

B. Predicate Acts and Pattern 41

C. Proximate Cause 42

D. RICO Conspiracy — Cross-Tier Participation as Coordinated Enterprise Conduct Under § 1962(d)..... 42

III. VoIP-Pal’s Claims Should Not Be Dismissed with Prejudice. 43

IV. The Lock-And-Key Architecture Explains Why Four Related Actions Arise From The Same Structural Restraint..... 43

A. Related Actions 44

B. Common Structural Question and Case Management..... 45

CONCLUSION..... 45

Table of Authorities

Cases

Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 u.s. 143 (1987)..... 21

Ambellu v. Re’ese Adbarat Debre Selam Kidist Mariam, 387 f. Supp. 3d 71, 82 (d.d.c. 2019)... 41

American Dental Ass’n v. Cigna Corp., 605 f.3d 1283 (11th cir. 2010)..... 42

Andrx Pharms., Inc. v. Biovail Corp. Int’l, 256 f.3d 799, 806 (d.c. cir. 2001)..... 9, 12, 14

Anza v. Ideal Steel Supply Corp., 547 u.s. 451, 457–61 (2006)..... 42

Arpaio v. Obama, 797 f.3d 11, 19 (d.c. cir. 2015)..... 8

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).....8, 9

Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 u.s. 585 (1985)..... 33

Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 u.s. 519 (1983) 9

Banneker Ventures, LLC v. Graham, 798 f.3d 1119, 1129 (d.c. cir. 2015) 8

Bell Atl. Corp. v. Twombly, 550 u.s. 544, 556-57 (2007) 7, 8, 9, 36

Berkey Photo, Inc. v. Eastman Kodak Co., 603 f.2d 263, 293 (2d cir. 1979) 29

Bourns, Inc. v. Raychem Corp., 331 f.3d 704 (9th cir. 2003) 15

Boyle v. United states, 556 u.s. 938, 946 (2009)..... 40

Bridge v. Phoenix Bond & Indemnity Co., 553 u.s. 639 (2008)..... 42

Brown Shoe Co. v. United States, 370 u.s. 294, 325 (1962) 25, 27 29

Brunswick Corp. v. Pueblo Bowl-o-Mat, inc., 429 u.s. 477, 489 (1977) 34

Cargill, Inc. v. Monfort of Colorado, 479 u.s. 104, 111 (1986) 17

Cheeks v. Fort Myer Construction Corp., 216 f. Supp. 3d 146 (d.d.c. 2016)..... 43

Copperweld Corp. v. Independence Tube Corp., 467 u.s. 752, 768 (1984)..... 35, 36

David Orgell, Inc. v. Geary’s Stores, Inc., 640 f.2d 936, 937-38 (9th cir. 1981) 18

Domestic Airline Travel Antitrust Litig., 221 f. Supp. 3d 46, 58–60 (d.d.c. 2016)..... 38

Eastman Kodak Co. v. Image Tech. Servs., Inc., 504 u.s. 451, 464, 472–77, 482 (1992) 28, 29, 30, 39

Firestone v. Firestone, 76 f.3d 1205, 1209 (d.c. cir. 1996)..... 9, 43

Foman v. Davis, 371 u.s. 178, 182 (1962) 9

Ftc v. Surescripts, LLC, no. 1:19-cv-01080-jdb (d.d.c.) 23, 31
Genetic Sys. Corp. V. Abbott Lab ’ys, 691 f. Supp. 407, 420–21 (d.d.c. 1988) 14, 15
Hecht v. Pro-football, Inc., 570 f.2d 982, 994 (d.c. cir. 1977) 9, 12, 15
Holmes v. Securities Investor Protection Corp., 503 u.s. 258 (1992)..... 42
Ill. Tool Works Inc. v. Indep. Ink, Inc., 547 u.s. 28, 46 (2006) 38
In re Cox Enters., 871 f.3d 1093, 1108 (10th cir. 2017) 39
Interstate Circuit, Inc. v. United States, 306 u.s. 208, 222–23 (1939)..... 7, 36, 45
Islamic Am. Relief Agency v. Gonzales, 477 f.3d 728, 732 (d.c. cir. 2007) 8
Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 u.s. 2, 12–18 (1984) 38
Kaufman v. Time Warner, 836 f.3d 137 (2d cir. 2016) 38
Klehr v. A.O. Smith Corp., 521 u.s. 179, 189 (1997) 17, 19, 21, 32
Lorain Journal Co. v. United States, 342 u.s. 143, 149 (1951) 34
Meta Platforms, 66 f.4th at 305 33
Miller v. Downtown Bid Services Corp., 281 f. Supp. 3d 15 (d.d.c. 2017)..... 43
Monsanto Co. v. Spray-Rite Serv. Corp., 465 u.s. 752, 761 (1984) 36
Neder v. United States, 527 u.s. 1, 25 (1999)..... 42
New York v. Facebook, Inc., 549 f. Supp. 3d 6, 43 (d.d.c. 2021)..... 18
Newcal Indus., Inc. v. Ikon Off. Solution, 513 f.3d 1038, 1048–49 (9th cir. 2008) 22, 28, 30
Ohio v. American express co., 585 u.s. 529 (2018)..... 22, 23
Oxbow, 926 f. Supp. 2d 36 (d.d.c. 2013) 31, 32, 35, 36
Pac. Bell Tel. Co. V. Linkline commc ’ns, inc., 555 u.s. 438, 448 (2009) 31
Page v. Comey, 137 f.4th 806, 813 (d.c. cir. 2025) 8
Phantomalert v. Apple inc., 762 f. Supp. 3d 8 (d.d.c. 2025) 18, 27
RSM Production Corp. V. Freshfields bruckhaus deringer u.s. llp, 682 f.3d 1043 (d.c. cir. 2012) 42
RX Solutions, Inc. v. Caremark, l.l.c., 164 f.4th 436 (5th cir. 2026) 43, 44
Salinas v. United States, 522 u.s. 52, 63–65 (1997)..... 42
Sky Angel U.S., LLC v. Nat’l Cable Satellite Corp., 947 f. Supp. 2d 88, 102–05 (d.d.c. 2013) .. 27
Sky Angel, 33 f. Supp. 3d 14 (d.d.c. 2014)..... 36
Spanish Broadcasting, 376 f.3d 1065 (11th cir. 2004)..... 32
Spectrum Sports, Inc. v. Mcquillan, 506 u.s. 447, 456 (1993) 35
Stewart v. Nat’l Educ. Ass’n, 471 f.3d 169, 173 (d.c. cir. 2006)..... 8
Sun Dun, 740 f. Supp. At 391–92 35
United States ex rel. Heath v. AT&T inc., 791 f.3d 112, 123 (d.c. cir. 2015)..... 41
United States v. Microsoft Corp., 253 f.3d 34, 58–67 (d.c. cir. 2001) passim
Verizon Communications Inc. V. Law Offices of Curtis v. Trinko, LLP, 540 u.s. 398, 411 (2004) passim
Votevets Action Fund v. U.S. Dep’t of Veterans Affs., 992 f.3d 1097, 1104 (d.c. cir. 2021) 8
White v. Rockingham Radiologists, 820 f.2d 98 (4th cir. 1987)..... 39
Zenith Radio Corp. v. Hazeltine Research, Inc., 401 u.s. 321, 338 (1971)..... 17

Statutes

Clayton Act 7, 19
RICO Act 6, 21, 40, 42

Sherman Act..... passim

Rules

Federal Rule of Civil Procedure 12(b)(6) 3, 8, 9, 10, 12
Federal Rule of Civil Procedure 8(d)(3) 25
Federal Rule of Civil Procedure 9(b)..... 46

INTRODUCTION

A. NATIVE WI-FI CALLING

Modern smartphones can make phone calls from their native dialer over ordinary internet connections using Wi-Fi technology. These Wi-Fi calls travel over the same broadband connection used for email, video streaming, and web browsing and they don't need a cellular tower. Since these Wi-Fi calls use a smartphone's native dialer, they operate with a primary phone number on the smartphone as well as operating differently from other Wi-Fi calls made with apps like WhatsApp, Skype, and Facebook Messenger that might use the primary phone number merely as an identifier. The type of Wi-Fi calling addressed in Plaintiff's First Amended Complaint ("FAC") refers to specific types of Wi-Fi calls that enjoy access to a smartphone's native dialer with that primary phone number, calls known as VoWi-Fi calls or Wi-Fi Calling. The companies that make smartphone operating systems, specifically the Defendants Apple, Google, and Samsung (hereinafter the Platform Defendants) and the dominant cellular carriers AT&T, Verizon, and T-Mobile, reserve exclusive access to a smartphone's native dialer for Wi-Fi Calling for the cellular carriers.

The Platform Defendants have the technical ability to allow this functionality to work independently of a carrier subscription but chose not to in an exclusionary manner. Access to the default internet browser in the Windows APIs at issue in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) was a must-pass interface for any standalone internet browser, and here, the native telephony layer of iOS and Android functions are also a must-pass interface for standalone voice and messaging applications. When a platform determines which services may access and use a must-pass interface on parity (e.g., equal terms), the enforcement of those decision effectively determines whether rival voice and messaging applications can compete as in *Microsoft*.

The FAC alleges that Defendants implemented and repeatedly reinforced an authorization-and-enforcement structure conditioning parity-grade native telephony functionality on carrier-issued validation credentials — the “Lock-and-Key” architecture. FAC ¶ 100. The “Lock” consists of operating-system and firmware rules in the Platform Defendants’ smartphones controlling access to native telephony privileges, including default dialer integration, push-free wake-and-ring, call-log integration, emergency routing, quality-of-service prioritization, and control of the primary phone number. The “Key” consists of carrier-issued credentials that the Platform Defendants’ smartphones (i.e., the operating system and firmware rules) must recognize before those native telephony privileges activate. Absent validation, native status is withheld. FAC ¶¶ 68–73, 85–86, 100, 113.

B. PLATFORM GATING AND THE ABSENCE OF STANDALONE WI-FI CALLING

This case concerns whether platform operators may condition access to native smartphone telephony functionality on carrier authorization, thereby limiting the availability of standalone Wi-Fi calling as an independent alternative. Modern smartphones are capable of carrying voice calls over ordinary Wi-Fi connections without reliance on cellular networks. The issue is not technological feasibility, but how access to native telephony functionality is controlled.

Plaintiffs allege that full native telephony privileges are made available only to carrier-authorized services. Platforms implement this limitation through software controls that require carrier-issued credentials before those privileges activate. Without such authorization, a voice service cannot achieve parity-grade integration with core device functions.

Independent VoIP providers are not granted access to the same native telephony privileges, including default dialer status, system-level call handling, push-free wake-and-ring behavior, and

integrated emergency routing. As a result, over-the-top applications operate without the same level of device integration and are not substitutes for carrier-grade native telephony functionality.

Although platforms and carriers have the ability to permit standalone Wi-Fi calling and extend these privileges to independent providers, they have not done so. The Complaint alleges that the absence of a standalone, parity-grade Wi-Fi calling option reflects these access restrictions and leaves carrier-authorized services as the only pathway to full native telephony functionality.

C. THE COURT SHOULD EVALUATE THE CLAIMS AS PLEADED

Defendants' Motion seeks dismissal by recasting Plaintiffs' claims under legal theories and doctrinal frameworks that differ from those actually pleaded in the First Amended Complaint. Rule 12(b)(6) does not permit that approach. A motion to dismiss tests the sufficiency of the claims as framed by the plaintiff, not a different or reframed theory substituted by the defendants.

The Complaint alleges a specific theory of liability: a coordinated authorization-and-enforcement architecture—the “Lock-and-Key”—in which carrier-issued credentials control access to native telephony functionality and platform operating-system and firmware rules enforce that restriction at the device level. The alleged restraint arises from that combined mechanism, not from isolated design choices or unilateral conduct.

Defendants' Motion does not engage that theory. Instead, it evaluates the claims as if they involved unilateral design choices, generalized industry practices, or a refusal to deal, rather than the coordinated authorization-and-enforcement architecture alleged in the Complaint. By ignoring the Lock-and-Key mechanism and analyzing different forms of conduct, the Motion effectively substitutes a different theory of liability. That substitution distorts the pleading and invites dismissal on grounds Plaintiffs did not assert.

The proper inquiry is whether the Complaint states a plausible claim for relief under the doctrines it actually invokes, accepting its factual allegations as true and drawing all reasonable inferences in Plaintiffs' favor. By urging evaluation under different theories, Defendants effectively rewrite the Complaint to fit more favorable standards.

The Court should reject that approach and evaluate the claims as pleaded, ensuring that the sufficiency analysis proceeds on the theory Plaintiffs actually advance—not one substituted by Defendants.

BACKGROUND

A. VOIP-PAL.COM INC.

Defendants' motion starts with a fundamental mischaracterization of VoIP-Pal as merely "a patent-monetization company." That is not true. VoIP-Pal was a prepared market participant.

Plaintiff VoIP-Pal was founded with the objective of developing scalable Voice-over-IP and WiFi-based telecommunications technologies capable of providing an alternative to traditional cellular telephony. Long before such technologies became widely deployed, VoIP-Pal began building a robust and scalable technology-based solution designed to enable voice and data communications across internet-based networks. VoIP-Pal's business strategy was not limited to licensing its intellectual property portfolio, but sought to participate directly in the rapidly emerging mobile communications ecosystem by desiring to work with handset manufacturers and platform providers, including Apple, Samsung, and Nokia, to integrate VoIP-Pal's technology into next-generation mobile devices and communication platforms.

From the outset, the record reflects a sustained campaign by some of the world's largest technology and telecommunications companies, including Apple, Google, Samsung, AT&T, Verizon, and T-Mobile, to overwhelm a small innovator through costly administrative challenges

rather than engage in meaningful negotiations over the use of its intellectual property. VoIP-Pal is not a litigation-driven entity but a technology pioneer whose objective has always been to survive and grow as an industry leader in next-generation communications technology providing alternatives to traditional cellular telephony.

Consistent with that objective, VoIP-Pal repeatedly sought constructive engagement with Defendants to participate in this promising and rapidly emerging market beginning in 2014. For example, in April 2016, VoIP-Pal representatives held direct, in-person meetings with several Defendants, including discussions at AT&T's Dallas headquarters on April 19, 2016 and at Apple's headquarters in Cupertino, California on April 20, 2016. VoIP-Pal entered those discussions in good faith seeking to explore a variety of mutually beneficial paths forward, including licensing arrangements, technical collaboration, and even the potential acquisition of VoIP-Pal's intellectual property portfolio. Those discussions revealed, however, that Defendants had little interest in any business arrangement. In the April 20, 2016 meeting, Apple appeared with four in-house attorneys and outside counsel from Desmarais LLP. Rather than discuss potential commercial possibilities, Apple stated that there was "no deal to be had" and indicated that it had "yet to begin" testing VoIP-Pal's patent portfolio through administrative challenges. That statement proved to be more than rhetoric. What followed was not a good-faith effort to resolve legitimate patent concerns, but a coordinated campaign to weaponize administrative patent procedures against a small innovator—forcing VoIP-Pal to defend its patents repeatedly in costly proceedings rather than engage in meaningful commercial negotiations.

Between May 2016 and March 2023, the six Defendants collectively initiated twenty-eight separate patent challenges, including *inter partes* review petitions and other proceedings before the United States Patent and Trademark Office all directed at VoIP-Pal. These challenges were

brought in staggering numbers: eight by Apple, eight by Google, four by Samsung, four by T-Mobile, three by AT&T, and one by Verizon. VoIP-Pal won every one of those challenges. Yet the cost of successfully defending itself forced the small company to exhaust its resources in defense costs. The practical effect of such tactics is obvious: few small innovators could withstand a campaign of this magnitude, even when their patents ultimately prevail.

Defendants now attempt to recast VoIP-Pal's history as "a string of defeats," but that characterization is both inaccurate and misleading. In reality, VoIP-Pal's patent portfolio has been subjected to extraordinary scrutiny and was repeatedly validated. Of VoIP-Pal's prior litigations, only a single district court case was dismissed at summary judgment; the remaining matters concluded through voluntary dismissals or financial settlements. More importantly, VoIP-Pal prevailed in every claim construction proceeding in which it participated, including Markman hearings involving Amazon, T-Mobile, Verizon, and Samsung, and secured a favorable patent-eligibility ruling under 35 U.S.C. § 101 against Huawei in the Northern District of Texas. Most tellingly, VoIP-Pal successfully defeated all thirty-six validity challenges brought against its patents at the Patent Trial and Appeal Board, including twenty-eight filed by the Defendants before this Court and their affiliates. That record does not describe a patent portfolio built on weakness; it reflects one that has been repeatedly tested and consistently upheld. Defendants' revisionist narrative should therefore be afforded no weight in evaluating the sufficiency of VoIP-Pal's claims.

B. THE PLEADED COUNTS

Plaintiffs proceed on Counts I and II under the Sherman Act and on Counts V and VI under RICO, 18 U.S.C. §§ 1962(c) and (d). Counts III and IV (Clayton Act §§ 3 and 7) are withdrawn. Counts VII and VIII (RICO §§ 1962(a) and (b)) are not pursued. Accordingly, Plaintiffs intend to file a notice of voluntary dismissal of Counts III, IV, VII, and VIII.

1. Count I — Sherman Act § 2: Exclusionary Product Design at the Native Telephony Interface

Count I proceeds under the product-design maintenance framework recognized in *United States v. Microsoft Corp.*, 253 F.3d 34, 58–67 (D.C. Cir. 2001). The FAC alleges that Platform Defendants embedded operating-system and firmware rules in their smartphones conditioning parity-grade native telephony privileges on carrier-issued validation credentials at a must-pass device-level enforcement interface. FAC ¶¶ 68–73, 85–86, 100. Under *Microsoft*, exclusionary technical restrictions implemented at a platform interface controlling downstream competition may violate Section 2 even absent a prior business relationship with excluded competitors. The Motion instead appears to evaluate Count I under the refusal-to-deal doctrine of *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004), characterizing the conduct as “longstanding designs” and a “refusal to redesign firmware.” MTD at 1, 16–19. The Motion’s reframing is outcome-determinative only because *Trinko* limits liability for refusals to share existing infrastructure, whereas *Microsoft* addresses exclusion embedded directly in a monopolist’s own product architecture.

2. Count II — Sherman Act § 1: Bilateral Conditioning Requiring Both Sides to Produce the Foreclosure

Count II likewise proceeds on a different doctrinal basis than the MTD assumes, specifically the structural interdependence framework recognized in *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 222–23 (1939). The FAC alleges a bilateral authorization-and-enforcement structure (i.e., the Lock-and-Key architecture) in which platform operating-system rules and carrier-issued validation credentials operate together to produce the foreclosure. FAC ¶¶ 100, 141–142, 171–181. The MTD instead evaluates Count II as a parallel-conduct conspiracy governed by *Twombly*. MTD at 12–15. Plaintiff pleads a different theory as under *Interstate*

Circuit, agreement may be inferred where each participant’s conduct is rational only if the other performs its complementary role — precisely the structural interdependence alleged in the FAC.

LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint (or counterclaim) “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face,’” although the allegations need not be “detailed.” *VoteVets Action Fund v. U.S. Dep’t of Veterans Affs.*, 992 F.3d 1097, 1104 (D.C. Cir. 2021) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The alleged facts must not be “‘merely consistent with’ a defendant’s liability” but rather must “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007)). “A complaint survives a motion to dismiss even ‘[i]f there are two alternative explanations, one advanced by [the] defendant and the other advanced by [the] plaintiff, both of which are plausible.’” *VoteVets Action Fund*, 992 F.3d at 1104 (alterations in original) (quoting *Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015)).

In assessing the sufficiency of a complaint under Rule 12(b)(6), a court’s consideration is limited “to materials properly before it,” including, in this Circuit, “‘the facts alleged in the complaint, [and] documents attached thereto or incorporated therein.’” *Page v. Comey*, 137 F.4th 806, 813 (D.C. Cir. 2025) (alterations in original) (quoting *Stewart v. Nat’l Educ. Ass’n*, 471 F.3d 169, 173 (D.C. Cir. 2006)). All factual allegations in the complaint must be accepted as true, “even if doubtful in fact,” *Twombly*, 550 U.S. at 555, though the court does “not assume the truth of legal conclusions, nor . . . ‘accept inferences that are unsupported by the facts set out in the complaint,’” *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015) (quoting *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 732 (D.C. Cir. 2007)).

Dismissal with prejudice is appropriate only where amendment would be futile — where the complaint could not state a claim as a matter of law even if amended. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996). The burden rests with Defendants.

ARGUMENT

I. VOIP-PAL'S PLEADINGS PLAUSIBLY STATE ITS ANTITRUST CLAIMS

A. VoIP-Pal Has Antitrust Standing.

Antitrust standing under the *AGC* framework is a merits question governed by Rule 12(b)(6). The Court evaluates Plaintiff's standing allegations under the plausibility standard of *Twombly* and *Iqbal*, accepting factual allegations as true. The First Amended Complaint ("FAC") plausibly alleges antitrust standing under the framework articulated in *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519 (1983). Relevant considerations include the causal connection between the violation and the plaintiff's injury, the nature of the injury and whether it is of the type the antitrust laws were intended to redress, the directness of the injury, the speculative character of the damages, the existence of more direct victims, and the risk of duplicative recovery or complex apportionment. *See AGC*, 459 U.S. at 535, 542-45 & n.31. Where the plaintiff was not yet fully operating in the restrained market, the D.C. Circuit requires a potential competitor to plead "both its intention to enter the market and its preparedness to do so." *Andrx Pharms., Inc. v. Biovail Corp. Int'l*, 256 F.3d 799, 806 (D.C. Cir. 2001). "Indicia of preparedness include adequate background and experience in the new field, sufficient financial capability to enter it, and the taking of actual and substantial affirmative steps toward entry." *Id.* (quoting *Hecht v. Pro-Football, Inc.*, 570 F.2d 982, 994 (D.C. Cir. 1977)). As discussed below, the FAC plausibly satisfies each of these requirements.

1. VoIP-Pal Is a Market Participant, Not a Passive Supplier

Defendants assert that VoIP-Pal merely alleges its technology “*could* be used to offer Wi-Fi calling services” but “does not allege that it has ever offered such a service (or any other product) or that it has ever had any customers.” MTD at 3 (Dkt. 30-1 at 12). Defendants assert that VoIP-Pal “does not allege that VoIP-Pal has ever offered standalone commercial Wi-Fi calling services”; that “[t]here is no allegation that VoIP-Pal or Digifonica ever provided its service to anyone”; and that VoIP-Pal “apparently did not even ‘plan to offer the VoIP service to end customers directly, only providing the service through partner companies, who also have the responsibility of providing first-line support to their customers.’” MTD at 7 (Dkt. 30-1 at 16) (quoting Dkt. 9-1 at 39). Every element of this characterization is refuted by the FAC, by its appendices (including the very document Defendants cite), by the ’815 patent, and by judicially noticeable public records.

The FAC plausibly pleads that VoIP-Pal through its predecessor, Digifonica, was a market participant, not merely a supplier: it had a “very functional system operational” (¶79); it had an “independently validated, live system in operation” (¶79); “not a speculative actor or a paper-only entity” (¶78). The FAC asserts that VoIP-Pal “*was* an *existing* VoIP service provider” (¶68 [emphasis added]), “live and functioning by June 2005” (¶81). The FAC pleads a system that was “ready and operable” (¶84), with “commercial readiness” verified by a third party audit (¶157). In the context of these assertions, the Defendants’ reading of the statement that VoIP-Pal was “ready” to offer services (¶¶26, 78, 167) as merely being aspirational is simply unreasonable. Not only are these are factual allegations that must be accepted as true at the Rule 12(b)(6) stage, they are backed by the very appendices Defendants cite: the Smart421 audit confirming live service, and Exhibit 2020 confirming a Wi-Fi capable design.

Smart421—an independent UK-based technology consultancy—conducted an on-site audit at Digifonica’s Vancouver offices in June 2005, comprising document review, technical inspection, and live demonstrations. Dkt. 9-1 at 37-71. The report’s findings, stated in the present tense, describe a company that was providing a live commercial service—not a company with plans to do so someday: “VoIP provision *is provided* by Digifonica as a wholesale service through a range of reseller arrangements.” Dkt. 9-1, p. 2 of 35 (emphasis added). The report identifies “the current live system” with “reseller and customer details” in a production database, code “tested in live operation,” and a development process “now more formal, as expected of a company now responsible for live service provision and maintenance.” *Id.* at pp. 4, 9, 14. Smart421’s auditors even discovered a live, branded reseller deployment—“Klondike”—with operational user accounts had a branding defect in its voicemail service, proving an active white-label deployment was serving a customer. *Id.* at p. 26. The Smart421 technical review of the Digifonica system in the FAC appendices further establishes Digifonica was a market participant.

Critically, the system that Smart421 audited was not limited to a particular transport medium. The “Next Generation Networks” (NGN) technology overview (Exhibit 2020, Dkt. 9-1, pp. 332-408)—expressly identifies “*Wifi* 2400Mhz Radio” as Transport Layer technologies supported by the platform. Dkt. 9-1 at 339 [emphasis added]. The document states that the system “does not ... demand any specific layer 2/3 technology implementation” and lists “Wifi/WiMAX” as a typical underlying network. *Id.* at 340. The platform was designed to “provide full roaming capability where we do not specify nor care how the terminal connects to the Internet.” *Id.* at p. 353. This demonstrates that Digifonica’s live VoIP service was architecturally designed to deliver calls over Wi-Fi as a named, designed-for transport layer—not merely as a theoretical possibility.

Indeed, Digifonica's mobile gateway patent (*e.g.*, US 8,630,234) mentions using Wi-Fi for calling (col. 9, ll. 8-13; col. 10, ll. 53-58, col. 11, ll. 48-52).

Defendants cite the Smart421 report as establishing that VoIP-Pal did not even plan to offer the VoIP service directly to end customers. Motion at 7, citing Dkt. 9-1 at 39. But Smart421 was primarily evaluating Digifonica's technology, not its commercialization plans, so the statement is out of scope. Defendants ignore Smart421's disclaimer that this is "a technical review only, with limited scope" that "does not include any assessment of the commercial viability or marketability." Dkt. 9-1 at 43. Smart421 recognized that Digifonica was pursuing "a wholesale service through a range of reseller arrangements," but that *focus* did not necessarily foreclose other commercialization models. *Id.* at 39. Indeed, Digifonica's NGN paper is explicit that the system was designed to be "flexible enough to accommodate new models as they occur." Dkt. 9-1 at 342.

2. The FAC Satisfies Each Preparedness Factor

The preceding section cited evidence that VoIP-Pal had actual market participation. But even if this evidence is deemed to be insufficient, VoIP-Pal still has a basis for standing. Where a plaintiff is not yet fully operating in the restrained market, the D.C. Circuit requires a showing of "adequate background and experience in the new field, sufficient financial capability to enter it, and the taking of actual and substantial affirmative steps toward entry." *Andrx*, 256 F.3d at 806 (quoting, 570 F.2d at 994). The D.C. Circuit assesses preparedness during the period of the restraint, not at the time of filing. *Hecht*, 570 F.2d at 994.

Background and experience. Digifonica employed over a dozen professionals including three Ph.D.-qualified engineers and spent over \$15 million developing a VoIP platform. Dkt. 9-1 at 2 (Appendix A). Smart421 validated the platform as "a very functional system [that was] operational," with "very well written" code "tested in live operation." FAC ¶ 79; Dkt. 9-1 at 57

(Smart421 report). The FAC asserts an “independently validated, live system” with “commercial readiness.” FAC ¶¶ 79, 157. The technology led to the issuance of multiple patents. FAC ¶ 84.

Financial capability. Over \$15 million was invested in technology development. Dkt. 9-1 at 2. Consumer pricing was developed at approximately \$6.50 per month for a single line and \$20 for a family plan. FAC ¶ 78. Production billing infrastructure with three-tier revenue-share logic—subscriber charge, reseller charge, and operator charge—with live account balance-updating confirms concrete commercial economics. Dkt. 9-1 at 148 (software design). And VoIP-Pal has successfully defended the validity of its patents, despite thirty-six *inter partes* reviews being filed against its patents (twenty by the Platform Defendants, seven by their carrier co-conspirators)—with no claims lost.

Substantial affirmative steps toward entry. VoIP-Pal took affirmative steps across multiple market-entry channels. The Smart421-validated platform itself operated with live reseller customers, including the Klondike reseller deployment. Dkt. 9-1 at 62. Between 2008 and 2014, VoIP-Pal launched multiple consumer products—JustCallMe (2008, a Wi-Fi calling service distributed through Nokia at £5.99/month), PointsPhone, and PlatinumPhone—the latter two deployed on Defendants’ own app platforms. See Exhibit 1, §§A-C (judicially noticeable public records of press releases, websites and app store listings). Between 2014 and 2023, VoIP-Pal made documented licensing proposals to Defendants, providing technical information and proposing technology partnership and licensing terms. Defendants rejected these proposals and also indicated they “would not be bound by Plaintiff’s licenses granted to third parties,” thus destroying not only VoIP-Pal’s direct licensing revenue but also the downstream demand to license other providers. Dkt. 9-3 at 14-15 (Appendix C). Exhibit 1, §D contains a proffer of evidence of steps taken to commercialize through partnership with the Defendants.

Intent to compete. VoIP-Pal pursued commercialization continuously from 2005 through 2023 across wholesale infrastructure, consumer products, and licensing outreach to Defendants. An entity that pursues commercialization across multiple channels over nearly two decades has demonstrated intent to compete.

3. Defendants' Standing Arguments Fail on the Plead Record

With VoIP-Pal showing that it was a market participant and also satisfies the *Andrx* indicia of preparedness, Defendants' standing argument can be shown to fail on the pleaded record. First, Defendants claim VoIP-Pal concedes it has not commercialized its technology. MTD at 3 (citing FAC ¶113). But ¶ 113 describes the *consequences* of Defendants' foreclosure—not a concession of non-participation. Specifically, the Lock-and-Key exclusion “denied native parity on subscriber-owned devices, making it impossible to conduct credible pilots, raise capital, secure distribution, or license its technology.” FAC ¶ 113. Treating a plaintiff's description of defendant-caused harm as a concession of incapacity would immunize any monopolist whose exclusion was totally effective.

Second, Defendants invoke *Genetic Sys. Corp. v. Abbott Lab 'ys*, 691 F. Supp. 407, 420–21 (D.D.C. 1988) for the proposition that technology suppliers lack standing in their customers' markets. *Genetic Systems* involved a passive component supplier that sold laboratory reagents to hospitals and claimed injury from monopolization of the hospital diagnostic-testing market. The supplier did not itself participate in the restrained market; its injury was entirely derivative through downstream customers. But VoIP-Pal developed and operated a complete telecommunications platform, launched consumer products including on Defendants' own app stores (Ex. 1, §§A-C); it operated wholesale infrastructure with routing, billing, rating, and quality-of-service management on its own platform. See Dkt. 9-1 at 39 (wholesale operations); *id.* at 62 (live

Klondike deployment). Its injury occurs at the OS interface—the platform gate—before any downstream deployment can occur. The injury is direct, not derivative. *Genetic Systems* is inapposite.

Third, VoIP-Pal's current corporate posture does not negate standing. Defendants point to SEC filings reflecting no employees, no revenue, no R&D expenditure, and no facilities as dispositive evidence of non-participation. MTD at 3, 8. Those disclosures do not answer preparedness during the relevant period. Preparedness is assessed during the period of the restraint, not at the time of filing. *Hecht*, 570 F.2d at 994. The Lock-and-Key architecture was implemented and extended—with consequences for VoIP-Pal's ability to compete and commercialize its technology. Defendants' argument also overlooks that some commercial opportunities from investors and potential partners did not materialize in part because of doubts created by the coordinated attacks Defendants launched against VoIP-Pal's patent portfolio. VoIP-Pal's condition is the predictable consequence of more than a decade of architectural foreclosure, compounded by Defendants' own twenty-seven *inter partes* review proceedings (apart from any non-defendant IPR's) that consumed VoIP-Pal's resources and chilled potential commercial partnerships. When every commercialization mode—OEM integration, white-label licensing, reseller partnerships, direct consumer deployment—being architecturally blocked at the platform gate, and the company's core patents being under attack by the most powerful companies in the industry, an infrastructure provider is left with only its technology and the patents defending it. VoIP-Pal's current posture reflects what Defendants did to it, not what VoIP-Pal chose. Treating the consequences of exclusion as evidence of non-preparedness inverts cause and effect.

Fourth, *Bourns, Inc. v. Raychem Corp.*, 331 F.3d 704 (9th Cir. 2003), is distinguishable. *Bourns* involved neither concrete entry steps nor a viable market—both of which the FAC

affirmatively alleges. VoIP-Pal took concrete steps including deploying consumer products, building wholesale infrastructure with live customers, and making licensing proposals to Defendants. And the record identifies a distinct Wi-Fi calling market that historically existed: providers including FreedomPop, Republic Wireless, Scratch Wireless, RingPlus and Freewheel offered Wi-Fi calling at low price points before being eliminated. Dkt. 9-3 at 2-12 (Appendix C).

4. VoIP-Pal Is the Efficient Enforcer

The remaining *AGC* factors confirm VoIP-Pal is the entity best positioned to litigate the architectural exclusion claims. The exclusion operates at the operating-system gate through which telephony services must pass to achieve native integration. The directly injured party is the VoIP platform blocked at that interface, not merely the downstream consumer who pays the resulting overcharge.

No more direct victims exist. Carriers participate in the restraint and have no incentive to challenge it. Consumers suffer a categorically different injury—downstream overcharges and lack of “bundle” choice—but that does not reach the platform-access interface. Individual VoIP application developers may suffer particular harms but lack the platform-level infrastructure claims that go to the architectural foreclosure itself. VoIP-Pal is the efficient enforcer.

No risk of duplicative recovery. The consumer class action (No. 1:25-cv-01970-RDM) addresses a categorically distinct injury—downstream overcharges to end users—that differs in kind, proof model, and damages methodology from VoIP-Pal’s claim of direct exclusion at the platform-access interface. The two injuries arise at different points in the distribution chain and require different proof. All cases are currently being coordinated by the same Court, which further aids in avoiding the risk of duplicative recovery.

Damages are not speculative. VoIP-Pal's damages are anchored to a real destroyed market: providers including FreedomPop, Republic Wireless, Scratch Wireless, RingPlus, and Freewheel operated at documented price points before each was eliminated, providing a non-speculative baseline for the infrastructure licensing revenue VoIP-Pal would have generated. Dkt. 9-3 at 2-9 (Appendix C). Standing for injunctive relief, moreover, does not require a plaintiff to quantify its damages with precision. See *Cargill, Inc. v. Monfort of Colorado*, 479 U.S. 104, 111 (1986) (plaintiff seeking injunctive relief under Clayton Act § 16 must demonstrate threatened injury of the type the antitrust laws were designed to prevent, not actual damages).

B. VoIP-Pal's Antitrust Claims Are Not Barred by Any Statute of Limitations.

Plaintiff's FAC alleges repeated platform-level engineering decisions implemented through successive operating-system and firmware rule releases of Platform Defendants' smartphones that removed existing capabilities, introduced new exclusionary architecture, and eliminated previously available integration pathways. Each new smartphone sold or licensed by the Platform Defendants adds to compound the Plaintiff's injuries. The alleged conduct is therefore not a single historical refusal to deal and a series of overt platform design decisions that repeatedly modified operating-system architecture to exclude non-carrier telephony services from a must-pass distribution interface and created new disparities. Where a complaint alleges continuing conduct and new overt acts causing new injury within the limitations period, dismissal is improper as each overt act that is part of the violation and that injures the plaintiff starts the statutory period running again. *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). The act must be new and independently injurious—not merely the continuing effect of a completed act. *Klehr*, 521 U.S. at 190.

The Motion argues the claims accrued in 2014 and are time-barred, relying on *David Orgell, Inc. v. Geary's Stores, Inc.*, 640 F.2d 936, 937-38 (9th Cir. 1981), and *New York v. Facebook, Inc.*, 549 F. Supp. 3d 6, 43 (D.D.C. 2021). MTD at 9-10. Both are inapposite. *David Orgell* involved a single completed refusal with no subsequent act; *Facebook* involved passive continuation of previously acquired properties. The FAC alleges neither and includes factual allegations of repeated platform-level engineering decisions implemented through successive operating-system releases that removed existing capabilities, introduced new exclusionary architecture, and eliminated previously available integration pathways. These acts are not the inevitable downstream consequences of a fixed 2014 design; they are release-specific engineering decisions evolving the architecture itself so as to independently injure Plaintiff. The FAC alleges affirmative engineering acts implemented through new code and deployment cycles within the limitations period. Appendix B. Moreover, *PhantomALERT v. Apple Inc.*, 762 F. Supp. 3d 8 (D.D.C. 2025) involved static product-design allegations rather than the successive engineering acts alleged here.

1. Affirmative New Acts Within the Limitations Period

FAC Appendix B (Dkt. 9-2) documents in over 41 pages how each platform's evolution has included repeated engineering decisions—across APIs, frameworks, firmware, and messaging protocols—that systematically exclude non-carrier telephony providers from OS-level parity with carriers. The technical details are numerous and shift with each release, but the direction is uniform: every change widens the disparity. The following acts are illustrative, not exhaustive. They are the tip of the iceberg. Ex. 1 (§§ F–H) provides additional judicially noticeable examples, most published by Defendants themselves, identified since FAC Appendix B was compiled.

The following overt acts each constitute new conduct causing new injury within the four-year *Sherman Act* window. They are not maintenance of a past design but new engineering decisions implemented through new code and deployment events. The Motion claims all injury flowed from 2014 design decisions. MTD at 9. Each of the categories of acts below independently refutes that proposition. Google both removed the SIP stack (android.net.sip) and deprecated the native RTP stack (android.net.rtp) at API level 31 (Oct. 2021), executing AOSP commits tagged “sip-removal” to eliminate calling and media-transport infrastructure available since Android 2.3 (2010). Dkt. 9-2 at 5-7. Google preserved RTP support for carrier telephony through CarrierConfigManager. *Id.* at 7. Google’s acts destroying existing VoIP infrastructure are new injuries under *Klehr*. Google introduced IMS Single Registration, consolidating VoLTE, VoWiFi, and RCS under a unified IMS framework restricted to “preinstalled applications” with carrier-level permissions. Dkt. 9-2 at 13. Because this architecture is new in Android 12, its creation constitutes a new act causing new injury. *See also* examples in Ex. 1 (§G).

Beginning in 2024, Apple deployed new telephony frameworks (*e.g.*, TelephonyMessagingKit) in iOS 18, a new framework enabling SMS, MMS, and RCS messaging—but restricted it to apps holding carrier entitlements and deployed it only in the European Union. Dkt. 9-2 at 24-25. Apple also introduced RCS messaging in iOS 18, albeit as inferior to iMessage, and locked independent VoIP applications out of even this second-tier implementation. *Id.* at 25-26. Because these capabilities did not exist prior to 2024, their creation and selective withholding from the U.S. market constitute new acts causing new injury. *See also* further examples in Ex. 1 (§F).

In 2025, Samsung removed OEM Unlock in One UI 8 firmware, eliminating both the settings toggle and the bootloader code required to unlock the device—the last pathway for

independent modification of the telephony stack. Dkt. 9-2 at 33. Removing a previously available capability constitutes a new overt act causing new injury. Beginning in 2022, Samsung collaborated with Google to deploy Google Messages as the default messaging platform on Samsung devices starting with the Galaxy S22, later discontinued Samsung Messages, and in January 2025 terminated its own RCS support entirely. Dkt. 9-2 at 34-35. Because modern telephony platforms integrate calling and messaging as a unified service, this consolidation under Google's carrier-exclusive RCS framework further foreclosed independent VoIP providers from offering a competitive telephony product on Samsung devices. *Id.* at 34. *See also* further examples in Ex. 1 (§H).

2. Supporting Structural Evidence

The Platform Defendants' own documentation confirms ongoing structural discrimination against non-carrier telephony services. Google documentation states that third-party calling apps must give carrier calls priority and that the preloaded dialer is always used for emergency calls regardless of which app holds the default role. Dkt. 9-2 at 8-9. Apple documentation specifies that FaceTime and Wi-Fi Calling receive automatic network-level QoS priority while third-party VoIP applications receive none unless specifically whitelisted through enterprise MDM configuration. Dkt. 9-2 at 27-29. These statements confirm that the discriminatory architecture continues to be implemented in successive software releases rather than merely maintained from a completed act. The Motion does not even attempt to refute the technical evidence of a continuously evolving, carrier-exclusive "lock" of native telephony functions. Dkt. 9-2, *passim*.

3. A "Decimated" Market in 2014 Does Not Establish a Time Bar

The Motion relies on earlier statements describing the independent Wi-Fi telephony market as "decimated" by 2014. MTD at 9. But that language describes an initial competitive impact, not

the completion of all injury. Subsequent acts within the limitations period destroyed additional infrastructure, created new exclusionary systems, and eliminated remaining integration pathways. Under *Klehr*, the relevant question is whether new independently injurious acts occurred within the statutory window. 521 U.S. at 190. They did.

4. RICO Timeliness

The same analysis applies to the RICO claims. The Motion says the RICO claims are time-barred under *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143 (1987). MTD at 28-29. Yet each operating-system release was accompanied by renewed developer documentation describing public APIs for third-party telephony integration while omitting that native telephony functions are gated behind carrier-authorization conditions that no independent VoIP provider can satisfy. These repeated omissions constitute new predicate acts within the statutory window.

C. VoIP-Pal Clearly Alleges a Relevant Market.

1. Market Structure

The FAC pleads a layered market structure with a primary downstream market, alternative upstream enablement markets, and further alternatives. Rule 8(d)(3). The **primary downstream market** is the U.S. market for natively integrated Wi-Fi calling services: calling services delivered over Wi-Fi that function with handset-level integration comparable to the device's native calling experience. This market encompasses multiple service models, including Wi-Fi-only services, Wi-Fi-first services with limited cellular backup, and carrier-bundled Wi-Fi calling all sharing the commercially meaningful characteristic of native handset integration. FAC ¶¶ 12–18, 27, 61–63, 68–73, 82–86, 170; FAC App. C (Dkt. 9-3) at 4–6. Carrier bundles are relevant not because plaintiff sought to sell carrier bundles, but because Defendants conditioned native Wi-Fi calling integration

on buying or retaining those bundles and thereby used them as the commercial vehicle through which the restraint operates.

In the **alternative**, the FAC pleads platform-specific aftermarkets for parity-grade native Wi-Fi calling enablement services (the OS-level interfaces, permissions, validation mechanisms, system-integration pathways, and related administrative access necessary for a third-party Wi-Fi calling product to achieve native-grade integration on the relevant platform). On iOS, Apple alone supplies these enablement services. On Android, Google controls the equivalent pathways. FAC ¶¶ 13–16, 86, 100–108. Once a subscriber is locked into a platform ecosystem, there is no substitute source for parity-grade native Wi-Fi calling enablement on that device. These alternative upstream markets are cognizable as aftermarkets or bottleneck markets under *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 472–77, 482 (1992); *Newcal Indus., Inc. v. Ikon Off. Solution*, 513 F.3d 1038, 1048–49 (9th Cir. 2008); and *United States v. Microsoft Corp.*, 253 F.3d 34, 50–71 (D.C. Cir. 2001) (en banc). Consumers could not reasonably anticipate at the time of device purchase that the platform operator would restrict parity-grade native Wi-Fi calling access to carrier-authorized services, or that subsequent OS updates would progressively entrench that restriction. As a **further alternative**, the FAC supports platform-specific downstream markets: an iOS-specific natively integrated Wi-Fi calling services market in which Apple holds gatekeeper control, and an Android-specific natively integrated Wi-Fi calling services market in which Google holds gatekeeper control. Rule 8(d)(3).

Defendants overread *Ohio v. American Express Co.*, 585 U.S. 529 (2018). The challenged restraint is not a credit-card-style transaction platform in which a simultaneous transaction occurs only if both sides agree to use the same network. It is a gatekeeping rule embedded in OS and firmware architecture that determines which Wi-Fi calling providers may obtain native-grade

integration on the device. The *Microsoft* court did not apply two-sided analysis to the Windows operating system despite Windows serving both end users and software developers. The same reasoning applies here.

Microsoft supplies the closer framework because the alleged monopoly sits at a software control layer that governs downstream competition. 253 F.3d at 50–71. *FTC v. Surescripts, LLC* is also supportive. *Surescripts* involved identifiable intermediary service markets — electronic routing and electronic eligibility for e-prescribing. But the underlying principle is the same: *Surescripts* confirms in this Court that antitrust analysis may focus on an intermediary bottleneck layer rather than only on the downstream retail service, and that *American Express* does not automatically defeat a Section 2 monopolization claim merely because the system exhibits cross-side effects. *See* 424 F. Supp. 3d 92, 106–07 (D.D.C. 2020) (denying motion to dismiss); *see also* 665 F. Supp. 3d 14, 44 (D.D.C. 2023) (granting partial summary judgment on market definition and monopoly power). Even if the Court were to apply some form of *American Express* analysis, the FAC alleges harm on all sides of the alleged platform: consumers pay inflated bundle costs and lose access to lower-cost Wi-Fi-centric alternatives; independent Wi-Fi calling providers are excluded; and innovation in Wi-Fi calling is suppressed.

2. Upstream Markets: Platform-Specific Native Wi-Fi Calling Enablement Services

The upstream markets concern platform-specific native Wi-Fi calling enablement services supplied by the operator of each mobile operating system to third-party Wi-Fi calling providers seeking native-grade integration with the device’s calling environment. The economic structure of these markets is straightforward:

Buyer: Any third-party Wi-Fi calling provider or developer seeking to offer a natively integrated Wi-Fi calling service on the platform.

Seller: The platform operator — Apple for iOS, Google for Android.

Output: The integration bundle — the OS-level interfaces, validation pathways, administrative approval, and system hooks necessary for a Wi-Fi calling product to function at native grade on the device.

No substitute: Only the platform operator can supply the enablement layer for that platform’s locked-in users. App-store distribution without parity-grade integration leaves the provider in degraded app mode — a separate application with delayed push notifications, no native ringing, no system call-log integration, and no emergency hooks. FAC ¶¶ 12–18, 61–63.

Apple and Google each control the only practical path to native-grade Wi-Fi calling within devices already locked into their ecosystems. On iOS, Apple alone determines whether a Wi-Fi calling service can obtain the privileged native treatment tied to carrier entitlements and IMS recognition. FAC ¶¶ 12–15, 86, 101–102. On Android, Google controls the OS-level privilege and configuration pathways that determine whether a Wi-Fi calling service can achieve native-grade integration. FAC ¶¶ 13–16, 86, 103–104. Apple and Google offer some call-integration tools to third-party developers, including default-calling-app or default-dialer pathways. Those tools do not defeat the FAC’s theory but sharpen it. Samsung’s Galaxy firmware reinforces Android-side foreclosure by adding an OEM enforcement layer — CSC configurations, allow-listing, and bootloader restrictions — that can independently withhold native Wi-Fi calling privileges on Samsung devices. FAC ¶¶ 15–16, 86, 105–106. In the alternative, those controls support a Galaxy-specific enablement aftermarket. FAC ¶¶ 105–106.

3. Downstream Market: Natively Integrated Wi-Fi Calling Services

The downstream market is the U.S. market for natively integrated Wi-Fi calling services — the market where the competitive foreclosure is felt and measured. Natively integrated Wi-Fi calling is not “voice communication in the abstract.” It is a commercially distinct category: Wi-Fi calling services functioning with handset-level native integration — default-number treatment, native wake-and-ring, system call-log integration, emergency hooks, and comparable quality of

service — delivered over broadband infrastructure. Free OTT applications such as Skype, WhatsApp, or FaceTime Audio do not supply natively integrated Wi-Fi calling. They operate in degraded app mode, without native dialer integration, with delayed push notifications, without system call-log integration, and without emergency hooks. Those differences are not cosmetic — they explain why more than 373 million U.S. subscribers continue to pay for carrier bundles despite universal free OTT availability. The defense argues that FAC ¶ 27 (describing Wi-Fi calling as a “lower-cost alternative”) and ¶ 122 (describing Wi-Fi calling as a “true alternative”) are admissions of interchangeability. They are not. Those paragraphs describe consumer aspiration for standalone telephony in a neutral architecture — what consumers *would* use if native-grade alternatives were available. They do not concede that degraded OTT apps are adequate substitutes for the native-grade product consumers are forced to obtain only through carrier bundles.

4. Historical Evidence and Brown Shoe Market Indicators

Appendix C documents that Wi-Fi calling services — including Wi-Fi-only, Wi-Fi-first, and unbundled plans — actually operated in the U.S. marketplace. FAC App. C (Dkt. 9-3) at 4–8. These historical offerings share a common denominator: all were marketed as lower-cost Wi-Fi-centered calling alternatives where native integration was the commercially decisive choke point. The FAC plausibly alleges a distinct market or submarket under *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962). Each practical indicium is established from the FAC and Appendix C:

Industry recognition. The Economist, CCG Consulting, Light Reading, CNET, and The Verge each recognized Wi-Fi calling as a distinct product category. The Economist predicted in 2015 that Wi-Fi-first technology would be “great for consumers, disruptive for mobile firms.” CCG Consulting wrote that Wi-Fi calling represented “the beginning of a shift” that “could really shake up the cellular industry.” Light Reading described Republic Wireless, Scratch Wireless, and

other entrants as showing “an appetite for a WiFi-fueled alternative.” CNET wrote of Republic Wireless: “In terms of pure bang for the buck, no major carrier offers anything close.” Columnist Walt Mossberg asked: “The real question, to me, is why there are so few other choices in Wi-Fi-first calling.” FAC App. C (Dkt. 9-3) at 4–6.

Distinct prices. Wi-Fi calling services were marketed at dramatically lower prices than carrier bundles, ranging from free (Scratch Wireless’s free unlimited Wi-Fi calling plan; FreedomPop’s free Wi-Fi-first plan) to approximately \$5/month (Republic Wireless’s Wi-Fi-only plan; FreedomPop’s Wi-Fi calling plan). By contrast, carrier bundles require consumers to purchase full cellular plans at materially higher monthly costs. FAC ¶ 27; FAC App. C (Dkt. 9-3) at 4–6. **Specialized vendors.** Multiple companies marketed Wi-Fi calling services outside the conventional carrier bundle model: Freewheel (Wi-Fi only, no cellular backup), Republic Wireless, FreedomPop, and Scratch Wireless (Wi-Fi-first with limited cellular backup), and RingPlus and Red Pocket Mobile (unbundled plans with differentiated minute allocations). FAC App. C (Dkt. 9-3) at 4–8. **Peculiar characteristics.** The product’s distinguishing feature is native handset integration delivered over broadband infrastructure — default-number treatment, native wake-and-ring, system call-log integration, emergency hooks, and comparable quality of service. FAC ¶¶ 12–18, 61–63, 70, 82–86.

Cross-elasticity of demand. Cross-elasticity of demand. Revealed consumer behavior is strongly consistent with non-substitutability. More than 373 million U.S. subscribers continue to pay for carrier bundles despite the universal availability of free OTT voice applications. If free OTT alternatives were adequate substitutes for natively integrated Wi-Fi calling, rational consumers would have migrated rather than continue paying for carrier plans. The persistence of carrier bundle demand cannot be explained by cellular coverage, phone number portability, or habit

alone: if consumers valued only those features, there would be no commercial reason for carriers to embed Wi-Fi calling into the bundle and condition native access on carrier authorization. FAC ¶ 27; *Brown Shoe*, 370 U.S. at 325. Conversely, the Appendix C evidence shows that consumers did purchase Wi-Fi calling plans — at \$0–\$5/month — as substitutes for full carrier bundles when those plans offered or appeared likely to offer native-grade functionality. FreedomPop was “on pace to break 1 million users” by adding “hundreds of thousands per quarter.” FAC App. C (Dkt. 9-3) at 4–5. That bidirectional pattern — positive demand toward natively integrated Wi-Fi calling alternatives and continued demand for carrier bundles despite free OTT availability — is strongly consistent with a distinct market boundary.

That is enough at Rule 12 to plead a distinct market or submarket. *See, e.g., Sky Angel U.S., LLC v. Nat’l Cable Satellite Corp.*, 947 F. Supp. 2d 88, 102–05 (D.D.C. 2013).

5. Distinguishing PhantomALERT

Defendants’ reliance on *PhantomALERT v. Apple Inc.*, 762 F. Supp. 3d 8 (D.D.C. 2025), is misplaced. *PhantomALERT* is distinguishable in every material respect. *PhantomALERT* failed because the plaintiff alleged a speculative app-level submarket with no established pricing, no consumer transactions, and no demonstrated demand. 762 F. Supp. 3d at 18. Here, Appendix C documents a historically active Wi-Fi calling market with named commercial providers (FreedomPop, Republic Wireless, Scratch Wireless, Freewheel, RingPlus), real pricing (\$0–\$5/month), growing customer bases (FreedomPop on pace for 1 million users), and contemporaneous industry recognition (The Economist, CCG Consulting, Light Reading, CNET). FAC App. C (Dkt. 9-3) at 4–6. Moreover, unlike *PhantomALERT*, the FAC does not define a market around a consumer-facing “feature” of a single brand’s ecosystem. It defines the market around natively integrated Wi-Fi calling. The FAC alleges a U.S. geographic market supported by

jurisdiction-specific evidence, such as Apple’s EU-only deployment of default-dialer functionality, Samsung’s region-specific firmware configurations, and jurisdiction-specific carrier certification requirements.

6. Vertical Relationship and the Upstream Market/Mechanism Hierarchy

The upstream enablement layer is a cognizable relevant market. Each platform defendant controls 100% of the only pathway to parity-grade native Wi-Fi calling within its ecosystem, making it a cognizable aftermarket or bottleneck market. *Eastman Kodak Co.*, 504 U.S. at 472–77, 482; *Newcal*, 513 F.3d at 1048–49. It simultaneously functions as the mechanism through which downstream competition is foreclosed: the gatekeeping rules embedded in the platform interface are the acts by which the platforms foreclose downstream competition and preserve the carrier-conditioned status quo. *Microsoft*, 253 F.3d at 58–67. Even if the Court were to conclude that the enablement layer is better understood as a mechanism of exclusion rather than a separate market, that conclusion would not defeat the claim. The same conduct would still constitute the exclusionary act foreclosing competition in the downstream market for natively integrated Wi-Fi calling services.

7. Geographic Market

The relevant geographic market is the United States. FAC ¶¶ 1, 26, 86. The exclusionary conduct is demonstrably U.S.-specific: Apple has deployed LiveCommunicationKit default-dialer functionality exclusively in the EU while withholding it in the United States; Samsung CSC firmware profiles enforce carrier-exclusive access on a region-specific basis; and carrier certification requirements are jurisdiction-specific and non-transferable. That geographic differentiation establishes the U.S. as a distinct market because the exclusionary conditions are imposed specifically in the United States.

8. Defendants' Market Definition Arguments

Defendants cite VoIP-Pal's allegation in the carrier case (No. 1:24-cv-03051) that carriers hold approximately 97% of the Wi-Fi calling market. They argue this mathematically limits platform defendants to 3% share. This argument confuses two different markets at two different levels of the competitive structure, and it fails on procedural grounds as well as the 97% figure describes carriers' share of the downstream retail mobile voice telephony market. Platform defendants are not competitors in that market. Indeed, the 97% figure *supports* the upstream theory. If the platforms' gating conduct has successfully ensured that 97% of the downstream market is allocated to carrier-authorized services, that confirms rather than refutes the exclusionary effect the FAC alleges. Samsung's "0%" market share measures the downstream market the architecture foreclosed — a market that once existed, as the Appendix C evidence documents, and was destroyed. Samsung controls the upstream firmware enforcement interface on every Samsung device. FAC ¶¶ 16, 105–106. The 0% observation is the measurable consequence of the foreclosure the FAC alleges — not evidence that no market exists. *See Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 293 (2d Cir. 1979).

9. Alternative Market Definitions

Alternative 1: Wi-Fi calling services submarket. Under *Brown Shoe*, 370 U.S. at 325, the historical evidence in Appendix C supports a Wi-Fi calling services submarket that is a cognizable subset of any broader mobile telephony market.

Alternative 2: Platform-specific natively integrated Wi-Fi calling services markets. An iOS-specific natively integrated Wi-Fi calling services market in which Apple holds gatekeeper control, and an Android-specific natively integrated Wi-Fi calling services market in which Google holds gatekeeper control. Each platform-specific market yields 100% market share for the

respective defendant and avoids any cross-platform aggregation objection. Because subscribers are locked into their platform ecosystem by contractual, financial, and ecosystem switching costs, the relevant market may properly be defined at the platform level. *Eastman Kodak Co.*, 504 U.S. at 472–77; *Newcal*, 513 F.3d at 1048–49.

Alternative 3: Platform-specific upstream enablement aftermarkets. Platform-specific aftermarkets for parity-grade native Wi-Fi calling enablement services, each independently controlled at 100% by the respective platform operator.

D. VoIP-Pal States a Plausible Sherman Act Section 2 Claim

Count I alleges that Platform Defendants maintained monopoly control over native smartphone telephony by embedding carrier-conditioned access rules within operating-system and firmware architecture. The claim proceeds under the product-design maintenance framework recognized in *United States v. Microsoft Corp.*, 253 F.3d 34, 58–67 (D.C. Cir. 2001).

1. Architectural Exclusion at the Native Telephony Interface

The FAC alleges that Platform Defendants embedded conditioning within operating-system and firmware code governing the native telephony enforcement layer. A monopolist violates § 2 when it designs platform architecture to exclude rival technologies from a must-pass interface through which competition would otherwise emerge. *United States v. Microsoft Corp.*, 253 F.3d 34, 64–67 (D.C. Cir. 2001). Platform rules determine whether a voice service receives parity-grade native integration — including default dialer access, call-log integration, emergency-routing hooks, quality-of-service prioritization, and control of the primary phone number. FAC ¶¶ 12–17, 60–61, 100, 107–108. Those privileges activate only upon carrier credential validation; absent validation, native status is withheld. The Motion confirms the architectural nature of the restriction and characterize the conduct as “longstanding designs” and a refusal to redesign

firmware. MTD at 1, 17–19. Footnote 8 identifies three implementation mechanisms: Apple through iOS entitlement gating, Google through Android carrier-privilege APIs, and Samsung through firmware access controls. MTD at n.8.

The Motion invokes *Trinko* and *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 448 (2009) yet neither governs the conduct alleged. *Trinko*, 540 U.S. 398 (2004), addresses compelled sharing of existing resources. *LinkLine*, 555 U.S. 438 (2009), extends *Trinko* to price-squeeze claims. The FAC does not allege passive refusal to share but affirmative architectural design that conditions access to the platform interface on carrier bundle participation—precisely the type of exclusionary product design analyzed in *Microsoft*.

2. Monopoly Power at the Enforcement Interface

Each Platform Defendant exclusively controls allocation of native telephony privileges within its ecosystem: Apple through iOS (FAC ¶¶ 12–13, 101–103); Google through Android (FAC ¶¶ 14–15, 104–105); and Samsung through firmware including CSC profiles, allow-lists, and bootloader restrictions (FAC ¶¶ 16, 105–106). Even where Android would permit integration, Samsung firmware independently blocks it. MTD at n.8. The monopoly alleged is control over the native telephony enforcement interface — the must-pass layer through which downstream voice services must obtain parity-grade native status. This mirrors the conduct in *Microsoft*, where monopoly power was measured at the operating-system distribution layer rather than the downstream browser market. 253 F.3d at 51–54. Courts in this District likewise recognize monopoly power at a must-pass network layer. See, e.g., *FTC v. Surescripts, LLC*, No. 1:19-cv-01080-JDB (D.D.C.).

The Motion argues the FAC impermissibly aggregates Defendants' shares. MTD at 15–17 (citing *Oxbow*, 926 F. Supp. 2d 36 (D.D.C. 2013)). The FAC does not aggregate shares. It alleges

three separate upstream markets, each independently controlled at 100% by a single operator. *Oxbow* addressed shared monopoly within a single market; the FAC alleges parallel monopolies at distinct enforcement interfaces. The Platform Defendants further argue that Samsung has “0%” share, MTD at 15–16 (citing *Spanish Broadcasting*, 376 F.3d 1065 (11th Cir. 2004)), measuring the downstream market the architecture foreclosed. In contrast, Samsung controls the upstream enforcement interface through firmware that blocks native access on every Samsung device. FAC ¶¶ 16, 105–106. Samsung controls a platform-level bottleneck: its firmware independently blocks native access even where the underlying Android operating system would permit it. MTD at n.8. Under *Microsoft’s* product-design framework, the relevant inquiry is whether a defendant controls such a bottleneck and uses that control to foreclose rivals—not whether it competes in the downstream service market.

3. Exclusionary Conduct

The Platform Defendants developed platform code for their smartphones that grants native telephony privileges upon carrier entitlement validation. FAC ¶¶ 12–17, 107–108. Previously available VoIP capabilities were restricted while carrier-exclusive integration was reinforced. FAC ¶¶ 67–78. Specific acts include Google’s removal of native SIP/RTP stack support at API level 31 (FAC ¶¶66, 124-125), Apple’s CallKit timing constraints and EU-only deployment of native telephony APIs (FAC ¶¶65, 102, 108, 111), and Samsung’s tightened bootloader controls (FAC ¶¶ FAC ¶¶106). Each constitutes a new overt act of exclusionary conduct under *Klehr*, 521 U.S. at 189. The selective character of these restrictions is confirmed by the platforms’ treatment of their own services: Apple grants FaceTime native-grade telephony privileges—including push-free wake-and-ring and system call-log integration—while denying equivalent access to independent VoIP providers; Google grants its RCS implementation native-grade integration architecturally

withheld from competitors. FAC ¶¶ 68–73, 110–111. The restrictions are thus selective, not inherent.

The Motion argues that no standalone provider previously obtained native access. MTD at 19. Under *Microsoft*, the relevant inquiry is whether platform design forecloses rivals at a must-pass interface. That no provider ever obtained parity-grade integration confirms the completeness of the foreclosure. FAC ¶¶ 68–73, 85–86, 100, 113. In a gatekeeping case, complete historical exclusion does not undermine plausibility; it is often the strongest evidence that the gate was effectively closed. Even under *Trinko*, the FAC plausibly alleges termination of previously available pathways under *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985). The Motion argues no narrow exception to the general right to refuse to deal applies here. MTD at 18–19 (citing *Trinko*, 540 U.S. at 411, and *Meta Platforms*, 66 F.4th at 305). That argument applies the wrong framework — the FAC does not allege passive refusal to deal but affirmative design acts that condition access on carrier participation. Google’s removal of a previously available native SIP/RTP stack, Apple’s withholding of APIs deployed in the EU, and Samsung’s elimination of OEM Unlock are overt design changes, not mere inaction. *Aspen Skiing*, 472 U.S. at 604–05.

4. Competitive Harm

The challenged architecture forecloses parity-grade native entry across every commercially meaningful pathway—direct licensing, OEM deployment, and white-label integration. FAC ¶¶ 68–82, 85–94, 100. No independent VoIP provider can obtain native-grade integration on any platform, regardless of its technical capability or willingness to meet safety and quality standards. Five historical Wi-Fi-first providers (FreedomPop, Republic Wireless, Scratch Wireless, Freewheel, RingPlus) were eliminated or relegated to degraded app-mode. FAC ¶ 85 n.4; App. C. This is

foreclosure of the competitive process itself—the quintessential § 2 harm. *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977).

5. Less Restrictive Alternatives

Apple deployed native telephony APIs (LiveCommunicationKit, TelephonyMessagingKit) in the EU while withholding them in the United States. FAC ¶ 86; App. B (FAC ¶ 85 n.3). This is relevant not because foreign law governs but because it demonstrates that the platforms can provide more neutral native access when they choose. A neutral certification pathway applying the same safety, E911, QoS, and lawful-access standards carriers satisfy could achieve any legitimate objective with substantially less exclusionary effect. The predictable justifications—security, privacy, E911 compliance, QoS, and carrier certification—are standards that could be applied neutrally rather than through carrier-exclusive gating. Carrier certification in particular is itself part of the challenged architecture (the “Key”) and cannot simultaneously serve as the justification for the “Lock.” Whether such justifications warrant the challenged design is a merits question. *Microsoft*, 253 F.3d at 65–67.

6. Attempted Monopolization

Specific intent may be inferred from conduct that has no rational business purpose other than excluding competition. *Lorain Journal Co. v. United States*, 342 U.S. 143, 149 (1951). Here, the successive restriction and removal of previously available capabilities—Google’s removal of the native SIP/RTP stack, Apple’s withholding of native telephony APIs deployed in the EU, Samsung’s elimination of OEM Unlock in One UI 8—supports the inference that platform design was directed at foreclosing standalone entry rather than improving the product. FAC ¶¶ 67–78, 100, 107–108. Dangerous probability is satisfied not by joint shares in a downstream market but by each defendant’s 100% control of its enforcement interface—the chokepoint through which

competition must pass. *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456 (1993). The Motion’s contention that no single defendant has monopoly power in the Wi-Fi calling market misidentifies the relevant market for attempted-monopolization analysis, which is the enforcement interface each defendant independently controls.

7. Conspiracy to Monopolize

The Motion argues the FAC alleges only a “shared monopoly.” MTD at 21 (citing *Oxbow*, 926 F. Supp. 2d at 45; *Sun Dun*, 740 F. Supp. at 391–92). It does not. The FAC alleges vertical conspiracies: each platform defendant conspired with carrier co-conspirators to maintain *that platform’s own* monopoly power at *its own* enforcement interface. Each platform-carrier pair aims at maintenance of a single defendant’s monopoly over a single platform-specific market, satisfying *Sun Dun*’s requirement that the aim be “to form a single entity to possess the illegal market power.” 740 F. Supp. at 391–92. *Oxbow* addressed horizontal coordination among competitors within one market and does not foreclose vertical conspiracies between complementary actors at different tiers. Platforms and carriers are independent economic actors under *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 768 (1984), and their structural interdependence satisfies the concerted-action requirement.

E. VoIP-Pal States a Plausible Sherman Act § 1 Claim

Count II alleges a concerted restraint of trade implemented through coordinated architectural conditioning at a must-pass device-layer interface. The FAC alleges that Platform Defendants embedded operating-system and firmware rules (the “Lock”) conditioning parity-grade native telephony privileges on carrier-issued validation credentials (the “Key”). FAC ¶¶ 100, 147–148, 175–185. Neither mechanism independently produces the foreclosure. Carrier authorization alone does not grant native status; operating-system code alone does not activate

parity privileges without carrier validation. The restraint operates only through their combined effect. Independent providers are structurally excluded from parity-grade native telephony and relegated to degraded app mode—lacking default dialer access, push-free wake-and-ring, E911 hooks, and control of the primary phone number—while consumers are forced into \$60–\$90 carrier bundles to unlock the native capabilities of phones they already own.

1. Concerted Action Through Structural Interdependence

Section 1 requires concerted action among distinct economic actors. *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984). The Platform Defendants and Carrier Co-Conspirators are independent centers of decision-making: platforms compete against each other for device sales; carriers compete against each other for subscribers. No platform-carrier pair shares the unity of interest that would support single-entity treatment. *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 769 (1984); *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 195–96 (2010).

The Motion argues the FAC fails to allege agreement and relies on parallel conduct insufficient under *Twombly*. MTD at 12–15 (citing *Oxbow*, 926 F. Supp. 2d 36 (D.D.C. 2013); *Sky Angel*, 33 F. Supp. 3d 14 (D.D.C. 2014)). Those cases address conscious parallelism among competitors making similar independent decisions. The FAC alleges something different. Under *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 222–23 (1939), agreement may be inferred from precisely this structural interdependence. The credential specifications that operate as the “Key” were developed through shared industry channels including the GSMA and OMA-DM standard-setting organizations, FAC ¶¶ 59–66, and each platform independently coded its operating system to validate those same credentials. A platform that unilaterally opened its native telephony interface to a \$6.50/month standalone Wi-Fi calling alternative would gain a significant

competitive advantage in device sales. The uniform refusal to do so is economically puzzling as independent conduct.

2. Reinforcing Circumstances

Three circumstances reinforce the inference of concerted action. First, no neutral certification pathway. Across all three competing platform ecosystems, for over a decade, no Platform Defendant has offered even an optional neutral route to parity-grade native telephony for independent providers. FAC ¶¶ 12–17, 61–63, 100. Second, the restrained market actually existed. Appendix C documents that standalone and Wi-Fi-first calling services—including Republic Wireless, FreedomPop, Scratch Wireless, Freewheel, and RingPlus—operated in the U.S. at \$0–\$5 per month before carrier-exclusive native integration eliminated each one. FAC ¶ 85 fn. 4; App. C. Third, the FAC alleges progressive hardening and not a static 2014 design within the limitations period that destroyed existing infrastructure and created new exclusionary frameworks—including Google’s removal of native SIP/RTP support (2021–2022), Apple’s selective deployment of LiveCommunicationKit in the EU while withholding it from U.S. developers (2024–2025), and Samsung’s elimination of bootloader unlocking (2025). FAC ¶¶ 83–86, 100–108; App. B.

3. The Alternative Explanation Does Not Account for the Conduct Alleged

The Motion argues that each Defendant independently benefits from carrier relationships—subsidies, distribution, revenue-sharing—and that these benefits provide an independent reason for similar design choices. MTD at 14. Those benefits do not explain the specific architectural choice alleged: hard-coding credential validation while providing no neutral certification alternative whatsoever. That Apple deployed LiveCommunicationKit to EU developers while withholding it from U.S. developers (FAC Act 3) confirms the technical capability exists and the restriction is a policy choice. The carrier relationship explains why platforms cooperate with

carriers. It does not explain why all three platforms simultaneously refuse to permit any alternative on any terms. See *In re Domestic Airline Travel Antitrust Litig.*, 221 F. Supp. 3d 46, 58–60 (D.D.C. 2016). Samsung itself characterizes the conduct as “concerted misconduct” designed to “facilitate carrier dominance.” Dkt. 30-1 at 18, 20–22.

4. Tying (Alternative Theory)

The FAC pleads tying in the alternative as an additional doctrinal lens on the same conditioning facts. Under *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12–18 (1984), separate products exist where “there is a sufficient demand for the purchase of [the tied product] separate from [the tying product].” 466 U.S. at 21–22. The tying product is the native telephony privilege package each platform controls: default dialer, push-free wake-and-ring, call-log integration, E911 hooks, and QoS prioritization. The tied product is a carrier voice/text subscription. Separate demand is not hypothetical. Between 2013 and 2016, multiple providers sold standalone voice service unbundled from carrier subscriptions: Republic Wireless (\$5/month Wi-Fi-only), FreedomPop (unlimited Wi-Fi calling with minimal cellular), Scratch Wireless (free Wi-Fi calling), Cablevision’s Freewheel (Wi-Fi-only, zero cellular), and RingPlus (various unbundled plans). FAC ¶¶ 88–94; App. C (Dkt. 9-3). That this market subsequently collapsed is consistent with the architectural foreclosure at issue. The OS’s own architecture confirms separability: Wi-Fi calling code resides in the OS but activates only after an external carrier credential passes `hasCarrierPrivileges()`. App. G-1, Entry A.2. *Kaufman v. Time Warner*, 836 F.3d 137 (2d Cir. 2016), is distinguishable: cable boxes were never independently sold; here, native telephony was independently sold until the Lock-and-Key architecture foreclosed standalone entry.

Market Power. Tying requires market power in the tying product. *Ill. Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28, 46 (2006). The Motion argues power is absent because carriers control 97%

of “Wi-Fi calling.” MTD at 24. That argument misidentifies the tying product. The tying product is the native telephony privilege package embedded in each platform’s operating system. Each platform defendant exclusively controls whether its OS allocates parity-grade native privileges to any voice provider. FAC ¶¶ 12–17, 20–25, 100–108. The 97% figure describes the result of the conditioning, not its source. Cf. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 464 (1992) (market power assessed at the interface where the conditioning occurs).

Coercion. The Motion argues platforms cannot coerce carrier-bundle purchases because they do not sell carrier bundles. MTD at 24 (citing *White v. Rockingham Radiologists*, 820 F.2d 98 (4th Cir. 1987)). Tying does not require the seller of the tying product to also sell the tied product. It requires that the seller condition access to the tying product on the buyer’s acquisition of the tied product. *Kodak*, 504 U.S. at 463; *United States v. Microsoft Corp.*, 253 F.3d 34, 85–87 (D.C. Cir. 2001). Platforms sell the tying product (the smartphone with its native telephony package) and architect the OS so native privileges activate only upon carrier-credential validation. FAC ¶¶ 12–17, 62, 107–108. *White* is distinguishable: the defendant physician group did not design the marketplace channeling patients toward the tied provider; here, the platform designs and maintains the conditioning architecture. Samsung itself characterizes the conduct as “concerted misconduct” designed to “facilitate carrier dominance.” Dkt. 30-1 at 18, 20–22.

Foreclosure. The Motion argues the FAC does not allege foreclosure in the tied market. MTD at 24–25 (citing *In re Cox Enters.*, 871 F.3d 1093, 1108 (10th Cir. 2017)). The tied market is mobile voice service subscriptions. The conditioning forecloses competition there by making it structurally impossible for any non-carrier provider to offer a competing voice subscription with parity-grade native functionality. *Cox Enterprises*, which involved zero foreclosure, is inapposite—the FAC alleges categorical exclusion of non-carrier providers. FAC ¶¶ 85–94.

II. VOIP-PAL'S PLEADINGS PLAUSIBLY STATE ITS CLAIM UNDER RICO.

Counts V and VI allege that the Platform Defendants operated an authorization-and-certification enterprise through which platform architecture and carrier validation systems jointly controlled access to parity-grade native telephony. The conduct alleged is not a bilateral dispute or a single product-design decision. It is a cross-tier authorization-and-certification enterprise operated by six defendants across two industry tiers, sustained through successive operating-system releases since 2014, renewed through recurring interstate communications directed simultaneously at developers and consumers, and directed toward a single sustained objective: maintaining carrier-conditioned control over parity-grade native telephony and excluding independent VoIP competitors from that interface. This case therefore does not involve an ordinary commercial dispute between competitors.

A. The Lock-and-Key as the Operational Mechanism of the § 1962© Enterprise

The Motion argues the FAC fails to allege such an enterprise. MTD at 30–31. An association-in-fact enterprise requires a common purpose, relationships among participants, and longevity. *Boyle v. United States*, 556 U.S. 938, 946 (2009). The Lock-and-Key architecture is not merely evidence of the enterprise; it plausibly describes the enterprise's operational mechanism. Platform defendants control the Lock: operating-system and firmware rules conditioning parity-grade native telephony privileges on carrier credential validation. Carriers control the Key: authorization credentials issued exclusively in formats the platform operating systems are coded to recognize. Together those two mechanisms plausibly describe a unified operational system — with a defined input, a defined enforcement mechanism, a defined output, and a defined beneficiary class — actively maintained across three platform ecosystems and three carrier networks since at least 2014.

B. Predicate Acts and Pattern

The predicate acts consist of successive interstate wire communications that described native telephony integration pathways while omitting the structural carrier-authorization condition. FAC ¶ 135. Three categories of communications satisfy Rule 9(b)'s who/what/when/how requirements: (1) **Apple:** CallKit developer documentation (successive iOS release cycles from iOS 10 forward, transmitted via Apple Developer Portal) describing VoIP application integration capabilities while omitting that CallKit does not confer default-dialer registration, inbound wake-and-ring, or QoS entitlements necessary for native parity. FAC ¶ 86(c). (2) **Google:** Android developer documentation (successive Android releases, transmitted via AOSP and developer portal) stating that IMS APIs are “not being made available to downloadable applications” while omitting that this restriction is the mechanism maintaining carrier-exclusive native integration. FAC ¶ 86(a). (3) **Carriers:** Marketing communications (from at least 2014, transmitted via carrier websites and device setup flows) representing that Wi-Fi Calling is “included at no additional charge” while omitting that bundle purchase and retention is required and independent providers are categorically excluded. FAC ¶¶ 125, 129. The FAC identifies who made each communication, what it conveyed, when it occurred, and how it was transmitted. *United States ex rel. Heath v. AT&T, Inc.*, 791 F.3d 112, 123 (D.C. Cir. 2015); *Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71, 82 (D.D.C. 2019).

Each successive release transmitted communications describing Wi-Fi Calling as available while omitting the critical architectural condition: parity-grade native integration is granted only upon carrier-issued credentials that independent providers cannot obtain. Developer-facing materials omitted that parity-grade access is architecturally closed to independent providers; consumer-facing materials omitted that availability is conditioned on carrier bundle purchase,

including representations that Wi-Fi Calling is included or available at no additional charge. FAC ¶¶ 80, 86, 125, 129. The omission renders the representations misleading regardless of literal accuracy, and material under *Neder v. United States*, 527 U.S. 1, 25 (1999). Pattern is established through repeated predicate acts across successive release cycles, a common objective maintained by six defendants over more than a decade, and ongoing conduct with no defined endpoint on open-ended continuity.

C. Proximate Cause

The Motion argues the injury is derivative. MTD at 33 (citing *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992); *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008)). RICO requires a direct relationship between predicate acts and injury. *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457–61 (2006). The causal chain is direct and structurally inseparable as every platform release cycle that renewed the Lock enforcement rules simultaneously renewed the exclusionary conditions foreclosing Plaintiff’s deployment pathways. Each release cycle simultaneously satisfies the predicate act requirement and directly produces the injury. *Holmes* requires injury flowing directly from the predicate acts and *Bridge* confirms first-party reliance is not required — both standards are satisfied because the same cycles that transmitted the misleading communications implemented the exclusionary architecture targeting exactly the category of independent VoIP competitor Plaintiff represents.

D. RICO Conspiracy — Cross-Tier Participation as Coordinated Enterprise Conduct Under § 1962(d)

Section 1962(d) prohibits conspiracy to violate § 1962(c). *Salinas v. United States*, 522 U.S. 52, 63–65 (1997). The Motion argues the FAC pleads only parallel conduct. MTD at 34 (citing *RSM Production Corp. v. Freshfields Bruckhaus Deringer U.S. LLP*, 682 F.3d 1043 (D.C. Cir. 2012); *American Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283 (11th Cir. 2010)). The FAC alleges

cross-tier participation in a functioning operational enterprise — not parallel conduct among independent actors making similar decisions, but distinct actors performing complementary roles within a unified system whose function depends on each participant executing its assigned role. Platform defendants maintain enforcement rules recognizing only carrier-issued credentials; carriers supply credentials in formats the platforms are coded to accept. Each tier’s participation is rational only because the other tier performs its complementary role — and that mutual interdependence plausibly supports coordinated enterprise participation under § 1962(d).

III. VOIP-PAL’S CLAIMS SHOULD NOT BE DISMISSED WITH PREJUDICE.

The Motion requests dismissal with prejudice, asserting that prior complaints render any deficiencies incurable. MTD at 34–35 (citing *Cheeks v. Fort Myer Construction Corp.*, 216 F. Supp. 3d 146 (D.D.C. 2016), and *Miller v. Downtown BID Services Corp.*, 281 F. Supp. 3d 15 (D.D.C. 2017)). *Cheeks* and *Miller* involved repeated re-filings of the same legally deficient claims after explicit judicial guidance identifying incurable defects. This case does not. The FAC is the first amended complaint in this posture, and no court has dismissed these competitive-foreclosure claims on the merit as it applies established antitrust doctrine to ongoing platform-level engineering conduct. Even if the Court identified areas requiring clarification — such as market definition, market participation, conditioning specificity, or the scope of foreclosure — those would be curable pleading issues rather than incurable legal failures. The proper course in that circumstance is dismissal without prejudice and leave to amend. *Firestone*, 76 F.3d at 1209.

IV. The Lock-And-Key Architecture Explains Why Four Related Actions Arise From The Same Structural Restraint

On March 11, 2026, AT&T, T-Mobile, and Verizon filed a Notice of Supplemental Authority in the coordinated carrier dockets, Nos. 1:24-cv-03051-RDM and 1:24-cv-03054-RDM, citing *Rx Solutions, Inc. v. Caremark, L.L.C.*, 164 F.4th 436 (5th Cir. 2026). Because the Lock-

and-Key architecture pleaded in this action establishes that the carrier authorization tier and the platform enforcement tier are structurally interdependent, Plaintiffs respectfully bring that filing to this Court's attention. Far from undermining Plaintiffs' claims, *Rx Solutions* confirms them: the Fifth Circuit identified failure to plead a relevant market and failure to allege consumer harm — specifically increased prices, decreased supply, or decreased quality to consumers — as the deficiencies requiring dismissal. 164 F.4th at 442–45. Both complaints satisfy each standard. On relevant market, Plaintiffs plead carrier-grade VoWi-Fi as a legally distinct product market, non-interchangeable with OTT alternatives, with 97% subscriber market control establishing market power and cross-elasticity of demand. On consumer harm, Plaintiffs plead that consumers cannot purchase VoWi-Fi independently, are charged full cellular rates for calls that never traverse carrier towers, and suffer quantified price overcharges — a senior paying \$45 per month for unused services, a family of four paying \$180 per month when a standalone alternative was viable at \$20 per month. The platform FAC independently satisfies the same standards under a product-design conditioning theory under *United States v. Microsoft Corp.*, 253 F.3d 34, 58–67 (D.C. Cir. 2001) — a theory *Rx Solutions* never addressed and therefore cannot govern. Plaintiffs reserve the right to respond separately and directly to Defendants' Notice of Supplemental Authority in the carrier dockets.

A. Related Actions

Moreover, the Lock-and-Key architecture provides a straightforward structural explanation for why four related actions arise from the same alleged restraint. This unified architecture plausibly implicates both Sherman Act § 1 and § 2 across all four actions. The uniformity of this architectural pattern across three competing platforms and three competing carrier networks, despite independent incentives to differentiate, reflects structural interdependence supporting

coordinated conduct under *Interstate Circuit*. The four related cases -- *VoIP-Pal v. Apple* (platforms, individual); *Inza v. Apple* (platforms, class); *VoIP-Pal v. AT&T*, (carriers, individual); and *Leon v. AT&T* (carriers, class) -- arise from the same alleged restraint.

The Motion characterizes the multi-case structure as an improper attempt to aggregate claims across separate proceedings against distinct defendants. MTD at 3–4. The convergence of separate complaints against distinct economic actors, namely the platform manufacturers and telecommunications carriers in different industry tiers, and all alleging common Sherman Act violations arising from the same structural mechanism is analytically significant. If the alleged restraint reflected merely independent unilateral design decisions, the same architectural pattern would not appear uniformly across three competing platforms and three competing carrier networks. The Motion suggests the platform action and the class action present overlapping claims producing duplicative recovery. MTD at 3. The two actions instead address distinct injuries at distinct levels of the restraint. This action addresses the competitive dimension and the class action (*Inza*, No. 1:25-cv-01970) addresses the consumer dimension.

B. Common Structural Question and Case Management

The core Sherman question is common across all four actions: whether carrier authorization requirements and device-level platform enforcement operate together to foreclose standalone native Wi-Fi calling, excluding competitors from a commercially active carrier revenue market. Plaintiff does not seek consolidation but limited coordination of the common Sherman Act issues across all four proceedings, following denial of the pending motions to dismiss.

CONCLUSION

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

Respectfully submitted,

/s/ Travis Pittman

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Filed: March 17, 2026

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's Motion was served on March 17, 2026 to all counsel of record via the Court's electronic filing system.

/s/ Travis Pittman
Travis Pittman