from disruptive VoIP competition;
- Prevent consumers from selecting cheaper, standalone alternatives;
- Misrepresent the nature of the product and its infrastructure costs.

<u>1. The Concealed Dual-Payment Scheme</u>

The economic result of this bundling is a dual-payment model:

- First, consumers pay their broadband providers (e.g., Comcast, Spectrum) for the actual transmission path used by Wi-Fi Calling.

- Second, they are required to pay Defendants for mobile voice access—even though those networks are not used during Wi-Fi Calling sessions.

The false representation that Wi-Fi Calling is "included at no additional charge"—prominently displayed on digital interfaces, app settings, subscriber dashboards, and promotional materials—is not a benign oversimplification. It is a material misrepresentation of billing structure, service delivery, and technical dependency.

<u>2. Fraud as Predicate Racketeering Conduct</u>

This conduct supports predicate acts of mail and wire fraud under 18 U.S.C. §§ 1341 and 1343, including:

- Use of interstate communications to disseminate false advertising;
- Electronic delivery of contracts and clickwrap interfaces containing deceptive terms and arbitration clauses;
- Billing disclosures that conceal actual cost mechanics and technical routing.

As courts have held, fraud in the billing structure, transmitted through electronic and contractual interfaces, qualifies as racketeering activity when repeated and enterprise-driven. See:

- *United States v. Wong*, 40 F.3d 1347, 1373 (2d Cir. 1994) (acts of concealment and delay in exposing a scheme support a continuing pattern);
- *McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215, 227 (2d Cir. 2008) (fraudulent misstatements tied to suppressed pricing mechanisms may support RICO liability under § 1962).

<u>3. Inducement of Arbitration Clauses Through Fraud</u>

The subscriber contracts containing arbitration clauses were not freely negotiated. They were:

- Accepted based on a false promise of cost neutrality;
- Presented without conspicuous disclosure or opt-out options;
- Designed to foreclose judicial scrutiny of the billing model that constituted the core fraud.

Under *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006), when a party challenges the validity of the arbitration clause itself—based on fraudulent inducement—the issue must be resolved by the court, not the arbitrator.

Here, the Class does not merely challenge the broader agreement—they challenge the arbitration provision as an embedded tool of fraud, used to perpetuate concealment and suppress collective action.

Conclusion of A.V

The arbitration clauses at issue must be declared void *ab initio*. They were not neutral instruments of dispute resolution. They were systematically embedded to preserve an unlawful billing construct, conceal dual-payment pricing, and suppress market entry from lawful VoIP alternatives such as VoIP-Pal.

Under *Buckeye* and governing federal law, arbitration may not be compelled where the clause is part of a fraudulent inducement. Enforcement of these clauses would only reward concealment and distort the judicial function Congress intended RICO and the Sherman Act to serve.

This scheme was not innovation. It was cost-shifting disguised as integration. It was fraud camouflaged as functionality. And it was sustained by a deceptive promise—"no charge"—that misled hundreds of millions of U.S. subscribers and systematically excluded lawful competitors.

A.VI . The Arbitration Clauses Are Void Due to Unjust Enrichment and Strategic Cost Offloading Sustained by Fraudulent Billing

Defendants' Wi-Fi Calling architecture is designed to achieve a singular economic outcome: the offloading of network delivery costs onto consumers, while retaining full-rate billing as if the calls had traversed carrier-owned cellular infrastructure.

Each time a subscriber uses Wi-Fi Calling, the Defendants incur:

- No use of radio spectrum;
- No congestion on licensed towers;
- No switching or transport overhead through their core carrier networks.

Instead, the call is routed over broadband networks paid for, maintained, and managed by the consumer—at home, work, or in public.

1. Cost Offloading and Consumer Deception

This design yields substantial cost savings for AT&T, Verizon, and T-Mobile:

- Reduced infrastructure demand on mobile networks;
- Lowered capital expenditure on towers, switching, and bandwidth provisioning;
- Minimized need for scaling voice capacity on proprietary systems.

Yet these savings are not passed on to consumers. Defendants continue to:

- Bill subscribers for full mobile voice plans;
- Maintain that Wi-Fi Calling is "included at no additional charge";
- Conceal the fact that consumers are bearing the infrastructure burden themselves.

This is not simply a pricing strategy. It is an engineered dual-payment scheme:

- Payment #1: Broadband service (funded by the consumer);
- Payment #2: Mobile voice plan (often unused during Wi-Fi Calling).

The "no charge" claim, repeated in online portals, apps, and billing interfaces, is not harmless—it is a material misrepresentation. It masks a deliberate cost-shifting scheme and misleads consumers into believing they are receiving carrier-funded services when they are not.

2. RICO Predicate Fraud and Enterprise Conduct

This deception constitutes predicate racketeering activity under 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud). Defendants used the instrumentalities of interstate commerce—including:

- National advertising;
- Digital billing interfaces;
- Click-through service terms;
- Email and SMS notifications—

to promote a false narrative of pricing neutrality.

As the Supreme Court held in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 647 (2008), victims of RICO fraud need not be the direct recipient of the misrepresentation, so long as they are injured by its deployment as part of the scheme.

Here, subscribers and competitors alike were injured by:

- Paying for a service that used consumer infrastructure;
- Being denied access to alternatives (like VoIP-Pal) that were excluded via entitlement and firmware restrictions.

This scheme is not isolated. It was implemented and sustained over time, satisfying the continuity and relatedness requirement under *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 240–42 (1989).

3. Arbitration Clauses Embedded in Fraud

The arbitration clauses at issue were embedded in subscriber contracts that were:

- Induced by the false claim of "no additional charge";
- Not meaningfully disclosed;
- Not accompanied by opt-out provisions;
- Functionally used to suppress public challenges to the enterprise.

Under *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006), where the validity of the arbitration clause itself is challenged as fraudulently induced, the court—not the arbitrator—must determine its enforceability.

Here, the same misrepresentation that induced subscription also induced assent to arbitration, making the clause inseparable from the fraud.

4. Post-Notice Conduct Confirms RICO Conspiracy

Even after receiving formal legal notice in June 2024, Defendants:

- Continued promoting the “no charge” message;
- Maintained full-rate billing structures for Wi-Fi Calling;
- Enforced arbitration clauses to preclude public resolution.

This post-notice conduct confirms knowing participation in an ongoing RICO conspiracy under § 1962(d).

As held in *United States v. Wong*, 40 F.3d 1347, 1373 (2d Cir. 1994), acts taken to delay or prevent exposure of fraud support the existence of a continuing racketeering pattern. And as affirmed in *McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215, 227 (2d Cir. 2008), ongoing suppression of the truth using public messaging and legal instruments may sustain enterprise liability under RICO.

Conclusion of A.VI

The arbitration clauses here are not enforceable. They are not the product of arms-length negotiation or mutual understanding. They are instruments of unjust enrichment and concealment, embedded within a nationwide billing scheme that transferred carrier costs to consumers under false pretenses.

Invalidating them is necessary to:

- Prevent the continued enrichment of Defendants through systemic deception;
- Restore access to statutory remedies under RICO and Sherman Act § 2;
- Preserve the public interest in disclosure and accountability for enterprise-level fraud in the communications market.

This is not innovation mischaracterized. It is infrastructure misappropriation, enforced through contract, and hidden behind a billing falsehood. Under federal law and public policy, these arbitration clauses cannot survive.

A.VIII. The Pendency of Litigation Does Not Immunize Defendants from RICO Liability

Defendants may argue that, once litigation commenced, their directors and executive officers were obligated to defer to the judicial process. But under established RICO jurisprudence, the mere existence of litigation does not absolve a defendant of ongoing liability. The statutory standard under 18 U.S.C. § 1962(d) is not based on procedural posture—it is based on knowledge, conduct, and continued participation in the affairs of an unlawful enterprise.

RICO does not permit corporate actors to passively perpetuate fraud or exclusionary conduct simply because they have been sued. The relevant inquiry is whether the defendants knew that the enterprise was unlawful, and whether they continued to facilitate or preserve its operation. See *United States v. Salinas*, 522 U.S. 52, 64–65 (1997) (a RICO conspirator need not commit or agree to commit predicate acts—only agree to further the enterprise). In other words, liability attaches where knowledge is joined with intentional failure to act.

The record demonstrates that after Plaintiffs filed their complaint alleging systemic exclusion of VoIP-Pal, dual-payment deception, and fraudulent contract inducement, Defendants have continued to operate the challenged practices. They have not suspended the Wi-Fi Calling provisioning framework, revised their pricing representations, or withdrawn the arbitration clauses embedded in subscriber contracts. The enterprise remains operational.

This is not a theoretical violation. It is a live, active system that continues to:

- Exclude independent VoIP providers from entitlement server and SIM provisioning access;
- Prevent lawful competitors from integrating with device-level dialers;
- Market Wi-Fi Calling as "included," despite requiring simultaneous payment for broadband and mobile infrastructure.

Defendants' continued operation of the challenged practices, despite notice of the allegations, supports the inference that they have chosen to maintain the allegedly fraudulent enterprise. Under established RICO conspiracy principles, continued participation in enterprise activities after becoming aware of their allegedly unlawful nature can support liability.

The argument that litigation somehow immunizes directors from RICO liability lacks merit under established precedent. RICO liability is based on conduct and knowledge, not procedural timing. Defendants' continued operation of the challenged practices supports the inference that they have chosen to preserve the allegedly fraudulent enterprise rather than remediate it.

<u>Conclusion of Section A.VIII</u>

The carriers cannot shield themselves from liability by invoking the procedural existence of litigation while continuing to operate the exclusionary system at issue. Under *Salinas* and general RICO conspiracy principles, knowledge and continued participation in enterprise activities can establish liability regardless of whether litigation is pending. For these reasons, the arbitration clauses should be declared unenforceable, and Defendants held accountable under §§ 1962(c) and (d) of the RICO statute.

A.IX. Arbitration Is Inapplicable to Claims Arising from Public Fraud and Structural Market Exclusion—And Its Denial Establishes a Basis for Coordinated Adjudication

This matter does not involve a private billing dispute or a routine contractual disagreement. It presents allegations of a nationwide, multi-billion-dollar racketeering scheme involving coordinated deception, exclusion of lawful competitors, and the concealment of systemic market manipulation through arbitration provisions embedded in fraudulently induced contracts. The stakes are not limited to the enforcement of a clause—they implicate the enforceability of federal statutory protections under RICO and the Sherman Act.

Under binding precedent, arbitration cannot be compelled where the underlying agreement is procured through fraud, or where the clause is used to conceal or perpetuate unlawful enterprise conduct. See *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445 (2006). In this case, the arbitration clauses were not disclosed in good faith, nor presented with informed consent. They were used to prevent judicial scrutiny of structural fraud affecting over 373 million mobile subscribers and obstruct access to core statutory remedies under 18 U.S.C. § 1964 and 15 U.S.C. § 2.

A ruling from this Court invalidating the arbitration clauses does more than resolve a procedural gateway. It constitutes a judicial recognition that Plaintiffs have plausibly alleged a pattern of enterprise fraud and monopolistic exclusion warranting full adjudication under federal public law. Such a ruling confirms that the challenged conduct is not a private dispute between contracting parties, but a systemic course of behavior that implicates broader economic harm, competitive suppression, and unlawful cost-shifting.

This has direct consequences for related litigation. Four federal actions—two individual and two class complaints—are now pending, all asserting related claims under RICO § 1962, Sherman Act § 2, and the Telecommunications Act § 251. Each arises from the same technical exclusion: the denial of standalone Wi-Fi Calling through infrastructure control, bundled billing, and SIM/entitlement gating. Each challenges the same deceptive "no charge" narrative. Each implicates the same six corporate actors and overlapping legal theories.

If arbitration is denied in this case, the Court will have established a legal foundation for consolidating or coordinating those matters under Federal Rule of Civil Procedure 42(a) (for actions involving common questions of law or fact) and Rule 23(b)(3) (for class certification based on predominance and superiority). Judicial efficiency, consistency of rulings, and the avoidance of duplicative discovery all counsel in favor of a unified track.

More broadly, the denial of arbitration ensures that claims involving public statutory enforcement under RICO and the Sherman Act are resolved in the forum Congress intended: federal court. Private arbitration was not designed to adjudicate market-wide monopolization, concealment of systemic billing fraud, or the exclusion of regulatory-compliant competitors from an essential communications market. Public law requires public adjudication.

Conclusion of Section A.IX

The arbitration clauses at issue are inseparable from the racketeering enterprise they were designed to protect. Invalidating them is not merely a procedural step—it is a judicial threshold determination that the claims before this Court warrant full legal review under federal statutes governing fraud, exclusion, and monopolization.

Such a ruling will provide the legal infrastructure to coordinate four pending federal cases, ensure procedural economy, and confirm that systemic fraud of this magnitude cannot be shielded by private arbitration clauses embedded in deceptive contracts.

A.X. The Alleged Conduct Meets All Statutory Elements for RICO Violations Under §§ 1962(c) and (d)

The allegations presented in the Class Action Complaint fully satisfy the requirements of a civil RICO claim under 18 U.S.C. § 1962(c). That provision makes it unlawful "for any person employed by or associated with any enterprise ... to conduct or participate ... in the conduct of such enterprise's affairs through a pattern of racketeering activity." The predicate racketeering acts alleged here—mail fraud under 18 U.S.C. § 1341 and wire fraud under 18 U.S.C. § 1343—are repeatedly and plausibly pleaded.

Defendants AT&T, Verizon, and T-Mobile used interstate wires and mail to carry out and conceal a scheme that misrepresented the nature and cost structure of Wi-Fi Calling. Specifically, they:

- Delivered recurring electronic billing statements falsely representing that Wi-Fi Calling was "included at no additional charge";
- Disseminated uniform promotional language via email, websites, and app interfaces that concealed the reliance on consumer-funded broadband infrastructure;
- Required full-price mobile subscriptions, despite not delivering voice traffic over their own infrastructure during Wi-Fi calls;
- Designed entitlement systems, SIM provisioning, and dialer-level controls to prevent third-party VoIP providers from replicating or accessing the same service channel.

These acts were not incidental—they were central to the structure and function of the billing and provisioning system. The goal was to (1) extract revenue from unused carrier infrastructure, (2) maintain consumer lock-in through misleading pricing representations, and (3) exclude potential competition from lawful, stand-alone VoIP alternatives. As such, the conduct alleged constitutes a continuous pattern of fraudulent activity affecting interstate commerce, carried out through coordinated and repeated use of mail and wire communications. See *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

The claim under 18 U.S.C. § 1962(d) is likewise well-supported. That provision prohibits any person from conspiring to violate § 1962(c), including by agreeing to facilitate the conduct of an enterprise through a pattern of racketeering activity. The Complaint alleges that Defendants' corporate boards and legal officers received formal legal notice describing the enterprise, including specific evidence of (1) exclusionary provisioning logic, (2) fraudulent billing design, and (3) unlawful market foreclosure.

Plaintiffs contend that Defendants have continued to operate the challenged practices after receiving notice of the allegations. Under established RICO conspiracy principles, continued participation in enterprise activities after becoming aware of their allegedly unlawful nature can support liability.

This enterprise conduct is not peripheral. It defines the architecture through which Defendants generate recurring voice revenue. It is embedded in the entire billing framework, the contract formation process, and the technical gating infrastructure used to exclude VoIP-Pal and similarly situated competitors from lawful market access.

In short, the allegations describe the very type of sustained, concealment-based, revenue-driven racketeering that RICO was enacted to redress. The arbitration clauses, inseparable from this enterprise fraud, cannot stand as a legal shield to prevent full adjudication under federal law.

A.XI. Controlling Precedent Confirms That Arbitration Cannot Shield RICO and Antitrust Enterprise Conduct—and That Class wide Claims Must Be Heard in Federal Court

Federal precedent is unequivocal: arbitration clauses cannot be used to immunize racketeering, systemic fraud, or exclusionary conduct that violates public law. When a coordinated enterprise deploys deception not as an isolated misstatement but as a structural part of its business model—as alleged here—arbitration provisions embedded in those contracts are unenforceable as a matter of federal statutory purpose and public policy.

The Supreme Court and numerous appellate and district courts have recognized that the enforcement of RICO, Sherman Act, and Telecommunications Act claims cannot be displaced by private contract when those claims implicate broad public harm, monopolistic exclusion, or systemic misrepresentation.

<u>1. Unified Conspiracy Claims Under Sherman Act § 2 and RICO §§ 1962(c)–(d) Cannot Be Fragmented Through Arbitration</u>

Defendants seek to compel arbitration of a claim that alleges a single, unified enterprise conspiracy involving deceptive marketing, infrastructure-based exclusion, and denial of access to standalone Wi-Fi Calling. This claim is not divisible. It alleges conduct that spans:

- Misrepresentation of Wi-Fi Calling as "included at no additional charge";
- Billing structures that required consumers to pay for both broadband and bundled voice services;
- Lockout of competitive VoIP providers through entitlement, SIM, and OS-level restrictions.

To compel arbitration of any segment of this conduct would be to improperly compartmentalize a conspiracy that must be adjudicated as a whole. Courts have recognized that compelling arbitration of portions of conspiracy claims can undermine the integrity of antitrust analysis.

This principle was established by the Supreme Court in *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962): "The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts."

<u>Rule 23(b)(3): The Procedural Necessity of Preserving Class Claims in Court</u>

This is precisely the type of action envisioned by Rule 23(b)(3): where individual claims are small relative to litigation costs, but where the harm is class wide and the fraud systemic. The class of millions of wireless subscribers was exposed to the same deceptive messaging, the same infrastructure exclusion, and the same billing model. If arbitration is enforced, these claims will never be heard collectively, undermining the deterrent and compensatory functions of class adjudication.

Conclusion of A.XI

These precedents establish that arbitration cannot be used to insulate racketeering enterprises, antitrust conspiracies, or public-market manipulation from judicial scrutiny. The allegations here implicate both statutory enforcement and structural market reform. Forcing them into private arbitration would contravene established legal doctrine and dismantle the framework for coordinated redress.

This Court should reject Defendants' attempt to divide a unified conspiracy and circumvent antitrust and RICO accountability. The enforcement of federal statutory rights belongs to Article III courts—not to closed-door arbitration panels.

A.XII. Concluding Legal Basis: RICO Violations Render Arbitration Clauses Unenforceable as a Matter of Federal Law and Public Policy

This case presents far more than a routine contractual dispute. It alleges a coordinated and ongoing violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), satisfying all elements under 18 U.S.C. §§ 1962(c) and (d). The central misrepresentation—that Wi-Fi Calling is "included at no additional charge"—is not an incidental advertising misstatement. It is the linchpin of an integrated commercial strategy designed to mislead consumers, suppress competitive VoIP entry, and conceal cost-shifting from carrier infrastructure to consumer-funded broadband networks.

The pattern of racketeering activity includes:

- Repeated and materially false representations disseminated via digital marketing, billing statements, and subscriber account portals;
- Concealment of the economic reality that voice traffic was routed over infrastructure funded and maintained by consumers, while full-price cellular billing continued;
- Denial of access to SIM provisioning, entitlement servers, and OS-level telephony APIs to VoIP-Pal and other lawful competitors, thereby effectuating exclusion from the mobile voice market;
- Systematic invocation of non-negotiable arbitration clauses embedded in fraud-induced subscriber agreements to suppress judicial review and shield the enterprise from accountability.

These allegations satisfy the statutory requirements for a RICO claim under § 1962(c)—including enterprise participation, conduct of enterprise affairs, pattern of predicate acts (mail and wire fraud), and injury to both business and property. Additionally, Plaintiffs contend that Defendants' continued operation of the challenged practices supports conspiracy liability under § 1962(d).

Because the arbitration clauses were allegedly procured by systemic and material misrepresentation, they are unenforceable under controlling Supreme Court precedent. When, as here, the contract is a vehicle for enterprise fraud, courts must intervene to prevent abuse of the Federal Arbitration Act.

This principle has been applied in the RICO context. Arbitration may not be enforced when it would serve to shield a racketeering enterprise from judicial scrutiny. Courts have recognized that where fraud permeates the contractual relationship, arbitration clauses may not survive independent analysis.

Importantly, denying arbitration here does not merely protect Plaintiffs' right to litigate—it carries broader structural consequences. It confirms that the conduct alleged constitutes enterprise fraud subject to federal judicial oversight. That finding will directly inform and accelerate adjudication in four parallel federal complaints already pending, which arise from the same exclusionary and deceptive conduct by the same Defendants, and which assert overlapping claims under RICO, the Sherman Act, and the Telecommunications Act.

A ruling that arbitration is invalid on the basis of enterprise-level fraud will:

- Preclude the piecemeal fragmentation of conspiracy claims across arbitration and litigation forums;
- Promote coordinated adjudication and discovery efficiency under Fed. R. Civ. P. 42(a);
- Validate the statutory right to classwide redress under Fed. R. Civ. P. 23(b)(3), which arbitration would extinguish.

Conclusion

Arbitration was never intended to immunize racketeering conduct, conceal monopolistic exclusion, or prevent judicial enforcement of public statutes. The Supreme Court, the lower federal courts, and the structural objectives of RICO all point in one direction: where enterprise fraud taints contract formation, courts must retain jurisdiction.

The arbitration clauses at issue are not enforceable under *Buckeye* or subsequent authority. They were allegedly induced by deception, deployed to obstruct legal remedy, and sustained in furtherance of a coordinated exclusionary scheme. Denying arbitration not only aligns with precedent—it ensures that RICO remains a tool for dismantling systemic fraud.

Accordingly, the Court should deny enforcement of the arbitration clauses, retain full jurisdiction over these federal statutory claims, and permit coordinated judicial resolution of all related actions.

A.XIII. Final Word: Denial of Arbitration Confirms the Plausibility and Justiciability of a RICO Enterprise

This case does not present a routine billing dispute or a narrow contract interpretation. It alleges an enterprise-level scheme centered on the systemic misrepresentation that Wi-Fi Calling is "included at no additional charge." In reality, consumers paid for the broadband infrastructure required to place the call, were separately billed for full-price mobile subscriptions that provided no incremental technical value, and were denied access to competitive alternatives through a coordinated architecture of exclusion.

The Complaint alleges a racketeering enterprise that meets every statutory element required under 18 U.S.C. § 1962(c) and (d):

- The existence of an association-in-fact enterprise;
- Participation in that enterprise through a pattern of wire and mail fraud;
- Economic harm to both consumers and competitors;
- Continued operation of the challenged practices despite notice of the allegations.

This structure is not incidental—it is systemic. And it is precisely the type of deceptive and exclusionary conduct that RICO was enacted to expose and dismantle.

A ruling from this Court denying arbitration does more than preserve Plaintiffs' procedural rights. It affirms that the allegations—rooted in nationwide consumer deception, infrastructure manipulation, and competitor exclusion—are serious, systemic, and appropriate for public adjudication under federal law. It confirms that the fraud allegations are not speculative, but judicially cognizable. It also sends a clear message: racketeering enterprises cannot insulate themselves from review by embedding arbitration clauses within contracts procured through fraud.

Where the enforcement of arbitration would frustrate statutory purpose, suppress accountability, and prevent public adjudication of structural fraud, the Court must deny it. Doing so here affirms the central proposition of this litigation: that enterprise fraud allegations are real, ongoing, and subject to federal judicial review.

A.XIV. Upon Denial of Arbitration, Coordinated Adjudication of All Related Actions Is Procedurally Appropriate and Judicially Efficient

If this Court determines that the arbitration clauses are unenforceable, it will have necessarily concluded that the claims before it allege more than individualized contractual harm. Such a ruling confirms that the Plaintiffs have plausibly alleged a coordinated enterprise-level scheme involving racketeering conduct, systemic deception, and market exclusion. That finding warrants immediate procedural action.

Specifically, denial of arbitration creates a sound legal foundation to consolidate and fast-track all four related federal actions currently pending before the judiciary:

1. This putative nationwide class action, which alleges RICO and Sherman Act § 2 violations affecting millions of mobile subscribers;
2. The parallel individual action (Case No. 1:24-cv-03051), asserting the same claims on behalf of VoIP-Pal;
3. A companion antitrust complaint addressing monopolization through technical and contractual exclusion;
4. A RICO conspiracy suit against platform and device co-conspirators for their role in reinforcing structural exclusion and suppressing VoIP alternatives.

Each of these actions arises from the same factual nucleus—namely, the denial of standalone Wi-Fi Calling through misrepresentation, infrastructure control, and arbitration-based concealment. Denial of arbitration removes a key procedural barrier to coordinated resolution and enables this Court to exercise its discretion under Federal Rule of Civil Procedure 42(a) to consolidate proceedings involving common questions of law or fact. It also creates a clear pathway for evaluating class certification under Rule 23(b)(3), where common issues predominate and class-wide resolution is the superior method for adjudication.

In the interest of judicial economy, consistent rulings, and equitable treatment of similarly situated plaintiffs, these cases should proceed in tandem. There is no prudential or legal reason to delay coordinated adjudication now that the threshold arbitration issue has been addressed. The factual groundwork has been laid, the statutory framework is clear, and the claims are appropriately framed for prompt judicial review.

A.XV. TWOMBLY STANDARD SATISFIED — CLASS ACTION RICO FRAUD AND SHERMAN ACT § 2 ALLEGATIONS INVALIDATE ARBITRATION CLAUSES

The Supreme Court's ruling in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), requires that federal complaints plead "enough facts to state a claim to relief that is plausible on its face." This standard governs not only RICO claims—but also claims under Sherman Act § 2 for exclusionary conduct. The Class Action Complaint satisfies both.

In RICO cases, Twombly plausibility and Rule 9(b) specificity must work together: plaintiffs must plead a concrete enterprise, predicate fraud acts, a continuing pattern of racketeering, and resulting injury. When fraud is the mechanism of enterprise conduct—as it is here—precise and coordinated factual allegations are required. Similarly, in Sherman § 2 cases, plaintiffs must plead monopoly power, exclusionary conduct, market foreclosure, and consumer harm—backed by structural "plus factors" suggesting coordinated behavior.

The Class's allegations under both statutes exceed Twombly's threshold. The same facts that establish a RICO enterprise—coordinated exclusion, fraudulent dual-payment schemes, and arbitration-based concealment—also establish a monopolistic architecture in violation of § 2 of the Sherman Act. The dual statutory violations reinforce each other and confirm that arbitration clauses were part of a broader scheme to defraud consumers and suppress market entry.

TWOMBLY STANDARD SATISFIED – CLASS ACTION SHERMAN ACT § 2 PLEADING FOR STANDALONE WI-FI CALLING EXCLUSION SUPPORTS INVALIDATION OF ARBITRATION CLAUSES

In addition to racketeering conduct, the Class Action alleges a unified, exclusionary scheme under Sherman Act § 2. The relevant market is standalone Wi-Fi Calling—a technically separable, broadband-based voice service—distinct from bundled mobile plans. This market is dominated by a closed network of:

- Three mobile carriers controlling 97% of voice services;
- Two operating system vendors with over 95% share;
- Three device manufacturers that gatekeep firmware-level telephony access.

The Class pleads that:

- Wi-Fi Calling is tied to bundled cellular plans, rendering standalone access impossible despite broadband sufficiency;
- Carriers block third-party VoIP apps from entitlement servers, SIM provisioning, and native dialer access;
- OS vendors and manufacturers enforce gatekeeping, restricting APIs, routing logic, and firmware behavior to favor carrier-approved apps;
- No defendant deviated from this pattern, despite the potential to capture market share with a competitive standalone product;
- Consumers are harmed, forced to pay for full cellular plans even when calls are routed over home Wi-Fi, with no option to opt out.

These Allegations Meet and Surpass All Twombly Requirements for Sherman Act § 2 Liability—And Invalidate Arbitration Clauses as a Matter of Law

The Class Action presents a detailed, systemic account of exclusionary conduct in the standalone Wi-Fi Calling market. The pleadings satisfy the requirements set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Moreover, because this coordinated exclusion was hidden and enforced through arbitration clauses, those clauses are not enforceable—they are instruments of monopolization.

1. Factual Plausibility – Not Just Possible, But Probable

Twombly demands more than speculative claims—it requires a narrative grounded in fact, logic, and industry-specific detail. The Class Complaint lays out a cohesive and plausible theory of exclusionary conduct by major carriers (AT&T, Verizon, T-Mobile), working in tandem with platform providers (Google, Apple) and device manufacturers (Samsung, Apple, Google Pixel).

The facts are not abstract: they are drawn from public documentation, technical specifications, user interface conditions, regulatory filings, and device behavior. Together, they present a factually plausible claim that this exclusion was no accident—it was the product of deliberate enterprise conduct.

As such, the arbitration clauses embedded in subscriber contracts were not incidental. They were deployed to shield this exclusion from review. Under *Buckeye*, arbitration cannot enforce provisions that conceal anticompetitive schemes from judicial scrutiny.

2. Exclusionary Conduct – Concrete Barriers, Not Policy Choices

The Class does not allege general unfairness; it alleges specific, mechanical exclusion from market access:

- Carriers refuse to activate Wi-Fi Calling unless users buy full cellular plans.
- SIM provisioning and entitlement servers are controlled by the carriers—and denied to independent VoIP providers.
- Platform APIs for call routing, dialer integration, and emergency calling are blocked from third-party apps.
- Firmware logic in devices deprioritizes or disables competing VoIP services.

This exclusion is coded, standardized, and enforced across every technical layer. It is not a feature of healthy competition—it is a structural denial of entry. Arbitration clauses that were used to enforce this denial are themselves exclusionary devices and cannot stand.

3. Plus Factors – Evidence of Coordination

Twombly allows for circumstantial inference of agreement where conduct would be irrational if independent. Here, several "plus factors" support a strong inference of coordination:

- All carriers require bundled plans; none offer standalone Wi-Fi Calling.
- All platforms enforce the same API restrictions.
- All devices embed firmware preferences for carrier apps.
- No Defendant breaks ranks, even though any one of them could gain market share by offering unbundled VoIP access.

This uniform behavior—against each company's short-term economic interest—signals not chance, but coordination. And because the arbitration clauses were uniformly used to suppress legal challenges to this behavior, they are not defensible under federal law. Their very function was to entrench monopoly, not resolve disputes.

4. Market Power – Control at Every Layer

Twombly requires that Defendants have market power in a clearly defined market. The Class identifies that market as standalone Wi-Fi Calling over consumer broadband—a service that is technologically and economically distinct from bundled mobile voice.

The Complaint documents that:

- The three carrier Defendants control 97% of the mobile voice market.
- The two platform providers control 95%+ of the mobile OS ecosystem.
- Three device manufacturers gatekeep native telephony access.

This cross-layer dominance allowed Defendants to jointly enforce exclusion without fear of substitution or bypass. Arbitration clauses were a critical part of maintaining that power—they ensured that legal accountability would be deferred or denied.

5. Market Foreclosure – No Way In

Twombly also requires that competitors are actually excluded. The Class does not claim theoretical barriers—it shows total, operational foreclosure:

- No unaffiliated VoIP app can access entitlement servers or SIM profiles.
- No third-party provider can integrate with the default dialer, assign a native phone number, or offer fallback routing.
- Firmware restrictions render non-carrier apps unstable or invisible.

In short: lawful, technically qualified providers cannot enter the market. This is not failure on the merits—it is lockout by design. Arbitration clauses were then presented to consumers as benign—but they were actually central to sustaining this hidden wall. That makes them unenforceable under the doctrine of fraudulent inducement and structural concealment.

6. Consumer Harm – Class wide Injury by Design

The antitrust injury here is both economic and systemic:

- Consumers pay for mobile infrastructure they do not use—while being told Wi-Fi Calling is "no extra charge."
- They are denied access to cheaper standalone options—like VoIP plans for $6.50/month.
- Innovation is stalled, with no independent provider able to offer features like encrypted calling or dynamic number assignment.

These harms are measurable and impact millions of U.S. subscribers. They are traceable to Defendants' collective conduct. Arbitration clauses that block redress for these harms do not serve justice—they protect monopoly. Courts have repeatedly invalidated such clauses when they frustrate enforcement of public interest statutes like the Sherman Act.

7. Factual Detail – The "Who, What, Where, When, and How"

The Class Complaint leaves no ambiguity:

- **Who**: AT&T, Verizon, T-Mobile; Google (Android OS), Apple (iOS); Samsung, Google Pixel, Apple (devices).
- **What**: Tying, bundling, entitlement control, firmware lockout, API exclusion.
- **Where**: Across the national mobile infrastructure and device ecosystem.
- **When**: Conduct has been ongoing and active
- **How**: Through subscriber contracts, mobile apps, OS frameworks, firmware behavior, and device certification.

This specificity meets the pleading threshold under Twombly and Rule 9(b). It also removes any doubt that the arbitration clauses were not neutral—they were part of the same system that carried out the exclusion.

8. Unified Enterprise – A Coordinated Exclusionary Scheme

Finally, Twombly permits plaintiffs to allege conspiracy by inference. Here, the inference is not just plausible—it is compelling:

- All six Defendants follow identical exclusion protocols.
- None acted independently—even when it would be profitable to do so.
- The exclusion spans layers that no single company controls alone—indicating collaboration.
- Arbitration clauses were deployed with similar timing, structure, and enforcement mechanisms—reinforcing the unified nature of the enterprise.

This is the same pattern condemned in cases like *Microsoft* and *United States v. AT&T*. And when arbitration clauses are used to sustain it, courts have full authority to strike them down as contrary to law and public policy.

Conclusion: The Arbitration Clauses Cannot Survive Twombly or Federal Scrutiny

When a scheme involves both fraudulent concealment and structural monopolization, arbitration clauses cannot shield it from liability. The Class Action's pleadings meet every Twombly standard for Sherman Act § 2. They also plead a RICO enterprise built on deception. In both cases, arbitration was not a neutral mechanism—it was the weapon used to silence exposure and eliminate legal challenge.

Such clauses are void *ab initio* under *Buckeye* and established precedent. This Court should invalidate them now—and allow the class claims to proceed in full view of the law and the public.

These facts not only establish a plausible Sherman Act § 2 violation—they explain why the arbitration clauses must be seen as an integral part of the monopolization scheme. Arbitration was not neutral. It was the legal firewall that protected the technical lockout from judicial scrutiny.

The Court should therefore analyze RICO and Sherman Act § 2 together—recognizing that the arbitration clauses were not merely procedurally defective, but were substantively weaponized to maintain an unlawful monopoly.

<u>9. Arbitration Clauses Were Tools of Fraud—and Must Be Invalidated</u>

Because the arbitration clauses were:

- Embedded in contracts induced by RICO fraud;
- Used to conceal enterprise conduct and suppress judicial challenge;
- Continued to be enforced despite notice of the allegations;

—they are void *ab initio* under *Buckeye Check Cashing v. Cardegna*, 546 U.S. 440 (2006), and its progeny. Courts cannot enforce arbitration where the clause itself is the fruit of a racketeering scheme.

VoIP-Pal's RICO claim is not hypothetical—it is facially sufficient, factually detailed, and plausibly pleaded. That suffices to destroy the arbitration clause's enforceability as a matter of federal law and public policy.

11. Arbitration Clauses Functioned as a Tool of Concealment — Supporting Pattern and Fraudulent Purpose

A key component of any RICO claim is the "pattern" of racketeering activity. Courts have held that acts of concealment or continued deception can extend and confirm that pattern. In this case, the Class alleges that the very existence and enforcement of the arbitration clauses was not incidental, but strategically used to conceal and sustain the racketeering enterprise.

Specifically:

- Defendants embedded arbitration clauses in digital subscriber agreements without meaningful disclosure, conspicuous language, or opt-out options;
- These clauses were not neutral dispute resolution tools—they were deployed to insulate an unlawful dual-payment structure from judicial review;
- The clauses have been enforced to suppress legal challenges to the alleged scheme.

This use of arbitration as a concealment mechanism aligns with case law recognizing that acts taken to prevent detection or hinder exposure of fraudulent enterprises can support continuing patterns of racketeering activity.

Accordingly, the arbitration clauses:

- Are not separate from the RICO scheme;
- Constitute an ongoing element of concealment;
- And their continued enforcement reinforces the existence of a coordinated enterprise under § 1962(c) and § 1962(d).

This theory further justifies the Court's power to declare the clauses void *ab initio*, as they were tools of racketeering—not legitimate contract terms.

12. Conclusion

The Class Action Complaint presents a detailed, fact-driven account of coordinated exclusionary conduct that violates both the Racketeer Influenced and Corrupt Organizations Act and Section 2 of the Sherman Act. It satisfies every requirement under Twombly, not only by plausibly alleging a RICO enterprise built on wire fraud and concealment, but by establishing a structurally enforced monopolization scheme in the standalone Wi-Fi Calling market. That scheme was made possible—and perpetuated—through arbitration clauses embedded in deceptive subscriber agreements.

Because these clauses were not entered into knowingly, were part of a pattern of racketeering activity, and were strategically used to shield illegal monopolization from judicial scrutiny, they are void as a matter of law. Under binding precedent, including *Buckeye* and established authority, courts are obligated to strike down arbitration provisions that arise from systemic fraud or are used to preserve exclusionary market control.

B. Arbitration Agreements Are Invalid and Unenforceable Due to Procedural and Substantive Unconscionability

Courts across jurisdictions have long recognized that arbitration agreements are invalid if they are both procedurally and substantively unconscionable. See *Doctor's Associates v. Casarotto*, 517 U.S. 681 (1996) (applying general contract principles to arbitration clauses). See also *AT&T Mobility LLC v. Concepcion,* 563 U.S. 333 (2011), *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614 (1985), *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440 (2006), and *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395 (1967). The provisions under consideration here were not only imposed under conditions of mass adhesion and consumer powerlessness, but were also deployed to preemptively shield Defendants from liability under federal racketeering, antitrust, and telecommunications laws. That makes them unenforceable as a matter of federal law and public policy.

In *Jung v. Association of American Medical Colleges*, 300 F. Supp. 2d 119 (D.D.C. 2004), this court denied dismissal of Sherman Act claims where plaintiffs alleged a conspiracy involving the systemic exclusion of medical residents from negotiating market-based compensation. Similarly, the Plaintiffs allege a market-wide antitrust conspiracy in which mobile carriers and platform vendors coordinated to exclude standalone VoIP providers from the infrastructure necessary for Wi-Fi Calling. Both cases turn on allegations of structural exclusion from a defined market through control of system architecture (medical residency assignments in Jung, and bundled Wi-Fi Calling and market exclusion here).

Jung emphasized that claims involving a cohesive market structure and broad conspiracies are ill-suited for fragmented or private resolution. In this case, arbitration would result in improper claim fragmentation and undermine class-wide resolution. Just as Jung rejected motions that would compartmentalize a unified conspiracy into discrete disputes, compelling arbitration here would dismember a collective action involving overlapping market control by multiple defendants, frustrating both judicial efficiency and antitrust enforcement.

> While the Court has concluded that the arbitration clause in the Student Match Contract encompasses the claim the NRMP seeks to have arbitrated, and that none of the countervailing statutory or policy considerations suggested by plaintiffs and certain institutional defendants relieve them from the responsibility to arbitrate, the Court nonetheless concludes that compelling arbitration of any part of the conspiracy claim would undermine the purposes of the Sherman Act by improperly compartmentalizing plaintiffs' single conspiracy claim. The Court also concludes that the request for arbitration by the AMA, a non-signatory to the Student Match Contract, would result in further improvident compartmentalizing of the claim.
> In its motion, the NRMP describes plaintiffs' conspiracy claim, designating three main elements: the use of the Match Program to eliminate competition in the recruitment and employment of medical residents, the exchange of competitively sensitive information regarding resident physician compensation and benefits, and the promulgation of and compliance with purportedly anticompetitive accreditation

standards. See NRMP's Arbit. Mem. at 3–4. The NRMP asserts that "[t]ogether, these three elements of the supposed conspiracy are said to have 'the purpose and effect of artificially fixing, depressing, standardizing and stabilizing resident physician compensation and other terms of employment.' " Id. at 4 (quoting Compl. ¶ 101). Plaintiffs likely would not dispute this characterization of their claim. The NRMP then seeks an order "compelling plaintiffs to arbitrate the first element of their tripartite claim; namely, that defendants used the Matching Program to eliminate competition in the recruitment and employment of resident physicians.' " NRMP's Arbit. Mem. at 7. Characterizing plaintiffs' single conspiracy claim as "tripartite," however, cannot disguise the fact that plaintiffs' claim alleges a single conspiracy with three interacting prongs that—when considered together—are alleged to have the anticompetitive effect charged.

The Supreme Court has held that where certain claims within a multi-count complaint are arbitrable, the liberal federal policy favoring arbitration directs referral of those claims to arbitration "even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." *Dean Witter Reynolds Inc. v.* Byrd, 470 U.S. 213, 217, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985). See also *NPS Communications, Inc. v. The Continental Group, Inc.*, 760 F.2d 463, 465 (2d Cir.1985)(retaining non-arbitrable antitrust claims while referring arbitrable contract claims to arbitration). In Dean Witter, the Supreme Court rejected the "doctrine of intertwining claims" as a defense to arbitration even when "piecemeal" litigation results, "at least absent a countervailing policy manifested in another federal statute." Id. at 221. Some courts also have concluded that "the Arbitration Act requires the separation of arbitrable 'issues' from non-arbitrable ones" within individual claims. *Rain v. Donning Co./ Publishers, Inc.*, 964 F.2d 1455, 1460 (4th Cir.1992) (in single breach of contract claim alleging multiple bases for breach, referring to arbitration only those bases expressly arbitrable under relevant agreement).

It does not follow, however, that one element of an overarching conspiracy claim, an element in which multiple defendants allegedly are involved, should be referred to arbitration. Conspiracy is a far different creature from breach of contract, and conspiracy allegations in antitrust cases cannot be compartmentalized and considered in isolation "as if they were separate lawsuits, thereby overlooking the conspiracy claim itself." *In re Fine Paper Antitrust Litigation*, 685 F.2d 810, 822 (3d Cir.1982). Indeed, in *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 82 S.Ct. 1404, 8 L.Ed.2d 777 (1962), the Supreme Court expressly held that in cases that involve an alleged conspiracy among multiple actors involving multiple acts, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole .... [I]n a case like the one before us, the duty of the jury was to look at the whole picture and not merely at the individual figures in it. *Id.* at 699, 82 S.Ct. 1404 (internal quotation and citation omitted). See also *In re Consumer Credit*

Counseling Services Antitrust Litigation, Misc. No. 97–0233/Civil Action No. 97–1741, 1997 WL 755019, at *5 (D.D.C. Dec. 4, 1997), 1997 U.S. Dist. LEXIS 19669, at *13–14 (refusing to consider allegations of various anticompetitive acts separately when brought under single conspiracy claim, concluding that "the character and effect of the conspiracy are not to be evaluated by viewing its separate parts.... [T]he ramification and effect of the conspiracy should be looked at as a whole."); In re Medical X–Ray Film Antitrust Litigation, 946 F.Supp. 209, 218 (E.D.N.Y.1996) (refusing to consider elements of conspiracy claim separately because "while each of these factors taken in isolation does not necessarily provide a basis alone for inferring an agreement or conspiracy, in combination, these factors, taken together and 'on the ground,' may support a reasonable inference that an agreement or conspiracy existed").

Chief Judge Hogan's decision in *In re Vitamins Antitrust Litigation*, Misc. No. 99–197 (TFH), 2000 WL 1475705 (D.D.C. May 9, 2000), 2000 U.S. Dist. LEXIS 7397 is instructive on this issue. In that case, certain defendants moved to sever the allegations that related to those defendants in plaintiffs' single price-fixing conspiracy claim, arguing that not one but three conspiracies existed, each based on different vitamins produced. Relying on Continental Ore, Judge Hogan denied the motion to sever portions of the single conspiracy claim, concluding that "it would be improper ... to prejudge the scope of the conspiracy that plaintiffs allege," and noting that "the trier of fact 'must look at the whole picture and not merely at the individual figures in it.' " Id. at *17 (quoting *Continental Ore Co. v. Union Carbide & Carbon Corp.*,370 U.S. at 699, 82 S.Ct. 1404). The Court finds the Continental Ore directive even more compelling in the instant action, in which defendants assert that the alleged anticompetitive acts are facially lawful if considered separately. See Section IV(B)(3)-(5) infra. The Court concludes that the Continental Ore decision and its progeny manifest a clear and compelling countervailing interest in the comprehensive adjudication of conspiracy claims brought under the Sherman Act. Defendant NRMP's motion to compel arbitration therefore must be denied.

The Court also concludes that the request for arbitration made by the AMA, a non-signatory to the Student Match Contract, must be denied as well. The referral of the claim would further improperly compartmentalize plaintiffs' single conspiracy claim. Moreover, inasmuch as this request is predicated on a theory of derivative liability resulting from the AMA's role as a "governing sponsor" of the NRMP, the Court's conclusion that the claim as it relates to the NRMP is non-arbitrable also defeats these additional requests. See NRMP Arbit. Reply at 30–31. It also seems self-evident that entities that are not parties to a contract containing an arbitration agreement are not entitled to arbitrate their disputes. As the Supreme Court said in Waffle House, "[t]he FAA directs courts to place arbitration agreements on equal footing with other contracts, but it 'does not require parties to arbitrate when they have not agreed to do so.' " *EEOC v. Waffle House, Inc.*, 534 U.S. at 293, 122 S.Ct. 754(quoting *Volt Information Sciences, Inc. v. Board of Trustees*, 489 U.S. at 478, 109 S.Ct. 1248). None of the plaintiffs in this case has a contractual obligation to

> arbitrate any claims with the AMA and the Court will not require them to do so. See *Dayhoff, Inc. v. H.J. Heinz, Co.*, 86 F.3d 1287, 1296–97 (3d Cir.1996).

The *Jung* acknowledged that systemic misconduct—especially when orchestrated across institutional actors—can require departure from standard procedural paths to preserve judicial oversight. Moreover, in Jung, the court found that acts committed by co-conspirators within the forum (District of Columbia) could create jurisdiction over all participants, even those without direct contacts. As discussed further below, non-signatory parties like Apple and Google cannot invoke the Defendants' arbitration protections where they were part of the same exclusionary enterprise. Finally, Jung underscores the value of resolving threshold legal questions—such as jurisdiction and the sufficiency of conspiracy allegations—before proceeding to merits discovery or procedural motions. Arbitration enforceability should be resolved first.

While Plaintiffs may agree with the Defendants, as to themselves, that this case may be governed by the FAA and the laws of the state of Florida (where the agreements were entered), a thorough analysis here implicates federal rights held by over 373 million U.S. wireless subscribers in all 50 state jurisdictions. Florida law provides a framework that most states would use to recognize that arbitration agreements are invalid if they are both procedurally and substantively unconscionable (*Powertel, Inc. v. Bexley*, 743 So.2d 570, 574-575 (1999). Under Florida law,

> In ruling on a motion to compel arbitration, the trial court is limited to three inquiries: "(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." *Seifert v. U.S. Home Corp.*, 750 So.2d 633, 636 (Fla.1999) (citing Terminix Int'l Co. v. Ponzio, 693 So.2d 104, 106 (Fla. 5th DCA 1997)).
>
> To decline to enforce a contract as unconscionable, the contract must be both procedurally unconscionable and substantively unconscionable. *See Powertel, Inc. v. Bexley,* 743 So.2d 570, 574 (Fla. 1st DCA 1999) (citation omitted); *Kohl v. Bay Colony Club Condo., Inc.,* 398 So.2d 865, 867 (Fla. 4th DCA 1981). Procedural unconscionability refers to the individualized circumstances under which the contract is entered, while substantive unconscionability deals with the

unreasonableness and unfairness of the contractual terms themselves. *See Kohl,* 398 So.2d at 868. As we noted in *Kohl,*

> *Most courts take a "balancing approach" to the unconscionability question, and to tip the scales in favor of unconscionability, most courts seem to require a certain quantum of procedural plus a certain quantum of substantive unconscionability.*

Id. at 868 (quoting *Johnson v. Mobil Oil Corp.,* 415 F.Supp. 264, 268 (E.D.Mich.1976)). The amount of either may vary. In *Armendariz v. Foundation Health Psychcare Services, Inc.,* 24 Cal.4th 83, 99 Cal.Rptr.2d 745, 6 P.3d 669 (2000), the court explained:

> *"The prevailing view is that [procedural and substantive unconscionability] must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (Stirlen v. Supercuts, Inc., supra, 51 Cal.App.4th at p. 1533, 60 Cal.Rptr.2d 138 (Stirlen).) But they need not be present in the same degree. "Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves." (15 Williston on Contracts (3d ed. 1972) § 1763A, pp. 226–227; see also A & M Produce Co., supra, 135 Cal.App.3d at p. 487, 186 Cal.Rptr. 114.) In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.*

Id. at 690; *see also Burch v. Second Judicial Dist. Court of State ex rel. County of Washoe,* 49 P.3d 647 (Nev.2002). Because the arbitration contract in this case is substantively unconscionable to a great degree, and we conclude that there is some irregularity in the contract formation amounting to procedural unconscionability of some degree, the contract is unenforceable.

Although parties may agree to arbitrate statutory claims, even ones involving important social policies, arbitration must provide the prospective litigant with an effective way to vindicate his or her statutory cause of action in the arbitral forum. *See Green Tree Fin. Corp.-Ala. v. Randolph,* 531 U.S. 79, 90, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000) (citing *Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20, 28, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991)); *see also Flyer Printing Co. v. Hill,* 805 So.2d 829, 831 (Fla. 2d DCA 2001). When an arbitration agreement contains provisions which defeat the remedial provisions of the statute, the agreement is not enforceable. *See Flyer Printing,* 805 So.2d at 831.

Romano ex rel. Romano v. Manor Care, Inc., 861 So.2d 59, 61-62 (2003); *Hill v. Wackenhut Services Intern.*, 865 F.Supp.2d 84 (2012) (applying Florida law on the issue of unconscionability).

B.1. Procedural Unconscionability: Lack of Meaningful Choice or Informed Consent

Florida courts may properly decline to enforce a contract on the ground that it is unconscionable. See *Steinhardt v. Rudolph*, 422 So.2d 884 (Fla. 3d DCA 1982). To support a determination of unconscionability, however, the court must find that the contract is both procedurally unconscionable and substantively unconscionable. See *Belcher v. Kier*, 558 So.2d 1039 (Fla. 2d DCA 1990); *Complete Interiors v. Behan*, 558 So.2d 48 (Fla. 5th DCA 1990). The procedural component of unconscionability relates to the manner in which the contract was entered and it involves consideration of such issues as the relative bargaining power of the parties and their ability to know and understand the disputed contract terms. For example, the court might find that a contract is procedurally unconscionable if important terms were "hidden in a maze of fine print and minimized by deceptive sales practices." *Williams v. Walker–Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C.Cir.1965). In contrast, the substantive component focuses on the agreement itself. As the court explained in *Kohl v. Bay Colony Club Condominium, Inc.*, 398 So.2d 865, 868 (Fla. 4th DCA 1981), a case is made out for substantive unconscionability by showing that "the terms of the contract are unreasonable and unfair."

> As for the first element, we conclude that the arbitration clause at issue is procedurally unconscionable. Although not dispositive of this point, it is significant that the arbitration clause is an adhesion contract. Generally, an adhesion contract is defined as a "standardized contract form offered to consumers of goods and services on essentially [a] "take it or leave it" basis without affording [the] consumer [a] realistic opportunity to bargain and under such conditions that [the] consumer cannot obtain [the] desired product or services except by acquiescing in the form contract." Black's Law Dictionary, 6th Ed. (1990). See also *Pasteur Health Plan, Inc. v. Salazar*, 658 So.2d 543, 544 (Fla. 3d DCA 1995) (stating the definition of an adhesion contract).

> Powertel prepared the arbitration clause unilaterally and sent it along to its customers as an insert to their monthly telephone bill. The customers did not bargain for the arbitration clause, nor did they have the power to reject it. One of the hallmarks of procedural unconscionability is the absence of any meaningful choice on the part of the consumer. See Belcher; Kohl. Here, the customers had no choice but to agree to the new arbitration clause if they wished to continue to use the cellular telephone plans they had purchased from Powertel.
>
> It is true, as Powertel argues, that customers can avoid the effect of the arbitration clause by canceling their phone service and signing an agreement with another provider. The fallacy of that argument, however, is that switching providers would result in a loss of the investment the customers have in the agreements they made with Powertel. They purchased equipment that works only with the Powertel service and they have obtained telephone numbers that cannot be transferred to a new provider. It is reasonable to assume that some customers may suffer a great deal of inconvenience and expense to obtain and publish a new telephone number. Hence, it is no answer to say that the customers can simply switch providers. Many customers may have continued their service with Powertel despite their objection to the arbitration clause simply because they had no economically feasible alternative.

Powertel, Inc. v. Bexley, 743 So.2d 570, 574-575 (1999).

The arbitration clauses in these subscriber agreements were not presented in a manner that allowed for informed or voluntary assent. They were embedded in digital sign-up flows, obscured within dense fine print, and implemented through standardized, non-negotiable terms without meaningful opt-out opportunities. This formation process is emblematic of procedural unconscionability. Courts have recognized that where a contract offers no mutuality, no plain-language explanation, and no opportunity to reject arbitration while continuing service, procedural unconscionability is present. Courts have held that arbitration clauses imposed without transparency and with potentially excessive costs can be unenforceable. The clauses here were designed and deployed to ensure subscribers could not knowingly or freely reject arbitration without losing access to essential communications services.

The arbitration clauses embedded in Defendants' subscriber agreements satisfy every element of procedural unconscionability under Florida law. These provisions were imposed through standardized, non-negotiable digital contracts that denied consumers meaningful choice, concealed material consequences, and exploited the inherent power imbalance between telecommunications carriers and individual subscribers seeking essential communications services.

Adhesion Contracts And The Absence Of Meaningful Choice

As the Florida Fourth District Court of Appeal recognized in *Powertel, Inc. v. Bexley*, 743 So.2d 570, 574-575 (1999), an adhesion contract is "a standardized contract form offered to consumers of goods and services on essentially [a] 'take it or leave it' basis without affording [the] consumer [a] realistic opportunity to bargain and under such conditions that [the] consumer cannot obtain [the] desired product or services except by acquiescing in the form contract." The arbitration clauses at issue here are classic adhesion contracts that exceed even the problematic circumstances addressed in *Powertel*. Unlike the billing insert in *Powertel*, these arbitration provisions were embedded within the initial subscriber agreements themselves, presented through digital enrollment processes that provided no opportunity for negotiation, modification, or meaningful opt-out.

The hallmark of procedural unconscionability, as established in *Belcher* and *Kohl*, is "the absence of any meaningful choice on the part of the consumer." Here, consumers seeking mobile communications services—an essential utility in modern society—were presented with standardized agreements containing arbitration clauses that were:

- Non-negotiable and uniformly imposed across all three major carriers
- Buried within lengthy digital terms of service without conspicuous highlighting
- Presented without plain-language explanation of their legal consequences
- Offered on a "take it or leave it" basis with no alternative options

The *Powertel* court noted that customers "had no choice but to agree to the new arbitration clause if they wished to continue to use the cellular telephone plans they had purchased." The same coercive dynamic applies here with even greater force, as consumers were required to accept arbitration clauses from the outset of their service relationships, not as post-contractual modifications.

Defendants may argue, as in *Powertel*, that consumers could avoid arbitration clauses by choosing different service providers. However, this argument fails for the same reasons the *Powertel* court rejected it, and additional factors make it even more problematic in this context. The *Powertel* court recognized that "switching providers would result in a loss of the investment the customers have in the agreements they made with Powertel." The court noted that customers "purchased equipment that works only with the Powertel service and they have obtained telephone numbers that cannot be transferred to a new provider," creating switching costs that eliminated any realistic alternative.

In the current telecommunications landscape, these barriers to switching are even more pronounced:

Market Concentration: AT&T, Verizon, and T-Mobile control over 97% of the mobile voice market, creating an oligopoly where meaningful competition on contract terms is virtually nonexistent;

Uniform Industry Practice: All major carriers employ substantially identical arbitration clauses, meaning consumers cannot escape these provisions by switching providers. This industry-wide adoption eliminates any semblance of competitive choice regarding dispute resolution mechanisms;

Technical Lock-in: Modern smartphones contain carrier-specific configurations, including the very Wi-Fi Calling entitlement systems that are central to this litigation. Switching carriers often requires new devices, porting complications, and loss of integrated services; and

Network Effects: Consumers invest in carrier-specific services, family plans, device financing arrangements, and loyalty programs that create substantial switching costs beyond mere inconvenience.

As the *Powertel* court observed, "it is reasonable to assume that some customers may suffer a great deal of inconvenience and expense" from switching providers. The court concluded that "it is no answer to say that the customers can simply switch providers. Many customers may have continued their service with Powertel despite their objection to the arbitration clause simply because they had no economically feasible alternative."

This reasoning applies with even greater force here, where the lack of alternatives is not incidental but systematic across the entire industry.

Concealment And Deceptive Presentation Of Arbitration Terms

The procedural unconscionability analysis must also consider how the arbitration clauses were presented to consumers. Under *Williams v. Walker-Thomas Furniture Co.*, contracts are procedurally unconscionable when important terms are "hidden in a maze of fine print and minimized by deceptive sales practices." The arbitration clauses here were not merely buried in fine print—they were systematically obscured through digital presentation methods designed to discourage careful review:

Digital Overwhelm: The clauses were embedded within lengthy, multi-page terms of service documents presented on small mobile screens during the enrollment process, making careful review practically impossible;

Clickwrap Manipulation: Consumers were required to scroll through dense legal text and click "I Agree" buttons to proceed with service activation, exploiting the well-documented tendency of consumers to skip through such presentations;

Absence of Plain-Language Disclosure: Unlike other material terms such as pricing and service features, the arbitration clauses were not explained in consumer-friendly language or highlighted as waiving fundamental legal rights;

Timing and Context: The clauses were presented during the service activation process, when consumers were focused on establishing communications services rather than evaluating legal terms; and

No Separate Acknowledgment: Consumers were not required to separately acknowledge or initial the arbitration provisions, despite their fundamental impact on legal rights.

This presentation violated the principle established in *Williams* that contracts must not hide important terms through deceptive practices. The systematic concealment of arbitration clauses within digital enrollment processes constitutes exactly the kind of deceptive presentation that renders contracts procedurally unconscionable.

The procedural unconscionability analysis must also consider the relative bargaining power of the parties and their ability to understand the disputed contract terms. Here, the asymmetry between telecommunications carriers and individual consumers is stark and multifaceted. The arbitration clauses were drafted by teams of corporate attorneys specifically to limit liability and prevent collective litigation. Individual consumers lack the legal expertise to understand the full implications of these provisions, including their waiver of class action rights, limitations on discovery, and restrictions on meaningful appellate review. Defendants possessed complete information about the technical and legal implications of Wi-Fi Calling, including its reliance on consumer-funded broadband infrastructure and the exclusion of competitive alternatives. Consumers were deliberately kept ignorant of these material facts through the "no additional charge" misrepresentation. Major telecommunications carriers possess virtually unlimited legal resources to draft, defend, and enforce arbitration clauses. Individual consumers lack comparable resources to challenge these provisions or understand their implications. Defendants leveraged their control over essential communications infrastructure to impose arbitration clauses as non-negotiable conditions of service, exploiting consumers' dependence on mobile communications.

The Florida courts have consistently recognized that such asymmetries in bargaining power and information contribute to procedural unconscionability. The *Belcher* and *Kohl* decisions emphasize that procedural unconscionability focuses on whether consumers had meaningful opportunity to understand and negotiate contract terms. Here, that opportunity was systematically denied.

The Systematic Nature Of The Procedural Violations

What distinguishes this case from ordinary adhesion contract disputes is the systematic and coordinated nature of the procedural violations. The arbitration clauses were not isolated contractual provisions but integral components of an alleged enterprise-wide scheme to suppress legal accountability. The procedural unconscionability here extends beyond mere adhesion to active deception. Consumers were induced to accept arbitration clauses through material misrepresentations about Wi-Fi Calling being "included at no additional charge." This false representation concealed the true nature of the service, meaning that consumers would fund the infrastructure while being required to maintain cellular subscriptions they would not use for Wi-Fi calls.

Under these circumstances, consumers did not merely lack bargaining power, they also lacked accurate information about the fundamental nature of what they were purchasing. The arbitration clauses were embedded within contracts procured through systematic fraud, making the procedural unconscionability more egregious than typical adhesion contract scenarios.

B.2. Substantive Unconscionability: Suppression of Statutory Remedies

Courts have held that clauses that insulate corporations from liability while stripping consumers of statutory protections are unenforceable. Here, the clauses are structured to deny Plaintiffs access to precisely the remedies Congress intended to preserve through public litigation—remedies that arbitration cannot replicate or substitute. They eliminate critical statutory rights and remedies—such as class action participation, injunctive relief, and statutory damages under RICO, the Sherman Act, and the Telecommunications Act.

Again, while Plaintiffs may agree with the Defendants, as to themselves, that this case may be governed by the FAA and the laws of the state of Florida (where the agreements were entered), a thorough analysis continues to implicate federal rights held by over 373 million U.S. wireless subscribers in all 50 state jurisdictions. Florida law continues the framework that most states would use to recognize that arbitration agreements are invalid if they are both procedurally and substantively unconscionable (*Powertel, Inc. v. Bexley*, 743 So.2d 570, 574-575 (1999).

> As for the second major element, we conclude that the arbitration clause is substantively unconscionable. One indicator of substantive unconscionability is that the agreement requires the customers to give up other legal remedies. See Richard A. Lord, Williston on Contracts, § 18.13 (1998); Steven J. Ware, Arbitration and Unconscionability after *Doctor's Associates, Inc. v. Casarotto*, 31 Wake Forest L.Rev. 1001 (1996). That is so in the present case. The arbitration clause expressly limits Powertel's liability to actual damages, thereby precluding the possibility that Powertel will ever be exposed to punitive damages, no matter how outrageous its conduct might be. Powertel argues that this limitation works both ways, but as a practical matter, it is difficult to imagine any situation in which

a telephone company would have an action for punitive damages against its customers. In effect, this provision removes a significant remedy that would otherwise be available in consumer litigation against a corporation.

The arbitration clause also effectively removes Powertel's exposure to any remedy that could be pursued on behalf of a class of consumers. See *Champ v. Siegel Trading Co., Inc.*, 55 F.3d 269 (7th Cir.1995) (holding that the court has no independent authority to compel arbitration of a class claim). Class litigation provides the most economically feasible remedy for the kind of claim that has been asserted here. The potential claims are too small to litigate individually, but collectively they might amount to a large sum of money. The prospect of class litigation ordinarily has some deterrent effect on a manufacturer or service provider, but that is absent here. By requiring arbitration of all claims, Powertel has precluded the possibility that a group of its customers might join together to seek relief that would be impractical for any of them to obtain alone. Again, this is an advantage that inures only to Powertel. The arbitration clause precludes class litigation by either party, but it is difficult to envision a scenario in which that would work to Powertel's detriment.

Moreover, the arbitration clause forces the plaintiff and other cellular telephone customers to waive important statutory remedies. The complaint in this case is based in part on an alleged violation of Florida's Deceptive and Unfair Trade Practices Act. One purpose of this Act is to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." See § 501.202(2), Fla.Stat. (1997). An individual filing suit under the Act can obtain declaratory and injunctive relief in addition to a judgment for damages. See § 501.211, Fla.Stat. (1997). In contrast, the arbitration clause contains no provision that would allow an arbitrator to provide injunctive or declaratory relief.

The arbitrability of a statutory claim rests on the assumption that the arbitration agreement permits relief equivalent to that which is available in the courts. Therefore, an arbitration clause is not enforceable if it would defeat the remedial purpose of the statute upon which an action is based. See *Randolph v. Green Tree Financial Corp.-Alabama*, 178 F.3d 1149 (11th Cir.1999); *Paladino v. Avnet Computer Technologies, Inc.*, 134 F.3d 1054, 1059 (11th Cir.1998). In the present case, the arbitration clause purports to apply to an action under Florida's Deceptive and Unfair Trade Practices Act, yet it does not authorize the arbitrator to afford all of the same remedies. It is unreasonable to assume that the plaintiff and other cellular telephone customers would knowingly and voluntarily trade powerful remedies under a consumer protection statute for the limited right to recover actual damages under the arbitration agreement. Here again, the arbitration clause gives Powertel an unfair advantage. The fact that the arbitration clause effectively insulates Powertel from liability under state consumer laws is yet another reason to conclude that it is substantively unconscionable.

Powertel, Inc. v. Bexley, 743 So.2d 570, 576-577 (1999).

To be sure, the arbitration agreements have been carefully drafted to comply with current caselaw. The agreements are careful not to put limitations on the authority of the arbitrator and the relief available in arbitration. They also contain cost-sharing provisions that tend to reduce barriers to dispute resolution. And the courts have been upholding the class waivers.

But the unfairness lies in the aggregate. The putative class in this case represents essentially every telephone customer in the nation, and the three defendants represent the entire telephone market. The defendants are asking the Court to decide that no telephone customer is entitled to a Court proceeding against their telephone company form any reason. That can't possibly be correct or constitutional. This aggregate disposition is essentially unfair and unconscionable.

Under Florida law, the substantive component of unconscionability "focuses on the agreement itself." *Kohl v. Bay Colony Club Condominium, Inc.*, 398 So.2d 865, 868 (Fla. 4th DCA 1981). A case is made out for substantive unconscionability by showing that "the terms of the contract are unreasonable and unfair." *Id.* The Florida Supreme Court in *Powertel, Inc. v. Bexley*, 743 So.2d 570, 576-577 (1999), established that substantive unconscionability exists when arbitration clauses eliminate meaningful legal remedies, preclude class action relief, and defeat the remedial purposes of consumer protection statutes.

The arbitration clauses embedded in Defendants' subscriber agreements satisfy every indicator of substantive unconscionability identified in *Powertel* and Florida precedent. These provisions systematically eliminate statutory remedies, preclude class-wide relief for small-value claims, and defeat the core purposes of federal statutes including RICO, the Sherman Act, and telecommunications laws. They create a fundamentally one-sided arrangement that benefits only the carriers while depriving millions of consumers of meaningful legal recourse.

Elimination Of Statutory Remedies And Punitive Damages

As the *Powertel* court recognized, "[o]ne indicator of substantive unconscionability is that the agreement requires the customers to give up other legal remedies." 743 So.2d at 576. The court found substantive unconscionability where the arbitration clause "expressly limits Powertel's liability to actual damages, thereby precluding the possibility that Powertel will ever be exposed to punitive damages, no matter how outrageous its conduct might be."

The arbitration clauses here create even more severe limitations on remedies than those condemned in *Powertel*. Defendants' clauses eliminate access to:

Punitive and Exemplary Damages: Under RICO, prevailing plaintiffs are entitled to treble damages as both compensation and deterrence. 18 U.S.C. § 1964(c). The arbitration clauses effectively eliminate this crucial remedy, removing the primary deterrent mechanism Congress built into the RICO statute.

Injunctive Relief: The systematic exclusion of VoIP competitors requires structural injunctive relief to restore market access and prevent ongoing monopolization. Arbitration panels lack authority to issue binding injunctive relief against multiple defendants or to mandate industry-wide reforms.

Declaratory Relief: The alleged enterprise fraud requires declaratory judgments establishing the illegality of the alleged dual-payment scheme and the invalidity of exclusionary practices. Private arbitrators cannot provide the precedential determinations necessary for broad market reform.

For example, AT&T's Customer Agreement states: “To the greatest extent permitted by law, AT&T is not liable for any reason to you, or any user or beneficiary of AT&T Services, for any indirect, incidental, special, consequential, treble, punitive, or exemplary damages.” [Dkt. No. 70-8, page 7]. Similarly, Verizon's Customer Agreement provides: “You and Verizon both agree to limit claims against each other solely to direct damages. This means that to the fullest extent allowed by applicable law, neither of us will claim any damages that are indirect, special, consequential, incidental, treble, or punitive, regardless of the theory of liability." [Dkt. No. 70-28, page 6] T-Mobile's Terms and Conditions contain nearly identical language: "Unless prohibited by law, you and we each agree to limit claims for damages or other monetary relief against each other to direct and actual damages regardless of the theory of liability. This means that neither of us will seek any indirect, special, consequential, treble, or punitive damages from the other." [Dkt. No. 70-10, page 11].

As in *Powertel*, these limitations work only in one direction. The court noted that "as a practical matter, it is difficult to imagine any situation in which a telephone company would have an action for punitive damages against its customers." Similarly here, the carriers will never seek treble damages, injunctive relief, or attorney's fees against individual subscribers. The remedy limitations "remove significant remedies that would otherwise be available in consumer litigation against a corporation."

Preclusion Of Class Action Relief And Collective Redress

The *Powertel* court found substantive unconscionability where the arbitration clause "effectively removes Powertel's exposure to any remedy that could be pursued on behalf of a class of consumers." The court emphasized that "[c]lass litigation provides the most economically feasible remedy for the kind of claim that has been asserted here. The potential claims are too small to litigate individually, but collectively they might amount to a large sum of money."

This analysis applies with even greater force to the present case. The individual harm to each consumer—overcharges for Wi-Fi Calling service—may be modest on a per-subscriber basis. However, multiplied across millions of subscribers over multiple years, the aggregate harm reaches billions of dollars. Without class action procedures, this systematic fraud would be economically immune from challenge.

The arbitration clauses "effectively remove[] [defendants'] exposure to any remedy that could be pursued on behalf of a class of consumers." Powertel, 743 So.2d at 574. All three carriers include explicit class action waivers:

- **AT&T**: "Please read this Agreement carefully. It requires you and AT&T to resolve disputes through arbitration on an individual basis rather than jury trials or class actions." [Dkt. No. 70-8, page 2]. "You and AT&T agree that arbitration will take place on an individual basis. Class arbitrations, class actions, and representative actions are not permitted." [Dkt. No. 70-8, page 3].

- **Verizon**: "YOU AND VERIZON AGREE THAT, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, NO ACTION WILL BE BROUGHT ON A CLASS OR COLLECTIVE BASIS AND YOU AND VERIZON UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION." [Dkt. No. 70-27, page 9].

- **T-Mobile**: "YOU AND WE EACH AGREE THAT ANY 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." [Dkt. No. 70-10, page 10].

The *Powertel* court noted that "[t]he prospect of class litigation ordinarily has some deterrent effect on a manufacturer or service provider, but that is absent here." The elimination of class remedies removes the primary deterrent mechanism for enterprise-level fraud affecting large populations. As the court observed, "By requiring arbitration of all claims, Powertel has precluded the possibility that a group of its customers might join together to seek relief that would be impractical for any of them to obtain alone."

The systemic nature of the alleged conduct—uniform misrepresentation across all three carriers, coordinated exclusion of competitors, and industry-wide deployment of identical arbitration clauses—demonstrates that class relief is not merely preferable but essential. Individual arbitration cannot address enterprise-wide misconduct or provide the market-wide reforms necessary to restore competition.

Defeat Of Statutory Remedial Purposes

The most compelling indicator of substantive unconscionability in *Powertel* was that the arbitration clause defeated the remedial purposes of consumer protection statutes. The court held that "[t]he arbitrability of a statutory claim rests on the assumption that the arbitration agreement permits relief equivalent to that which is available in the courts. Therefore, an arbitration clause is not enforceable if it would defeat the remedial purpose of the statute upon which an action is based."

The court found that Florida's Deceptive and Unfair Trade Practices Act was designed to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices." The arbitration clause was substantively unconscionable because it "contains no provision that would allow an arbitrator to provide injunctive or declaratory relief" available under the statute.

Here, the arbitration clauses defeat the remedial purposes of multiple federal statutes:

RICO Enforcement: Congress enacted RICO to "turn victims into private attorneys general" and provide enhanced damages to deter organized criminal conduct. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 493 (1985). The arbitration clauses eliminate treble damages and public accountability—gutting RICO's enforcement mechanism;

Sherman Act Deterrence: Section 2 of the Sherman Act relies on private enforcement through treble damages and injunctive relief to prevent monopolization. The arbitration clauses eliminate both remedies, allowing systematic exclusion to continue without meaningful deterrent effect; and

Telecommunications Access: Section 251 of the Telecommunications Act requires equal access to essential telecommunications infrastructure. Structural compliance requires industry-wide injunctive relief that arbitration panels cannot provide.

As in *Powertel*, it is "unreasonable to assume that the plaintiff and other cellular telephone customers would knowingly and voluntarily trade powerful remedies under a consumer protection statute for the limited right to recover actual damages under the arbitration agreement."

The Defendants' arbitration clauses eliminate these remedies:

- AT&T's Agreement limits relief to "only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim" and explicitly states arbitrators "may not consolidate more than one person's or entity's claims and may not otherwise preside over any form of a representative, class, private attorney general, or public injunction proceeding." [Dkt. No. 70-8, page 5]. Yet, note the limits on liability specific to only monetary damages discussed above.

- Verizon's Agreement provides that "the arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim." [Dkt. No. 70-27]. Yet, note the limits on liability specific to only monetary damages discussed above.

- T-Mobile's Agreement states an "arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief and attorneys' fees." [Dkt. No. 70-10, page 10]. Yet, note the limits on liability specific to only monetary damages discussed above.

Unfair Advantage And One-Sided Benefit Structure

The *Powertel* court emphasized that substantive unconscionability exists where arbitration clauses give defendants "an unfair advantage" and create benefits that flow only in one direction. The court noted that "the arbitration clause effectively insulates Powertel from liability under state consumer laws" while providing no corresponding benefit to consumers.

The arbitration clauses here create an even more extreme imbalance. The clauses shield a coordinated racketeering enterprise from the very accountability mechanisms Congress designed to dismantle such organizations. They convert RICO from a deterrent into a shield. By eliminating class actions and injunctive relief, the clauses allow systematic monopolization to continue indefinitely without meaningful challenge. They effectively privatize immunity from antitrust enforcement. Arbitration provides defendants with confidential proceedings, limited discovery, restricted appellate review, and arbitrator selection advantages—none of which benefit individual consumers facing enterprise-level misconduct. The uniform adoption of identical clauses across all major carriers demonstrates coordinated effort to eliminate legal accountability industry-wide. This goes beyond mere contractual advantage to systematic suppression of statutory enforcement.

The Court should follow *Powertel* and declare these arbitration clauses unenforceable as substantively unconscionable, thereby preserving the statutory remedies Congress intended for victims of enterprise fraud and monopolistic exclusion.

B.3. The Unconscionability Balancing Test Is Satisfied

Courts apply a sliding scale to evaluate unconscionability. Greater procedural irregularity can be offset by less egregious substantive terms—and vice versa. Here, both dimensions are present: procedural unfairness in contract formation and substantive deprivation of federal rights. The more one-sided and oppressive the substantive terms, the less procedural fairness is required to invalidate the clause. The arbitration clauses here fail under both prongs.

B.4. Arbitration Clauses That Preclude Statutory Relief Are Invalid as a Matter of Law

As discussed above, a clause that operates to deny a plaintiff access to the full scope of legal remedies under federal law is void. Courts have struck down arbitration clauses because they limited plaintiffs' ability to pursue statutory claims. The same logic applies here: the clauses foreclose relief under RICO, Sherman Act § 2, and the Telecommunications Act § 251, rendering them legally invalid. Courts have held that arbitration agreements that defeat the remedial purpose of public statutes must be invalidated. That outcome is compelled here.

B.5. Adhesion, Consumer Trust, and the Fiction of Consent in Digital Contracts

This case involves millions of wireless subscribers—most of whom entered agreements under the functional illusion of trust, not through informed negotiation. The arbitration clauses were neither explained nor presented with clarity. They were not the product of mutual assent but of unilateral imposition in an environment of asymmetric power.

Courts have confirmed that silence or passive inaction cannot constitute assent when the terms are materially deceptive. Courts have recognized that arbitration clauses in adhesion contracts are invalid when the process combines unequal bargaining power with concealment of material consequences.

Defendants violated the trust inherent in these transactions. They misrepresented the cost of Wi-Fi Calling, excluded VoIP competitors, and structured arbitration clauses to suppress judicial scrutiny. That breach of trust, combined with systemic fraud, renders the contract unconscionable and void.

B.6. Arbitration Clauses That Shield an Ongoing RICO Violation Are Invalid

An arbitration clause is unenforceable when it is signed under circumstances that conceal an active racketeering scheme. That is the allegation here. Defendants represented that Wi-Fi Calling was "included at no charge," while in reality:

- Consumers were required to fund the infrastructure through broadband subscriptions;
- The carriers imposed full-price voice plan requirements for access;
- Competitors such as VoIP-Pal were denied entry through entitlement and platform-based lockouts.

This structural deception was not disclosed at the point of contract formation. Consumers signed arbitration clauses unaware that the service itself was constructed upon predicate acts of mail and wire fraud—core elements of a RICO enterprise under §§ 1962(c) and (d).

Courts have held that an arbitration clause is both procedurally and substantively unconscionable when it is used to shield systemic statutory violations, particularly where the clause was accepted under conditions of powerlessness and concealment. Fraud in the inducement of a contract—even if not targeted solely at the arbitration clause—can defeat the clause's enforceability.

Here, subscribers were never told that:

- Their "included" Wi-Fi Calling plan was part of a dual-payment scheme;
- They were contractually waiving their right to challenge systemic billing fraud;
- VoIP-Pal and other alternatives were being excluded through technical and contractual lockouts.

This silence was not mere omission—it was a strategic concealment of an ongoing enterprise scheme. That renders the arbitration clauses void.

Conclusion of Section B

The arbitration clauses are unenforceable under well-established doctrines of procedural and substantive unconscionability, as well as under federal precedent governing fraud-induced contracts and systemic statutory violations. These clauses were not entered into knowingly or voluntarily. They were imposed as tools of concealment, designed to suppress judicial accountability and preserve an enterprise scheme that allegedly defrauded millions of consumers and excluded lawful competitors.

Federal courts do not—and must not—enforce arbitration clauses when they serve to entrench RICO enterprises and block access to remedies Congress created for the public's protection.

C. Non-Signatories Cannot Compel Arbitration Where the Claims Fall Outside the Contractual Scope or Violate Public Statutory Protections

Defendants AT&T, Verizon, and T-Mobile seek to enforce arbitration clauses not only as against the individual signatories to their own subscriber agreements, but across co-defendants and claims that extend beyond any specific carrier relationship. This effort fails under both contract law and federal arbitration doctrine. Arbitration is fundamentally a matter of consent, and cannot be extended to non-signatories unless the claims asserted are entirely derivative of, and inseparable from, the contract containing the clause. That is not the case here.

C.1. General Rule: Arbitration Cannot Be Compelled by Non-Signatories Without Contractual Nexus

Florida law and federal precedent are clear: a non-signatory to a contract containing an arbitration clause cannot compel arbitration absent a recognized legal basis grounded in contract law.

> Generally, "a non-signatory to a contract containing an arbitration agreement ... cannot compel a signatory to submit to arbitration." *Koechli v. BIP Int'l, Inc.*, 870 So.2d 940, 943 (Fla. 1st DCA 2004). However, an exception to this rule is "when the claims relate directly to the contract and the signatory is relying on the contract to assert its claims against the non-signatory." Id. at 944 (citations omitted).

AP Atlantic, Inc. v. Silver Creek St. Augustine, LLLP, 266 So.3d 865, 866 (2019).

The Defendants argue that non-signatories can enforce an arbitration agreement "when a *signatory* to a contract containing the arbitration clause raises allegations of substantially interdependent and concerted misconduct by both a non-signatory and one or more of the signatories to the agreement." *Greene v. Johnson*, 276 So. 3d 527, 531 (Fla. 3d DCA 2019). But that is only half of the analysis. Courts will allow a non-signatory to enforce an arbitration agreement when the plaintiff's claims against the non-signatory are grounded in the contractual agreement. See *Kratos Investments LLC v. ABS Healthcare Services, LLC*, 319 So.3d 97 (2021); *Greene v. Johnson*, 276 So.3d 527 (2019); *Fox v. Computer World Services Corp.*, 920 F.Supp.2d 90, 103 (2013).

The U.S. Supreme Court reached the same conclusion in *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009), holding that arbitration may be compelled by or against non-signatories only where traditional contract doctrines—such as agency, estoppel, or assumption—support such a result. None of those doctrines apply here.

Here, Plaintiffs' claims do not rely on any carrier's performance under a subscription plan. Rather, they allege systemic statutory violations, including:

- A nationwide RICO scheme involving wire and mail fraud in marketing Wi-Fi Calling;
- Antitrust violations under Sherman Act § 2 through infrastructure-based exclusion;
- Deprivation of equal access under the Telecommunications Act.

These claims arise from the Defendants' concerted enterprise conduct, not from the performance of any specific contract. As such, limited interdependent misconduct doctrines are inapplicable.

Courts have recognized that the narrow exception allowing arbitration enforcement by a non-signatory applies only when the plaintiff's claims are expressly based on the underlying contract itself. That is not the case here. Plaintiffs assert independent statutory claims under the Sherman Act, the RICO statute, and the Telecommunications Act—none of which arise from the performance, breach, or interpretation of a subscriber agreement.

C.2. Public Statutory Claims Cannot Be Subject to Arbitration by Non-Signatories

Even where arbitration may be valid as to some claims, statutory causes of action arising under public-interest statutes such as RICO and the Sherman Act are not presumptively subject to arbitration by non-signatories. In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985), the Supreme Court recognized that statutory claims may be arbitrable only if the statutory framework allows it.

That principle was reaffirmed in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67-68 (2010), which confirmed that courts must enforce arbitration agreements according to their terms—but those agreements may be invalidated by "generally applicable contract defenses. Arbitration may not be compelled where the clause undermines core statutory rights or where the agreement itself was induced through fraud.

Courts have recognized that arbitration clauses cannot be enforced in a manner that extinguishes statutory remedies. Here, Plaintiffs seek to vindicate rights under three public-interest statutes—RICO, Sherman Act § 2, and § 251 of the Telecommunications Act. Arbitration clauses cannot be enforced in a manner that extinguishes those remedies, especially where the agreement itself was allegedly part of the fraudulent scheme.

C.3. Class Structure and Enterprise Allegations Preclude Cross-Enforcement by Carrier Defendants

This case is brought on behalf of a nationwide class of millions of wireless subscribers. Each subscriber entered into a contract with only one of the three carrier Defendants. There is no basis under law or logic to allow one carrier—e.g., AT&T—to enforce the arbitration clause found in Verizon's or T-Mobile's subscriber contracts.

Courts have recognized that expanding arbitration beyond its intended scope to foreclose class remedies can be substantively unconscionable, particularly where it undermines statutory enforcement.

To allow all three carrier Defendants to compel arbitration on the basis of any single contract would violate foundational principles of contract formation and would effectively convert unilateral carrier agreements into instruments of enterprise-wide immunity. This would defeat not only contract law but also the core deterrent functions of federal racketeering and antitrust statutes.

Conclusion of Section C: Arbitration Cannot Be Invoked by Non-Signatories to Evade Statutory Liability or Block Class wide Adjudication

The claims asserted in this litigation—including violations of RICO §§ 1962(c) and (d), Sherman Act § 2, and the Telecommunications Act—do not arise from private contractual duties, but from public statutes designed to protect market competition, prevent enterprise-level fraud, and ensure non-discriminatory access to telecommunications infrastructure.

These statutory rights cannot be waived through boilerplate arbitration clauses—especially not by non-signatory co-defendants who were not parties to the agreements at issue. Federal courts must guard against the improper expansion of arbitration to suppress statutory enforcement and deny class wide relief.

In a class action of this scale—where millions of consumers were subject to uniform concealment, lacked bargaining power, and were unaware of the arbitration clause's impact—the Court has both the authority and the duty to reject cross-enforcement of arbitration clauses by non-signatory Defendants.

To hold otherwise would permit coordinated racketeers to insulate themselves from liability by hiding behind contracts they did not sign—and thereby privatize immunity from federal law.

D. Compelling Arbitration of the Class Action Would Result in Impermissible Claim Splitting and Systemic Harm to the Class

This Court currently oversees two overlapping federal proceedings: (1) the individual RICO and antitrust action filed by VoIP-Pal.com Inc. against AT&T, Verizon, and T-Mobile (Case No. 1:24-cv-03051); and (2) this proposed nationwide class action on behalf of millions of wireless subscribers asserting materially identical statutory claims.

Both cases are predicated on the same nucleus of operative facts, including:

- The coordinated misrepresentation that Wi-Fi Calling is "included at no additional charge";
- The denial of standalone VoIP service through technical and contractual exclusion;
- The concealment of infrastructure cost-shifting via dual-payment schemes; and
- The enforcement of arbitration clauses to suppress statutory remedies.

Plaintiffs have moved for consolidation under Federal Rule of Civil Procedure 42(a), recognizing that judicial economy, evidentiary efficiency, and consistent resolution of statutory claims counsel in favor of unified adjudication. Defendants' attempt to sever the class action from its companion case and reroute it into private arbitration, however, would result in impermissible claim splitting, procedural incoherence, and harm to the public enforcement function of antitrust and racketeering law.

D.1. Arbitration Would Produce Claim Splitting in Violation of Judicial Precedent

Courts have recognized that claim splitting occurs when the same party brings two suits based on the same cause of action. Courts must avoid duplicative litigation arising from the "same nucleus of operative facts."

Here, the parties (corporate Defendants), claims (RICO, Sherman Act § 2), and statutory remedies (injunctive and declaratory relief) are materially identical across both actions. Forcing arbitration of the class claims while litigating the individual action in federal court would generate conflicting proceedings, apply divergent procedural rules, and undermine consistent legal outcomes. It would also risk parallel factual determinations without the protections of judicial oversight.

D.2. Issue Preclusion Risks Arising from Arbitration Undermine Due Process

The Supreme Court in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 59 (1974), held that arbitral decisions cannot preclude claims involving public statutory rights. This principle extends to RICO and antitrust claims, which implicate the public interest and are enforceable only in federal court.

Courts have recognized that collateral estoppel from arbitration may not bind absent class members, particularly where they lack procedural safeguards. Here, compelling arbitration risks issuing factual findings in closed proceedings that may later constrain or prejudice class-wide litigation in federal court—violating the constitutional guarantee of procedural due process.

D.3. Arbitration Would Disrupt Discovery, Delay Resolution, and Complicate Case Management

The two proceedings involve intertwined factual issues, including entitlement server provisioning, device-level integration with operating systems, SIM-based network access, and marketing representations about pricing and access. Fragmenting these issues between federal court and arbitration will produce:

- Disjointed discovery timelines;
- Duplicative depositions and evidentiary conflicts;
- Inconsistent protective orders and evidentiary rulings.

Courts have recognized that arbitration is inappropriate where claims require uniform discovery and class-wide factual development. That reasoning applies with even greater urgency here, where discovery is technical, data-heavy, and central to both actions.

D.4. Arbitration Fails Rule 23(b)(3)'s Superiority Requirement

Federal Rule of Civil Procedure 23(b)(3) allows class actions where they are "superior to other available methods for fairly and efficiently adjudicating the controversy." Here, arbitration is neither superior nor adequate.

The alternative—fragmented, private arbitration proceedings—undermines class efficacy, impedes uniform relief, and eliminates deterrence for systemic misconduct. Arbitration fails both the fairness and efficiency prongs of Rule 23(b)(3).

D.5. Arbitration Cannot Provide Structural Relief for the Class

The proposed class seeks system-wide relief, including:

- Injunctive remedies halting deceptive marketing;
- Declaratory findings invalidating arbitration clauses induced by fraud;
- Structural injunctions ensuring VoIP competitors have equal access to core infrastructure.

Arbitration panels lack the authority to:

- Issue injunctive relief binding on multiple defendants;
- Order public disclosure of exclusionary practices;
- Compel systemic market access reform under § 251 of the Telecommunications Act.

That is the risk here: arbitration would function not as an alternative forum—but as a barrier to comprehensive relief.

Conclusion of Section D: One Scheme Requires One Forum

Permitting arbitration of the class action while the individual action proceeds in federal court would result in procedural disarray, duplicative effort, and loss of public oversight. The Defendants' conduct constitutes a unified enterprise scheme that cannot be dissected and distributed across conflicting adjudicative systems. The proper remedy is consolidated federal adjudication under Rule 42(a) and certification under Rule 23(b)(3)—not fragmented arbitration that denies class rights and statutory remedies.

The motion to compel arbitration must be denied. To compel arbitration in this context would not only divide claims—it would divide justice. It would contravene decades of precedent affirming that federal statutes cannot be privatized or nullified through coercive contracting mechanisms.

This is not merely a question of procedural efficiency. It is a matter of substantive legal rights, statutory purpose, and the public's ability to hold enterprise actors accountable in the forum Congress intended.

E.I. Arbitration Cannot Deliver Justice for a Nationwide Class of Millions of Subscribers

Defendants ask this Court to divert a case of national significance—involving millions of subscribers and systemic statutory violations—into private arbitration. That request must be denied. Arbitration is not capable of providing the procedural transparency, structural remedies, evidentiary tools, or public adjudication required by the claims at issue. When the rights of millions of consumers and the public interest in market integrity are at stake, only federal judicial proceedings can safeguard both accountability and legality.

The following are five independent and compounding reasons why arbitration is not a lawful or appropriate substitute for judicial resolution in this matter.

E.1. Arbitration Deprives the Public of Transparency and Judicial Accountability

Judicial proceedings occur on the public record. Parties benefit from:

- Written, reasoned, and reviewable opinions;
- Public access to hearings, evidence, and outcomes;
- Structured appellate review and procedural safeguards.

These features are not present in arbitration, where proceedings are conducted in private, decisions are typically unpublished, and outcomes lack precedential or systemic effect.

For a case involving allegations of enterprise fraud, monopolization, and systemic exclusion from core telecommunications infrastructure, secrecy is antithetical to justice. As the Supreme Court acknowledged in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 30 (1991), arbitration is suitable only when it preserves the "effective vindication" of statutory rights. That requirement is not met here.

E.2. Arbitrators Lack Authority to Issue Public Remedies

This class action seeks not just monetary compensation, but systemic injunctive and declaratory relief, including:

- Ending deceptive advertising practices;
- Dismantling exclusionary provisioning systems;
- Compelling open access to core telephony infrastructure.

Arbitrators are private individuals, not Article III judges. They lack the authority to:

- Issue binding injunctive relief affecting non-parties;
- Mandate public reforms;
- Provide precedential interpretation of statutory frameworks like RICO or the Sherman Act.

Congress did not entrust arbitrators with enforcement of public economic law. It entrusted the courts. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 n.19 (1985).

E.3. Arbitration Is Structurally Incapable of Resolving Claims at Scale

Federal Rule of Civil Procedure 23 exists to adjudicate large-scale claims in an orderly and efficient manner. Class actions allow courts to:

- Coordinate common discovery;
- Control the docket;
- Apply uniform evidentiary rulings;
- Certify issues for collective resolution.

Arbitration provides none of these mechanisms. It is structurally designed for individualized, bilateral dispute resolution, not mass adjudication of system-wide fraud affecting millions of consumers. There is no mechanism for:

- Consolidated discovery across defendants;
- Uniform evidentiary rulings;
- Binding public relief applicable to the class.

E.4. Arbitration Suppresses the Public Narrative of Fraud and Market Exclusion

This case exposes a multi-defendant conspiracy in which dominant carriers misrepresented Wi-Fi Calling as "free," charged consumers on both ends of the connection, and blocked lawful VoIP competition. It is a nationwide narrative of consumer deception and market suppression—not a private contractual dispute.

To confine this story to closed-door proceedings—without public access, published rulings, or open examination of systemic misconduct—is to suppress the accountability Congress intended when it passed RICO, the Sherman Act, and the Telecommunications Act. Public adjudication is an essential part of democratic enforcement. Arbitration buries the record and forecloses public scrutiny.

E.5. Federal Courts—Not Arbitrators—Are Charged with Enforcing Public Statutes

Congress designed statutes like the Sherman Act, RICO, and the Telecommunications Act to prevent systemic misconduct, protect market integrity, and promote competition. Their enforcement requires:

- Judicial process;
- Subpoena power;
- Evidentiary standards;
- Published precedent;
- Classwide remedies;
- Appellate review.

Arbitration offers none of these. It was designed for commercial dispute resolution, not the adjudication of public-interest litigation implicating fraud, monopolization, and nationwide exclusionary practices.

As the Court observed in *Green Tree Fin. Corp.–Ala. v. Randolph*, 531 U.S. 79, 90 (2000), arbitration may only be enforced when it allows effective vindication of rights. Where, as here, it would preclude structural reform, conceal wrongdoing, and obstruct statutory remedies, it cannot stand.

Conclusion of Section E.I

Arbitration cannot deliver justice for a class of this scale. It is procedurally inadequate, structurally deficient, and jurisdictionally unfit to handle the claims and remedies at issue. Plaintiffs do not seek to bypass arbitration—they seek to preserve public enforcement of federal statutes through the only forum authorized to do so: the federal judiciary.

Denying arbitration in this case is not a rejection of private resolution—it is a reaffirmation of public justice.

E.II. Three Carriers Cannot Jointly Enforce Arbitration—Nor Should Arbitration Be Deferred

Defendants AT&T, Verizon, and T-Mobile have jointly requested that this Court stay proceedings in this class action while preserving their option to compel arbitration at a later stage. That approach is both legally flawed and procedurally inefficient. The appropriate course—both as a matter of contract doctrine and judicial economy—is to resolve the enforceability of arbitration now, at the outset.

1. Arbitration Under the FAA Is Inherently Bilateral

The Federal Arbitration Act ("FAA") establishes that arbitration is a matter of consensual bilateral agreement. It permits enforcement only where parties have "agreed to submit [a dispute] to arbitration," 9 U.S.C. § 2, and only as to the parties that have mutually assented to its terms. The Supreme Court has repeatedly reaffirmed that arbitration "is a matter of consent not coercion." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989).

Each subscriber in this case entered into a distinct, bilateral agreement with only one carrier. There is no contractual or legal basis for Defendants to jointly compel arbitration across all class members based on individualized, carrier-specific terms. The FAA does not authorize a multi-defendant joint enforcement theory in which three competitors coordinate to enforce arbitration collectively—especially where the underlying contracts contain no provision for joint resolution or multi-party arbitration procedures.

2. The Supreme Court Prohibits Expanding Arbitration Beyond Its Contractual Scope

In *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010), the Supreme Court held that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so." The Court warned that expanding arbitration beyond its contractually defined scope creates fundamental due process and procedural concerns, particularly in class contexts.

Here, no contract permits joint enforcement of arbitration clauses by three corporate defendants. Each agreement is narrowly tailored to bilateral disputes between the subscriber and their carrier. None contemplates a collective mechanism for cross-defendant coordination in a single arbitration process. Permitting the Defendants to jointly enforce arbitration without such authority would violate *Stolt-Nielsen* and convert individualized subscriber contracts into enterprise-level shields against collective adjudication—precisely what the FAA forbids.

3. Deferring Arbitration Resolution Would Create Redundant and Disruptive Litigation

The Defendants' request to defer arbitration enforcement while pausing the case introduces substantial inefficiencies. If arbitration is ultimately enforceable, that result would terminate the case; if not, discovery, certification, and dispositive motion practice can proceed on a unified track.

Postponing this threshold decision risks:

- Duplicative briefing on arbitration and stay enforcement;
- Inefficient bifurcation of discovery and pretrial scheduling;
- Delayed resolution of foundational questions essential to class notice and certification.

Resolving arbitration now—rather than staging it as a post-litigation mechanism—promotes judicial economy and avoids entangling this Court in piecemeal litigation. As discussed above, courts have recognized that arbitration cannot be compelled in the absence of procedural machinery to bind all defendants or provide coherent relief. The absence of a class arbitration framework, combined with the presence of multiple, competing corporate actors, renders any effort to impose joint arbitration procedurally unmanageable.

4. Arbitration Should Be Resolved Now as a Threshold Issue

The most efficient and legally sound approach is for this Court to resolve the arbitration question before committing judicial resources to discovery, motion practice, or class certification. Because the Defendants themselves have conditioned their stay motion on the validity of the arbitration clauses, this Court is presented with a unique procedural opportunity to address enforceability at the outset.

As numerous courts have held, where arbitration clauses are intertwined with threshold issues of fraud, public enforcement, and multi-defendant liability, the Court is empowered—and in many cases obligated—to resolve enforceability before granting any stay. See *Green Tree Fin. Corp.–Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

Conclusion of Section E.II

The FAA does not authorize enterprise-wide arbitration enforcement by multiple defendants acting in concert. Each subscriber contract is limited to bilateral disputes with a single carrier, and no agreement authorizes collective arbitration across multiple corporate actors.

Deferring the arbitration question would lead to fragmented proceedings, unnecessary delay, and procedural confusion. This Court should instead resolve arbitration enforceability now, as a threshold matter of judicial efficiency, statutory integrity, and procedural fairness.

Only by doing so can the Court ensure that class claims involving structural fraud, statutory exclusion, and nationwide consumer deception are adjudicated in the forum and manner that Congress intended.

E.III. Request for Expedited Determination of Arbitration Enforceability

In the interest of judicial efficiency, docket management, and the avoidance of unnecessary motion practice, Plaintiffs respectfully request that this Court exercise its inherent case management authority to expedite resolution of the arbitration enforceability issue. Prompt adjudication of this threshold matter will provide clarity not only for this class action but for three related federal actions asserting materially identical statutory claims.

Specifically, Plaintiffs request that the Court:

1. Order expedited briefing on the enforceability of the arbitration clauses, including the applicability of each Defendant's arbitration agreement to this class action and the non-signatory enforcement theory advanced by the carriers;
2. Set a hearing on the arbitrability issue within 90 days, ensuring that the Court can resolve this gateway question before engaging in broader litigation planning, including scheduling orders, discovery coordination, or Rule 12 and Rule 23 proceedings.

Such a schedule is well within the Court's authority under Federal Rules of Civil Procedure 16 and 42, and will materially advance the litigation by:

- Determining whether class claims are justiciable in federal court;
- Avoiding duplicative motion practice across multiple cases;
- Preventing fragmented discovery and piecemeal adjudication;
- Protecting absent class members from procedural prejudice.

Federal courts routinely address arbitration enforceability as a threshold matter. See *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91 (2000) (describing arbitration as a "gateway" issue that must be resolved early). Where, as here, the arbitration clauses are contested on the basis of fraud, unconscionability, non-signatory overreach, and conflict with public statutes, expedited resolution is particularly appropriate.

Conclusion to Section E: Arbitration Cannot Substitute for Public Adjudication of Enterprise Misconduct

Defendants ask this Court to redirect the claims of 373 million American consumers into a private forum with no public record, no published decisions, and no judicial oversight. But arbitration was never intended to handle claims of this magnitude or nature. It lacks the procedural tools, structural remedies, and public transparency necessary to adjudicate violations of RICO, the Sherman Act, and the Telecommunications Act.

The federal courts—not private arbitration panels—were created to:

- Enforce public statutes;
- Dismantle unlawful monopolies;
- Expose racketeering enterprises;
- Protect market competition;
- Ensure transparency, reviewability, and precedent.

To compel arbitration here would not serve justice—it would obstruct it. It would deprive the class of meaningful remedies, conceal a pattern of systemic fraud, and silence claims that Congress expressly intended to be litigated in open court.

The Court should not defer or pause this litigation while these foundational issues remain unresolved. Because arbitration cannot be jointly enforced by three distinct carriers across 373 million individualized agreements, and because the arbitration clauses are infected by procedural and substantive defects, the only lawful course is to adjudicate the threshold issue of arbitrability now.

Doing so will clarify jurisdiction, protect the public interest, and ensure that these statutory claims—alleging nationwide exclusion, dual-payment deception, and enterprise-level fraud—are adjudicated where they belong: in a public forum, before a federal court, with the full force of the law.

F. Conclusion

WHEREFORE, Plaintiffs Rich Inza, Michael Inza, and VoIP-Pal.com, Inc. respectfully request that the Court deny Defendants' Motion to Stay Proceedings, and grant Plaintiffs' Cross-Motion to Resolve Arbitration as a Threshold Issue and enter an Order finding that the arbitration agreements are unenforceable.

Respectfully submitted,

/s/ Travis Pittman

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Memorandum Of Law In Opposition To Defendants' Motion To Stay And In Support Of Cross-Motion To Resolve Arbitration As A Threshold Issue was served on July 14, 2025 to all counsel of record via the Court's electronic filing system.

/s/ Travis Pittman
Travis Pittman