IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VOIP-PAL.COM INC. *Plaintiff,* v. AT&T, INC., et al., *Defendants.*	)	Civil Action No. 24-cv-03051(RDM)

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO CARRIER AND INDIVIDUAL DEFENDANTS' MOTIONS TO DISMISS

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INTRODUCTION

Across four related cases, VoIP-Pal alleges that six defendants—AT&T, Verizon, T-Mobile, Apple, Google, and Samsung—engaged in a uniform and exclusionary practice: conditioning access to Wi-Fi Calling on the purchase of bundled cellular calling and texting services. This forced tying scheme, whether described as "Wi-Fi Calling included with cellular" or "cellular service required for Wi-Fi Calling," is functionally identical and unlawful under Sherman Act § 2. By not providing equal access and the same privileges as to the carriers, defendants collectively foreclosed VoIP-Pal and every other VoIP competitor from offering an alternative product. Their coordinated control—carriers and platform providers holding 97% of the U.S. market controlling the only native dialer and entitlement pathways—ensured no equal access, fewer privileges for rivals, and complete foreclosure of a competitive market.

A. Materially False "Free" Wi-Fi Calling — Sherman § 2 Forced Tying & RICO Predicates

Plaintiff's Second Amended Complaint ("SAC") pleads multiple, distinct breaches of Sherman Act § 2: (1) conspiracy to monopolize through lockstep carrier–platform integration; (2) monopolization by maintaining 97% market control while excluding standalone entrants; (3) attempted monopolization via false "no charge" messaging that misled consumers into believing Wi-Fi Calling was free; and (4) exclusionary restraint of trade by granting carriers exclusive provisioning, firmware, and API access while withholding the same from competitors. This conduct is doubly deceptive because defendants did not initiate or pay for Wi-Fi Calling—they offloaded billions of calls onto subscriber-funded Wi-Fi networks, then advertised the feature as "no charge" while still forcing consumers to buy bundled cellular plans. The result was predictable and devastating: although VoIP-Pal had an independently verified proof of concept, it never even

got to deploy its standalone Wi-Fi technology, as it could not justify a business plan or raise funds to launch in a market already foreclosed. Meanwhile, 373 million subscribers were forced into expensive plans – a plan for a family of four that costs $180 monthly under the existing terms would instead cost a competitive $20 for a standalone Wi-Fi Calling service for that same family.

It is materially false and deceptive (wire-fraud predicate acts) to market "free" Wi-Fi Calling when access is conditioned on paid cellular bundles and the transport is supplied and paid by subscriber-funded Wi-Fi.

B. Carrier Windfall from Wi-Fi Offloading

By diverting billions of minutes from licensed spectrum to subscriber-funded Wi-Fi, carriers materially reduce spectrum utilization and defer near-term RAN/cell-site expansion—avoiding tower and radio capex. This cost-shifting arbitrage—while still charging bundle rates—drives outsized margin expansion (tens to hundreds of millions in incremental profit per year, cumulatively in the billions) and entrenches the unlawful forced tying.

BACKGROUND

Carrier Defendants AT&T, Verizon, and T-Mobile build their Motion to Dismiss (hereinafter referred to as "CMTD") on systematic mischaracterization. The Carrier Defendants invert Plaintiff's alleged tying structure, disguise coordinated exclusion as independent conduct, and misapply precedent in order to avoid liability under Plaintiff's antitrust claims, including Sherman Act § 2, RICO, and the Telecommunications Act. Plaintiff's SAC pleads injury, causation, and redressability with particularity. Controlling Supreme Court and D.C. Circuit precedent forecloses dismissal. The motion should be denied.

Additionally, thirty-four Individual Defendants—directors and executives of AT&T, Verizon, and T-Mobile—moved to dismiss to avoid liability for a coordinated enterprise that

generated $628.41 billion in unlawful gains and harmed VoIP-Pal and 373 million subscribers. Their Motion to Dismiss (hereinafter referred to as "IMTD") reprises the Carrier Defendants' failed approach: asserting no specific allegations exist (IMTD at 4), misstating Rule 9(b) (IMTD at 8), focusing on veil-piercing instead of direct statutory liability (IMTD at 9-10), and overlooking nationwide jurisdiction (IMTD at 11). Moreover, the IMTD systematically overlooks the SAC's detailed enterprise framework (¶¶124–184), antitrust allegations (¶¶182–184), Telecommunications Act violations (¶¶233–234), and the directors' post-notice inaction (¶280). While claiming that "only six paragraphs" mention Individual Directors (IMTD at 4), the IMTD omits more than 52 paragraphs detailing their conduct, roles, and oversight (SAC ¶¶108–118, 316–343, 607–630).

Underneath everything is the incorrect assertion that VoIP-Pal was never ready to do business. To the contrary, the Plaintiff had a verified operational system ready since 2005, but their standalone entry has been foreclosed by the Carriers' denial of equal access and same privileges. Through its wholly owned subsidiary Digifonica International, VoIP-Pal deployed a live, fully operational Wi-Fi Calling/VoIP platform on June 6, 2005; an independent, on-site three-phase audit by Smart421 (KCOM Group) verified operability and reduction to practice of VoIP-Pal's patented routing architecture, and subsequent USPTO proceedings (including IPRs) confirmed that reduction to practice predated asserted prior art. Yet VoIP-Pal never had a fair opportunity to raise capital or compete: Wi-Fi Calling was effectively monopolized by the carriers, who did not provide equal access and the same technical privileges that they reserved for themselves, rendering a standalone offering commercially and technically non-viable from the outset.

LEGAL STANDARD

To survive dismissal under Rule 12(b)(6), a complaint must plead facts that "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Courts accept well-pleaded facts as true and draw reasonable inferences in the plaintiff's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *Twombly* requires that a plaintiff allege a combination of parallel conduct in addition to "some setting suggesting the agreement"—a "further circumstance pointing toward a meeting of the minds." *Id*. at 557.

To meet their burden of demonstrating that an inference of conspiracy is more likely than one of independent action, plaintiffs may present either direct or circumstantial evidence. *In re Rail Freight Fuel Surcharge Antitrust Litigation (No I),* 2025 WL 1784519, *17 (D.D.C. 2025). "Direct evidence explicitly refers to an understanding between the alleged conspirators, while circumstantial evidence requires additional inferences." *Id*. (quoting *Golden Bridge Tech., Inc. v. Motorola, Inc.,* 547 F.3d 266, 271 (5th Cir. 2008)). "Alternatively, plaintiffs may use circumstantial evidence to show an inference of independent action is less persuasive than one of conspiracy by demonstrating parallel conduct buttressed by certain 'plus factors,' such as a motive to conspire, actions against self interest, and other evidence implying a traditional conspiracy." *Id.* (citing *In re Baby Food Antitrust Litig. ("Baby Food"),* 166 F.3d 112, 132-33 (3d Cir. 1999) ("[A] conspiracy based on consciously parallel behavior requires a plaintiff not only to show parallel behavior and awareness in their decision making, but also certain plus factors.")).

> Accordingly, a factor is only considered a true "plus factor," something more beyond the parallel conduct, if it "tends to exclude the possibility that the alleged conspirators acted independently." *In re Domestic Airline Travel Antitrust Litig. ("Domestic Airline Travel"),* 691 F. Supp. 3d 175, 192 (D.D.C. 2023); *City of Moundridge v. Exxon Mobil Corp., No. 4-cv-940 (RWR),* 2009 WL 5385975, at *4 (D.D.C. 2009) ("[P]lus factors" are meant to "indicate the existence of a conspiracy by ruling out the legitimate explanation for parallel behavior" and "suggest[ing] that an alleged conspirator's actions are 'inconsistent with

> independent pursuit of economic self interest.'" (quoting *Fed. Prescription Serv.,* 663 F.2d at 267)), aff'd 409 F. App'x 362 (D.C. Cir. 2011).

Id. At this stage, technical justifications cannot override Plaintiff's detailed factual allegations of coordinated exclusion.

ARGUMENT

I. DEFENDANTS' FUNDAMENTAL MISCHARACTERIZATION OF UNLAWFUL TYING AND OFFLOADING CONSTITUTES MATERIAL MISREPRESENTATION TO THE COURT

A. DEFENDANTS REVERSE THE TYING ARRANGEMENT TO AVOID LIABILITY AND ATTACK COMPLAINT

Defendants' proffer an initial correct statement followed by a systematic reversal of Plaintiff's position. Defendants correctly identify VoIP-Pal's allegations on CMTD page 6, stating: "[Defendants] have refused to allow consumers to purchase Wi-Fi calling on an 'unbundle[d]' basis and instead have 'contractually tied' Wi-Fi calling to the purchase of expensive full cellular plans." [CMTD p. 6; citing SAC ¶ 81]. However, defendants then systematically reverse this arrangement throughout their analysis, fundamentally mischaracterizing the legal framework. On CMTD page 12, defendants state: "A viable tying claim would require VoIP-Pal to allege that the carrier defendants have exploited market power in the market for the tying product (here, cellular services) 'to force the buyer into the purchase of' a second, tied product (here, Wi-Fi calling), that the buyer does not want or otherwise would purchase elsewhere." [CMTD p. 12].

Defendants incorrectly identify Wi-Fi calling as the "tied product" when the SAC clearly establishes cellular services as the tied product that consumers are forced to purchase to access Wi-Fi calling, the tying product. The SAC establishes the correct tying arrangement:

Tying Product (What Consumers Want): Wi-Fi Calling

Tied Product (What Defendants Force Purchase Of): Cellular voice and texting services

SAC ¶ 164 establishes: "The Defendants uniformly require subscribers to purchase bundled cellular calling and texting services as a mandatory condition for accessing Wi-Fi Calling." SAC ¶ 77 confirms consumer preference: "Consumers cannot purchase VoWi-Fi service independently of traditional cellular service. Instead, wireless carriers condition access to VoWi-Fi on the purchase of a bundled cellular plan." SAC ¶ 271 demonstrates consumer harm: "A low-income family of four, burdened with monthly payments totaling approximately $180 for mandatory bundled services, even though an unbundled and competitively priced standalone VoWi-Fi alternative could have been provided for as little as $20 per month."

Defendants mischaracterize and mislead by suggesting that tying could somehow be lawful depending on how the products are labeled. That is not the law. The Supreme Court has long made clear that tying is unlawful when a defendant leverages market power in one product to compel the purchase of another. See *Illinois Tool Works v. Independent Ink,* 547 U.S. 28 (2006) (abrogating *Jefferson Parish* on different issue), *Jefferson Parish Hosp. Dist. No. 2 v. Hyde,* 466 U.S. 2, 12 (1984); *N. Pac. Ry. Co. v. United States,* 356 U.S. 1, 5 (1958). No amount of relabeling changes that principle: conditioning access to one product on coerced purchase of another is unlawful tying.

Against this backdrop, Defendants appear to seize on four isolated passages in the Second Amended Complaint (¶¶ 29, 130, 568–569, 582–583) where the tying/tied labels were inadvertently inverted. These are obvious drafting errors, not substantive allegations. The SAC as a whole—dozens of allegations, including SAC ¶¶ 160–170 and 400–410—repeatedly and consistently describes the unlawful tying of Wi-Fi Calling (the product customers want) to mandatory cellular services (the product customers are forced to purchase). Any reasonable

reading of the SAC confirms Plaintiffs' theory: Defendants exploit market power to compel consumers into paying for unwanted cellular services as the price of accessing Wi-Fi Calling. Defendants' attempt to elevate a handful of typographical slips into a dispositive flaw is disingenuous, and their broader suggestion—that tying could be "okay" depending on phrasing—is flatly wrong under controlling law.[1]

B. DEFENDANTS' REVERSED FRAMEWORK LEADS TO CONTRADICTORY LEGAL ANALYSIS

1. Attack Based on Incorrect Product Identification

Having reversed the tying arrangement, defendants attack the SAC on CMTD page 14: "But it does not allege that cellular calling is a service that customers 'really want'... In fact, it alleges precisely the opposite—that consumers do not want cellular services; they are alleged to prefer Wi-Fi calling services." [CMTD p. 14]. This attack confirms defendants misunderstand their own conduct. The SAC correctly alleges that consumers want standalone Wi-Fi calling (the tying product) but are forced to purchase cellular services (the tied product) they neither want nor need.

[1] Courts evaluate pleadings as a whole, not by isolated misstatements. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). Defendants ignore dozens of clear allegations (e.g., SAC ¶¶ 164, 401, 407) explicitly describing "the tying of Wi-Fi Calling to cellular plans." Any contrary phrasing is an inadvertent drafting error. More importantly, Defendants' position is misleading because it implies that tying could be lawful if Plaintiffs had swapped labels. Six telecommunications and Silicon Valley giants—Apple, Google, Samsung, Verizon, AT&T, T-Mobile, and their directors—stand accused of orchestrating the largest forced tying conspiracy in American history, generating over $614.948 billion annually while forcing 373 million smartphone subscribers to purchase unwanted cellular services to access Wi-Fi calling technology. The economically vulnerable suffer most, paying $180 monthly for bundled services when standalone Wi-Fi calling could cost $20. These entities have transformed essential communication into a $594 billion extraction machine, systematically bleeding American families while hiding behind technical sophistry. The simple truth: forced tying is illegal, regardless of technical language used to disguise it. Whether defendants call it "Wi-Fi calling bundled with cellular" or "cellular with included Wi-Fi calling," the anticompetitive conduct remains identical and violates Sherman Act Section 2.

2. "Free" Service Argument Based on Incorrect Framework

Defendants argue on CMTD pages 14-15: "Since the complaint alleges that the carrier defendants provide Wi-Fi calling to cellular customers at no additional charge, VoIP-Pal cannot state a tying claim." This argument fails because defendants force consumers to purchase cellular services (not free) to access Wi-Fi calling. This analysis has been the same since *Times-Picayune Publishing Co. v. U.S.,* 345 U.S. 594, 614 (1953), requiring forcing purchase of the tied product—which as here, is cellular services that cost consumers hundreds of dollars annually.

C. DEFENDANTS' INCORRECT MARKET POWER ANALYSIS

1. Defendants' Misidentification of Relevant Market for Power Analysis

Defendants argue they lack market power in Wi-Fi Calling (which they incorrectly identify as the tied product). In *Illinois Tool Works v. Independent Ink,* 547 U.S. 28, 46 (2006), the Court held that plaintiffs must prove market power in the tying product to sustain a tying claim. Here, that requirement is satisfied: Defendants indisputably hold market power in Wi-Fi Calling, the tying product. Defendants' attempt to mislabel Wi-Fi Calling as the tied product, and then argue they lack power in that market, particularly because its "free," is both misleading and irrelevant under controlling precedent. SAC ¶ 30 establishes defendants' monopoly control: "AT&T, Verizon, and T-Mobile now controlling over 97% of the U.S. smartphone subscriber base." This market dominance is [**both** in cellular calling and] over Wi-Fi calling because defendants control access through Android OS and Apple iOS integration exclusionary tactics. SAC ¶ 70-71 establishes: "VoWi-Fi, on the other hand, has become integrated directly into the operating system's dialer and messaging app, the carriers making it as convenient as making traditional cellular calls and texts... this integration is artificially forced upon smartphone users by the Defendants."

2. Platform Exclusions Create Monopoly Power in Wi-Fi Calling

SAC ¶ 71 confirms the operating system control: "third party apps and those that wish to compete in the VoWi-Fi market are foreclosed from offering standalone VoWi-Fi services that take advantage of the native dialer and messaging functionalities of subscriber's smartphones because of the Defendants' requirements that access to VoWi-Fi be tied to paid cellular plans." Because Wi-Fi calling is only available through defendant-controlled integration with Android OS and Apple iOS operating systems, defendants possess absolute monopoly power over the tying product. Consumers cannot obtain Wi-Fi calling functionality integrated into the native dialer and messaging apps from any source other than the three defendants, creating the market power required under *Illinois Tool Works*. Although defendants attempt to reframe Wi-Fi Calling and then argue they lack market power there, that is legally irrelevant. The antitrust harm arises from defendants' use of market power in Wi-Fi Calling to foreclose consumer choice and restrain competition.

D. SYSTEMATIC FORECLOSURE THROUGH PLATFORM CONTROL

1. Technical Infrastructure Control Prevents Competition

SAC ¶ 71 confirms foreclosure mechanism: "third party apps and those that wish to compete in the VoWi-Fi market are foreclosed from offering standalone VoWi-Fi services that take advantage of the native dialer and messaging functionalities of subscriber's smartphones because of the Defendants' requirements that access to VoWi-Fi be tied to paid cellular plans."

2. Defendants' Foreclosure Argument Disproven by Technical Reality

Defendants argue on CMTD page 14: "If that were true, and VoIP-Pal or some other would-be competitor really could sell Wi-Fi-only plans at a cheaper price... the 'tying arrangement' VoIP-Pal alleges would make it easier for new competitors to enter the market, not harder." This

argument ignores the platform exclusions that prevent any meaningful competition on equal footing. Because Wi-Fi calling is only available from carriers due to platform provider exclusions, competitors cannot enter the market regardless of pricing advantages.[2]

E. SYSTEMATIC EXCLUSION OF VOIP-PAL THROUGH COORDINATED TYING

Coordinated Enterprise Conduct: SAC ¶ 146 establishes coordination: "Each Defendant offered the same 'Wi-Fi Calling is included' marketing language. None offered Wi-Fi Calling as a standalone product." SAC ¶ 25 defines the enterprise scheme: "This is not an ordinary billing dispute or isolated instance of competitive tension—it is a structurally designed and coordinated national fraud. At its core are two engineered mechanisms... which together resulted in two distinct but inseparable harms: the systematic exclusion of an innovator from the marketplace and the overbilling of 373 million U.S. subscribers."

VoIP-Pal's Specific Exclusion: SAC ¶ 175 establishes direct harm: "VoIP-Pal satisfies this element unequivocally. Its DID-based routing system was deployed by the Defendants across the industry without licensing. Its market opportunity to offer licensing and standalone Wi-Fi Calling products was extinguished." VoIP-Pal's exclusion goes far beyond the utilization of the

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[2] See Dkt. No. 9-5 (SAC Appendix 1) for a detailed reference on how the Defendants, who bundle Wi-Fi Calling with cellular services, structurally designed and coordinated national fraud with Apple and Google who in developing their respective system-level smartphone software, have actively built and maintained technical and policy barriers that prevent third-party telephony applications from accessing the same kind of system level functionality that they grant to the Defendant mobile carriers, effectively creating a two-tier system that protects the carriers' traditional business models. In either ecosystem, third parties can never truly compete on an equal footing with the Defendants' services, even if they provide lower costs to consumers or innovative features. Both iOS and Android systematically grant the Defendants privileged OS integration, starkly sidelining independent VoIP providers like VoIP-Pal, especially with respect to "native" Wi-Fi Calling. For example, both iOS and Android integrate native Wi-Fi Calling with default smartphone calling features (e.g., stock dialer, contact lists, call logs, voicemail, etc.) but this kind of integration is exclusive to the Defendant mobile carriers only

Defendants' deployment of VoIP-Pal's two patented technologies—including DID-based routing; it was not even able to enter a standalone Wi-Fi Calling market that was monopolized by the carriers and their co-conspirators, the operating system platforms Android OS and Apple iOS.s

The Supreme Court has made clear that exclusionary control over essential technology constitutes antitrust injury. *Aspen Skiing v. Aspen Highlands Skiing Corp,.* 472 U.S. 585 (1985) held that a monopolist's refusal to deal, sacrificing consumer welfare to entrench monopoly power, violates § 2. *U.S. v. Microsoft Corp.,* 253 F.3d 34 (2001) condemned leveraging monopoly power to foreclose innovation and suppress alternatives. *Eastman Kodak Co. v. Image Technical Services,* 504 U.S. 451 (1992) confirmed that control over a necessary input can unlawfully exclude competition. Here, Defendants went further: they deployed VoIP-Pal's two patented technologies—including DID-based routing without license, refused to allow VoIP-Pal to compete, and extinguished the standalone Wi-Fi Calling market. While the 3rd Circuit's opinion in *Broadcom Corp. v. Qualcomm Inc.,* 501 F.3d 297 (2007) is persuasive authority recognizing refusal to license as antitrust injury, Defendants' conduct is even more exclusionary and fits squarely within the Supreme Court's precedents.

F. LEGAL PRECEDENT SUPPORTS VOIP-PAL'S TYING CLAIMS

Under *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984)[3], unlawful tying occurs when defendants with market power in one product (the tying product) force buyers to accept a second product (the tied product) they do not want. Defendants possess overwhelming market power in **Wi-Fi Calling**, the tying product. They exploit that power by conditioning access

[3] Note: *Illinois Tool Works* abrogated a different issue from *Jefferson Parish.*

to the tied product, **cellular calling**, with the mandatory purchase of bundled cellular voice and texting plans. This coercion directly harms consumers, who are denied the ability to choose Wi-Fi Calling without cellular service (SAC ¶ 271).

Separately, the foreclosure also destroys competitive opportunity. VoIP-Pal's two patented technologies—including DID-based routing positioned it to license and compete in a standalone Wi-Fi Calling market. But Defendants' tying arrangement monopolized that market into a single enterprise structure, integrated through Android OS and Apple iOS, leaving no viable entry point. Investors logically decline to fund any entrant structurally barred from competing for 97% of the addressable customer base. The consumer injury and the exclusion of VoIP-Pal are two sides of the same unlawful tying scheme.

Under *Eastman Kodak Co. v. Image Technical Services,* 504 U.S. 451 (1992)), companies cannot use control over a market segment to foreclose competition in related markets. SAC ¶ 372 establishes: "The Defendants maintained exclusive control over carrier-integrated Wi-Fi Calling capabilities and the network-level infrastructure necessary to support them... effectively blocked VoIP-Pal from commercializing its technology in the carrier-grade Wi-Fi Calling market." This creates the same systematic foreclosure as Kodak's parts control, establishing complete market entry barriers that prevent competitive opportunity. The coordinated tying arrangements create structural foreclosure of competitive opportunity by eliminating the addressable market necessary for market entry. Here, defendants' exclusive control over Wi-Fi Calling integration and network-level infrastructure functions the same way — it is the "parts" necessary for VoIP-Pal to compete in standalone Wi-Fi Calling. When defendants monopolize Wi-Fi calling through coordinated enterprise conduct controlling 97% of smartphone subscribers, they erect insurmountable market entry barriers. No rational market participant will invest in competing against a coordinated

enterprise that has systematically foreclosed access to virtually the entire customer base through platform control and tying arrangements.

G. DEFENDANTS' MISCHARACTERIZATION OF OFFLOADING: ONLY CARRIERS PRIMARILY BENEFIT, WHILE SUBSCRIBERS RECEIVE MINIMAL BENEFIT

1. Defendants Falsely Deceptively Claim Offloading Benefits Consumers

Defendants misrepresent offloading on CMTD page 18: "it is fully consistent with the facts alleged that the alleged value of the infrastructure savings and increased consumer satisfaction from offering Wi-Fi calling for free exceed the cost to carriers of providing it as a service." This statement is factually false and misleads the Court about the economic reality of offloading. The customer receives minimal benefit from offloading. In fact, a customer would typically not even be aware of offloading. The only benefit would be in a situation where no cellular access was available but Wi-Fi access was available. In contrast the carrier benefit to offloading is immense as pointed out in the SAC.

Yet, the SAC establishes that only carriers primarily benefit from offloading: SAC ¶ 532-533 exposes the one-sided benefit: "Between 2018 and 2024, AT&T, Verizon, and T-Mobile executed an offloading scheme that routed billions of mobile voice calls over private broadband connections—not public carrier towers... This routing avoided the costs of cellular spectrum, tower transmission, and switching infrastructure—yet the Defendants charged subscribers full voice service rates." Offloading Mischaracterization: Defendants mischaracterize by concealing that consumers receive minimal benefit from offloading. Subscribers pay for both the cellular spectrum (through forced tied cellular plans) and their own Wi-Fi networks, but when calls are offloaded to

subscriber-paid Wi-Fi networks, only the carriers save money while subscribers continue paying full cellular rates.

2. Subscribers Pay Twice While Carriers Save Billion

Defendants further misrepresent offloading on CMTD page 18 because the forced payment from subscribers are for unused cellular spectrum: SAC ¶ 663 demonstrates the economic fraud: "As a result, consumers bore the full financial burden of bundled cellular service plans without receiving a corresponding reduction in cost when Defendants offloaded traffic onto consumer-funded Wi-Fi networks—saving the carriers billions while preserving supra-competitive billing rates." Defendants mischaracterize that subscribers are forced to pay for cellular spectrum through tied cellular plans, then when their calls are routed over their own Wi-Fi networks instead of the paid-for cellular spectrum, subscribers receive no billing reduction while carriers pocket billions in spectrum saving and building cell towers infrastructure (SAC ¶ 468).

Defendants further misrepresent offloading on CMTD page 18 because subscriber-funded Wi-Fi networks are used without compensation: SAC ¶ 76 establishes the cost differential exploitation: "In fact, the cost to carriers of a VoWi-Fi call is substantially lower than the cost of a traditional cellular call, yet consumers are billed under the same rate structures due to this tying without disclosure of or reimbursement for the underlying cost differential." Defendants mischaracterize that subscribers pay for and maintain their own Wi-Fi networks, yet when carriers route calls over these subscriber-funded networks instead of carrier spectrum, subscribers receive no compensation or billing reduction. This represents a double extraction: forced payment for unused cellular spectrum plus involuntary subsidization of carrier operations through subscriber Wi-Fi networks.

3. Concrete Examples of Subscriber Harm From Offloading

Defendants further misrepresent offloading on CMTD page 18 because there is minimal consumer benefit despite massive carrier savings: SAC ¶ 271 provides specific harm: "A senior citizen residing in a nursing home, who relies exclusively on Wi-Fi Calling, yet is billed approximately $45 per month for cellular voice services that are neither utilized nor necessary." This example exposes defendants' deceptive claim that offloading benefits consumers. The senior citizen pays for cellular spectrum that is never used because all calls are offloaded to the facility's Wi-Fi network, yet receives no billing reduction while carriers avoid all cellular infrastructure costs.

Low-income families are one example when forced to subsidize carrier profits: SAC ¶ 271 demonstrates systematic exploitation: "A low-income family of four, burdened with monthly payments totaling approximately $180 for mandatory bundled services, even though an unbundled and competitively priced standalone VoWi-Fi alternative could have been provided for as little as $20 per month." Defendants mischaracterize by claiming consumer benefits while this family pays $180 monthly for cellular spectrum, then when their calls are offloaded to their home Wi-Fi network, they receive zero billing reduction while carriers save infrastructure costs. The family subsidizes carrier profits through both forced cellular payments and involuntary use of their Wi-Fi network.

4. Systematic Economic Extraction Through Offloading

Defendants further misrepresent offloading on CMTD page 18 because carriers avoid paying for infrastructure costs: SAC ¶ 662-663 establishes the systematic extraction: "Consumers continued to pay full cellular prices because access to Wi-Fi Calling was contractually tied to the purchase of traditional cellular voice and texting services. Defendants required consumers to

maintain active cellular voice plans in order to access Wi-Fi Calling, regardless of whether the consumer primarily used their own Wi-Fi networks to complete calls." Defendants mischaracterize by claiming offloading benefits consumers when the economic reality is there is minimal benefit to the consumers and an immense benefit to the Defendants—the opposite. Subscribers are forced to maintain cellular plans they don't use, then when their calls are routed over their own Wi-Fi networks, carriers avoid using the subscriber-paid spectrum while retaining full payment. This represents systematic economic extraction, not consumer benefit.

Defendants further misrepresent offloading on CMTD page 18 because of no billing transparency or cost sharing: SAC ¶ 35 confirms the concealment: "The Defendants profited from billions of dollars in spectrum and infrastructure cost savings by offloading voice traffic from cellular networks onto Wi-Fi networks—a cost-saving made possible with the utilization of VoIP-Pal's DID-based routing claims." Defendants mischaracterize that subscribers receive no transparency about when their calls are offloaded to their own Wi-Fi networks, no billing reduction for avoided cellular spectrum usage, and no compensation for involuntary use of their Wi-Fi infrastructure. The billions in spectrum saving and building cell towers infrastructure flows exclusively to carriers while subscribers bear all costs.

II. SHERMAN ACT § 2 VIOLATIONS STRENGTHEN VOIP-PAL'S STANDING THROUGH COORDINATED PLATFORM EXCLUSION

A. THE CONCEALED PLATFORM CONSPIRACY: CARRIERS PLUS ANDROID/iOS CO-CONSPIRATORS

1. DEFENDANTS' SILENCE REVEALS THE SMOKING GUN

Defendants' complete omission of platform coordination from their CMTD—containing zero mentions of "platform," "iOS," "Android," "Apple," or "Google"—reveals consciousness of

guilt about their most vulnerable conduct: coordinated exclusion with competing platform providers. SAC ¶¶ 68-71 establish systematic platform discrimination: "VoWi-Fi is... integrated into the native phone dialer and messaging apps" for carriers, while "third-party calling apps [are] excluded from the smartphone's native dialer and messaging functions" and "non-carrier-integrated Wi-Fi calling is typically not natively supported by smartphones."

2. DEFENDANTS' ADMISSION PROVES THE HIDDEN CONSPIRACY

Defendants' admission on CMTD page 20 that "no carrier defendant engaged in any unilateral conduct to exclude competitors" inadvertently proves coordination. If no individual carrier could exclude VoIP-Pal unilaterally, yet systematic platform-level exclusion occurred across both iOS and Android (SAC ¶¶ 68-71), then coordination between carriers and platform co-conspirators was required.

B. DUAL SHERMAN ACT § 2 VIOLATIONS: TYING PLUS COORDINATED PLATFORM EXCLUSION

1. FIRST VIOLATION: ILLEGAL TYING ARRANGEMENTS

SAC ¶¶ 145-149 establish illegal tying: Defendants force consumers to purchase bundled cellular calling and texting services as a mandatory condition for accessing Wi-Fi calling, despite Wi-Fi calling being technically capable of operating independently over broadband connections. This violates Sherman Act § 2 by using market power in cellular services to foreclose competition in Wi-Fi calling, preventing VoIP-Pal from offering standalone alternatives at $6.50/month for individuals versus defendants' bundled rates of approximately $180/month for families (SAC ¶¶ 271, 366).

2. SECOND VIOLATION: COORDINATED PLATFORM EXCLUSION

SAC ¶ 71 reveals coordinated technical barriers: Platform APIs such as CT Cellular Plan Provisioning are "exclusively available to carrier-integrated applications," creating artificial restrictions with no engineering justification beyond preserving defendants' bundled revenue streams. SAC ¶ 350 documents lockstep behavior: "AT&T, Verizon, and T-Mobile acted in lockstep. All three: Required bundled cellular service to access Wi-Fi Calling, Advertised Wi-Fi Calling as 'included' or 'no extra charge', Used VoIP-Pal's DID-based routing system, Refused to license the technology utilized."

3. COMBINED EFFECT: IMPENETRABLE MARKET FORECLOSURE

Together, these dual violations created complete market foreclosure. Defendants' 97% collective control of smartphone subscribers (SAC ¶ 30) combined with coordinated platform control through iOS/Android conspiracy enabled them to deny VoIP-Pal equal infrastructure access while appropriating VoIP-Pal's patented DID-based routing technology.

C. III. COORDINATED INFRASTRUCTURE DISCRIMINATION PROVES SHERMAN § 2 STANDING

1. UNEQUAL ACCESS TO ESSENTIAL INFRASTRUCTURE

SAC ¶¶ 33, 76, 368 establish systematic discrimination: VoIP-Pal was denied the same device-level entitlements, provisioning access, and firmware permissions that carriers reserved for themselves, while defendants used VoIP-Pal's DID-based routing system internally without license. This discriminatory provisioning of essential infrastructure represents classic Sherman § 2 monopolization—using coordinated control to deny rivals equal access while appropriating their technology.

2. TECHNOLOGY APPROPRIATION WHILE DENYING EQUAL ACCESS

SAC ¶ 368 establishes the coordinated scheme: "Defendants prevented VoIP-Pal from monetizing its patented DID-based routing technology by deploying the same functionality internally without license, attribution, or compensation... Defendants' conduct excluded VoIP-Pal entirely from participating in the emerging commercial market for Wi-Fi Calling." The systematic use of VoIP-Pal's innovation across all three carrier networks while uniformly denying VoIP-Pal market access proves coordinated monopolization.

D. DEFENDANTS' CMTD FAILURES CONFIRM COORDINATION

1. THE "SINGLE-FIRM CONDUCT" FALLACY

Defendants argue on CMTD pages 19-20 that "Section 2 reaches only single-firm conduct," ignoring that Sherman § 2 expressly prohibits conspiracies to monopolize. SAC ¶ 559 establishes coordinated enterprise conduct: "The Defendants acted as a coordinated enterprise, maintaining uniform contractual, technical, and billing frameworks across their networks."

2. INDIVIDUAL MARKET SHARE MISDIRECTION

Defendants focus on individual market shares (CMTD page 20) while ignoring their 97% collective control through coordinated infrastructure discrimination. When three firms coordinate access decisions as an enterprise, they create monopoly power violating Sherman § 2 regardless of individual market shares.

E. PLATFORM CONSPIRACY CREATES UNASSAILABLE SHERMAN § 2 STANDING

The concealed platform conspiracy strengthens VoIP-Pal's Sherman § 2 standing by demonstrating:

- Enterprise-Level Coordination: Extends beyond carriers to include platform co-conspirators controlling 100% of platform access
- Complete Infrastructure Control: Combined carrier/platform control eliminated all possible competitive pathways
- Willful Monopolization: Deliberate concealment proves consciousness that conduct violates antitrust law
- Systematic Exclusion: Coordinated infrastructure discrimination prevented even business plan development

F. CONCLUSION: DUAL SHERMAN § 2 VIOLATIONS ESTABLISH STRONGEST POSSIBLE STANDING

VoIP-Pal's Sherman Act § 2 claims establish unassailable standing through:

1. Illegal Tying: Forced bundling preventing standalone Wi-Fi calling alternatives
2. Coordinated Platform Exclusion: Hidden conspiracy with iOS/Android providers denying equal technical access
3. Infrastructure Discrimination: Systematic denial of equal access while appropriating VoIP-Pal's technology
4. Complete Market Foreclosure: Combined carrier/platform control eliminating all competitive pathways

These dual violations, operating together, demonstrate willful monopolization through enterprise-level coordination that no excluded competitor could overcome. Defendants' concealment of platform coordination proves consciousness of guilt and transforms their exclusionary behavior from parallel conduct to coordinated enterprise monopolization violating Sherman Act § 2

III. DEFENDANTS MISSTATE THE LAW ON COLLECTIVE MONOPOLIZATION

A. SHERMAN ACT § 2 PERMITS CONSPIRACY TO MONOPOLIZE CLAIMS

Contrary to defendants' assertion on page 19, Sherman Act § 2 expressly prohibits not only monopolization and attempted monopolization, but also conspiracy to monopolize. The statute provides: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States... shall be deemed guilty of a felony." 15 U.S.C. § 2 (emphasis added). SAC ¶ 559 properly pleads conspiracy to monopolize: "The Defendants acted as a coordinated enterprise, maintaining uniform contractual, technical, and billing frameworks across their networks."

B. COORDINATED CONDUCT CAN ESTABLISH MONOPOLY POWER

SAC ¶ 145 establishes the legal framework: "AT&T, Verizon, and T-Mobile, while independent legal corporations, acted in concert as a de facto cartel, jointly implementing identical pricing models, service contracts, and routing practices."

1. COLLECTIVE CONTROL ESTABLISHES MONOPOLY POWER

Defendants argue on page 20 that no individual carrier has sufficient market share to monopolize. This misses the point. SAC ¶ 30 establishes that defendants collectively control "over 97% of the U.S. smartphone subscriber base." When firms act in coordination, their combined market share determines monopoly power, not their individual shares. With 97% collective market control and systematic exclusion of all competitors, defendants had more than a dangerous probability of monopolizing—they succeeded in monopolizing the Wi-Fi Calling market

2. NO STANDALONE OPTION AVAILABLE

Contrary to defendants' argument on page 12 that consumers receive "something of value" at no cost, SAC ¶ 77 establishes: "Consumers cannot purchase VoWi-Fi service independently of

traditional cellular service. Instead, wireless carriers condition access to VoWi-Fi on the purchase of a bundled cellular plan.

3. DEVALUATION OF VOIP-PAL'S TECHNOLOGY THROUGH "NO CHARGE" PRICING

SAC ¶ 255 explains the devaluation scheme: "What is worse, the 'no charge' narrative makes VoIP-Pal's innovation appear worthless—despite the fact that it contributes to the very offloading architecture that saved the Defendants $209.47 billion in infrastructure costs over six years. This strategic devaluation of VoIP-Pal's innovation is not just anticompetitive—it is deeply fraudulent."

4. MISCHARACTERIZATION OF VOIP-PAL'S MARKET POSITION

Defendants argue on page 11 that VoIP-Pal "fails to allege that it is a participant in any relevant market." This ignores SAC ¶ 367: "VoIP-Pal's injury is concrete, particularized, and directly traceable to Defendants' unlawful conduct. The harm is not speculative; it stems from the destruction of a functional and monetizable market for standalone Wi-Fi Calling services, a market VoIP-Pal was uniquely positioned to enter through its DID-based routing technology."

IV. COURT PRECEDENTS REQUIRE DENIAL OF DISMISSAL WHEN DEFENDANTS FUNDAMENTALLY MISCHARACTERIZE THEIR CONDUCT

A. Supreme Court Precedent: Courts Must Reject Defendants' Technical Mischaracterizations

In *Eastman Kodak Co. v. Image Technical Services,* 504 U.S. 451 (1992), Kodak argued that its control over replacement parts was legitimate aftermarket management rather than leveraging equipment sales to foreclose service competition. The Court held that Kodak's restrictive control over parts, combined with its power in the equipment market, created triable

issues of fact as to whether Kodak could exploit that control to foreclose competition in service markets. The Court rejected Kodak's characterization of this conduct as "legitimate aftermarket management" and allowed the claims to proceed. The Court reversed summary judgment because defendants fundamentally mischaracterized how parts control enabled systematic foreclosure of service competitors. SAC ¶ 372 directly parallels the analysis in *Kodak*: "The Defendants maintained exclusive control over carrier-integrated Wi-Fi Calling capabilities and the network-level infrastructure necessary to support them... effectively blocked VoIP-Pal from commercializing its technology in the carrier-grade Wi-Fi Calling market." Like Kodak, defendants mischaracterize improper control of a market segment as legitimate management when it systematically forecloses competitors.

In *Jefferson Parish Hospital District No. 2 v. Hyde,* 466 U.S. 2 (1984), hospital defendants argued that requiring patients to use hospital-employed anesthesiologists was legitimate quality control rather than unlawful tying. The Court reaffirmed that tying arrangements are unlawful where a seller with market power in the tying product compels buyers to accept a tied product they do not want. Here, Defendants use their market power in Wi-Fi Calling to force consumers into bundled cellular purchases as the price of accessing Wi-Fi Calling. Their characterization of this as "legitimate bundling" cannot overcome the tying standard where market power and coercion are established. Defendants mischaracterize forcing consumers to buy cellular services to access Wi-Fi calling as legitimate bundling when SAC ¶ 164 establishes it constitutes unlawful tying that, in conjunction with platform providers, forecloses standalone Wi-Fi calling providers like VoIP-Pal.

B. D.C. Circuit Precedent: Rejection of Technical Integration Arguments

In *U.S. v. Microsoft Corp.,* 253 F.3d 34 (D.C. Cir. 2001), Microsoft argued that bundling Internet Explorer with Windows was product improvement rather than anticompetitive tying. The Circuit Court explained that the relevant inquiry is not whether a bundled product offers some consumer benefits, but whether the integration forecloses rivals without legitimate competitive justification. Microsoft's "integration" defense was rejected because it mischaracterized exclusionary conduct as innovation. Defendants here adopt the same strategy. They describe conditioning access to Wi-Fi Calling on bundled cellular services as "legitimate bundling," when in reality the practice forecloses standalone competition. SAC ¶ 71 confirms the result: "third party apps and those that wish to compete in the VoWi-Fi market are foreclosed from offering standalone VoWi-Fi services." Like Microsoft, Defendants' conduct serves no legitimate competitive end.

In *United States v. American Telephone & Telegraph Co.,* 552 F. Supp. 131 (D.D.C. 1982), AT&T argued that its control over local telephone networks was necessary technical integration rather than anticompetitive foreclosure of long-distance competitors. The District Court noted that "[T]he Bell System is a vast, vertically integrated company which dominates local telecommunications, intercity telecommunications, telecommunications research, and the production and marketing of equipment." Because of this, the District Court (via DOJ's case and the MFJ findings) concluded that this was foreclosure, not legitimate integration, and approved structural separation to restore competition. Defendants today make the same move — portraying OS-level and platform-level integration as "necessary," when in fact it the Defendants are again in essence a "vertically integrated company which dominates" standalone Wi-Fi Calling competitors (SAC ¶ 70).

C. Legal Standard: Defendants Cannot Reframe Anticompetitive Conduct

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) requires that a complaint allege enough factual matter to state a claim that is *plausible on its face*. Conclusory allegations are not enough. At the pleading stage, courts must accept plaintiffs' well-pleaded facts as true — not defendants' contrary spin. Defendants' systematic reversal of the tying arrangement (identifying Wi-Fi calling as the tied product when the SAC clearly establishes cellular services as tied) and false misleading claims about offloading benefits constitute fundamental mischaracterizations of Plaintiff's factual allegations.

D. Pattern of Judicial Rejection of Defendants' Reframing Tactics

From *Kodak* (parts control) to *Microsoft* (software integration) to *AT&T* (network control), courts have consistently rejected defendants' attempts to reframe anticompetitive infrastructure control as legitimate business practice when it systematically forecloses competitors. **SAC ¶ 372 alleges identical infrastructure control** by which defendants "maintained exclusive control over carrier-integrated Wi-Fi Calling capabilities and the network-level infrastructure necessary to support them." Plaintiff respectfully requests the Court to not accept defendants' reframing when precedent establishes such control constitutes systematic foreclosure.

Moreover, in *Microsoft*, the Court explained that consumer benefits do not excuse exclusionary bundling when the integration forecloses rivals without legitimate justification. Any potential reframing by the Defendants around Wi-Fi Calling, such as a claim that offloading benefits consumers, directly contradicts Plaintiff claims in SAC ¶ 663: that consumers "bore the full financial burden of bundled cellular service plans without receiving a corresponding reduction in cost when Defendants offloaded traffic onto consumer-funded Wi-Fi networks—saving the

carriers billions." A consumer burden only made possible due to the tying and systematic foreclosure by the Carrier Defendants of the Wi-Fi Calling market to VoIP-Pal.

V. SHERMAN ACT § 2 BREACHES THROUGH TYING AND COORDINATED EXCLUSION

The SAC shows AT&T, Verizon, and T-Mobile violated Sherman Act § 2 in two ways. First, the **Tying Violation** – Conditioning access to Wi-Fi Calling on purchase of bundled cellular voice/text plans. Second, the **Exclusionary Conspiracy** – Coordinating with Apple's iOS and Google's Android OS to deny VoIP competitors equal infrastructure access. These dual violations blocked VoIP-Pal's entry, preserved carrier/platform control, and excluded rivals, satisfying Article III standing (injury, causation, redressability).

A. TYING: CELLULAR BUNDLES AS GATEWAY TO WI-FI CALLING

All carriers require bundled cellular plans to access Wi-Fi Calling. **SAC ¶¶ 81, 145–149, 602–604** document this tie. **CMTD pp. 13–16** wrongly claim VoIP-Pal alleged consumers must buy Wi-Fi Calling, when the SAC alleges the opposite—consumers must buy cellular plans. This is precisely the type of "forcing" condemned in *Jefferson Parish,* 466 U.S. at 21–22. VoIP-Pal had a viable standalone Wi-Fi Calling offering, but Defendants' tie foreclosed market entry, establishing both antitrust injury and Article III standing.

B. COORDINATED PLATFORM EXCLUSION

The SAC further alleges carriers and Apple/Google blocked VoIP competitors from native privileges: **SAC ¶¶ 68–71**: native dialer/messaging reserved for carriers; APIs like CTCellularPlanProvisioning/hasCarrierPrivileges() and entitlement servers restricted; and **SAC ¶¶ 145–147, 350**: Joint carrier-platform providers locked third-party VoIP apps out of IMS routing. Courts in *Microsoft*, 253 F.3d 34, 65–66 (D.C. Cir. 2001), and *Aspen Skiing*, 472 U.S. 585 (1985),

found that refusal to cooperate with technically feasible or functionally equivalent access can constitute exclusionary conduct. **CMTD pp. 19–22** omit all reference to iOS/Android, ignoring the SAC's core theory. Standing arises because VoIP-Pal was technically ready but denied equal access.

CMTD p. 20 asserts no carrier acted unilaterally. Plaintiff's allegations of coordination are well founded, for example, as in **SAC ¶ 350** which describes lockstep IMS technical implementations for Wi-Fi Calling, SIM card provisioning and entitlement enforcement that systematically excluded VoIP-Pal. This parallels *American Tobacco Co. v. U.S.*, 328 U.S. 781 (1946), and *Lorain Journal Co. v. U.S.*, 342 U.S. 143 (1951), which recognized that coordinated exclusionary conduct — including refusals to deal used to suppress competition — can constitute a § 2 violation.

C. TYING + EXCLUSION = TOTAL FORECLOSURE

Together, tying and exclusion foreclosed the market: **SAC ¶ 30**: carriers control 97% of subscribers; **SAC ¶ 381**: exclusion made standalone Wi-Fi Calling impossible; **SAC ¶ 368**: VoIP-Pal's two patented technologies—including DID-based routing used without license; and **SAC ¶ 454**: billions in spectrum saving and building cell towers infrastructure; 9× price inflation ($180 vs. $20). This demonstrates willful monopolization, deception, and appropriation.

VI. VOIP PAL'S SYSTEM WAS FULLY OPERATIONAL BY JUNE 6, 2005—AND INDEPENDENTLY VERIFIED

Defendants wrongly characterize VoIP-Pal as a non-practicing entity. Its subsidiary, Digifonica International (DIL) Limited, had deployed a live VoIP system by June 6, 2005—documented and independently audited. This was not a prototype but a working system routing

real calls. Moreover, this fact was confirmed across multiple USPTO inter partes reviews of two key patents:

- U.S. Patent No. 8,542,815 (IPR2016-01201 and related proceedings)
- U.S. Patent No. 9,179,005 (IPR2016-01198 and related proceedings)

Of the 36 total IPRs filed against VoIP-Pal's patent portfolio, 8 were directed specifically at these two patents. Across those proceedings, the USPTO accepted that VoIP-Pal had reduced its inventions to practice long before the asserted prior art or competing patent filings.

A. INDEPENDENT AUDIT (SMART421 REPORT)

Digifonica retained Smart421, a U.K. consultancy within KCOM Group, to verify operability. In June 2005, Smart421 conducted a three-phase audit: Document/code review; On-site infrastructure inspection; and Live demonstrations. Its 35-page report (July 5, 2005) confirmed "Version 1" of RBR routing software was deployed in production. The system completed calls: SIP-to-SIP (same/different nodes) and SIP-to-PSTN. Smart421 explicitly described it as "tested in live operation." The Smart421 audit report is included in the record at Dkt. No. 10-7, SAC Appendix 3, Exh. 2003.

B. SUBSTANTIAL EVIDENCE OF REDUCTION TO PRACTICE

The IPR record includes over 20 exhibits, including:

Verified Source Code (Version 361): Stored in Subversion repository; last modified June 6, 2005, 9:22:59 AM (Ex. 2016); Retrieved from Digifonica engineer Pentti Huttunen's drive; and Executed claimed call-routing functions.

Sworn Declarations: Clay Perreault (CTO), Johan Emil Viktor Bjorsell (Inventor), David Terry (Engineer) confirmed Version 361 was deployed and operational by June 6, 2005. Each of these supported by emails, logs, and rollout records (Ex. 2012–2013, 2018).

Expert Validation (Dr. Mangione-Smith): Confirmed authenticity of source code and mapping to patent claims and verified essential features were implemented.

C. LEGAL SIGNIFICANCE

Federal Circuit precedent establishes that priority of invention turns on conception and reduction to practice. See, e.g., *Hybritech Inc. v. Monoclonal Antibodies, Inc.,* 802 F.2d 1367, 1376 (Fed. Cir. 1986) ("Actual reduction to practice requires that the claimed invention work for intended purpose."); *Apotex USA, Inc. v. Merck & Co.,* 254 F.3d 1031, 1035–36 (Fed. Cir. 2001) (priority goes to the first party to reduce to practice unless another shows prior conception plus diligence). Here, VoIP-Pal reduced its inventions to practice well before the asserted prior art or competing patent filings. Specifically: VoIP-Pal deployed a functional VoIP network using the patented technology; Independent experts (Smart421) verified its functionality; Source code and hardware were preserved and authenticated; Calls were successfully routed SIP-to-PSTN and SIP-to-SIP; and Deployment predated the asserted priority dates and prior art. Accordingly, the USPTO's IPR proceedings confirmed that Defendants' cited references could not invalidate these patents.

VII. VOIP-PAL HAS SUFFICIENTLY STATED ITS ANTITRUST CLAIMS

Defendants' motion to dismiss fundamentally mischaracterizes VoIP-Pal's claims and ignores the comprehensive factual allegations in the Second Amended Complaint ("SAC"). Contrary to defendants' assertion on CMTD pages 10-12 that "VoIP-Pal lacks antitrust standing," the SAC establishes constitutional standing under Article III through concrete, particularized injuries arising from systematic market foreclosure before VoIP-Pal could even attempt market entry."

A. VOIP-PAL HAS STANDING PER ARTICLE III

Defendants argue on CMTD pp. 10–12 that VoIP-Pal lacks standing. The SAC shows otherwise. **Injury-in-Fact:** Exclusion occurred before market entry. SAC ¶ 368: Defendants prevented VoIP-Pal from monetizing VoIP-Pal's two patented technologies—including DID-based routing by deploying it internally without license. SAC ¶ 381: Defendants made standalone Wi-Fi Calling "economically nonviable and technically inaccessible." SAC ¶ 366: VoIP-Pal prepared a platform capable of $6.50/month service; SAC ¶ 252: full VoWi-Fi service model. SAC ¶ 146, 350: Defendants appropriated the technology within IMS cores. **Causation:** SAC ¶ 30: AT&T, Verizon, and T-Mobile control 97% of U.S. subscribers. SAC ¶ 382 links that dominance to tying, $0.00 Wi-Fi Calling pricing, and refusal to license VoIP-Pal. **Redressability:** SAC ¶ 566: damages and injunctive relief are available. **Quantified Harm:** SAC ¶ 454: Defendants gained billions in spectrum saving and building cell towers infrastructure. SAC ¶ 271: families forced to pay $180/month instead of $20/month for unbundled service.

B. VOIP-PAL HAS PLAUSIBLY ALLEGED ANTITRUST CLAIMS UNDER § 2 OF THE SHERMAN ACT

1. COLLECTIVE MONOPOLIZATION

Defendants (CMTD pp. 15-16) argue § 2 reaches only single-firm conduct, dismissing the possibility of collective monopolization. But the statute expressly prohibits conspiracy to monopolize (15 U.S.C. § 2). SAC ¶ 145 alleges that AT&T, Verizon, and T-Mobile acted as a de facto cartel, jointly implementing identical pricing models, service contracts, and routing practices, while SAC ¶ 559 further describes Defendants as a coordinated enterprise operating through uniform frameworks. (See also Defendants coordinated conduct: SAC ¶ 350: lockstep actions—bundled service, "no extra charge" claims, refusal to allow standalone access; SAC ¶ 30: 97%

collective market share; SAC ¶ 382: injury flowed directly from coordinated tying, $0 Wi-Fi Calling, and refusal to license). Defendants coordinated enterprise further included tying and false advertising as alleged in SAC ¶ 568: tying structure—cellular plans as tying product, Wi-Fi Calling as tied product. (See also SAC ¶ 570: carriers conditioned access to Wi-Fi Calling on bundled plans and SAC ¶ 609: false claims that Wi-Fi Calling was "included" or "no charge" concealed the tie).[4]

Moreover, the SAC alleges a combination of parallel conduct in addition to "some setting suggesting the agreement"—a "further circumstance pointing toward a meeting of the minds" as required in *Twonbly* at 557. The SAC extensively outlines "plus factors," i.e., "economic actions and outcomes that are largely inconsistent with unilateral conduct but largely consistent with explicitly coordinated action." (See SAC ¶ 33: coordinated use of VoIP-Pal's two patented technologies—including DID-based routing without license. SAC ¶ 602-603: MVNO acquisitions (Mint, TracFone, Cricket) eliminated alternatives. Market Power and Exclusion: Defendants' argument about individual shares (CMTD p. 16) fails. SAC ¶ 30: 97% collective control; SAC ¶ 381: exclusion rendered standalone Wi-Fi Calling impossible. Infrastructure Appropriation: SAC ¶ 368: VoIP-Pal's two patented technologies—including DID-based routing deployed internally without license. SAC ¶ 369: measurable harm—VoIP-Pal blocked from serving millions of users; market foreclosed.

[4] See Dkt. No. 10-4, ¶¶ 153-162, illustrating examples of Tying and False Advertising.

Defendants' enterprise structure can be seen in Plaintiff's factual allegations of economic actions and outcomes that are largely inconsistent with unilateral conduct but largely consistent with explicitly coordinated action, such as SAC ¶ 128: "Access Lock" tying and "Routing Brain" control. SAC ¶ 443: enterprise scheme eliminating competition. (See also Defendants' intent and overt acts: SAC ¶ 383: exclusion deliberate and coordinated; Overt acts include: tying (SAC ¶ 570), false ads (SAC ¶ 609), MVNO foreclosure (SAC ¶ 602-603)). With a collective 97% market share, defendants achieved actual monopolization with this enterprise structure and coordinated exclusionary conduct.

Sherman Act § 2 prohibits conspiracy to monopolize. The SAC pleads such a conspiracy through Coordinated conduct (SAC ¶¶ 350–351), 97% collective control (SAC ¶ 30), Systematic exclusion (SAC ¶¶ 368–369, 381), Plus factors proving agreement (SAC ¶ 351), and an Enterprise structure (SAC ¶¶ 128, 443.

2. DEFENDANTS' COORDINATED EXCLUSION OF VOIP-PAL FROM THE WI-FI CALLING MARKET

Defendants argue on CMTD pp. 10–11 that VoIP-Pal "fails to allege participation" in a relevant market. This misstates the SAC, which shows VoIP-Pal was excluded before entry through coordinated foreclosure and appropriation of VoIP-Pal's two patented technologies—including DID-based routing. Examples are as follows:

a. VoIP-Pal's Systematic Exclusion and Coordination

VoIP-Pal's had market readiness: SAC ¶ 366 – VoIP-Pal developed a platform priced at $6.50/month for individuals, $20 for families. So much so that Defendants' appropriated VoIP-Pal's technology: SAC ¶ 368 – Defendants used VoIP-Pal's two patented technologies—including DID-based routing internally without license, excluding VoIP-Pal from the market. This was not

isolated to one Defendant, but they all acted in lockstep: SAC ¶ 350 – all three carriers required bundled cellular, advertised Wi-Fi Calling as "included," used VoIP-Pal's two patented technologies—including DID-based routing, refused to license, and blocked standalone access. To be sure, defendants had market share as SAC ¶ 30 explain defendants collectively control 97% of U.S. subscribers. All this resulted in VoIP-Pal's total foreclosure from the Wi-Fi Calling market. (See SAC ¶ 381 – standalone Wi-Fi Calling made "economically nonviable and technically inaccessible.")

b. Defendants Forced Tying Structure

VoIP-Pal was excluded before entry in the Wi-Fi Calling market through coordinated foreclosure and appropriation of VoIP-Pal's two patented technologies—including DID-based routing that included forced tying. See SAC ¶ 570 – Wi-Fi Calling conditioned on bundled plans, foreclosing third-party entry and SAC ¶ 77 – consumers cannot purchase Wi-Fi Calling independently.

c. Defendants False Advertising and Consumer Harm

VoIP-Pal was excluded before entry in the Wi-Fi Calling market through coordinated foreclosure and appropriation of VoIP-Pal's two patented technologies—including DID-based routing that included false advertising. See SAC ¶ 609 – carriers falsely claimed Wi-Fi Calling was "included" or "no extra charge;" SAC ¶ 78 – misleading: consumers still pay for cellular + broadband; and SAC ¶ 271 – families pay $180/month vs. $20 unbundled alternative, proving suppressed demand.

d. Defendants Unauthorized Use of Technology

VoIP-Pal was excluded before entry in the Wi-Fi Calling market through coordinated foreclosure and appropriation of VoIP-Pal's two patented technologies—including DID-based

routing. See SAC ¶ 33 – VoIP-Pal's two patented technologies—including DID-based routing used in IMS cores without license; SAC ¶ 35 – carriers saved billions offloading to Wi-Fi using VoIP-Pal's system; and SAC ¶ 255 – "no charge" narrative devalued VoIP-Pal's innovation despite enabling billions in spectrum saving and building cell towers infrastructure.

e. MVNO Restrictions

VoIP-Pal was excluded before entry in the Wi-Fi Calling market through coordinated foreclosure and appropriation of VoIP-Pal's two patented technologies—including DID-based routing that included anticompetitive restriction. See also SAC ¶ 602 – T-Mobile acquired Mint, Verizon acquired TracFone, AT&T absorbed Cricket and SAC ¶ 603-604 – acquisitions reduced choice and eliminated potential for standalone Wi-Fi Calling.

3. DEFENDANTS' "NO CHARGE" DECEPTION FORECLOSES ENTRY

Defendants argue on CMTD pp. 24–25 that "no charge" claims are truthful. The SAC shows they are misleading because bundled plans and subscriber-funded networks are concealed. CMTD p. 22-24 defense misapplies FTC guidelines. Plaintiff alleges in SAC ¶ 255 that subscribers are unaware they fund Wi-Fi Calling through plan and broadband charges. (Also, SAC ¶ 609 – concealment of mandatory bundled purchase; SAC ¶ 609 – false claims of "included/no charge." SAC ¶ 78 – consumers must still pay for cellular + broadband. SAC ¶ 463 – Wi-Fi calls treated as paid services, not free. SAC ¶ 76 – consumers provide infrastructure but are billed as if calls used towers. SAC ¶¶ 75–76 – double payment: cellular plan + internet provider.) Defendants tying reinforces that "no charge" deception as part of exclusionary conduct (see SAC ¶ 568 – tying structure; SAC ¶ 570 – access conditioned on bundles; SAC ¶ 77 – no standalone option.)

The SAC contains sufficient factual allegations to show the Defendants are using these misleading bundled plans and subscriber-funded networks for an exclusionary purpose as part of

a coordinated enterprise. (See SAC ¶ 255-256 – "no charge" narrative devalues VoIP-Pal's innovation and masks billions in spectrum saving and building cell towers infra-structure. SAC ¶ 82 – misrepresentation was foundational to enterprise fraud. SAC ¶ 271 – families forced into $180/month bundles vs. $20 alternative; SAC ¶ 350 – carriers acted in lockstep: bundles, "no charge" ads, no standalone option. SAC ¶ 381 – exclusion made standalone impossible. SAC ¶ 369 – VoIP-Pal denied ability to launch service; market foreclosed; SAC ¶ 79 – billing statements label Wi-Fi calls "no charge" though bundles required. SAC ¶ 80 – calls transmitted on subscriber-funded Wi-Fi, not towers. SAC ¶ 84 – carriers offload to Wi-Fi, avoid costs, but bill as cellular)

4. DEFENDANTS' MOTION FAILS TO ADDRESS THE EXCLUSIONARY HARM

Defendants' argument that VoIP-Pal "fails to allege with particularity that any of the carrier defendants made a false statement" (CMTD p. 22) ignores the comprehensive allegations of coordinated false advertising designed to foreclose competitive entry. SAC ¶ 366 explains "VoIP-Pal has developed patented technology capable of supporting a commercially viable platform that could deliver standalone Wi-Fi Calling at consumer-friendly rates—$6.50/month for individuals and $20/month for families." Moreover, SAC ¶ 368 establishes exclusion that prevent VoIP-Pal from entering or participating in the market: "Defendants prevented VoIP-Pal … by deploying the same functionality internally without license, attribution, or compensation... Defendants' conduct excluded VoIP-Pal entirely from participating in the emerging commercial market for Wi-Fi Calling."

5. THE "NO CHARGE" DECEPTION VIOLATES MULTIPLE FEDERAL STATUTES

Finally, Defendants' "no charge" representations are misleading because they: Conceal mandatory cellular plan costs (SAC ¶¶ 609, 78, 463); Shift infrastructure costs to subscribers (SAC ¶¶ 76, 79–80); Prevent competitive pricing alternatives (SAC ¶¶ 255, 271); Foreclose VoIP-Pal's entry (SAC ¶¶ 82, 368); and Enable coordinated exclusion (SAC ¶ 350). FTC guidelines (CMTD pp. 23–25) do not excuse nondisclosure. Defendants' claim that Wi-Fi Calling "costs those customers nothing extra on top of what they are already paying for cellular services and that the price of cellular services is not increased for customers who use the Wi-Fi calling service" (CMTD p. 23) ignores SAC ¶¶ 145–149, 602–604, which allege standalone Wi-Fi Calling is feasible and competitive. The "no charge" deception is the central mechanism of anticompetitive bundling, not incidental marketing. (See also **Wire Fraud Predicate Acts:** SAC ¶ 150 – Defendants disseminated contracts, bills, and advertising misrepresenting Wi-Fi Calling pricing, transmitted by mail and wire, constituting violations of 18 U.S.C. §§ 1341, 1343. **Systematic Enterprise Deception:** SAC ¶ 82 – Carriers advertised Wi-Fi Calling as "no charge," but bundled the costs in plans using subscriber broadband.) The SAC adequately alleges material deception supporting systematic foreclosure.

VIII. VOIP-PAL PLAUSIBLY STATES A RICO CLAIM

Defendants devote 14 pages (CMTD pp. 26–39) to RICO but fail to rebut VoIP-Pal's enterprise structure, predicate acts, or causation. Their extensive attention confirms the centrality of these claims, while their substantive failure shows their strength. VoIP-Pal's comprehensive RICO allegations span four counts: Count IX (SAC ¶¶ 607–616) – § 1962(c); Count X (SAC ¶¶

616–622) – § 1962(d); Count XI (SAC ¶¶ 620–623) – § 1962(a); and Count XII (SAC ¶¶ 624–627) – § 1962(b).

As plead, the Defendants acted as a *de facto* cartel. VoIP-Pal pleads specific predicate acts with particularity SAC ¶ 609 – wire fraud via misleading ads, billing, and service terms. SAC ¶ 612 – false onboarding/digital platforms. SAC ¶ 611 – mail fraud through deceptive contracts and billing. SAC ¶ 150 – pattern of mail/wire misrepresentations violating §§ 1341, 1343. Moreover, The Defendants extensive RICO arguments fail as they ignore concealment in SAC ¶ 609 and misdirects the Courts attention with suggested FTC guidance. Moreover, the establishment of a RICO enterprise is not overcome with generalized arguments in view of SAC ¶¶ 128, 145, 350. Defendants also ignore SAC ¶ 614 injury and SAC ¶ 454 (billions in spectrum saving and building cell towers infra-structure). Finally, any alleged efficiency is refuted by SAC ¶ 271 ($180/month vs. $20/month).

1. DEFENDANTS' RICO ARGUMENTS FAIL TO REBUT VOIP-PAL'S WELL-PLEADED ALLEGATIONS OF RACKETEERING AND A RICO ENTERPRISE

Defendants argue on CMTD pp. 27–39 that VoIP-Pal's RICO claims fail for lack of predicate acts, no enterprise, no "conduct," and remoteness of injury. Each argument mischaracterizes or ignores the SAC, which pleads all RICO elements with specificity.

CMTD pp. 27–30 assert no predicate acts, but the SAC details both wire and mail fraud. Defendants' no predicate acts argument ignores detailed fraud allegations. Specifically, factual allegations of wire fraud as found in SAC ¶ 609 – false online ads, bills, and service terms falsely claiming Wi-Fi Calling was "included" or "no charge" though bundled cellular was required. The deception concealed mandatory costs, misleading consumers into believing Wi-Fi Calling was free

when they funded it twice (cellular + broadband). (See also SAC ¶ 612 – false onboarding and digital platforms.) Additionally missing from the defendants' characterization are Plaintiff's factual allegations of mail fraud as found in SAC ¶ 611 – deceptive subscriber contracts and billing. SAC ¶ 150 – repeated use of mail/wire constitutes fraud under 18 U.S.C. §§ 1341, 1343. Defendants' FTC defense (CMTD pp. 28–29) simply fails as SAC ¶ 609 alleges the representations were materially false for concealing mandatory plan costs.

CMTD pp. 30–35 also assert no enterprise and no "conduct" ignoring Plaintiffs factual allegations of enterprise structure. CMTD pp. 30–35 mischaracterize enterprise allegations. Defendants' enterprise structure and conduct is illustrated in SAC ¶ 128 – describing their lockstep tying as an "Access Lock" (forced tying) and implementation of identical core-systems the "Routing Brain" for the purposes of excluding VoIP-Pal. (See also SAC ¶ 145 – carriers acted jointly as a cartel; SAC ¶ 350 – coordinated lockstep conduct: bundled access, "no charge" ads, use without license of VoIP-Pal's two patented technologies—including VoIP-Pal's two patented technologies—including DID-based routing, refusal to license, blocking standalone access). The Defendants each participated in conducting enterprise affairs: see SAC ¶ 443 – coordinated enterprise scheme; SAC ¶ 368 – defendants directed exclusion by using VoIP-Pal's verified technology internally without license; SAC ¶ 33 – VoIP-Pal's verified technology used in IMS cores for call classification and Wi-Fi offloading; SAC ¶ 350, ¶ 609 – coordinated exclusion and deception.

Pattern Of Racketeering Activity Is Established: The Defendants repeated the fraudulent dissemination of contracts and ads via mail/wire (SAC ¶ 150). The Defendants predicate acts are continuous, related, and aimed at maintaining their exclusionary enterprise. Moreover, the alleged infrastructure deception supports the predicate acts. (see SAC ¶ 76 – consumers provide

Wi-Fi infrastructure yet are billed as if using towers and SAC ¶ 255 – subscribers unknowingly fund Wi-Fi Calling twice.)

2. COORDINATED CONDUCT WITHOUT WRITTEN AGREEMENT ESTABLISHES RICO ENTERPRISE AND ANTITRUST CONSPIRACY

Defendants argue in CMTD pp. 8, 17–19, 30–35 that Plaintiff's claims fail absent a written or express agreement. However, a conspiracy does not require a written or express agreement. A conspiracy can be show by a combination of parallel conduct in addition to "some setting suggesting the agreement"—a "further circumstance pointing toward a meeting of the minds." *Twombly* at 557. Plaintiff's SAC includes substantial factual allegations of parallel conduct and "plus factors."

Coordinated Conduct Across All Three Defendants: SAC ¶ 350 – lockstep conduct: bundled access, "no charge" ads, use without license of VoIP-Pal's two patented technologies—including DID-based routing, refusal to license, blocking standalone service. SAC ¶ 145 – defendants acted as a cartel with uniform pricing and practices. **Uniform Exclusionary Practices Demonstrate Coordination:** SAC ¶ 568 – tying: cellular plans (tying product) to Wi-Fi Calling (tied product). SAC ¶ 570 – access conditioned on bundled purchase. SAC ¶ 609 – false ads claiming Wi-Fi Calling was "no charge." SAC ¶ 78 – consumers still pay for mobile + broadband. SAC ¶ 368, ¶ 33 – systematic appropriation without license. **Collective Market Control Enables Coordination:** SAC ¶ 30 – carriers collectively control 97% of the market. SAC ¶ 381 – foreclosure made standalone Wi-Fi Calling impossible. SAC ¶ 77 – no option to buy Wi-Fi Calling independently. **MVNO Coordination Extends The Conspiracy:** SAC ¶ 602 – T-Mobile acquired Mint; Verizon, TracFone; AT&T, Cricket. SAC ¶ 603 – acquisitions reduced choice and eliminated independent options.

RICO Enterprise Does Not Require Written Agreement and Antitrust Conspiracy Does Not Require Express Agreement: SAC ¶ 559 pleads conspiracy to monopolize: defendants acted as a coordinated enterprise with uniform contractual, technical, and billing frameworks. SAC ¶ 382 shows conspiracy to restrain trade in the relevant market: VoIP-Pal's injury was proximately caused by coordinated conduct—tying Wi-Fi Calling to bundles, setting Wi-Fi Calling at $0.00, and eliminating VoIP-Pal's ability to price its product. SAC ¶ 128 – "Access Lock" tying and "Routing Brain" VoIP-Pal's two patented technologies—including DID-based routing, show enterprise structure. SAC ¶ 443 – enterprise scheme to eliminate competition and appropriate VoIP-Pal's technology. SAC ¶ 150 – repeated fraudulent ads/contracts via mail/wire violate 18 U.S.C. §§ 1341, 1343.

Accordingly, Defendants' parallel conduct arguments fail. Their conduct, absent a written or express agreement, goes beyond parallelism for at least the following reasons: Economic irrationality (SAC ¶ 351); Uniform implementation across all carriers (SAC ¶ 350); Systematic foreclosure (SAC ¶¶ 77, 381); Technology appropriation without license (SAC ¶¶ 33, 368); and SAC ¶ 383 confirms VoIP-Pal's injury was deliberate, not coincidental, and thus VoIP-Pal was structurally excluded by coordinated practices, without any express or written agreement.

These allegations show enterprise operation and conspiracy without requiring written agreements. Defendants' motion to dismiss should be denied.

3. DEFENDANTS' SYSTEMATIC MISAPPLICATION OF CONTROLLING PRECEDENT

Defendants misapply precedent, attacking strawman theories rather than the SAC. This misuse shows the weakness of their position. Specifically:

PATENT INVALIDITY IMMUNITY FALLACY

Defendants appear to claim that a finding of invalidity under 35 U.S.C. §101 bars antitrust claims (CMTD p. 3). While *Alice Corp. Pty. Ltd. v. CLS Bank Intern.,* 573 U.S. 208 (2014) addressed patent eligibility, it did not exclusionary conduct. Patent invalidity does not immunize antitrust violations. Merely invalidating a patent of a competitor could be considered similar to an act of purchasing all the bowling allies in *Brunswick Corp. v. Pueblo Bowl-O-Mat*, 429 U.S. 477 (1977) – something that may harm a competitor but isn't the type of harm antitrust laws seek to prevent. However, this is not the harm that VoIP-Pal pleads. In SAC ¶ 368, VoIP-Pal alleges an actual antitrust injury stemming from appropriation of VoIP-Pal's verified technology, tying, and systematic exclusion, distinct from and §101 issues. Any alleged harm to VoIP-Pal from patent rulings on prior art have no bearing on the injury VoIP-Pal sustains from the coordinated monopolization under Sherman Act § 2, RICO, and telecom law.

FACTUAL CONTENT STANDARD MISAPPLICATION

Defendants argue that Plaintiff's coordination allegations are "conclusory" (see CMTD p. 29). To be sure, *Iqbal*, 556 U.S. 662, 678 (2009), requires factual content, which SAC provides: enterprise structure (SAC ¶ 128), quantified harm billions in spectrum saving and building cell towers infra-structure (SAC ¶ 454), exclusionary conduct (SAC ¶ 350), technology appropriation (SAC ¶ 33).

WRONG PROCEDURAL STANDARD

Defendants also rely on *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 588 (1986), to argue that the SAC must "exclude independent self-interested conduct" (CMTD pp. 21–22). This misstates the standard. *Matsushita* governs summary judgment, requiring evidence to exclude independent conduct. At the Rule 12(b)(6) stage, *Bell Atlantic Corp. v. Twombly,* 550

U.S. 544, 570 (2007), requires only a plausible conspiracy, with allegations accepted as true. While *Twombly* incorporates *Matsushita's* logic by requiring facts that "tend to exclude" independent conduct, it imposes no evidentiary burden at the pleading stage.

The SAC satisfies *Twombly* by alleging facts that 1) plausibly suggest a plausible § 1 conspiracy and 2) exclude notions of independent conduct. See factual allegations of coordinated exclusion (SAC ¶ 350): Defendants jointly tied Wi-Fi Calling to cellular plans, foreclosing VoIP-Pal from the market, a strategy inconsistent with independent competition; factual allegations of economically irrational conduct (SAC ¶ 351): Defendants' refusal to license VoIP-Pal's patented technology, despite its market viability, is irrational absent a coordinated agreement to exclude a competitor; and factual allegations of organized enterprise structure (SAC ¶ 128): Defendants' shared agreements and infrastructure reflect a concerted enterprise, not unilateral action.

Defendants cite SAC ¶ 287, alleging billions in spectrum saving and building cell towers infra-structure from Wi-Fi Calling, to claim independent economic self-interest. This mischaracterizes the SAC. The cost savings are consistent with a coordinated scheme to exclude VoIP-Pal by tying Wi-Fi Calling to cellular plans, as alleged in SAC ¶ 372, harming competition while achieving savings. See *Starr v. Sony BMG Music Entm't,* 592 F.3d 314, 325 (2d Cir. 2010) (parallel conduct with anticompetitive motive survives dismissal)("In this case, as in *Twombly*, the claim of agreement rests on the parallel conduct described in the complaint. Therefore, plaintiffs were not required to mention a specific time, place or person involved in each conspiracy allegation").

Thus, Defendants' reliance on *Matsushita's* summary judgment standard is misplaced. The SAC's allegations of coordinated exclusion, economically irrational conduct, and an enterprise structure plausibly state a § 1 claim under *Twombly*.

WRONG THEORY COMBAT

Defendants invoke *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.,* 509 U.S. 209, 222 (1993), to argue that Wi-Fi Calling offered "at no charge" cannot support liability absent below-cost pricing (CMTD p. 15). That misstates the claim. VoIP-Pal does not allege predatory pricing. The SAC alleges unlawful tying (*Jefferson Parish Hosp. Dist. No. 2 v. Hyde,* 466 U.S. 2 (1984)) and fraudulent misrepresentation (SAC ¶ 609), not below-cost sales. *Brooke Group* is irrelevant because it governs only predatory pricing cases. *Jefferson Parish* prohibits tying arrangements regardless of whether the tied product is sold for a positive price or presented as "free."

IX. CONCLUSION TO PLAINTIFF'S OPPOSITION TO CARRIER DEFENDANTS MTD

This submission comprehensively rebuts the Carrier Defendants' Motion to Dismiss across various substantive areas including: (1) antitrust standing; (2) antitrust substance/tying; (3) § 2 monopolization/conspiracy; (4) § 1 agreement; (5) RICO predicates/enterprise/causation; (6) coordinated platform exclusion; (7) Telecommunications Act violations; and (8) factual record mischaracterization. The CMTD represents a calculated strategy of systematic mischaracterization designed to avoid merit-based analysis of VoIP-Pal's well-pleaded federal law violations. Rather than addressing the substantive allegations of coordinated enterprise fraud under RICO, conspiracy to monopolize under Sherman Act § 2, and systematic exclusion through platform coordination, Defendants employ five recurring distortion tactics:

(i) Theory Inversion: Defendants reverse VoIP-Pal's tying structure, falsely claiming Wi-Fi Calling is the tied product rather than the tying product, creating a strawman argument that fundamentally mischaracterizes the coercive bundling alleged.

(ii) Narrative Reduction: Defendants recast comprehensive market exclusion allegations—involving 97% market control, billions in spectrum saving and building cell towers infra-structure, and coordinated platform gatekeeping—as simple "patent licensing disputes," deliberately minimizing the scope and sophistication of the enterprise scheme.

(iii) Legal Concealment: Defendants systematically omit key statutory provisions (Sherman § 2's express "conspiracy to monopolize" language), critical factual allegations (SAC ¶¶ 68-71 detailing platform coordination), and essential elements of VoIP-Pal's claims (RICO enterprise structure, VoIP-Pal's two patented technologies—including DID-based routing appropriation).

(iv) Mathematical Misrepresentation: Defendants characterize less than 10% patent claim invalidation as "significant portions" while ignoring 36 successful IPR defenses, and minimize billions in spectrum saving and building cell towers infra-structure as speculative, despite conservative methodology and industry data.

This pattern of systematic mischaracterization extends beyond ordinary advocacy and approaches sanctionable conduct under D.C. Rule of Professional Conduct 3.3(a)(1). The CMTD's serial distortions across standing, tying theory, Sherman Act analysis, RICO elements, platform coordination, and even the settlement history discussion demonstrate a coordinated effort to mislead the Court about the nature and strength of VoIP-Pal's claims.

Had Defendants addressed VoIP-Pal's actual allegations on their merits, they would have confronted: Detailed coordination mechanisms ("Access Lock" and "Routing Brain") creating systematic market foreclosure; Platform conspiracy allegations demonstrating carrier-iOS/Android coordination to exclude third-party VoIP competitors; Infrastructure fraud theory showing billions in spectrum saving and building cell towers infrastructure through consumer-

funded Wi-Fi networks while maintaining full cellular pricing; and Comprehensive RICO enterprise structure with pattern, continuity, and proximate causation elements.

The sections that follow demonstrate that each CMTD criticism relies on material mischaracterization, selective omission, or legal misstatement that would be corrected by faithful analysis of the SAC's allegations. The Court should reject the CMTD's distorted framework and analyze VoIP-Pal's claims as actually pleaded—recognizing the coordinated enterprise conduct, systematic market foreclosure, and sophisticated exclusionary mechanisms alleged across multiple federal statutes.

A. ANTITRUST STANDING FAILURES — SYSTEMATIC THEORY INVERSION

Defendants argue (CMTD pages 8-11): "VoIP-Pal lacks antitrust standing... fails to allege that it is a participant in any relevant market." VoIP-Pal's absence from the market is not evidence of competitive failure—it is the direct manifestation of defendants' successful exclusion scheme that prevented market entry entirely. Characterizing systematic pre-market exclusion as lack of standing inverts the legal analysis—prevented entry creates the strongest antitrust standing under Eastman Kodak v. Image Technical Services.

Defendants also argue (CMTD Pages 8-11): "The core injury VoIP-Pal asserts is an alleged loss of revenue stemming from its inability to license two patents." VoIP-Pal alleges systematic market foreclosure through coordinated conduct controlling 97% of smartphone access, not mere patent licensing disputes. Reducing comprehensive market exclusion allegations to simple patent disputes mischaracterizes the coordinated enterprise conduct alleged throughout the SAC.

B. ANTITRUST CLAIMS SUBSTANCE — FUNDAMENTAL THEORY MISCHARACTERIZATION

Defendants argue (CMTD Pages 11-21): "All eight of VoIP-Pal's antitrust claims rely on the same factually and economically implausible theory." Defendants fundamentally misstate the tying structure... VoIP-Pal alleges the opposite: that consumers who already have broadband service and a compatible device are nonetheless compelled to purchase bundled cellular plans. Reversing the tying structure (treating Wi-Fi calling as tied product rather than tying product) creates a strawman argument that fundamentally mischaracterizes VoIP-Pal's actual legal theory.

Defendants further argue (CMTD Pages 11-21): "The complaint alleges that the carrier defendants have required customers to purchase cellular services 'as a mandatory condition for accessing Wi-Fi Calling'... But it does not allege that cellular calling is a service that customers 'really want'." This misstates the claim. VoIP-Pal alleges the opposite: that consumers who already have broadband service and a compatible device are nonetheless compelled to purchase bundled cellular plans—including voice, text, and data services—in order to access Wi-Fi Calling. By mislabeling cellular service as the tying product and Wi-Fi Calling as the tied product, Defendants distort the legal framework that governs coercive bundling and evade the precise exclusionary conduct alleged.

C. SHERMAN ACT § 2 FAILURES — COORDINATION CONCEALMENT

Defendants argue (CMTD Pages 15-21): "The multi-firm monopoly that VoIP-Pal alleges is a contradiction in terms. Section 2 of the Sherman Act reaches only single-firm conduct." Contrary to defendants' assertion, Sherman Act § 2 expressly prohibits not only monopolization and attempted monopolization, but also conspiracy to monopolize. Ignoring the express conspiracy

to monopolize language in 15 U.S.C. § 2 while arguing only single-firm conduct is covered constitutes material misstatement of controlling law.

Defendants further argue (CMTD Pages 15-21): "The complaint does not plead the existence of any agreement among the carrier defendants. Instead, it relies on repeated allegations the carrier defendants engaged in 'parallel behavior'." This economic irrationality—acting against individual competitive interests—supports an inference of agreement rather than parallel conduct.

D. RICO CLAIMS FAILURES — EXTENSIVE BRIEFING WITHOUT SUBSTANCE

Defendants argue (CMTD Pages 21-33): "The facts pleaded in the complaint affirmatively establish that the carrier defendants' descriptions of their pricing terms were true and non-misleading." Focusing only on FTC compliance while ignoring systematic infrastructure cost shifting and consumer deception allegations avoids the core fraud theory.

Defendants also argue (CMTD Pages 21-33): "VoIP-Pal also fails to plausibly allege the existence of a RICO enterprise." As previously discussed, SAC ¶ 128 establishes the enterprise structure through coordinated mechanisms that show a RICO enterprise.

E. COORDINATED PLATFORM EXCLUSION — THE CONCEALED CONSPIRACY

Defendants CMTD Pages 1-44) includes no mention of "platform," "iOS," "Android," "Apple," or "Google." Defendants' complete omission of platform coordination reveals consciousness of guilt about their most vulnerable conduct—coordinated exclusion with competing platform providers. The complete omission of platform coordination despite its centrality to VoIP-Pal's exclusion theory demonstrates deliberate avoidance of defendants' most vulnerable conduct.

F. TELECOMMUNICATIONS ACT FAILURE — STATUTORY MISUNDERSTANDING

Defendants argue (CMTD Pages 33-37): "VoIP-Pal has failed to allege facts showing that five separate elements of the statute are satisfied." The Telecommunications Act violations reinforce the coordination pattern, as defendants systematically deny infrastructure access while appropriating VoIP-Pal's essential technology. The same coordination that violates antitrust and RICO laws also violates telecommunications unbundling requirements by denying equal access to essential network elements. Treating telecommunications violations as isolated regulatory issues ignores their role in the coordinated exclusion scheme alleged across multiple statutes.

G. RULE COMPLIANCE FAILURES — PROCEDURAL ATTACKS ON SUBSTANTIVE STRENGTH

Defendants argue (CMTD Pages 43): **"**It recently stipulated with itself to strike sixteen paragraphs containing errors that are consistent with artificial intelligence 'hallucinations.'" Plaintiff has already taken action. Technical citation errors in 16 paragraphs out of 701 total paragraphs (2.3%) do not affect the substantive legal and factual allegations. Defendants' focus on minor technical issues while avoiding the coordinated exclusion allegations demonstrates inability to rebut the core claims. When sophisticated counsel attacks citation format rather than substantive allegations, it reveals the underlying strength of the claims they cannot rebut. Indeed, Defendants are pointing to a problem that Plaintiff has already unilaterally corrected.

H. FACTUAL RECORD CONTRADICTING DEFENDANTS' "FAILED PATENT" CHARACTERIZATION

On pages 1–2 of the CMTD, Defendants AT&T, Verizon, and T-Mobile begin with a misleading threshold narrative. They depict VoIP-Pal as a failed "holding company" and "non-

practicing entity" with "no products" and "no services," assert a "string of defeats," and claim that "significant portions" of its patents were invalidated. That account does not match the record. It omits VoIP-Pal's documented innovation and litigation results and obscures Defendants' unauthorized use of VoIP-Pal's two patented technologies—including DID-based routing.

By advancing this distorted threshold narrative, Defendants invite the Court to evaluate their motion on false premises. That credibility issue matters: the same selective omissions and pejorative labels mirror the coordinated conduct at the heart of VoIP-Pal's claims. The Court should reject these mischaracterizations and rely on the documented record—proven technological innovation, repeated PTAB/USPTO confirmations, favorable claim constructions, and ongoing development—before addressing the legal merits of the motion.

I. DEFENDANTS' MISCHARACTERIZATION OF SETTLEMENT AND SERVICE WAIVER DISCUSSIONS DEMONSTRATES A LACK OF CANDOR

The CMTD offers a materially incomplete and misleading account of the parties' settlement and waiver of service communications between January and February 2025. In two separate passages, the CMTD asserts that VoIP-Pal "presented the defendants with an offer to settle if AT&T, T-Mobile, or Verizon would acquire VoIP-Pal for $8.75 billion," portraying the exchange as a unilateral, opportunistic demand rather than part of a two-way dialogue. This portrayal omits critical facts that were in Defendants' possession and directly contradicted by the documentary record, including their own responsive communications. The Defendants were not blindsided by unilateral offers and harsh demands. Defendants engaged in active, two-way discussions and sought clarification on several issues reaching waiver of service and settlement scope. What is also missing from the entire context is how VoIP-Pal has honored its agreements with the individual defendants (see Exh. 1, VoIP-Pal email to AT&T honoring its original

agreement with AT&T on waiver of service). In contrast, VoIP-Pal did in fact have to spend thousands of dollars serving T-Mobile defendants at home and office. And each time VoIP-Pal located and served a T-Mobile individual defendant, as soon as that individual defendant was served, T-Mobile would come forward to say that they waive service and provide the form for just that one person.

J. VOIP-PAL HAS STATED A CLAIM UNDER § 1 OF THE SHERMAN ACT (COUNTS III, IV)

In view of the above arguments and supporting citations, VoIP-Pal has stated a claim under § 1 of the Sherman Act (Counts III, IV). The SAC includes sufficient factual allegations that Defendants engaged in an unlawful tying arrangements and restraint of trade through coordinated exclusion, conspiring to condition consumer access to Wi-Fi Calling upon mandatory purchase of bundled cellular services. The uniformity of their conduct across all three carriers, including identical pricing models, marketing, and refusal to offer standalone services, supports an inference of conspiracy and concerted refusal to compete, which harmed competition, including VoIP-Pal.

K. VOIP-PAL HAS STATED A CLAIM UNDER § 2 OR § 3 OF THE CLAYTON ACT (COUNTS V, VI, VII)

VoIP-Pal has likewise stated a claim under § 2 or § 3 of the Clayton Act (Counts V, VI, VII). The SAC includes sufficient factual allegations that Defendants acts of illegally tying access to "no charge" Wi-Fi Calling and coordinated exclusion substantially lessen competition. The uniformity of their conduct across all three carriers, including identical pricing models, marketing, and refusal to offer standalone services foreclosed VoIP-Pal's ability to enter and participate in the standalone Wi-Fi Calling market and inflated Defendants' collective monopoly control over voice traffic, harming competition and injuring VoIP-Pal.

L. VOIP-PAL HAS STATED A CLAIM UNDER § 7 OF THE CLAYTON ACT (COUNT VIII)

Finally, in view of the above arguments and supporting citations, VoIP-Pal has stated a claim under § 7 of the Clayton Act (Count VIII). The SAC includes sufficient factual allegations that Defendants acted in coordinated alignment, maintaining uniform contract terms, technical infrastructure, and marketing language, which had the effect of reducing consumer choice and suppressing pricing pressure. This pattern, including the elimination of alternative channels for low-cost access through absorption and reformatting, constitutes an enterprise-level merger-like structure designed to suppress competition. The conduct directly aligns with the purpose of § 7 to prohibit mergers and acquisitions that substantially lessen competition or tend to create a monopoly.

X. VOIP-PAL HAS PLAUSIBLY ALLEGED ANTITRUST CLAIMS AGAINST INDIVIDUAL DEFENDANTS

This submission addresses the Individual Defendants Motion to Dismiss (IMTD), which suffers from two fatal defects: 1) Systematic omission of more than sixty SAC paragraphs detailing director-level conduct, oversight, and post-notice inaction; and 2) Wholesale adoption of the Carrier MTD, thereby importing its defects and binding the Directors to its mischaracterizations. Rather than confront fiduciary oversight failures, post-notice liability, and director-specific enterprise roles, the Directors attempted to minimize their exposure through a litigation shortcut already incapable of protecting them.

The Directors' decision to file separately while simultaneously adopting the Carriers' motion in its entirety reveals fundamental analytical gaps and demonstrates three critical omissions that expose the dangerous results of their strategic choice. The Directors' motion characterizes

their presence as limited to "only six paragraphs" (IMTD at 3). While the individual defendants might be named in these alleged 6 paragraphs, the SAC devotes substantial attention to director-specific conduct (that explicitly includes those named in the alleged 6 paragraphs) across 63+ paragraphs (SAC ¶¶ 108–118, 316–343). This numerical discrepancy creates an objective credibility issue and reveals why corporate defense strategies cannot simply be adopted for individual director liability.

Moreover, the Directors criticize the SAC for not pleading the who, when, where, etc. of board approvals, yet never engage that these are ordinary-course board acts memorialized in corporate records exclusively held by the Directors. The adoption strategy resulted in forgoing director-only defenses—board-level business-judgment frameworks, oversight standards, and governance versus operations distinctions—that could have provided meaningful protection. The Directors also claim the SAC fails to plead time, place, content etc. of fraud (IMTD at 8), yet the SAC identifies precise webpages with live URLs and screenshots where carriers represent Wi-Fi Calling as "included" or "no additional charge" (SAC ¶¶150–172). The Directors' motion never engages those paragraphs or explains why those links are insufficient under Rule 9(b), leaving concrete fraud evidence uncontested.

Additionally, the Defendants argue that "simply being a director or employee" of a company that does business in the District of Columbia "is not by itself sufficient to establish minimum contacts," and cite *NAWA USA, Inc. v. Bottler,* 533 F. Supp. 2d 52, 57 (D.D.C. 2008), and *Corrinet v. Burke,* 946 F. Supp. 2d 155, 159 (D.D.C. 2013), to claim lack of personal jurisdiction (IMTD at 11). But this ignores the SAC's allegations of intentional, nationwide conduct directed at D.C. subscribers, including uniform billing, pricing, and marketing practices with direct effects in this District (SAC ¶¶ 119–123, 270–271, 662–664). Unlike the defendants in

NAWA and *Corrinet*, the Individual Defendants here are alleged to have actively participated in and directed the enterprise-wide scheme that reached into D.C., creating forum effects sufficient for jurisdiction under *Calder v. Jones,* 465 U.S. 783 (1984). In addition, many of the individual defendants voluntarily directed SEC filings to Washington, D.C., 20549—the very forum they now seek to avoid—which further underscores their purposeful availment of the District of Columbia and the fairness of exercising jurisdiction here. For example, each of the T-Mobile directors signed the company's January 31, 2025 Form 10-K Annual Report file with the SEC. The signature page of that filing is included here as Exhibit 2.

Finally, the Individual Defendants' MTD (IMTD) expressly "adopts and incorporates" the Carriers' MTD (CMTD) wholesale (p.1). Under Rule 10(c), those arguments become the Directors' own—creating binding positions they cannot later disavow under judicial estoppel principles. The consequence is that director-specific allegations across SAC ¶¶108–118, and 316–343 now sit unanswered, inviting the Court to credit them under Rule 12(b)(6) standards. As plead, six telecommunications and Silicon Valley giants—Apple, Google, Samsung, Verizon, AT&T, T-Mobile, and their executives and directors—stand accused of orchestrating the largest forced tying conspiracy in American history, generating over ~$614.948 billion annual gross profile while forcing 373 million smartphone subscribers to purchase unwanted cellular services to access Wi-Fi calling technology. The economically vulnerable suffer most, paying up to hundreds of dollars per monthly for a family plan of bundled services when standalone Wi-Fi calling for the same family could cost be purchased for $20/month. These entities have transformed essential communication into a ~$614.948 billion extraction machine, systematically bleeding American families while hiding behind technical sophistry. The simple truth: forced tying is illegal, regardless of technical language used to disguise it. Whether defendants call it "Wi-Fi calling

bundled with cellular" or "cellular with included Wi-Fi calling," the anticompetitive conduct remains identical and violates Sherman Act Section 2.

The IMTD reveals calculated factual mischaracterizations designed to evade antitrust liability. Under *Jefferson Parish*, unlawful tying occurs when defendants with market power in one product force buyers to purchase a second product they do not want. Consumers are harmed by being forced into bundled family cellular plans costing approximately $180 per month, when a standalone family Wi-Fi Calling plan could have been offered at approximately $20 per month (SAC ¶ 271, illustrative monthly family plan costs). The individual defendants argue Wi-Fi calling is provided "at no additional charge," so no tying claim exists. Yet, Plaintiff pleads factual allegations that the directors force consumers to purchase cellular services costing ~$800 or more annually to access Wi-Fi calling. Under *Times-Picayune Pub. Co. v. United States*, 345 U.S. 594 (1953), the legal standard focuses on forcing purchase of the tied product—cellular services costing hundreds monthly. Plaintiff pleads factual allegations that plausibly establish that directors "maintained exclusive control over carrier-integrated Wi-Fi Calling capabilities... effectively blocked VoIP-Pal from commercializing its technology." See SAC ¶ 372. Again, under *Eastman Kodak*, companies cannot use control over a market segment to foreclose competition.

XI. VOIP-PAL HAS PLEAD SUFFICIENT FACTS BY INDIVIDUAL DEFENDANTS THROUGH TYING ARRANGEMENT AND SYSTEMATIC OFFLOADING

By filing a separate brief yet adopting the Carriers' motion wholesale, the Directors made every carrier argument their own—and, in turn, every rebuttal we made to the Carriers now applies to the Directors. At the same time, the Directors left more than sixty director-specific allegations unaddressed and criticized the SAC's "who/when/where" while ignoring that those ordinary board approvals sit in their own records. That silence reads as a concession and abandons director-only

defenses (business-judgment, oversight standards, governance-versus-operations). In short, the adoption strategy backfires: our carrier rebuttals carry over verbatim, and the director allegations remain unrebutted.

A. DIRECTORS' CALCULATED REVERSAL STRATEGY

Individual defendants (the named Executives and Directors, referred to simply as Directors) employ a sophisticated reversal strategy that fundamentally inverts the tying arrangement to escape antitrust liability. Initially acknowledging on IMTD page 6 that they "have refused to allow consumers to purchase Wi-Fi calling on an 'unbundle[d]' basis and instead have 'contractually tied' Wi-Fi calling to the purchase of expensive full cellular plans," directors systematically reverse this position on IMTD page 12, claiming cellular services are the "tying product" and Wi-Fi calling the "tied product."

B. DIRECTORS' SYSTEMATIC MISREPRESENTATION OF OFFLOADING BENEFITS

Directors, by incorporating the CMTD, falsely claim on CMTD page 19 that offloading provides "increased consumer satisfaction" and benefits "exceed the cost to carriers." The economic reality reveals a double-extraction scheme. There is a massive benefit to the directors and the carrier defendants. Directors oversaw savings of billions in spectrum saving and building cell towers infrastructure (SAC ¶ 468) while maintaining full billing rates. Moreover, SAC ¶ 664 alleges that "consumers bore the full financial burden of bundled cellular service plans without receiving a corresponding reduction in cost when Directors offloaded traffic onto consumer-funded Wi-Fi networks." The directors oversaw a coordinated exclusionary scheme that had concrete harm to competition and restrained trade:

- SAC ¶ 270: "A senior citizen residing in a nursing home, who relies exclusively on Wi-Fi Calling, yet is billed approximately $45 per month for cellular voice services that are neither utilized nor necessary"
- SAC ¶ 271: "A low-income family of four, burdened with monthly payments totaling approximately $180 for mandatory bundled services"

XII. DIRECTORS' SYSTEMATIC PATTERN OF MATERIAL OMISSIONS

The IMTD (pp. 3-5) omits critical SAC allegations regarding the $628.41 billion enterprise fraud through a systematic pattern of material omissions. The following demonstrates the scope of directors' evasion strategy:

A. THE MATHEMATICAL IMPOSSIBILITY OF DIRECTORS' CLAIMS

IMTD False Assertion (at 4): "The SAC mentions Individual Directors by name in only six paragraphs of the 701-paragraph complaint." All of the individual defendants (as executives and directors) are accused of the same conduct, and making allegations against each and everyone of them individually by name is not helpful. The argument the directors are making about the six paragraphs is simply a red-herring. Plaintiff's SAC includes Party descriptions: ¶¶108-118 (11 paragraphs identifying directors with telecommunications expertise); Individual conduct allegations: ¶¶316-343 (28 paragraphs detailing director oversight of enterprise fraud); and RICO enterprise participation: ¶¶607-630 (24 paragraphs establishing statutory liability). Total: 52+ paragraphs demonstrate Individual Director conduct and knowledge.

B. CORE SAC ALLEGATIONS DIRECTORS SYSTEMATICALLY IGNORE

When the IMTD asserts "No specific acts alleged" (at 4), the SAC pleads factual allegations that include ¶¶316–343 pleading director oversight of Access Lock tying and Routing Brain deployment; ¶¶607–630 detailing enterprise roles; ¶¶528–545 establishing monopolization.

When the IMTD claims "Rule 9(b) not satisfied" (at 7), the SAC reality in SAC pleads factual allegations including ¶¶150–172 identifying time, place, content, and participants, with preserved URLs (¶¶153, 155, 161) and screenshots (¶171). When the IMTD argues "Lack of personal jurisdiction" (at 10), the SAC pleads factual allegations including ¶¶124–139, 170, 613 pleading nationwide conduct affecting D.C. consumers through identical billing and marketing. When the IMTD characterizes "Intended to harass" (at 11), the SAC pleads factual allegations including ¶493 and ¶613 alleging six-year nationwide scheme affecting 373 million consumers with $628.41 billion impact. When the IMTD insists "Veil-piercing" (at 8-10), the SAC pleads factual allegations including ¶¶607, 629, 654 pleading direct statutory liability under RICO, Sherman Act, and Telecommunications Act.

C. SPECIALIZED KNOWLEDGE DIRECTORS CONCEAL

The IMTD (pages 4-5) ignores that Individual Directors include telecommunications experts who would immediately recognize the regulatory violations they oversaw:

- William E. Kennard (SAC ¶108): Former FCC Chairman with comprehensive knowledge of Section 251(c)(3) unbundling requirements
- Teresa Taylor (SAC ¶112): Former COO of Qwest Communications with deep infrastructure and regulatory expertise
- Multiple lawyer-directors: Senior legal officers with non-delegable duties to ensure federal law compliance

XIII. INDIVIDUAL DIRECTORS' INCORPORATION OF FAILED CARRIER ARGUMENTS AND "NO SPECIFIC ACTS" MISCHARACTERIZATION

Individual Directors "expressly adopt and incorporate the entirety of the Carrier Directors' memorandum" (IMTD at 1), importing that filing's systematic omissions of the RICO enterprise

framework (SAC ¶¶124–184), Sherman Act violations (¶¶182–184), and §251(c)(3) unbundling violations (¶¶233–234). By incorporating arguments that mischaracterize the SAC's enterprise fraud as a "garden-variety business dispute," directors inherit comprehensive failures to address the statutory frameworks underlying VoIP-Pal's claims. This strategic error compounds their evasion of material SAC allegations while adopting arguments already proven insufficient to address the coordinated enterprise fraud detailed across 60+ paragraphs of the SAC.

Defendants argue individual directors face no liability for the alleged conspiracy (IMTD p. 11). In *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993), the Court endorsed the "operation or management" test to determine whether a defendant participated in the conduct of an enterprise's affairs. *Id*. at 184. According to *Reves*, "[i]n order to 'participate, directly or indirectly, in the conduct of such enterprise's affairs,' one must have some part in directing those affairs." *Id*. at 179. However, one need not hold a formal position within an enterprise in order to "participate" in its affairs. *Id*. at 179. Thus, individuals who knowingly participate in an antitrust conspiracy are personally liable. The SAC alleges the directors did so by approving tying arrangements (SAC ¶ 130, mandating cellular bundles for Wi-Fi Calling), uniform pricing policies (SAC ¶ 139, "no charge" claims), and platform exclusions with Apple and Google (SAC ¶ 350), all of which foreclosed VoIP-Pal from the market. This knowing participation is sufficient to establish personal liability, and the Court should reject defendants' argument.

Moreover, the IMTD issues a mischaracterization claiming the SAC "does not actually allege that any Individual Defendant did (or did not do) anything" (MTD at 45). In reality, the SAC systematically alleges that directors approved mechanisms forcing Wi-Fi Calling access through mandatory paid cellular plans (SAC ¶318: "Defendants' "executives and directors approved"... Access Lock mechanisms that tied Wi-Fi Calling to cellular services") and had oversight of

unlicensed deployment of VoIP-Pal's two patented technologies—including DID-based routing (SAC ¶323). The directors coordinated identical consumer-facing statements across all carriers (SAC ¶323): "Defendants engineered a closed market"... overseen by executives and directors who coordinated the exclusion of competitors"). Common purpose, identical practices, and reinvestment of racketeering income (SAC ¶¶608, 621: coordinated enterprise conduct and reinvestment into continued unlawful operations).

Additionally, Defendants argue the SAC lacks particularity for RICO fraud (IMTD pp. 27–30). Under *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 493-500 (1985), "[w]here the plaintiff alleges each element of a violation of § 1962, 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." *Id*. at 497. The SAC pleads factual allegations that satisfy this: False "no charge" claims, despite mandatory $180/month cellular bundles [for a family of four] (SAC ¶ 609), constituting mail/wire fraud (18 U.S.C. §§ 1341, 1343); Nationwide dissemination via ads, billing, and digital platforms, 2018–2024 (SAC ¶ 150); and Coordinated enterprise across three carriers, implementing uniform misrepresentations (SAC ¶¶ 128, 350, 443).

Finally, Defendants create a false framework requiring veil-piercing (IMTD at 8-10), ignoring that VoIP-Pal pleads direct statutory liability under multiple federal statutes that impose individual liability on corporate officers and directors. Defendants argue the individual directors did not direct the RICO enterprise (IMTD pp. 27–30). Under *Reves v. Ernst & Young,* 507 U.S. 170, 179 (1993), § 1962(c) liability extends to those who actively direct an enterprise's affairs. The SAC alleges the directors oversaw the enterprise's key policies: the "Access Lock" tying cellular bundles to Wi-Fi Calling (SAC ¶ 608), the "Routing Brain" controlling VoIP-Pal's two patented

technologies—including DID-based routing (SAC ¶¶ 316, 321), and uniform "no charge" pricing deceptions (SAC ¶ 321), facilitating wire fraud (SAC ¶ 609). The individual directors cannot ague they are insulated from antitrust liability (IMTD p. 11) nor face any antitrust liability (IMTD p. 11).

XIV. INDIVIDUAL DIRECTORS' TELECOMMUNICATIONS EXPERTISE ESTABLISHES KNOWLEDGE

Directors With Specialized Regulatory Knowledge: William E. Kennard (SAC ¶108) Former FCC Chairman (1997-2001) with comprehensive knowledge of telecommunications regulatory frameworks, including Section 251(c)(3) unbundling requirements that directors systematically violated. Would immediately recognize the regulatory violations alleged in SAC ¶¶233–234. Teresa Taylor (SAC ¶112) Former Chief Operating Officer of Qwest Communications with extensive knowledge of telecommunications infrastructure, regulatory compliance, competitive practices, and the substantial cost savings from Wi-Fi offloading detailed in SAC ¶142. Additional Specialized Directors: Clarence Otis, Jr. (SAC ¶117): Telecommunications experience enabling recognition of Sherman Act violations and competitive exclusion oversight; and Srinivasan Gopalan (SAC ¶111): Network operations expertise providing knowledge of VoIP-Pal's two patented technologies—including DID-based routing and technical fraud.

Financial Expertise Recognizing Fraud Indicators: Directors with financial and operations expertise would recognize the abnormal profit margins generated through: Wi-Fi offloading cost savings of billions in spectrum saving and building cell towers infrastructure (SAC ¶142); "No charge" marketing while requiring expensive cellular plans (SAC ¶151); and Unauthorized use of VoIP-Pal's technology without licensing payments (SAC ¶128-129);

Legal Expertise Establishing Statutory Knowledge: Lawyer-Directors with Non-Delegable Compliance Duties: AT&T: David R. McAtee II (Senior EVP & General Counsel), William E. Kennard (Former FCC Chairman/Attorney); Verizon: Vandana Venkatesh (EVP & Chief Legal Officer), Clarence Otis, Jr. (Attorney); and T-Mobile: Mark Nelson (EVP & General Counsel), Teresa Taylor (Former COO/Attorney). These lawyer-directors had heightened duties to ensure compliance with RICO, Sherman Act, and Telecommunications Act requirements from the moment they joined their boards.

XV. REBUTTAL TO "HARASSMENT" CHARACTERIZATION

The directors argue that VoIP-Pal's claims are "totally baseless and plainly intended to harass, vexatiously increasing the cost of the litigation" (IMTD at 12). The following are counter examples:

Mathematical Reality Contradicting Harassment Claims: Enterprise scale negating harassment part of ~$628.41 billion in gross profits documented across six years (SAC ¶493); 373 million subscribers systematically harmed through coordinated deception (SAC ¶139); Six-year coordinated pattern with identical practices across carriers (SAC ¶613); Preserved evidence including specific URLs and authenticated screenshots (SAC ¶¶153, 155, 161, 171); Post-notice continued violations despite formal warning establishing knowledge (SAC ¶280).

Specialized Director Knowledge Negating Harassment: Former FCC Chairman overseeing regulatory violations he would immediately recognize; Former telecommunications COO overseeing infrastructure fraud within her expertise; and Multiple lawyer-directors failing to ensure basic federal law compliance.

The systematic scale, specialized knowledge, and documentary support negate any harassment characterization. Moreover, the directors' acts include post-notice continuation.

Directors received formal notice of Sherman Act, RICO, and Telecommunications Act violations since becoming aware of the SAC, and at the time of Plaintiff's earlier complaints. Yet no remedial investigation or corrective action followed. Instead, the Directors filed their IMTD while violations persisted.

The IMTD portrays the directors as powerless individuals, almost as if they are innocent bystanders to the conduct of the companies. This portrayal is absurd. Aside from directing company policy and decision-making, the directors are highly-connected individuals at the top of their game from both private businesses and government agencies. These individuals are also highly compensated for their services as directors, and are personally profiting from the scheme alleged in the SAC.

A. ATTACK BASED ON INCORRECT PRODUCT IDENTIFICATION

Having reversed the tying arrangement, directors attack the SAC on IMTD page 14: "But it does not allege that cellular calling is a service that customers 'really want'... In fact, it alleges precisely the opposite—that consumers do not want cellular services; they are alleged to prefer Wi-Fi calling services." This attack confirms directors misunderstand their own conduct. The SAC correctly alleges that consumers want standalone Wi-Fi calling (the tying product) but are forced to purchase cellular services (the tied product) they neither want nor need.

B. "FREE" SERVICE ARGUMENT BASED ON INCORRECT FRAMEWORK

Directors argue on IMTD pages 14-15: "Since the complaint alleges that the carrier directors provide Wi-Fi calling to cellular customers at no additional charge, VoIP-Pal cannot state a tying claim." This argument fails because directors force consumers to purchase cellular services (not free) to access Wi-Fi calling. The relevant legal standard under *Times-Picayune Publishing*

Co. v. U.S., 345 U.S. 594, 614 (1953), requires forcing purchase of the tied product—here, cellular services that cost consumers hundreds of dollars annually.

XVI. DIRECTORS' INCORRECT MARKET POWER ANALYSIS

Directors' Misidentification Of Relevant Market: Directors argue (IMTD pp. 12-13) they lack market power in Wi-Fi calling (which they incorrectly identify as the tied product). However, the correct analysis under *Illinois Tool Works v. Independent Ink,* 547 U.S. 28, 46 (2006) requires market power in the tying product—here, Wi-Fi calling, not cellular services. SAC ¶ 30 establishes directors' monopoly control: "AT&T, Verizon, and T-Mobile now controlling over 97% of the U.S. smartphone subscriber base." This market dominance gives directors monopoly power over Wi-Fi calling because directors control access through Android OS and Apple iOS exclusionary tactics. (See also SAC ¶¶ 77, 81, 146, 164).

Platform Exclusions Create Monopoly Power In Wi-Fi Calling: The IMTD downplays device/OS integration and suggests third parties can compete for Wi-Fi calling. SAC ¶ 71 confirms the operating system control: "third party apps and those that wish to compete in the VoWi-Fi market are foreclosed from offering standalone VoWi-Fi services that take advantage of the native dialer and messaging functionalities of subscriber's smartphones because of the Directors' requirements that access to VoWi-Fi be tied to paid cellular plans." Because Wi-Fi calling is only available through director-controlled integration with Android OS and Apple iOS operating systems, directors possess absolute monopoly power over the tying product. (See also See SAC ¶ 30, ¶ 71, ¶ 164, ¶ 372).

Entry Would Be Easier" Argument Fails on Technical Reality (IMTD 14): The MTD claims that if a cheaper Wi-Fi-only plan were feasible, tying would "make it easier" for entrants (MTD p. 14). Price is beside the point when integration is foreclosed. The SAC alleges coordinated

control with OS providers over the native dialer/messaging stack and carrier-integrated Wi-Fi calling, "effectively block[ing] VoIP-Pal from commercializing its technology." SAC ¶ 372; see also ¶ 71. That device- and network-level lockout is classic foreclosure regardless of rival pricing, and it sustains a tying claim where market power in the tying product (integrated Wi-Fi calling) is used to coerce purchase of cellular bundles.

XVII. SYSTEMATIC FORECLOSURE THROUGH PLATFORM CONTROL

A. TECHNICAL INFRASTRUCTURE CONTROL PREVENTS COMPETITION

Responding to IMTD page 13-14, SAC ¶ 71 confirms foreclosure mechanism: "third party apps and those that wish to compete in the VoWi-Fi market are foreclosed from offering standalone VoWi-Fi services that take advantage of the native dialer and messaging functionalities of subscriber's smartphones because of the Directors' requirements that access to VoWi-Fi be tied to paid cellular plans." **Platform Provider Collaboration Creates Impenetrable Barrier:** Directors' systematic foreclosure extends beyond mere tying arrangements to encompass coordinated control over essential smartphone infrastructure. The collaboration between directors and operating system providers (Apple, Google, Samsung) in the actual design and implementation of platform architecture made it impossible for VoIP competitors like VoIP-Pal to achieve equal access and same privileges as the carriers. **Cross-Platform Conspiracy Evidence:** VoIP-Pal's separate antitrust action against Apple, Google, and Samsung specifically pleads the carriers as conspirators in this systematic foreclosure scheme. This coordinated exclusion across both carrier networks and device platforms creates a dual-layer foreclosure that eliminates any possibility of competitive entry, regardless of technical capability or pricing advantages.

B. DIRECTORS' FORECLOSURE ARGUMENT DISPROVEN

Directors adopt the argument of the CMTD page 14: "If that were true, and VoIP-Pal or some other would-be competitor really could sell Wi-Fi-only plans at a cheaper price... the 'tying arrangement' VoIP-Pal alleges would make it easier for new competitors to enter the market, not harder." This argument ignores the platform exclusions that prevent any competition on equal footing. Because Wi-Fi calling is only available from carriers due to platform provider exclusions, competitors cannot enter the market regardless of pricing advantages. Price is beside the point when **integration is foreclosed**. The SAC alleges coordinated control with OS providers over the native dialer/messaging stack and carrier-integrated Wi-Fi calling, "effectively block[ing] VoIP-Pal from commercializing its technology." SAC ¶ 372; see also ¶ 71. That device- and network-level lockout is classic **foreclosure** regardless of rival pricing, and it sustains a tying claim where market power in the tying product (integrated Wi-Fi calling) is used to coerce purchase of cellular bundles. **Technical Reality of Coordinated Foreclosure:** Directors' collaboration with operating system providers ensures that competitive VoWi-Fi services cannot access the native dialer and messaging functionalities essential for seamless user experience. SAC ¶ 372 establishes that directors "maintained exclusive control over carrier-integrated Wi-Fi Calling capabilities and the network-level infrastructure necessary to support them... effectively blocked VoIP-Pal from commercializing its technology." **Dual-Platform Conspiracy Creates Absolute Foreclosure:** The coordination between carriers (directors) and device manufacturers/OS providers creates an impenetrable barrier that no independent competitor can overcome through superior technology or pricing. This systematic exclusion from both network infrastructure and device integration represents the most comprehensive form of market foreclosure recognized under antitrust law.

The IMTD downplays device/OS integration and suggests third parties can compete for Wi-Fi calling. **Correction:** The SAC alleges a platform-level foreclosure: "third-party apps … are foreclosed from offering standalone VoWi-Fi services that take advantage of the native dialer and messaging functionalities … because access to VoWi-Fi is tied to paid cellular plans." SAC ¶ 71. Because integrated Wi-Fi calling is only available via carrier-controlled Android/iOS pathways, the Directors possess monopoly power over the **tying** product (integrated Wi-Fi calling), which is leveraged to force purchase of cellular bundles (the **tied** product). See SAC ¶ 30, ¶ 71, ¶ 164, ¶ 372.

XVIII. CONCLUSION TO PLAINTIFF'S OPPOSITION TO INDIVIDUAL DEFENDANTS' MTD

A. MATHEMATICAL IMPOSSIBILITY OF THE "SIX PARAGRAPHS" CLAIM

The Directors do assert they are named in "only six paragraphs" of the SAC (IMTD at 4). However, this is a red herring and the SAC pleads factual allegations for all individuals of: Party Descriptions — SAC ¶¶ 108–118 (11 paragraphs); Individual Oversight & Conduct — SAC ¶¶ 316–343 (28 paragraphs); RICO Enterprise Roles — SAC ¶¶ 607–630 (24 paragraphs). That is 63+ separate paragraphs. This ten-to-one discrepancy is a mathematical impossibility, not a matter of interpretation.

B. ADOPTION ERROR AND INCORPORATION CONSEQUENCES

The IMTD "expressly adopts and incorporates" the CMTD in full. This imports all of the CMTD's defects: Failure to address the RICO enterprise (SAC ¶¶ 124–184); Omission of Sherman Act §§ 1–2 conspiracy allegations (SAC ¶¶ 182–184); and Silence on Telecommunications Act § 251(c)(3) unbundling violations (SAC ¶¶ 233–234). Rule 10(c) makes adoption binding. Once

taken, judicial estoppel prevents retreat. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). Having adopted the Carriers' "six paragraphs" misrepresentation, the Directors are bound by it.

C. POST-NOTICE LIABILITY AND BAD-FAITH OVERSIGHT

At least the filing of the SAC, and possibly Plaintiff's earlier complaint, provide the directors with formal notice of Sherman Act, RICO, and Telecom Act violations (SAC ¶ 280). Yet no remedial investigation or corrective action followed. Instead, the Directors filed their IMTD while violations persisted. Moreover, some of the directors with specialized expertise cannot plausibly claim ignorance. Their silence after notice confirms culpable inaction.

D. SYSTEMATIC EVASION OF MATERIAL ALLEGATIONS

The IMTD repeats the Carriers' mischaracterization pattern: Scope Minimization — Reducing 63 paragraphs to six; Conduct Denial — Claiming "no acts alleged" while SAC ¶¶ 316–343 plead approvals; Rule 9(b) Distortion — Ignoring URLs, dates, and preserved fraud evidence; Jurisdictional Evasion — Omitting SAC ¶¶ 124–139 pleading D.C. impact; and Scale Inversion — Calling $628 billion in fraud "harassment."

E. FUNDAMENTAL MISCHARACTERIZATION OF DIRECTOR LIABILITY

The Directors' briefing is built on two red herrings: 1) **Veil-Piercing:** They devote pages to alter-ego arguments (IMTD at 9–10) while ignoring direct statutory liability under RICO § 1962(c), Sherman Act § 2, and Telecom Act § 251(c)(3). The SAC pleads direct participation, not veil-piercing; and 2) **Tying Theory Inversion:** They adopt the Carriers' reversal of the tying framework. Correctly stated, Wi-Fi Calling is the tying product (what consumers want); cellular services are the tied product (what consumers are forced to buy). Misstating this framework creates a strawman inconsistent with *Jefferson Parish* and *Eastman Kodak*. This mischaracterization is fatal because it rewrites the SAC's theory rather than addressing it.

F. RULE 9(b) FRAUD PARTICULARITY SATISFIED

The SAC pleads fraud with precision the who, what, when, where, and how needed to state Plaintiff's claims: URLs: AT&T (¶ 154), Verizon (¶ 156), T-Mobile (¶ 162); Timeframe: 2018–2024; Content: "No charge" misrepresentations while billing cellular plans; and Preserved Evidence: Screenshots (¶ 171). These meet Rule 9(b). The Directors' contrary assertion is not a dispute over sufficiency, but a refusal to acknowledge pled particulars.

G. JURISDICTION AND NEXUS TO D.C.

The IMTD claims no personal jurisdiction. Yet SAC ¶¶ 124–139 plead nationwide conduct harming D.C. consumers. Under *Calder v. Jones*, 465 U.S. 783 (1984), and *Burger King v. Rudzewicz*, 471 U.S. 462 (1985), this nexus suffices. Ignoring these facts amounts to jurisdictional fabrication.

H. PATENT CREDIBILITY AND FACTUAL RECORD

The Directors also inherit the Carriers' "failed patent" narrative. The record proves otherwise: 36 IPR wins with zero claim losses; § 101 victory in *VoIP-Pal v. AT&T* (N.D. Tex. 2024); Reexamination win (Dec. 2023, Twitter challenge); Claim-construction victories in W.D. Tex. Cases; < 10% invalidation vs. > 90% valid claims; VoIP-Pal's two patented technologies—including DID-based routing was deployed in 2005 and remains central. The Carriers' "failed patent" story is factually false; the Directors, by adopting it, now own the distortion.

CONCLUSION

For the foregoing reasons, Plaintiff VoIP-Pal has more than adequately pleaded facts sufficient to withstand dismissal of its claims against both the Carrier Defendants and the Individual Defendants. The SAC sets forth detailed, well-supported allegations demonstrating that the Carrier Defendants engaged in unlawful tying arrangements by conditioning access to Wi-Fi

Calling on the mandatory purchase of bundled cellular voice and texting services, thereby coercing consumers and foreclosing competition, specifically in violation of Sherman Act § 2. The SAC further alleges the Carrier Defendants, which collectively control 97% of the U.S. smartphone subscriber base and the essential technical infrastructure, are involved in a coordinated enterprise with platform providers of smartphones and smartphone operating systems and effectuating a comprehensive exclusion of competition including VoIP-Pal in the standalone Wi-Fi Calling market.

Equally, the SAC pleads extensive, director-specific allegations demonstrating the Individual Defendants' knowing participation, oversight, and approval of the unlawful tying scheme, coordinated platform exclusion, and deceptive marketing practices. These allegations include detailed factual assertions of their roles in implementing and maintaining the "Access Lock" tying mechanism, the "Routing Brain" technology appropriation of VoIP-Pal's two patented technologies, and the uniform "no charge" misrepresentations surrounding Wi-Fi Calling, all of which caused concrete antitrust injury to VoIP-Pal and consumers alike. The Individual Defendants' adoption of the Carrier Defendants' motion further binds them to the same deficiencies in those arguments.

Accordingly, the motions to dismiss filed by both the Carrier Defendants and the Individual Defendants should be denied in their entirety, allowing VoIP-Pal's claims to proceed to discovery and further adjudication on the merits.

WHEREFORE, VoIP-Pal.com, Inc. respectfully requests that the Court deny Defendants' Motions to Dismiss.

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 Points and Authorities in Opposition to Carrier and Individual Defendants' Motions to Dismiss was served on August 22, 2025 to all counsel of record via the Court's electronic filing system.

/s/ Travis Pittman
Travis Pittman