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.

To be sure, the central issue before the Court is one of contract law — whether the parties have binding and enforceable arbitration agreements that cover these claims, and whether standard contract defenses apply (i.e. fraud and unconscionability). However, several characteristics of this case make it overwhelmingly suitable to those defenses: Plaintiffs allege plausible antitrust and RICO claims based on facts and evidence that are available in the public record; the Defendants' unified opposition to the class corroborates the alleged monopoly and enterprise activity; and the resulting arbitration structure would essentially neutralize the class claims.

1.I. Defendants' Exclusionary Conduct Violates Sherman Act § 2 and Supports Denial of Arbitration

Plaintiffs' claims under Sherman Act § 2 and the RICO Act arise from Defendants' coercive bundling of Voice over Wi-Fi (VoWi-Fi also called Wi-Fi Calling hereafter) with paid cellular services. Defendants condition access to Wi-Fi Calling—a feature that natively operates on subscribers' smartphones over subscriber-funded broadband—on the purchase of bundled cellular plans. This tie violates Sherman Act § 2 by leveraging Defendants' market power in cellular calling and texting to suppress competing alternatives to bundled Wi-Fi Calling, mainly standalone native Wi-Fi Calling and third-party Voice over IP (VoIP) apps not given native access to subscribers' smartphones. The core of Plaintiffs' Sherman Act § 2 claim is not simply that Defendants tied one service to another. It is that Defendants unlawfully tied their paid cellular calling and texting services to a Wi-Fi Calling feature that is partially provided by the subscriber's own Wi-Fi infrastructure, at the subscriber's expense, and specifically to maintain their monopolies in the Wi-Fi Calling market and prevent competition. The Defendants' conduct is further a violation of RICO, as Defendants use deceptive marketing and billing practices to mask the nature of their bundled Wi-Fi Calling offerings, compel payments for infrastructure they do not provide, and prevent standalone and alternative VoIP providers from competing.

As detailed in the Complaint, this tie is artificial: there is no technical reason Wi-Fi Calling must be bundled with paid cellular service. Wi-Fi Calling routes calls and texts over the internet via subscriber-provided Wi-Fi to the Defendants' IP Multimedia Subsystem (IMS) cores, without using the Defendants' more expensive cellular tower infrastructure. While the Defendant carriers also use their IMS core with cellular calling and texting, this does not inherently mean that Wi-Fi Calling also requires a paid cellular subscription. Standalone VoIP services like Skype or WhatsApp demonstrate that voice and text over Wi-Fi are technically viable even without a carrier plan. Defendants merely impose the tie through artificial controls—such as entitlement servers and account status checks—that only provide access to Wi-Fi Calling if a paid cellular plan is active.

In *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001), the Court held that Microsoft unlawfully maintained its operating system monopoly by tying Internet Explorer to Windows through unnecessary integration that suppressed rival browsers. Similarly, Defendants could offer Wi-Fi Calling independently, but artificially tie it to bundled plans to maintain dominance. The false promise of "free" Wi-Fi Calling is not mere marketing—it is a mechanism of exclusion designed to entrench Defendants' control over mobile voice services. By conditioning access on mandatory bundled purchases, Defendants eliminate the possibility of standalone, independent VoIP competition.

In *Northern Pacific Railway Co. v. United States,* 356 U.S. 1 (1958), the Supreme Court held that tying arrangements can constitute per se violations of the Sherman Act when a seller uses its market power to condition the sale of one product on the forced purchase of another. The forced tie between cellular services and Wi-Fi Calling in this case raises the same antitrust concerns. But here, the exclusionary tie is even more egregious: Defendants are not merely bundling two of their own offerings—they are conditioning access to a function that fundamentally relies on infrastructure the subscriber provides. Wi-Fi Calling is initiated and sustained over the user's own Wi-Fi access hardware and broadband service, yet access is withheld unless the user purchases a bundled cellular calling and texting plan. This makes the exclusion not only coercive, but deceptive—misrepresenting a subscriber-funded function as a carrier-owned benefit, and weaponizing it to foreclose standalone VoIP alternatives.

This exclusionary design is amplified by Defendants' collective market dominance. AT&T, Verizon, and T-Mobile together control over 97% of the U.S. smartphone market, giving them the practical ability to set universal access terms. Through this unified strategy, they have not only tied subscriber-funded Wi-Fi access to their own paid offerings—they have also monopolized the Wi-Fi Calling channel itself, foreclosing lawful VoIP competitors from reaching consumers on equal terms. This conduct is precisely what Sherman Act § 2 was intended to prohibit: the leveraging of infrastructure control to impose artificial restraints, suppress alternatives, and preserve monopoly power through exclusion rather than merit. All references to Wi-Fi Calling in this motion and the related complaints must therefore be read as part of this Sherman Act § 2 violation: a nationwide exclusionary strategy that uses technical control and false representations to tie subscriber-owned functionality to paid cellular services, while denying equal access and privileges to VoIP competitors who could otherwise offer the same functionality on a competitive, standalone basis.

Although Wi-Fi Calling utilizes access points paid for and maintained by the subscriber—whether through home, work, or public broadband—the exclusionary strategy does not end with forcing a tie between paid cellular plans and access to Wi-Fi Calling. The carriers go one step further: they bypass much of the very cellular calling and texting infrastructure that subscribers were compelled to purchase by offloading calls and texts onto the subscriber's own Wi-Fi networks. In doing so, Defendants shift the cost-of-service delivery away from their cellular infrastructure and onto subscriber-funded bandwidth, while still collecting full-price cellular plan revenue. While Defendants may incur minimal costs for Wi-Fi Calling, such minimal cost is vastly lower than the substantial costs imposed on subscribers who must pay for their own internet connections, forced cellular calling and texting plans. Defendants reap massive benefits from offloading traffic onto subscriber-funded networks. Defendants shift their operational costs to consumers while maintaining full subscription revenues - creating an enormous economic advantage.

This practice magnifies the anticompetitive harm. It not only restricts standalone VoIP competition but also imposes an economic burden on subscribers who are paying for two services—carrier cellular access and personal broadband. Carriers thereby gain both technical and financial control over Wi-Fi Calling: they restrict who may access it, force its use through bundled plans, and offload their own delivery costs to consumer networks. This is a classic misuse of market power, leveraging control of access to maintain dominance and exclude rivals—not through innovation, but through structural exploitation of subscriber resources.

Material Facts Not in Dispute: Bundled Cellular Services and the "No Additional Charge" Wi-Fi Calling Claim

Defendants AT&T, Verizon, and T-Mobile publicly advertise and bill for bundled cellular calling and texting services that include Wi-Fi Calling, while simultaneously describing Wi-Fi Calling as being offered "at no additional charge." These representations appear in consumer-facing marketing, account portals, and monthly invoices, and are not subject to factual dispute or expert interpretation.

Access to Wi-Fi Calling is technically and contractually conditioned on purchasing a bundled cellular plan. Yet the feature functions over subscriber-funded broadband networks and local devices. Despite this, Defendants require payment for cellular service as a condition of access—while labeling the Wi-Fi Calling component as "free." The true cost to the carriers of Wi-Fi Calling is small compared to the cost of cellular calling. This is because Wi-Fi Calling uses no radio spectrum, no cellular towers and no cellular infrastructure. While the carriers do maintain VoIP servers and gateways to connect calls, the cost of maintaining this infrastructure is minimal. Thus, if Wi-Fi calling were properly unbundled from cellular calling, such that each service was priced based on its cost, a standalone Wi-Fi Calling service would be a small fraction of a cellular plan.

These facts are not disputed. They demonstrate the existence of a tied arrangement, where two services—operating over distinct infrastructures—are bundled under conditions that restrict competition. Plaintiffs submit that, under *Northern Pacific*, *Microsoft*, and *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984), this factual structure satisfies the criteria for unlawful tying and exclusion under Sherman Act § 2. Further, the billing and promotional statements supporting the "no additional charge" representation may constitute predicate acts of deception for purposes of RICO liability. These conclusions can be drawn on summary judgment, without further discovery, under Rule 56(a).

The "No Charge" Lie Behind Wi-Fi Calling Renders the Defendants' Arbitration Clauses Unenforceable

The arbitration clauses embedded in subscriber contracts by the Defendants are invalid. If Wi-Fi Calling is not truly "free," and access depends on deceptive tying to cellular plans, then consent to arbitration was fraudulently induced, rendering the clause unenforceable as a matter of law and public policy.

<u>The "Free" Wi-Fi Calling Claim Is a Coercive Lie</u>

Wi-Fi Calling is not free—it is locked behind a forced purchase of cellular calling and texting. Defendants condition access to a service that runs entirely over subscriber-funded infrastructure—home routers, broadband plans, access points—on the purchase of their own bundled subscription plans. Consumers pay for the delivery mechanism, and then must also pay Defendants again just to use it. This forced tie makes consumers pay twice, while hiding the true cost of Wi-Fi Calling behind a "no charge" marketing ploy. That deception undermines the entire agreement—including the arbitration provision buried within it.

<u>Defendants Shift Their Costs to the Consumer—While Preserving Monopoly Profits</u>

While Defendants point to the minimal cost of Wi-Fi Calling infrastructure on their end, that is a distraction. Consumers bear the real financial burden:

- Full-price cellular subscriptions just to unlock Wi-Fi Calling;
- Broadband service they must pay for separately;
- Carrier-approved devices locked by entitlement systems;
- And hidden costs through network offloading, while receiving none of the benefit.

This imbalance is not efficiency—it is structural exploitation. And it is concealed from consumers, who are told that Wi-Fi Calling is "included" or "free." That deception not only violates antitrust law—it supports a finding of fraud under RICO § 1962(c) and invalidates any contract term, like arbitration, that flows from it.

Technical Lockout of Competitors Confirms the Exclusionary Intent

Services like Skype, WhatsApp, and VoIP-Pal can operate voice and text over Wi-Fi without a cellular plan. But Defendants ensure that native functionality provided by Wi-Fi Calling is disabled unless the subscriber purchases their service. Through entitlement servers, account verification, and OS-level restrictions, Defendants create artificial barriers to standalone VoIP services—not because it is technically necessary, but to suppress competition. This is exactly the type of exclusionary conduct condemned in *Northern Pacific Railway Co. v. United States*, 356 U.S. 1 (1958), where the Supreme Court held that tying a desirable service to a monopolist's product constituted per se antitrust abuse.

Offloading Is Not a Benefit—It Is a Fraudulent Scheme to Shift Infrastructure Costs

Carriers use Wi-Fi Calling to route calls and texts through subscriber-funded Wi-Fi, bypassing more costly usage of their own cellular calling and texting infrastructure while still charging full price. This offloading is central to the economic fraud: subscribers are misled into believing they're receiving "added value," when in fact they're delivering carrier traffic at their own expense and at a substantial savings to the carriers. This deception is embodied as wire fraud predicate acts under RICO, further voiding the arbitration clauses. Arbitration clauses procured through systemic fraud, especially where concealment shields a monopolistic enterprise, cannot shield defendants from judicial accountability.

False Benevolence Cannot Justify Anticompetitive Conduct

Antitrust law does not evaluate monopolistic conduct based on how "cheap" or "generous" the Defendants claim it to be. What matters is whether *competition is suppressed* by the conduct. The promise of "no charge" is not a consumer benefit—it is the bait. The switch is that access to this supposedly free feature is locked behind a paywall, controlled by three carriers acting in concert and enforced by device-level integration.

Northern Pacific Railway Co. v. United States, 356 U.S. 1 (1958) – Why This Case is Perfectly On Point and Why It Supports Invalidation of the Arbitration Clause:

a. Market Power Analysis + Sherman Act § 2 Monopolization

The Court found that *"the very existence of this host of tying arrangements is itself compelling evidence of the defendant's great power"* over the relevant market — similar to how the carriers' universal Wi-Fi Calling ties demonstrate their collective market dominance. Under Sherman Act § 2, this market power combined with exclusionary tying constitutes monopolization when used to foreclose VoIP competition through deceptive "no charge" Wi-Fi Calling that masks the true cost burden on consumers. Because the arbitration clause was embedded in subscriber contracts that conceal this very abuse of market power, it was not agreed to knowingly or voluntarily, and is therefore invalid under basic contract law and FAA standards for fraudulent inducement.

b. Economic Coercion + Sherman Act § 2 Exclusionary Conduct

The Court emphasized that "by conditioning his sale of one commodity on the purchase of another, a seller coerces the abdication of buyers' independent judgment as to the 'tied' product's merits and insulates it from the competitive stresses of the open market" — exactly what's happening with Wi-Fi Calling. Under Sherman Act § 2, this economic coercion becomes exclusionary conduct when the "no charge" misrepresentation prevents consumers from recognizing they're paying premium prices for subscriber-funded functionality, thereby eliminating informed choice and competitive pressure on standalone VoIP alternatives.

This coercion also extends to the arbitration clause itself, which was signed under the illusion that Wi-Fi Calling was "included" and consumer-funded infrastructure was not being exploited—making the agreement, including arbitration, unenforceable due to lack of mutual assent.

c. Minimal Cost Irrelevant + Sherman Act § 2 Predatory/Exclusionary Pricing

The Court noted that the ”preferential routing” clauses "conferred no benefit on the purchasers or lessees" and that ”the defendant makes no claim that it came any cheaper than if the restrictive clauses had been omitted" — establishing that the minimal cost to provide the tied service doesn't justify the anticompetitive arrangement. Under Sherman Act § 2, defendants' minimal Wi-Fi Calling costs become exclusionary pricing when they shift massive service delivery expenses onto subscriber-funded networks while advertising "free" access, creating artificial competitive advantages that foreclose independent VoIP providers. This misrepresentation of cost and benefit invalidates the arbitration clause because it was embedded in a consumer contract tainted by structural deception, violating the FAA's threshold requirement that arbitration agreements be entered into "knowingly and voluntarily."

d. Purpose to Exclude + Sherman Act § 2 Willful Acquisition/Maintenance of Monopoly Power

The Court found the railroad's *”purpose obviously was to fence out competitors, to stifle competition”* — matching the carriers' strategy with Wi-Fi Calling. Under Sherman Act § 2, this exclusionary purpose constitutes willful acquisition and maintenance of monopoly power through systematic use of "no charge" marketing to conceal that consumers fund the infrastructure enabling Wi-Fi Calling, preventing market recognition of viable standalone alternatives and maintaining monopolistic control through deception rather than merit-based competition. When a contract's primary purpose is to conceal exclusionary conduct and monopolization, any embedded arbitration clause—especially one that purports to waive public enforcement rights under Sherman and RICO—is unenforceable under controlling precedent, and must be declared void. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006); *Jung v. Association of American Medical Colleges*, 300 F. Supp. 2d 119 (D.D.C. 2004); *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987).

Arbitration Cannot Be Enforced When the Entire Agreement Rests on Fraud, Monopoly, and Consumer Deception

The arbitration clause in Defendants' subscriber contracts is not an isolated term—it is a product of the same fraudulent conduct that violated Sherman Act § 2 and RICO §§ 1962(c) and (d). The claim that Wi-Fi Calling is "offered at no charge" is the cornerstone of that fraud. It conceals a coerced tie, shifts infrastructure costs to the subscriber, and prevents market recognition of standalone VoIP alternatives. Subscribers did not knowingly agree to arbitrate their claims—they were misled into service contracts through deceptive marketing, technical lockouts, and hidden pricing structures. Under well-established precedent, such fraud invalidates arbitration clauses in their entirety. See *Berman v. Freedom Financial Network, LLC*, 30 F.4th 849, 857–58 (9th Cir. 2022); *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851, 854–55 (11th Cir. 1992).

Because the arbitration clause was embedded in a contract tainted by monopolistic exclusion, structural deception, and offloading fraud, it cannot be enforced. To do so would permit Defendants to contract around their own antitrust and RICO liability, defeating the very statutory rights the FAA was never intended to suppress. The clauses are embedded in adhesion contracts presented on a take-it-or-leave-it basis to non-lawyer subscribers, without opportunity for negotiation or meaningful review, creating high procedural unconscionability through oppression and surprise.

Substantively, the clauses are one-sided: they include class action waivers that prevent effective vindication of statutory antitrust rights in low-value claims, impose short limitations periods inconsistent with federal law, and limit remedies like treble damages under the Sherman Act—while favoring Defendants through venue selection, fee-shifting, and broad discretion. This imbalance shocks the conscience, especially amid misrepresentations that the overall contracts are fair and inclusive, when the clauses conceal their role in shielding the exclusionary scheme from judicial scrutiny.

1.II. Clause Enforceability Must Be Resolved by the Court at the Threshold

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 not only the present action but also three parallel federal complaints and a putative nationwide class of over 386 million mobile subscribers.

The rationale is both procedural and pragmatic. If the arbitration clauses are enforceable, then this Class Action may not proceed in this forum. Conversely, if the clauses are void due to clause-specific fraudulent inducement or unconscionability—as Plaintiffs allege—then the matter should proceed to litigation without further delay. Addressing arbitrability now avoids the unnecessary expenditure of judicial resources on matters that could later be rendered moot.

The Class asserts such grounds: clause-specific misrepresentation and concealment, along with procedural and substantive unconscionability arising from oppressive terms, class waivers, and barriers to the effective vindication of statutory rights. Courts may refuse to enforce arbitration clauses that are unconscionable or procured by fraud. See *Abadi v. National Railroad Passenger Corporation*, 2024 WL 4441737, *2-4 (D.D.C. 2024) (a court can void a contract on the grounds that it is unconscionable if the party seeking to avoid the contract proves that the contract was both procedurally and substantively unconscionable); *Hill v. Wackenhut Services Intern.*, 865 F.Supp.2d 84, 93-96 (D.D.C. 2012) (issue of whether arbitration clause was enforceable was one of law for the court to decide; applying Florida law); *Powertel, Inc. v. Bexley*, 743 So.2d 570, 573-574 (Fla. 1st DCA 1999); *Kindred Nursing Centers Ltd. P'ship v. Clark*, 581 U.S. 246 (2017); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (arbitration agreements may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 403–04 (1967) (holding that while arbitrators decide general contract validity challenges, courts decide fraud claims specifically directed at the arbitration provision itself).

1.III. Judicial Consistency and Prior Ruling in NRMP Against Arbitration under Sherman Act § 2

In *Jung v. Association of American Medical Colleges,* 300 F. Supp. 2d 119 (D.D.C. 2004 ("NRMP"), Plaintiffs allege a coordinated, exclusionary scheme among dominant market players that structurally forecloses competition in a national market through contractual and technical restraints. In *Jung*, the court rejected efforts to sidestep judicial review, holding that complex antitrust conspiracy claims under the Sherman Act—particularly those involving multiple defendants, standardized control mechanisms, and system-wide exclusion—warranted judicial resolution in the public interest, rather than fragmentation through private proceedings.

While *Jung* involved a Sherman Act § 1 conspiracy claim, the court's reasoning applies with equal—if not greater—force to the monopolization scheme alleged here under Sherman Act § 2. Plaintiffs seek a judicial determination that the arbitration clauses in Defendants' subscriber agreements are unenforceable, as they arise from and attempt to insulate the very exclusionary conduct that sustains Defendants' market dominance.

The parallels between *Jung* and the present action are compelling and underscore why arbitration must yield to federal court scrutiny:

Coordinated Exclusion Through Contractual and Technical Frameworks

In *Jung*, defendants—including the NRMP, AAMC, and major medical institutions—allegedly conspired to restrain competition in the physician residency market through the standardized "Match" program, accreditation rules, and information sharing that suppressed wages and blocked alternatives. Similarly, AT&T, Verizon, and T-Mobile—controlling over 97% of the U.S. mobile market—enforce a coordinated exclusionary structure by tying paid cellular plans to Wi-Fi Calling access, and using entitlement servers, SIM authorizations, and device provisioning as technical chokepoints to block standalone VoIP competitors.

National Markets Suppressed by Standardized Terms

Jung involved a nationwide hiring system where uniform contracts and centralized processes foreclosed independent opportunities for medical residents. Likewise, Defendants here impose standardized subscriber agreements across the mobile voice market, falsely marketing Wi-Fi Calling as included at "no additional charge" while conditioning it on bundled cellular services—effectively monopolizing the voice channel and foreclosing infrastructure-neutral VoIP alternatives.

Arbitration Clauses as Shields for Antitrust Violations

In *Jung*, the court rejected arbitration motions from the NRMP and AMA, citing a "clear and compelling countervailing interest in the comprehensive adjudication of conspiracy claims brought under the Sherman Act," and relying on *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962), for the principle that antitrust conspiracies must be considered as an integrated whole rather than fragmented into isolated disputes. Here, the arbitration clauses are similarly weaponized: embedded in adhesion contracts that conceal the technical tie and service restrictions, they include class waivers and remedy limitations that bar the effective vindication of § 2 rights, including treble damages and injunctive relief.

Just as in *Jung*, fragmenting this system-wide antitrust claim—rooted in the collective leveraging of market power to entrench dominance through exclusion, not merit—would undermine the core objectives of federal antitrust law: preserving competition, protecting consumers, and enabling innovation. Judicial review is necessary to address the structural harm at issue here, including inflated mobile service prices, the suppression of standalone VoIP alternatives, and the reliance on subscriber-funded Wi-Fi infrastructure.

Where Plaintiffs challenge the enforceability of the arbitration clause itself—as procedurally and substantively unconscionable—and specifically contest any delegation provision therein, this Court must resolve that threshold issue. *Christian v. Uber Techs., Inc.*, 775 F. Supp. 3d 272 (D.D.C. 2025) (Under FAA, before a district court sends any issues to the arbitrator, it must consider any challenges to the delegation clause; such challenges, pursuant to the applicable state law, include contract defenses such as fraud in the inducement, duress, and unconscionability); *Coinbase, Inc. v. Suski*, 602 U.S. ___, 144 S. Ct. 1186 (2024); *Rent-A-Center, West, Inc. v. Jackson,* 561 U.S. 63, 70–71 (2010) (courts decide challenges directed at delegation provisions) *Lim v. TForce Logistics, LLC*, 8 F.4th 992, 1000 (9th Cir. 2021).

Institutional Consistency and Judicial Integrity

As the Supreme Court reaffirmed in *Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 561 U.S. 287, 297 (2010), "a court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute*." Here, Plaintiffs challenge both the formation of any valid arbitration agreement and, in the alternative, the enforceability of the arbitration clauses themselves as procedurally and substantively unconscionable—issues that, under *Granite Rock* and *Rent-A-Center*, must be resolved by this Court at the threshold. The *Jung* ruling reflects a complementary concern: even where agreements exist, public policy may demand judicial review for complex, multi-defendant antitrust claims to prevent fragmentation and ensure comprehensive adjudication. So too here, where the clauses are alleged to shield systemic violations of Sherman Act § 2.

1.IV. Conclusion: The Arbitration Clauses Must Be Invalidated

Accordingly, Plaintiffs respectfully request that this Court—consistent with its own reasoning in *Jung v. Association of American Medical Colleges*—hold that the arbitration clauses in this case are unenforceable based on principles of procedural unconscionability, lack of meaningful assent, and the need for judicial resolution of structurally coordinated antitrust claims. The Sherman Act § 2 claims presented here allege a unified, national exclusionary scheme that operates through standardized contracts and infrastructure control—paralleling the conspiracy structure addressed in *Jung*, where this Court recognized the necessity of comprehensive judicial adjudication for complex, system-wide antitrust allegations. To do otherwise would not only fragment the case—it would undermine the very same antitrust principles this Court has already vindicated.

2. *Stare Decisis* Supports Judicial Review and Weighs Against Arbitration

2.I. This Court Has Already Ruled That Systemic Exclusion Under § 2 Demands Judicial Oversight

This case arises in a jurisdiction that has adjudicated three of the most consequential Sherman Act § 2 actions in American antitrust law. In each, the District Court or its reviewing

Circuit found that monopolization through tying, bundling, and infrastructure or default-based exclusion violated § 2:

• *United States v. AT&T,* 552 F. Supp. 131 (D.D.C. 1982) – landmark antitrust settlement that led to the breakup of the Bell System, ending AT&T's monopoly over both long-distance and local telephone service in the United States; The court emphasized that the divestiture was essential to prevent AT&T from leveraging its monopoly in local telephone service to gain unfair advantage in long-distance, equipment, and data processing markets;

• *United States v. Microsoft Corp.,* 253 F.3d 34 (D.C. Cir. 2001) – tying Internet Explorer to Windows and suppressing browser competition through OS-level defaults;

• *United States v. Google LLC,* No. 1:20-cv-03010-APM (D.D.C. 2024) – exclusion of rivals via search defaults and exclusive pre-installation contracts (liability found; remedies pending). To compel arbitration of the present claims would sever this case from the very judicial authority that created and shaped this body of law. It would deny the Court its supervisory role over a unified § 2 monopolization scheme that directly mirrors the exclusionary strategies already adjudicated in this forum.

2.II. The Arbitration Clauses Are Alleged Instruments of a RICO Enterprise

The Class Complaint alleges that Defendants' arbitration clauses are not incidental—they are core instruments of an ongoing RICO enterprise. Plaintiffs assert violations of 18 U.S.C. §§ 1962(c) and (d), alleging that these clauses were embedded in subscriber agreements in order to conceal a dual-payment scheme involving paid cellular plans and subscriber-funded Wi-Fi Calling; mislead consumers through the false marketing of Wi-Fi Calling as "included at no additional charge;" and suppress judicial scrutiny of a coordinated market-exclusion structure.

Where arbitration is alleged to be a functional part of the unlawful scheme itself—thus constituting a specific challenge to the validity or enforceability of the arbitration clause, rather than the contract as a whole—courts must resolve the enforceability of the clause as a threshold matter, absent a valid delegation provision committing such questions to the arbitrator. See *Rent-A-Center, West, Inc. v. Jackson,* 561 U.S. 63, 70–71 (2010) (distinguishing challenges "specifically [to] the validity of the agreement to arbitrate," which are for courts, from challenges to "the contract as a whole," which are for arbitrators; noting that even challenges to the arbitration agreement may be delegated to the arbitrator if not specifically contested); *Granite Rock Co. v. Int'l Brotherhood of Teamsters,* 561 U.S. 287, 296–97 (2010) (emphasizing that courts decide issues concerning the formation, existence, or applicability of an arbitration agreement).

<u>2.III. Structural Sherman Act § 2 Violations Are Ill-Suited to Fragmented Arbitration</u>

Plaintiffs challenge a unified, systemic form of exclusion—conduct that parallels the exclusionary frameworks adjudicated in *United States v. AT&T Co.,* 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. *Maryland v. United States,* 460 U.S. 1001 (1983); *United States v. Microsoft Corp.,* 253 F.3d 34 (D.C. Cir. 2001); and *United States v. Google LLC,* No. 1:20-cv-03010 (D.D.C. Aug. 5, 2024). These landmark cases demonstrate that monopolization claims under § 2 of the Sherman Act often require judicial oversight to address market-wide harms and impose structural remedies, rendering fragmented arbitration an inadequate forum for such embedded claims.

Although the Supreme Court in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614 (1985), held that antitrust claims may generally be subject to arbitration, it expressly cautioned that arbitration clauses cannot operate as de facto waivers of federal statutory rights. As the Court explained:

"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." *Id*. 637 n.19.

This caveat is particularly salient where, as here, arbitration clauses are alleged to entrench structural exclusion by suppressing judicial enforcement of market-wide monopolization claims. Courts have invalidated such clauses when they undermine effective vindication of antitrust rights, especially in cases involving systemic market consequences. See, e.g., *Heckman v. Live Nation Ent., Inc.,* No. 23-55770, 2024 WL 4626777 (9th Cir. Oct. 28, 2024) (affirming denial of motion to compel arbitration in class action alleging Sherman Act violations, finding the clause procedurally and substantively unconscionable under California law due to market dominance creating a power imbalance and mass arbitration rules that limited discovery, applied bellwether precedents to non-parties, and hindered vindication of claims in the monopolized live event ticketing market) (petition for *certiorari* pending, No. 24-1145 (U.S. May 5, 2025)).

In this case, the arbitration clauses are integral to—and not severable from—the alleged exclusionary scheme. Compelling arbitration would risk waiving Plaintiffs' ability to pursue class-wide remedies essential to § 2 enforcement. Judicial review is therefore essential to preserve the integrity of federal antitrust law.

ARGUMENT

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

A.I. Early Resolution Promotes Judicial Efficiency Across Four Related Actions

Plaintiffs seek a ruling on arbitration based on (1) Sherman Act § 2 exclusion, (2) RICO enterprise fraud, and (3) satisfaction of *Twombly*. The four related cases filed by VoIP-Pal and the Class Plaintiffs allege forced bundling of Wi-Fi Calling, concealment of exclusionary conduct, and arbitration clauses used to block judicial review. A decision here would clarify overlapping dockets, reduce duplicative litigation, and support coordination under Rule 42(a). Denial of arbitration enables efficient adjudication and supports Rule 23(b)(3) class-wide treatment.

A.II. Defendants' Arbitration Clauses Are Unenforceable Due to RICO Fraud Allegations

Plaintiffs allege a civil RICO scheme involving shared entitlement infrastructure used to block competition, disguise costs, and embed arbitration clauses that suppress redress. These clauses are not neutral—they function as shields for racketeering conduct. The Complaint satisfies the elements of civil RICO under 18 U.S.C. § 1962(c): Defendants AT&T, Verizon, and T-Mobile formed an association-in-fact enterprise, engaged in coordinated exclusion of standalone Wi-Fi Calling, committed predicate acts of fraud, and caused harm through forced bundling and systemic market exclusion.

Under *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 403-04 (1967), courts must decide arbitrability where a challenge specifically targets the arbitration clause itself due to fraud in its inducement. Unlike challenges to contract validity generally, claims that the arbitration provision was specifically induced by fraud require judicial determination of enforceability. See also *Rent-A-Center, West, Inc. v. Jackson,* 561 U.S. 63, 71 (2010) (reaffirming separability: absent specific challenge to arbitration clause, general fraud claims are arbitrable).

A.III. Defendants' Conduct Constitutes a RICO Violation

Defendants jointly operated as a RICO enterprise using shared entitlement servers, billing systems, and device-level controls to promote the false claim that Wi-Fi Calling is "included at no extra charge." As in *Reves v. Ernst & Young,* 507 U.S. 170, 179 (1993), they managed and directed the enterprise; as in *H.J. Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229, 239 (1989), the conduct formed a pattern of racketeering. The enterprise operated through coordinated use of shared infrastructure, a deceptive "no charge" marketing campaign, sustained mail and wire fraud activity, and exclusion of VoIP-Pal and similarly situated firms.

These acts support a civil RICO claim under 18 U.S.C. §§ 1962(c) and (d), demonstrating: (1) an enterprise, (2) a pattern of racketeering activity, (3) conduct of the enterprise through the pattern, and (4) injury caused by the racketeering conduct.

A.IV. "No Charge" Marketing Was Predicate Fraud That Voids Arbitration

Defendants falsely marketed Wi-Fi Calling as "included at no extra charge" while requiring subscribers to purchase full-price mobile plans and use their own broadband infrastructure. This constitutes mail and wire fraud under 18 U.S.C. §§ 1341 and 1343 and supports civil RICO liability under §§ 1962(c) and (d).

Under *Prima Paint,* 388 U.S. at 403-04, where fraud specifically induces the arbitration clause itself—rather than the contract generally—courts must decide enforceability. The Complaint alleges that the arbitration provisions were embedded within and induced by the same fraudulent "no charge" misrepresentations that portrayed the service terms as cost-free and beneficial, thereby deceiving subscribers into accepting embedded arbitration clauses without awareness of their suppressive effect on redress for the fraud. This targeted inducement—misrepresenting the overall agreement to secure assent to arbitration—renders the clauses unenforceable.

A.V. Billing Confirms the Enterprise's Fraudulent Nature and Voids Arbitration

Although Wi-Fi Calling relies on subscriber-funded broadband, Defendants continued to bill for voice services and block access unless bundled with paid mobile plans. This "dual-payment" structure supports predicate acts of mail and wire fraud.

Fraud was communicated through marketing materials, online interfaces, and billing portals that emphasized "no additional charge" while implementing forced bundling. The arbitration clauses were embedded in these same deceptive interfaces and procurement processes, procured through misrepresentations that specifically induced agreement to arbitration by framing the entire service as non-costly and subscriber-friendly, making them products of the fraudulent scheme.

Under *Bridge v. Phoenix Bond & Indem. Co.,* 553 U.S. 639, 647 (2008), RICO plaintiffs "need not show, either as an element of [their] claim or as a prerequisite to establishing proximate causation, that [they] relied on the defendant's alleged misrepresentations" where the scheme proximately causes foreseeable harm to the plaintiff class.

The clauses were not knowingly or voluntarily agreed to; they were presented through deceptive clickwrap contracts that formed part of the broader fraudulent enterprise.

<u>A.VI. Ongoing Conduct Supports RICO Liability</u>

As held in *Salinas v. United States,* 522 U.S. 52, 64-65 (1997), defendants maintain RICO liability through continued participation in the enterprise's pattern of conduct. Defendants' continued enforcement of bundled billing and arbitration clauses after receiving legal notice demonstrates the ongoing nature of the enterprise and its fraudulent scheme, causing persistent harm to consumers (via hidden costs) and competitors (via market exclusion).

<u>A.VII. Arbitration Cannot Shield Structural Market Fraud</u>

This case involves systemic exclusion and enterprise fraud under RICO and Sherman Act § 2, not private contractual disputes. *Prima Paint* reserves judicial determination for challenges that fraud specifically induced the arbitration clause itself, which is precisely what Plaintiffs allege: the "no charge" fraud targeted inducement of arbitration by embedding it in misrepresented service terms. Invalidating arbitration affirms Plaintiffs' rights to pursue claims for enterprise-level racketeering and monopolization. Federal courts retain jurisdiction over such public statutory violations that affect market structure and competition.

A.VIII. RICO Elements Met; Arbitration Shields a Continuing Scheme

Plaintiffs assert RICO violations under §§ 1962(c) and (d), based on fraudulent "no charge" representations, forced bundling, and VoIP competitor exclusion. The arbitration clauses embedded in this fraudulent procurement process must be invalidated to enable full judicial review. Under Federal Rule of Civil Procedure 23(b)(3), classwide adjudication provides the superior method for resolving these claims. Fragmentation through private arbitration would suppress structural redress and perpetuate the alleged enterprise fraud, undermining the deterrent purposes of RICO and antitrust laws.

A.IX. Arbitration Cannot Fragment Public Antitrust and RICO Claims

Complex antitrust conspiracies require unified adjudication to prevent inconsistent outcomes and preserve deterrent effects. Although the Supreme Court has generally upheld class action waivers in arbitration agreements under the FAA, see *American Express Co. v. Italian Colors Rest.,* 570 U.S. 228, 236-38 (2013), such enforcement presupposes a valid arbitration clause. Here, the clause-specific fraud under *Prima Paint* precludes arbitration, allowing judicial handling to avoid fragmentation that could hinder comprehensive enforcement.

Arbitration would fracture class claims under Rule 23(b)(3) and prevent the coordinated adjudication necessary for effective resolution of enterprise-wide racketeering allegations. Unified resolution is essential in complex antitrust and RICO conspiracies, where defendants' conduct operates through shared infrastructure and parallel exclusionary behavior.

A.X. Denying Arbitration Confirms the RICO Enterprise Is Justiciable

The Complaint asserts justiciable civil RICO claims based on structural exclusion, fraudulent bundling, and suppression of VoIP competitors. Judicial review of the arbitration clauses is required under *Prima Paint* where fraud specifically induced the arbitration provisions themselves. The enterprise's pattern of racketeering activity, continuing harm to consumers and competitors, and use of arbitration clauses to suppress legal challenges satisfy all elements for civil RICO liability.

A.XI. Denial of Arbitration Supports Consolidated Adjudication

Denying arbitration confirms that this case involves systemic fraud—not individualized contractual disputes—and supports coordinated adjudication under Rule 42(a) and class certification under Rule 23(b)(3). Unified resolution promotes judicial efficiency and preserves the integrity of public antitrust and RICO enforcement against enterprise-level market manipulation.

A.XII. Complaint Satisfies Antitrust Pleading Standards under Twombly

The Class alleges a unified conspiracy under Sherman Act § 2 and RICO. The "no charge" marketing was false, the product was forcibly bundled, and broadband costs were shifted to consumers. Arbitration clauses were embedded in this scheme to suppress legal challenge. The Supreme Court's decision in *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007), requires more than speculative or conceivable allegations—it demands a factually grounded narrative that renders the alleged conduct not merely possible, but probable. Plaintiffs have met that burden. As detailed in the Second Amended Class Action Complaint [Dkt. No. 10-4, paragraphs 150-160], Plaintiffs provide screenshots from the Defendants' own websites that explicitly market Wi Fi Calling as "free," "no charges," "no fees," or included "at no additional charge" within bundled cellular service plans. These screenshots are not general or conclusory—they constitute specific documentary evidence from AT&T, Verizon, and T-Mobile's marketing materials, publicly accessible and verifiable at the time of filing. The Complaint further pleads factual plus factors of parallel conduct and shared infrastructure, the Defendants control substantial market share in U.S. mobile services, and evidence of foreclosure where independent VoIP providers are systematically excluded. Moreover, the Complaint outlines the consumer harm with hidden charges and reduced market options as well as the clear market-wide exclusion and forced bundling.

The arbitration clauses formed part of the exclusionary scheme under *Prima Paint* and must be invalidated as products of the fraudulent procurement process.

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

<u>B.I. Procedural Unconscionability: Class Action Waivers-A Structural Shield for Systemic Fraud</u>

Each Defendant—AT&T, Verizon, and T-Mobile—has embedded near-identical class action waiver language in its service agreements. These waivers are not incidental. They are premeditated mechanisms designed to extinguish collective consumer enforcement before it can begin, especially against systemic frauds like the false promise of Wi-Fi Calling at "no additional charge."

These provisions are embedded within lengthy, dense service contracts that the average subscriber signs without fully comprehending their implications, trusting the carriers to provide fair and transparent services. However, this trust is frequently misplaced, with carriers engaging in practices that prioritize corporate protection over consumer rights. This design inherently protects the carrier, not the consumer, by minimizing exposure to large-scale accountability.

Far from consumer protection, this waiver is engineered to insulate the defendants from mass liability, prioritizing corporate interests in an opaque arbitration environment devoid of appellate review or public scrutiny. It disadvantages subscribers who enter contracts trusting carriers' representations, only to find recourse blocked when deceptions emerge. These clauses operate as a legal firewall, preventing any group of consumers—no matter how injured or deceived—from jointly challenging the very infrastructure that tied Wi-Fi Calling to bundled, paid cellular plans. Below, we analyze each carrier's language and explain how its operation effectively disables consumer recourse across 373 million mobile subscribers.

AT&T Arbitration Provision

> "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, p. 2]. "Class arbitrations, class actions, and representative actions are not permitted." [Dkt. No. 70-8, p. 3].

AT&T's clause is engineered to preclude not only class actions but any collective redress whatsoever. The language explicitly bars jury trials and class actions—two cornerstones of public justice. In doing so, it ensures that no group of customers can challenge the fraudulent misrepresentation that Wi-Fi Calling is "included at no additional charge," even when that deception is repeated nationwide, across identical contracts and technical implementations.

Verizon Arbitration Provision

> "YOU AND VERIZON AGREE THAT, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, NO ACTION WILL BE BROUGHT ON A CLASS OR COLLECTIVE BASIS…" [Dkt. No. 70-27, p. 9].

Verizon's waiver compounds the problem. Its language seeks to preemptively waive all collective action, in any forum—whether court or arbitration—and even waives jury trial rights entirely. This ensures that a grandmother in Des Moines, a college student in Seattle, and a small business owner in Miami must all face Verizon's billion-dollar legal machine alone—despite having signed identical contracts, using identical phones, with identical infrastructure exclusions.

T-Mobile Arbitration Provision

> "ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS…" [Dkt. No. 70-10, p. 10].

T-Mobile's clause takes the waiver to its most extreme form. It prohibits collective redress in any forum, under any label, through any mechanism. Even consolidated arbitrations are banned. Even informal group efforts are blocked. This is not a procedural provision. It is a substantive strategy to eliminate exposure, no matter how fraudulent or harmful the conduct.

4. Legal and Structural Consequences: Why Class Waivers Are Incompatible with Justice in this Case

As the Florida 1st District Court of Appeal recognized in *Powertel, Inc. v. Bexley*, 743 So.2d 570, 576 (Fla. 1st DCA 1999):

> "The arbitration clause also effectively removes *Powertel*'s exposure to any remedy that could be pursued on behalf of a class of consumers…. Class litigation provides the most economically feasible remedy for the kind of claim that has been asserted 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."

This principle is echoed across jurisdictions. Courts have repeatedly found that class action waivers—especially those buried in consumer contracts of adhesion—serve one purpose: to silence collective voices and conceal systemic fraud. See *Berman v. Freedom Financial Network, LLC*, 30 F.4th 849, 857–58 (9th Cir. 2022) (rejecting arbitration clause for lack of reasonably conspicuous notice and manifestation of assent in an online consumer agreement involving widespread deception).

5. The Practical Reality: 373 Million Americans Cannot Arbitrate One-by-One

Individual arbitration is not a fair or viable substitute for class litigation in this context. Imagine 373 million U.S. subscribers—each required to navigate arbitration individually, with no access to discovery, no collective record, and no public scrutiny—just to challenge the same fraudulent marketing of "no additional charge" Wi-Fi Calling that hides a forced cellular tie-in.

This is not hypothetical. It is exactly what the carriers intended when drafting these clauses. This isn't about private disagreements but about systemic exclusion, federal statutory violations, and a nationwide deception enterprise. And yet, under these waivers, not a single consumer may bring a group claim—not even in arbitration.

6. Conclusion: Class Waivers Must Be Invalidated to Preserve Public Rights

The Defendants' class waivers bock enforcement of federal rights under RICO and the Sherman Act, prevent economically feasible redress for consumers, shield enterprise-level fraud from judicial oversight, and were never meaningfully bargained for by average consumers—they must be declared unenforceable as a matter of public policy and structural unconscionability.

B.II. Arbitration Clauses Are Substantively Unconscionable

Beyond the procedural unconscionability established above, these arbitration clauses are also substantively unconscionable because they operate to shield Defendants' fraudulent scheme from meaningful legal remedy. The clauses eliminate class action rights precisely when consumers most need collective redress—when facing systematic deception affecting hundreds of millions of similarly situated subscribers. This creates a fundamentally unfair result: Defendants can engage in widespread fraud while contractually insulating themselves from the most effective enforcement mechanism—public classwide adjudication. Florida courts have held that one-sided contract terms that suppress legal accountability and deny effective remedies may be substantively unconscionable. *Powertel, Inc. v. Bexley,* 743 So. 2d 570, 576 (Fla. 1st DCA 1999).

Moreover, courts have recognized that arbitration clauses may be unenforceable where they impair access to statutory remedies or limit procedural protections essential to public enforcement. See *Hill v. Wackenhut Services Intern.*, 865 F.Supp.2d 84, 93-96 (D.D.C. 2012) (to determine substantive unconscionability of a contract under Florida law, courts consider whether the disputed terms limit available remedies, exclude punitive damages, prevent equitable relief, impose substantial costs, or lack mutuality of obligation with respect to the arbitration of disputes). The combination of procedural unconscionability (fraud in inducement, buried terms) and substantive unconscionability (elimination of meaningful remedies) renders these arbitration clauses unenforceable under Florida law and applicable federal doctrine.

B.III. Both Sides of the Test Fail: Fraud and Structural Rigging Render the Contract Unenforceable

The subscriber contracts at issue fail both tests for enforceability. First, the substantive promise of "Wi-Fi Calling at no additional charge" is knowingly false. Second, the procedural remedy—mandatory arbitration on an individual basis with a class action waiver—is structurally rigged to prevent collective redress. This dual failure is fatal. As the Eleventh Circuit held in *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851, 855–56 (11th Cir. 1992), where "fraud permeates the entire agreement—including the arbitration clause—the court must intervene" and determine enforceability. That is the case here. The contract is a Trojan horse: it promises cost-free service, then locks consumers out of meaningful remedy when that promise proves false.

B.IV. Defendants' Arbitration Clauses Strip Away Essential Statutory Remedies

These arbitration clauses are substantively unconscionable because they eliminate the very remedies Congress designed to combat systematic fraud. The clauses block RICO treble damages, Sherman Act injunctive relief, and Telecommunications Act protections—precisely the tools needed to address Defendants' widespread deceptive scheme. Florida courts have recognized that arbitration clauses may be unconscionable when they effectively eliminate meaningful legal remedies. *Powertel, Inc. v. Bexley,* 743 So. 2d 570, 576 (Fla. 1st DCA 1999); *Kohl v. Bay Colony Club Condominium, Inc.,* 398 So. 2d 865 (Fla. 4th DCA 1981). Defendants' "no additional charge" fraud affecting hundreds of millions of consumers requires class action accountability—individual arbitration cannot provide adequate deterrence or compensation for such systematic wrongdoing. By using arbitration clauses to shield themselves from meaningful legal consequences, Defendants have created a contractual scheme that immunizes fraud while denying consumers access to the statutory protections Congress intended. Such one-sided terms that eliminate essential legal rights render the arbitration provisions unconscionable and unenforceable.

Arbitration Cannot be used to Stifle Statutory Remedies

The arbitration clauses at issue do not merely select a forum—they function as a barrier to enforcement of public statutory rights. By mandating individual arbitration and waiving class and representative actions, the Defendants' clauses operate as a de facto waiver of legal protections alleged to be violated in the Complaint: Sherman Act § 2, which prohibits monopolization and exclusionary dealing; RICO §§ 1962(c) and (d), which address enterprise-level fraud and racketeering; and the Telecommunications Act of 1996, including duties under § 251 to offer non-discriminatory interconnection access. Federal courts have repeatedly rejected arbitration clauses that eliminate or obstruct enforcement of statutory rights—particularly where those rights serve the public interest. Indeed, the Supreme Court has warned that it would have "little hesitation in condemning" agreements that operate as "a prospective waiver of a party's right to pursue statutory remedies." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 637 (1985).

<u>B.V. Adhesion Contracts and No Real Consumer Choice</u>

Arbitration clauses were adhesion contracts, buried in sign-up flows with no choice. As in *Powertel*, 743 So.2d 570 (Fla. 1st DCA 1999), this setup is procedurally unconscionable—no negotiation, no opt-out. Defendants forced full cellular bundles for "free" Wi-Fi, constituting fraud and making arbitration clauses unenforceable. Defendants might say, "You could've switched providers." But that argument didn't work in *Powertel*, and it doesn't work now. The court specifically rejected this defense:

"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... 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*, 743 So.2d at 575.

Deceptive Presentation of Arbitration Terms—No Real Consent

Florida courts have long held that procedural unconscionability arises when there is "an absence of any meaningful choice," particularly in contracts of adhesion presented on a take-it-or-leave-it basis. See *Kohl v. Bay Colony Club Condominium, Inc.,* 398 So. 2d 865 (Fla. 4th DCA 1981); *Belcher v. Kier,* 558 So. 2d 1039 (Fla. 2d DCA 1990). This classical understanding echoes the U.S. Supreme Court's early articulation in *Hume v. United States,* 132 U.S. 406, 411 (1889), where unconscionable contracts were described as those "no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other."

Here, arbitration clauses were buried in fine print on small screens, with no clear warnings or plain language—offering no meaningful choice to the consumer. This design prevented real consent and concealed the "no additional charge" fraud, forcing consumers to pay for bundled mobile plans without understanding or negotiating the deceptive terms.

B.VI. Systematic Deception Makes Arbitration Clauses Unenforceable

Defendants' fraud—marketing Wi-Fi Calling as "no additional charge" while forcing consumers to purchase bundled cellular plans—rendered the arbitration clauses both procedurally unconscionable and fraudulently induced. Because this deception targeted the arbitration provisions themselves, they are legally void and must be adjudicated by the Court under *Prima Paint*.

The arbitration clauses imposed by AT&T, Verizon, and T-Mobile are unenforceable because they were not entered into through informed consent and are the product of procedural and substantive unconscionability. They were buried in fine print and coupled with a fraudulent promise that Wi-Fi Calling was included at "no additional charge," when in fact it required a bundled paid cellular plan and the surrender of core legal rights. These were not negotiated agreements. They were adhesion contracts, designed to eliminate collective redress while falsely marketing a benefit that never existed. Courts have invalidated such arbitration provisions when consent was manufactured through deceptive practices or inequitable terms, particularly in class-wide consumer settings.

1. *Berman v. Freedom Financial Network,* LLC, 30 F.4th 849, 857–58 (9th Cir. 2022)

In *Berman*, the Ninth Circuit struck down an arbitration clause in an online consumer agreement because the website failed to provide proper notice and required no clear manifestation of assent. The court found that deceptive website design and insufficient disclosure defeated enforceability of the arbitration clause. Similarly, here, consumers never received conspicuous notice that by using "no additional charge" Wi-Fi Calling, they were forfeiting their right to bring class actions under RICO, the Sherman Act, or the Telecom Act. That deception nullifies any claim of assent and supports denial of enforcement under *Berman*.

2. *Nino v. Jewelry Exchange, Inc.* 609 F.3d 191, 202–03 (3d Cir. 2010)

In *Nino*, the Third Circuit found an arbitration agreement unenforceable due to procedural and substantive unconscionability. The court analyzed both the circumstances of contract formation and the fairness of the terms themselves. Here, the carriers' arbitration clauses are procedurally unconscionable because they were mandatory, non-negotiable, and attached to deceptive service terms. They are substantively unconscionable because they impose a total bar on class proceedings, strip consumers of statutory rights, and grant the carriers full control over dispute resolution processes. The terms effectively silence hundreds of millions of subscribers from challenging the same systemic fraud.

Berman and *Nino* together establish a clear rule: When arbitration clauses are concealed behind deceptive marketing and embedded in non-negotiable contracts that favor one party and suppress legal redress, they cannot stand. These cases provide powerful, directly applicable precedent for this Court to hold that the carriers' arbitration clauses are unenforceable. There was no real consent—only deception.

Arbitration May Impermissibly Enable a RICO Scheme

Arbitration clauses in AT&T, Verizon, and T-Mobile's contracts do not merely designate a forum—they function as enterprise-level concealment devices. They suppress class actions, bury fraud claims, and eliminate accountability for forced payments tied to a feature falsely marketed as "no additional charge." Where arbitration frameworks obstruct class enforcement and eliminate core remedies, they undermine RICO's fundamental goals of deterring fraud and compensating victims. Courts have recognized that arbitration clauses cannot be used to shield systematic fraud from meaningful legal accountability. These clauses are not neutral. They are integral to the fraudulent enterprise itself. Courts must retain jurisdiction and invalidate them to prevent further concealment of a coordinated RICO violation.

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

Arbitration is a matter of consent. Parties who have not agreed to arbitrate cannot be compelled to do so, particularly where the claims arise from conduct and legal duties that extend beyond the terms of the subscriber agreement. This principle is especially critical where non-signatory entities seek to invoke arbitration clauses to avoid judicial scrutiny of systemic wrongdoing. Here, many of Plaintiffs' claims—particularly those arising from the "no additional charge" Wi-Fi Calling deception and the forced bundling of cellular services—implicate platform providers, OEMs, and other non-signatory entities. These claims go beyond the scope of the subscriber contracts. Arbitration cannot be used to shield non-parties or enterprise-level conduct from accountability under RICO, the Sherman Act, or the Telecommunications Act.

Florida law and federal cases are clear: a non-signatory to a contract containing an arbitration clause cannot compel arbitration absent a 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 Supreme Court has directly addressed this issue in *Arthur Andersen LLP v. Carlisle,* 556 U.S. 624, 631 (2009), holding that non-signatories may not compel arbitration unless they satisfy traditional principles of contract and agency law, such as assumption, piercing the veil, incorporation by reference, third-party beneficiary theories, or estoppel. The Court emphasized that "the FAA does not alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them)."

That principle is fully applicable here. AT&T cannot enforce Verizon's or T-Mobile's arbitration clauses—nor vice versa—simply because the challenged conduct arises from a parallel fraudulent scheme. No exceptions apply: there is no agency relationship, estoppel (given the alleged fraud), or other basis under state law to bind non-signatories. Each contract must stand on its own terms. There is no legal basis for non-signatories to compel arbitration of RICO, Sherman Act § 2, or Telecommunications Act claims rooted in public rights and enterprise fraud. Allowing one defendant to invoke another's arbitration clause would convert contract-based defenses into structural shields against liability, even where the underlying claims concern deceptive conduct that violates federal law, and have nothing to do with performance of the contract containing the arbitration clause.

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

VoIP-Pal's individual suit and the putative class action arise from the same operative facts and legal theories: Defendants falsely advertised Wi-Fi Calling as included at "no additional charge," conditioned access on bundled cellular plans, excluded VoIP competitors from infrastructure access, and embedded arbitration clauses to block redress. The claims under RICO and Sherman Act § 2 are legally and factually identical across both proceedings.

Compelling the class into individual arbitration while VoIP-Pal proceeds in court would fragment a unified legal dispute, cause inconsistent outcomes, and undermine systemic enforcement of federal law. It would also deny absent class members the judicial safeguards and structural relief that only class litigation can provide. Courts have repeatedly recognized that complex public law claims—especially under RICO and antitrust statutes—require unified adjudication to ensure due process, efficiency, and meaningful relief.

<u>D.I. Arbitration Prejudices the Class and Violates Due Process</u>

This case centers on uniform misconduct: the "no additional charge" deception tied to forced cellular bundling and the exclusion of VoIP-based alternatives. Arbitration would sever these claims, fracturing a unified factual and legal foundation. Moreover, it would prejudice absent class members by depriving them of judicial notice and opportunity to be heard and undermine the purpose of Rule 23(b)(3), which mandates class treatment for widespread, small-value claims that cannot be litigated individually.

In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 57 (1974), the Supreme Court emphasized that arbitration is "a comparatively inappropriate forum for the final resolution of rights" created by public statutes. Though *Gardner-Denver* addressed Title VII, its reasoning applies with equal force here: arbitration lacks the procedural transparency, discovery tools, and judicial oversight necessary to enforce statutes like RICO and Sherman Act § 2. Absent class members cannot be expected to arbitrate hundreds of millions of identical claims, each premised on the same deceptive billing structure and systemic exclusion. Only judicial supervision can ensure accountability and structural relief.

D.II. Arbitration Undermines Classwide Relief and Adjudication

This case alleges enterprise-level misconduct that requires consistent, system-wide remedies—such as correcting false advertising, ending exclusionary bundling, and restoring access for VoIP alternatives. Individual arbitration cannot provide this scale of relief or safeguard the public interest.

As the Supreme Court emphasized in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615–16 (1997), Rule 23(b)(3) was designed to promote efficiency and ensure uniform adjudication where common legal and factual questions predominate. The Court explained that the Advisory Committee "had dominantly in mind vindication of 'the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.'"

And as the Seventh Circuit later elaborated in *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997):

> The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.

Forcing hundreds of millions of subscribers into one-by-one arbitrations would eliminate collective enforcement, suppress deterrence, and undermine the very statutes Congress enacted to protect competition and consumers. Arbitration, in this context, does not resolve—it fragments, delays, and erases. This Court should preserve classwide adjudication and reject arbitration where it functions not as a neutral forum, but as a barrier to statutory enforcement.

E. Arbitration Must Be Decided Now—Three Carriers Can't Enforce It Together

Defendants AT&T, Verizon, and T-Mobile each rely on separate arbitration clauses, yet now seek to jointly enforce arbitration across an entire class action. That position conflicts with the Federal Arbitration Act (FAA), which limits arbitration to individualized proceedings, not consolidated or group enforcement. See *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.,* 559 U.S. 662, 684 (2010) where "[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." Here there is no shared agreement allowing group arbitration across three carrier networks. Under *Stolt-Nielsen*, this makes joint enforcement improper, and forces the Court to evaluate enforceability now—before parallel actions proceed any further.

Moreover, each carrier's arbitration clause must stand—or fall—on its own language and formation context. *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Univ.,* 489 U.S. 468, 478 (1989) confirms that arbitration cannot be aggregated or generalized where individual consent is lacking, "Arbitration under the FAA is a matter of consent, not coercion." This reinforces why judicial review must come first, especially when enforcement would prejudice rights. Additionally, in *Green Tree Financial Corp.–Ala. v. Randolph*, 531 U.S. 79, 91 (2000), the Court reaffirmed that a district court must first determine whether an agreement to arbitrate exists before ordering arbitration—especially where federal statutory rights are implicated

These three precedents—*Stolt-Nielsen*, *Volt*, and *Green Tree*—compel this Court to decide arbitration now. Joint enforcement by three separate carriers violates the FAA, and delay would multiply proceedings, confuse legal standards, and frustrate resolution of core statutory claims under RICO and Sherman Act § 2. The Court should resolve the threshold arbitration question at this stage and prevent the misuse of arbitration as a shield for coordinated misconduct.

F. Declaratory Relief Is Warranted: The Arbitration Clauses Must Be Declared Unenforceable Based on Federal Statutory Violations, Fraud, and Public Policy

Plaintiffs respectfully request that this Court issue a declaratory judgment stating that the arbitration clauses embedded in Defendants' subscriber agreements are unenforceable. This request is grounded in multiple, independent legal bases established by the factual record, statutory framework, and controlling precedent. Each basis is sufficient on its own. Collectively, they compel the conclusion that the arbitration provisions were not validly formed, were fraudulently induced, and would, if enforced, undermine federal enforcement under the Sherman Act, the RICO Act, and the Telecommunications Act.

<u>F.I. Declaratory Relief Is Required Based on Statutory Breaches</u>

The Court should declare that the arbitration clauses are unenforceable because they are embedded in contracts that violate federal antitrust and racketeering statutes. Specifically:

- The subscriber agreements unlawfully tied Wi-Fi Calling access to full-price cellular bundles, violating Sherman Act § 2.
- These same contracts concealed the tie behind false advertising that Wi-Fi Calling was provided "at no additional charge."
- The arbitration clauses were not neutral—they were inserted as a means to shield this exclusionary conduct from judicial scrutiny and suppress statutory remedies.

Declaratory relief is warranted under 28 U.S.C. § 2201 because the presence of these clauses has an immediate and concrete impact on the parties' rights and remedies.

<u>F.II. Arbitration Clauses Were Instruments of the RICO Enterprise</u>

As demonstrated in Sections A and B (e.g., A.II, A.V, B.I, and B.II), the arbitration clauses were not merely procedural—they were strategically deployed to insulate the racketeering scheme from accountability. They functioned as part of an enterprise pattern by blocking class access to court; obscuring the fraudulent "no charge" Wi-Fi Calling deception; and concealing exclusionary offloading practices from judicial review.

Under RICO §§ 1962(c) and (d) and the federal Declaratory Judgment Act, the Court should declare these clauses unenforceable as part of an enterprise mechanism used to commit predicate acts of mail and wire fraud under 18 U.S.C. §§ 1341 and 1343.

F.III. Procedural and Substantive Unconscionability Compel Judicial Invalidation

As detailed in Sections B.I and B.III, the arbitration clauses were presented in non-negotiable, adhesive contracts with no opt-out and were buried in online clickwrap terms. This prevented meaningful review or understanding and stripped users of core rights under federal law, including the ability to seek injunctive relief and treble damages. These provisions are procedurally and substantively unconscionable under *Powertel* and *Berman*. Accordingly, the Court should declare them unenforceable as a matter of law.

F.IV. Fraud in the Inducement Nullifies Consent to Arbitrate

Sections A.IV and A.V show that Defendants falsely advertised Wi-Fi Calling as a benefit "at no additional charge," while requiring subscribers to purchase full-price cellular plans and use their own broadband to carry offloaded traffic. This deception induced consent to a broader contract that included the arbitration clause. Under *Buckeye*, *Chastain*, *Nino*, and *Bridge*, such fraud voids the arbitration agreement ab initio and places enforceability within this Court's jurisdiction. The Court should formally declare that no valid agreement to arbitrate was formed.

F.V. Public Policy Forbids Use of Arbitration to Evade Federal Statutory Enforcement

Defendants' arbitration clauses attempt to waive:

- Federal class action rights;
- Statutory antitrust remedies;
- Structural enforcement of 47 U.S.C. § 251 and RICO claims.

Enforcement would conflict with the strong federal policy favoring judicial resolution of public-interest claims, as confirmed in *Mitsubishi Motors*, *McMahon*, *Amchem*, and *Concepcion*.

The Court should declare that the arbitration clauses violate public policy and are unenforceable as to any Sherman Act, RICO, or Telecommunications Act claim.

F.VI. Cross-Enforcement of Arbitration Clauses Is Invalid

As shown in Section C, each subscriber only agreed to the arbitration terms of their respective carrier (AT&T, Verizon, or T-Mobile)—not all three. There is no shared arbitration framework; no mutual assent; and no valid agreement for joint invocation of other carriers' clauses. Declaratory relief is necessary to clarify that no Defendant may rely on another's arbitration clause, and to bar collective enforcement of otherwise unilateral agreements.

F.VII. Arbitration Would Fragment and Undermine Enforcement of a Unified Conspiracy

As shown in Section D, compelling arbitration would fragment adjudication of a single, nationwide conspiracy; meaning a denial of due process to absent class members; and undermine judicial efficiency and violate Rule 23(b)(3) and Rule 42 consolidation principles.

F.VIII. Formal Declaration Requested

In light of the foregoing, Plaintiffs respectfully request that the Court enter a declaratory judgment stating:

> The arbitration clauses embedded in subscriber contracts offered by AT&T, Verizon, and T-Mobile are unenforceable as to all claims arising from the allegations in this case, including but not limited to violations of the Sherman Act § 2, the Racketeer Influenced and Corrupt Organizations Act (RICO), and the Telecommunications Act, on the grounds that these clauses were fraudulently induced, unconscionably imposed, structurally used to conceal unlawful conduct, and contrary to established public policy. Defendants may not rely on each other's clauses, and arbitration shall not be compelled in any form as to the claims asserted herein.

This declaratory relief is necessary to prevent fragmentation of core statutory enforcement, safeguard due process for absent class members, and preserve judicial authority over coordinated enterprise-level conduct that, by design, evades private and public accountability.

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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Filed: July 22, 2025

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 22, 2025 to all counsel of record via the Court's electronic filing system.

/s/ Travis Pittman
Travis Pittman