

**CIVIL COVER SHEET**

JS-44 (Rev. 6/17 DC)

<p><b>I. (a) PLAINTIFFS</b> VoIP-Pal.Com, Inc.</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p><b>DEFENDANTS</b> AT&amp;T, Inc. et al., T-Mobile USA, Inc. et al., Deutsche Telekom AG, et al., Verizon Communications, Inc. et al.,</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
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<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Travis Pittman (D.C. Bar No. 1016894) HOLMES, PITTMAN &amp; HARAGUCHI, LLP 1140 3rd St. NE Washington, DC 20002 (202) 329-3558</p>	<p>ATTORNEYS (IF KNOWN)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff      <input checked="" type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 2 U.S. Government Defendant      <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input checked="" type="radio"/> 5</td> <td style="text-align: center;"><input checked="" type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input checked="" type="radio"/> 5	<input checked="" type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input checked="" type="radio"/> <b>A. Antitrust</b></p> <p><input checked="" type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input type="radio"/> <b>E. General Civil (Other)</b>      <b>OR</b>      <input type="radio"/> <b>F. Pro Se General Civil</b></p>			
<p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 27 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent – Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p>	<p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p>	<p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organization</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 15 USC § 1, et seq.; Antitrust violations under the Sherman Act and Clayton Act.

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: <u>October 25 2024</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Travis Pittman</u>
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

VOIP-PAL.COM INC.  
7215 Bosque Blvd  
Suite 102  
Waco, TX 76710  
*Plaintiff,*

v.

AT&T, INC.  
175 E Houston Street  
San Antonio TX 78205

AT&T CORPORATION  
One AT&T Way  
Bedminster NJ 07921

AT&T SERVICES, INC.  
175 E Houston Street  
San Antonio TX 78205

SCOTT T. FORD  
GLENN H. HUTCHINS  
WILLIAM E. KENNARD  
STEPHEN J. LUCZO  
MARISSA A. MAYER  
DAVID R. MCATEE II  
MICHAEL B. MCCALLISTER  
BETH E. MOONEY  
MATTHEW K. ROSE  
JOHN STANKEY  
CYNTHIA B. TAYLOR  
LUIS A. UBIÑAS  
175 E Houston Street  
San Antonio TX 78205

Serve all above named AT&T Defendants on:  
CT Corp System  
1999 Bryan St.  
Ste. 900  
Dallas TX 75201-3136

T-MOBILE USA, INC  
12920 Southeast 38th Street  
Bellevue WA 98006

CIVIL ACTION NO. \_\_\_\_\_

JURY TRIAL DEMANDED

ANDRÉ ALMEIDA  
MARCELO CLAURE  
SRIKANT M. DATAR  
SRINIVASAN GOPALAN  
TIMOTHEUS HÖTTGES  
DR. CHRISTIAN P. ILLEK  
JAMES J. KAVANAUGH  
RAPHAEL KÜBLER  
THORSTEN LANGHEIM  
DOMINIQUE LEROY  
LETITIA A. LONG  
MARK NELSON  
MIKE SIEVERT  
TERESA A. TAYLOR  
KELVIN R. WESTBROOK  
12920 Southeast 38th Street  
Bellevue WA 98006

Serve all above named T-Mobile Defendants  
on:

Corporation Service Company  
211 E. 7th Street  
Suite 620  
Austin TX 78701

DEUTSCHE TELEKOM AG  
Friedrich-Ebert-Allee 140  
Bonn, Germany 53113

TIMOTHEUS HÖTTGES  
DR. FERRI ABOLHASSAN  
BIRGIT BOHLE  
SRINI GOPALAN  
CHRISTIAN P. ILLEK  
THORSTEN LANGHEIM  
DOMINIQUE LEROY  
CLAUDIA NEMAT  
12920 Southeast 38th Street  
Bellevue WA 98006

Serve all Deutsche Telekom AG Defendants on:  
Corporation Service Company  
211 E. 7th Street  
Suite 620  
Austin TX 78701

VERIZON COMMUNICATIONS, INC.  
140 West Street  
New York NY 10013

Serve on:  
Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington DE 19801

CELLCO PARTNERSHIP dba VERIZON  
WIRELESS  
One Verizon Way  
Basking Ridge, NJ 07920

Serve on:  
Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington DE 19801

VERIZON SERVICES, CORP.  
1717 Arch Street  
21st Floor  
Philadelphia, PA 19103

Serve on:  
CT Corporation System  
1999 Bryan St.  
Ste. 900  
Dallas TX 75201-3136

VERIZON BUSINESS NETWORK  
SERVICES, INC.  
22001 Loudin County Parkway  
Ashburn VA 20147

Serve on:  
CT Corporation System  
1999 Bryan St.  
Ste. 900  
Dallas, TX 75201-3136

VITTORIO COLAO  
SHELLYE L. ARCHAMBEAU  
MARK T. BERTOLIN

ROXANNE S. AUSTIN  
MELANIE L. HEALEY  
LAXMAN NARASIMHAN  
CLARENCE OTIS, JR.  
DANIEL H. SCHULMAN  
RODNEY E. SLATER  
CAROL B. TOMÉ  
VANDANA VENKATESH  
HANS VESTBERG  
GREGORY G. WEAVER

140 West Street  
New York NY 10013

And

600 Hidden Ridge  
Irving TX 75038

Serve on:

Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington DE 19801

or

CT Corporation System  
1999 Bryan St.  
Ste. 900  
Dallas TX 75201-3136

*Defendants.*

**COMPLAINT**

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**PREAMBLE**

1. VoIP-Pal’s story is one of endurance and defiance in the face of overwhelming odds. For nearly nine years, the company has been entrenched in a brutal legal battle against some of the most powerful tech and telecom companies in the world, including Google, Apple, Facebook, Twitter, Samsung, AT&T, Verizon, T-Mobile, Amazon, and Huawei. Despite repeated efforts to negotiate fair licensing agreements, these corporate behemoths have consistently refused to engage, dismissing VoIP-Pal as litigious in a calculated effort to stall negotiations and run out the clock.
2. What these corporations label as “litigious” is, in fact, VoIP-Pal’s desperate fight for survival. Faced with the prospect of watching its patented technology languish unmonetized or engage in protracted, financially devastating litigation, VoIP-Pal has chosen the latter, albeit with minuscule chances of success under the current legal framework. These tech giants have leveraged the flaws in the America Invents Act (AIA) to their advantage, relying on multiple IPR challenges to tie VoIP-Pal up in court and bleed the company of its resources.
3. In many antitrust complaints, plaintiffs typically focus on one or two sections of the Sherman or

Clayton Acts. This Antitrust Action is unprecedented in its scope because it exposes 14 distinct legal violations spanning across four major legal frameworks: the 1996 Telecommunications Act, antitrust laws, the doctrine of negligence, and ultimately constitutional violations. This comprehensive legal approach challenges the Defendants as telecom giants who systematically abuse legal frameworks to maintain market dominance and restrict competition.

4. The Defendants—AT&T, Verizon, T-Mobile, and Deutsche Telekom—exploit their dominant positions using a series of practices that collectively harm competition and stifle innovation. The Defendants have systematically violated Section 251 of the Telecommunications Act of 1996, the Sherman Act, and the Clayton Act for over six years with antitrust violations by deliberately withholding from both consumers and competition standalone (or unbundled) Voice over Wi-Fi calling and texting (also known as "VoWi-Fi" or "Wi-Fi Calling").
5. The Defendants—AT&T, Verizon, T-Mobile, and Deutsche Telekom—exploit their dominant positions using anticompetitive practices and anticonsumer practices—including tying arrangements, forced sales, and predatory pricing—have allowed the Defendants to maintain oligopolistic control over 97% of the U.S. smartphone mobile market. The Defendants' deliberate conduct has definitively harmed the telecommunications market generally, the markets for standalone (or unbundled) VoWi-Fi, and specifically VoIP-Pal and access to approximately 373 million subscribers of the Defendants in the United States. Their refusal to offer standalone VoWi-Fi, instead bundling it with more expensive cellular services, exemplifies their anti-competitive behavior.
6. The Defendants—AT&T, Verizon, T-Mobile, and Deutsche Telekom—exploit their dominant positions using a series of practices that not only violate antitrust laws but also constitutional duties and the Telecommunications Act of 1996. The America Invents Act (AIA) has drastically

shifted the legal landscape, allowing large corporations like AT&T, Verizon, T-Mobile, and Deutsche Telekom to evade antitrust scrutiny while ignoring four critical constitutional provisions. For VoIP-Pal and the 373 million smartphone users affected by their monopolistic conduct, the consequences are dire. By tying cellular calling to VoWi-Fi, the Defendants have stripped subscribers of the basic right to choose, perpetuating a system where consumers are forced into bundled services, with no alternative options. This monopolistic practice is a direct violation of antitrust principles, as well as the Constitution's fundamental protections.

## **INTRODUCTION**

### **A. Introduction to VoWi-Fi**

7. The Defendants—as cellular carriers—implement a differentiated, carrier-grade service known as Voice over Wi-Fi (or VoWi-Fi) to make and receive voice calls and send and receive text messages using a Wi-Fi network (and the Internet) instead of relying on a cellular voice or data connection. VoWiFi is commonly marketed to consumers as an enhanced feature under the name “Wi-Fi Calling.” VoWi-Fi extends the capabilities of prior 3G, 4G, and 5G cellular technologies (such as Voice over Long-Term Evolution or VoLTE) by utilizing Wi-Fi networks for voice calls and text messages while maintaining integration with the carrier’s core network infrastructure. This integration ensures high-quality service, seamless handover, and access to essential features like emergency services. References to Wi-Fi Calling should be understood to refer to VoWi-Fi and should not be confused with traditional Voice over Internet Protocol (VoIP) services that use subscribers’ computers, laptops, tablets, or Polycom/conference room devices or other Internet data-centric calling and messaging services offered by companies that employ over-the-top (OTT) applications like those from WhatsApp, Google, Microsoft installed on computers, laptops, tables, and even smartphones that can communicate Wi-Fi, cellular data networks, or any

available wired or wireless connection to the Internet.

8. VoWi-Fi is a technology that allows users to make and receive voice calls and send and receive text messages using a Wi-Fi network instead of relying on a cellular connection. VoWi-Fi doesn't use cell towers or a cell phones data connection. It is built directly into a smartphone and integrated into the native phone dialer and messaging apps, **offering an integrated experience**. With VoWi-Fi, users can seamlessly make calls, send texts, and accessing their paid communication services even when they are outside of cellular network coverage, provided they have access to a Wi-Fi connection and the Internet. VoWi-Fi calls are routed through the Wi-Fi network (and thus the Internet) to the carrier's server, which then connects the call to the recipient, whether the recipient (or callee) is using a cellular network, a landline, or another VoWi-Fi connection. In general, a phone must be compatible with VoWi-Fi, and the mobile carrier must support it. Almost all smartphones nowadays offered by the Defendants from manufacturers such as Apple and Samsung are VoWi-Fi compatible.

#### **B. VoWi-Fi vs Traditional VoIP**

9. VoWi-Fi is often compared to traditional VoIP (Voice over Internet Protocol) calling. While both technologies use the Internet to transmit voice data, VoWi-Fi is integrated into the mobile network operator's infrastructure, meaning calls and texts made via VoWi-Fi are handled in the same way as traditional mobile voice calls and texts. Traditional VoIP services, like those offered by Google's Voice service, Meta's WhatsApp service, Microsoft's Skype service, or other third-party apps, are separate from the mobile operator and usually require specific apps to handle calls. VoWi-Fi, in contrast, doesn't need a third-party app. Thus, one key difference between VoWi-Fi and VoIP services such as WhatsApp or Skype is that VoWi-Fi uses the phone's native dialer and contact list. This means you can make and receive calls as if you were using the regular cellular

network, without needing to open a separate app or remember to check for notifications. When a user dials a number, the phone automatically chooses between VoWi-Fi or cellular based on availability and signal strength, which makes it seamless for users.

10. App-based calling services like WhatsApp, Skype, or Viber rely on an Internet connection, typically Wi-Fi or mobile data, to make voice or video calls. However, unlike VoWi-Fi, these calls are not integrated into the phone's native calling functions. You must open the app, find the contact, and initiate the call within the app itself. VoWi-Fi, on the other hand, integrates directly into the operating system's dialer, making it as convenient as traditional cellular calls.
11. Another significant difference between VoWi-Fi and third-party calling apps is that VoWi-Fi is typically offered and supported by mobile carriers. This integration with the carrier allows VoWi-Fi calls to seamlessly switch between Wi-Fi and cellular networks during the call if the signal strength changes, ensuring an uninterrupted call experience. In contrast, app-based calls can drop or suffer from poor quality if the Wi-Fi signal weakens or if data connections fluctuate. A final but minor aspect of VoWi-Fi is its ability to support emergency services. Because VoWi-Fi is part of the carrier's network infrastructure, emergency calls made over Wi-Fi can be routed to the nearest dispatch center with an accurate location, much like traditional cellular calls. This is a significant difference from app-based calling services like WhatsApp, which typically do not support emergency services and cannot reliably provide location data to emergency responders.

### **C. The Defendants Rely on Bundling VoWi-Fi with Cellular Calling and Texting Services**

12. VoWi-Fi combines the convenience and reliability of traditional cellular calls with the flexibility of internet-based calling. It offers seamless integration with the phone's native dialer, ensures emergency service support, and provides high-quality calls even in areas with poor cellular



coverage. While app-based calling services like WhatsApp or Skype appear to offer similar features, they require a separate interface and often do not integrate as smoothly into the phone's core functions.

13. As Wi-Fi coverage has expanded globally, VoWi-Fi has become an increasingly important and essential service not only for enhancing communication options for subscribers, but also for preserving the Defendants' dominance in global communications. The Defendants save significant costs with VoWi-Fi by **offloading network traffic** from their cellular networks to consumers' Wi-Fi networks. Consumers bear the cost of internet services required for VoWi-Fi, while the Defendants enjoy reduced spectrum and infrastructure expenditures. Yet, subscribers are not reimbursed, compensated, nor provided with lower costs for avoiding higher cost cellular services and using VoWi-Fi. Additionally, subscribers in locations with poor network signal, such as rural areas and basement apartments, whose calls are almost exclusively VoWi-Fi are required to pay bundled prices for traditionally cellular calling and texting they may never have a strong enough signal to use. The Defendants' offloading practices unfairly shift the cost burden onto the subscribers, who must pay for their personal Wi-Fi networks while continuing to pay inflated prices for cellular services. By avoiding the costs of expanding their networks and instead using consumer Wi-Fi without offering a standalone service, the Defendants force consumers into expensive bundled packages.

#### **D. Implications of Defendants' Bundling Practices on VoIP-Pal**

14. VoIP-Pal's know-how and patented technologies (such as found in U.S. Patent Nos. 8,542,815; 9,179,005; and 10,218,606) are also critical to the operation of VoWiFi services. VoIP-Pal's know-how and patented technologies enable the essential functionalities within the mobile carrier's telecommunications infrastructure, in particular what is known as the Enhanced Packet Core (or

EPC), that make seamless connectivity and intelligent routing possible. VoWiFi is fundamentally different from the other VoIP apps discussed above, being tied to each carrier's implementation of an IP Multimedia Subsystem or IP Multimedia Core Network Subsystem (IMS), which is a telecommunications industry standardized architectural framework for delivering Internet Protocol (IP) multimedia services reliant on the Evolved Packet Core (EPC) infrastructure, which the Defendants control.

15. VoIP-Pal's know-how and patented technologies used in the deployment and functioning of VoWi-Fi also sets it apart from standard VoIP services. These patents focus on various aspects of routing voice and data communications over the Internet, often involving complex systems, like those used in the Defendants' networks each with millions of subscribers, that enable efficient and cost-effective calling, messaging, and other data communications services.
16. VoIP-Pal's classification patents (e.g., the '815 and '005 patents) are used every time a call or text message is sent, irrespective of whether the communication originates via a cellular tower or a Wi-Fi network. In particular, a Wi-Fi call or text needs to be classified, using information about the caller, according to whether the destination of the call is an internal subscriber of the same carrier (in which case the call is routed internally), or an external subscriber (in which case the call is routed externally). This classification is performed at least in part by servers operated by the Defendants. This is because as currently practiced, Wi-Fi calls and texts are routed over the Internet back to the carriers' networks. In the case that there were a Wi-Fi only voice and text service provider, VoIP-Pal's classification patents would still be used by that provider. For example, a Wi-Fi only provider (like VoIP-Pal) would operate servers that would need to distinguish the destination of the communication as either one of its own subscribers or not. VoIP-Pal also owns call routing patents (e.g., the '606 patent) that are used in calling and text messaging

(again irrespective of whether the communication originates via a cellular tower or a Wi-Fi network) to route internal calls and text messages between different nodes in a distributed system with multiple nodes where participants are associated with nodes.

17. This Antitrust Action focuses on the Defendants' anticompetitive and anticonsumer bundling practices with respect to their VoWi-Fi technology and their market dominating cellular calling and messaging services and the Defendants' unauthorized use of VoIP-Pal's technology and know-how to anticompetitively deploy VoWi-Fi (which is different from other non-VoWi-Fi but VoIP services from companies like Google, Meta, and Microsoft) harming VoIP-Pal specifically and competition in general.

### **DEFENDANT'S OPEN LETTER REVEALING TECHNICAL POSITION AND BAD**

#### **FAITH CONDUCT**

#### **18. Introduction of Verizon's Open Letter (Exhibit A)**

In a critical development, Verizon Communications Inc. issued an open letter, submitted as Exhibit A, which was not marked as "without prejudice." This letter contains significant technical admissions from Verizon and includes threats of legal sanctions and fees if VoIP-Pal does not withdraw the complaint. These tactics are a clear attempt to intimidate VoIP-Pal into abandoning its legitimate antitrust claims, demonstrating bad faith conduct.

#### **19. Admissibility of Verizon's Open Letter Under Rule 801(d)(2)**

Verizon's letter is included under Rule 801(d)(2) of the Federal Rules of Evidence, which provides that an admission by a party-opponent is not hearsay if it is relevant to the dispute. The letter includes technical admissions regarding their refusal to unbundle VoWi-Fi services, reflecting monopolistic practices central to this case, as well as intimidation tactics designed to

coerce VoIP-Pal into withdrawing its legitimate antitrust claims. These admissions are admissible and form a key part of the antitrust violations presented in this complaint.

Legal precedents such as *United States v. Nixon*, 418 U.S. 683 (1974), and *Federal Trade Commission v. Actavis, Inc.*, 570 U.S. 136 (2013), further bolster the admissibility of this letter. These rulings emphasize that communications revealing a party's legal position are admissible unless explicitly protected by privilege. In *Nixon*, the Supreme Court established that relevant communications must be disclosed unless a legitimate claim of privilege exists, and *Actavis* reinforced that communications in the context of legal disputes, including those revealing tactics or positions, may be highly relevant to litigation. Verizon's letter reveals both their technical stance and their intimidation tactics, which are directly pertinent to this case.

**20. Verizon's Technical Admissions and Flawed Defense**

This letter cements the technical arguments Verizon intends to rely on, which are now part of the record. These arguments, however, are fundamentally flawed and without merit, as demonstrated by VoIP-Pal's technical analysis. Any attempt by Verizon to alter these arguments later would significantly weaken their credibility and expose further bad faith conduct before the court.

**A. Verizon's Mischaracterization of Unrelated Litigation and Misleading Statements**

**21.** In their letter, Verizon dedicates several paragraphs to discussing a separate patent litigation matter, filed by VoIP-Pal in June 2021 in the Western District of Texas (Case No. 6:21-cv-672-ADA). This case involved Mobile Gateway technology, which is unrelated to the current antitrust claims at issue in this litigation. VoIP-Pal never mentioned or asserted specific patent numbers in the original complaint; rather alleged that the Defendants unlawfully used Wi-Fi calling routing classifications to their advantage, excluding fair competition. By introducing the Mobile Gateway litigation, Verizon attempts to cherry-pick from VoIP-Pal's portfolio of 40

patents to confuse the issues at hand. The Mobile Gateway technology does not pertain to the Wi-Fi calling routing classification technology central to this case, making Verizon's reference irrelevant. This appears to be a clear effort to mislead the Court by conflating two distinct technical matters.

22. Verizon's mischaracterization of the claim construction dispute is similarly misleading. Although the dispute was preliminarily decided, it remains unresolved. Verizon falsely claims that "neither VoIP-Pal nor their expert could identify any Verizon access code request message that included both elements." This is incorrect. A collection of transmissions that included both elements was identified. The real issue is whether these transmissions constitute an "access code request message" according to the claims, a question still under dispute. Even if Judge Albright denies VoIP-Pal's request for a rehearing, this does not mark the end of the matter. There is still the possibility of an appeal to the Federal Circuit, which has the authority to reverse the claim construction ruling. Verizon's implication that the matter is settled is misleading.
23. Verizon also mischaracterizes the new complaint regarding the DID claims. It claims that VoIP-Pal is asserting the same patents that were declared invalid in the 2016 litigation. This is false. While certain claims were invalidated, the patents themselves were not declared invalid. The new complaint asserts claims that had never been asserted, challenged, or invalidated, and Verizon's statement is a clear misrepresentation of the facts.

#### **B. Bad Faith and Intimidation Tactics**

24. Verizon's threats of sanctions and legal fees are clearly intended to coerce VoIP-Pal into abandoning its legitimate claims rather than addressing the merits of the case. This conduct constitutes bad faith as defined by the U.S. Supreme Court in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), where the Court held that parties acting in bad faith, including those who misuse

litigation as a weapon of intimidation, can be sanctioned by the courts. Verizon's actions fit squarely within this definition of bad faith.

25. Additionally, the Supreme Court's ruling in *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980) emphasizes that tactics aimed at obstructing the judicial process—such as threats of sanctions to intimidate plaintiffs—warrant sanctions. Verizon's letter is not just a procedural communication; it is an improper attempt to obstruct VoIP-Pal's legal right to pursue its antitrust claims. This conduct further demonstrates that Verizon seeks to manipulate the judicial process to avoid answering for their monopolistic practices.

#### **C. Verizon's Weak Position and Flawed Technical Arguments in Their Open Letter**

26. By sending this open letter without the "without prejudice" protection, Verizon has locked itself into the technical arguments outlined therein. These admissions are now part of the case record and can be used by VoIP-Pal to demonstrate Verizon's flawed defense. Any attempt by Verizon to alter their technical arguments later in the proceedings would not only weaken their credibility but also expose their bad faith tactics to the court.
27. The importance of this legal positioning cannot be understated. Courts have consistently held that shifting technical defenses undermine a party's credibility, as seen in *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973). In this case, the defendant's monopolistic behavior and attempts to alter their technical defense were rejected, which mirrors the flawed strategy Verizon is attempting here.

#### **D. Allegation of Stock Promotion and Lack of Good Faith Basis**

28. **Verizon's Position:** Verizon claims that VoIP-Pal is using the lawsuit to promote its stock, pointing to previous litigation and asserting that the complaint is frivolous and lacks a good faith basis.

**29. VoIP-Pal's Response:** This allegation will be thoroughly disproven as baseless. VoIP-Pal's claims are backed by concrete legal and market evidence, demonstrating clear violations of antitrust laws by Verizon. VoIP-Pal has every right to pursue this litigation under antitrust principles, and the suggestion of stock promotion is a mere intimidation tactic intended to distract from the real issues. Courts have long recognized that antitrust claims are a legitimate legal strategy, as upheld in *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973), where a company defending against similar accusations was held liable for monopolizing a market.

#### **E. Accusation of Failing to Plead Facts Implicating Verizon in Anticompetitive Conduct**

**30. Verizon's Position:** Verizon argues that VoIP-Pal has failed to provide specific factual allegations tying it to anticompetitive conduct, claiming that Verizon competes with Google, Microsoft, and Meta in the VoWi-Fi market.

**31. VoIP-Pal's Response:** Verizon's position here will also be disproven as inaccurate. VoIP-Pal will present detailed evidence that clearly implicates Verizon in monopolistic conduct within the carrier-based VoWi-Fi market. Google, Microsoft, and Meta, as over-the-top (OTT) service providers, do not compete in the same market. Carrier-based VoWi-Fi operates in a distinct regulatory and infrastructure market, which Verizon, alongside AT&T and T-Mobile, has effectively monopolized by bundling VoWi-Fi with cellular services, in clear violation of Section 251 of the Telecommunications Act.

#### **F. Argument Against a "Shared Monopoly" and Claim of Robust Competition**

**32. Verizon's Position:** Verizon asserts that the claim of a shared monopoly is erroneous and that the presence of competitors such as Google, Microsoft, and Meta prove robust competition.

**33. VoIP-Pal's Response:** The claim of robust competition will be shown to be fundamentally

flawed. VoIP-Pal will prove that carrier-based VoWi-Fi is not in direct competition with OTT services like WhatsApp or Skype, as these services lack the infrastructure and regulatory control of the carriers. The Defendants have used their market dominance to stifle competition, and VoIP-Pal will demonstrate through market analysis and industry data that there is no real competition in the carrier VoWi-Fi market. Verizon, AT&T, and T-Mobile have effectively monopolized this market by bundling VoWi-Fi with cellular plans, preventing Standalone VoWi-Fi from being offered.

#### **G. Criticism of Group Pleading and Lack of Market Power Allegations**

- 34. Verizon's Position:** Verizon argues that group pleading is improper and that the complaint fails to attribute specific market power to Verizon or any single firm.
- 35. VoIP-Pal's Response:** Verizon's argument regarding group pleading will also be addressed and dismissed. VoIP-Pal will provide additional data and evidence detailing Verizon's dominant role in the telecommunications market. Verizon's market power is evident in its ability to bundle services and prevent consumer choice in VoWi-Fi. VoIP-Pal will show that Verizon's actions, in concert with AT&T and T-Mobile, have created a collective monopoly, violating antitrust laws. These actions are in direct contravention of the Clayton Act, and Verizon's conduct will be clearly tied to the anticompetitive behavior that harms consumers and stifles market entry for competitors.

#### **H. Challenge to Sherman Act Section 1 Conspiracy Allegations**

- 36. Verizon's Position:** Verizon contends that the conspiracy claims under Sherman Act Section 1 are unsupported and that there is no evidence of a concerted agreement between the Defendants.
- 37. VoIP-Pal's Response:** VoIP-Pal will provide compelling evidence of parallel conduct among Verizon, AT&T, and T-Mobile, supporting the existence of a concerted effort to monopolize the



VoWi-Fi market. The Defendants have consistently engaged in uniform bundling practices and refused to offer Standalone VoWi-Fi, demonstrating a clear restraint of trade. Courts have repeatedly held that parallel conduct, when supported by contextual evidence, can establish conspiracy claims, as seen in *Interstate Circuit v. United States*, 306 U.S. 208 (1939). VoIP-Pal will demonstrate that the Defendants' actions align with these precedents.

### **I. Smear Campaign and Baseless Allegations Against VoIP-Pal**

38. In addition to their flawed technical defense, Verizon has engaged in a smear campaign against VoIP-Pal, attempting to paint the company as a pump-and-dump market manipulator. These claims are entirely baseless and intended to divert attention from the core antitrust issues. By making these allegations, Verizon seeks to undermine VoIP-Pal's reputation in the hope of weakening its legal claims.
39. VoIP-Pal has voluntarily undergone financial audits and has never been subject to any regulatory investigations for improper financial practices. The allegations of market manipulation are a clear attempt by Verizon to shift the focus away from their anti-competitive conduct and onto irrelevant and unfounded claims. VoIP-Pal's financial status has no bearing on the merits of this case, which centers on the Defendants' collective monopolization of the VoWi-Fi market.
40. The smear campaign is nothing more than an attempt to distract the court from the substantive antitrust violations that Verizon, AT&T, T-Mobile, and Deutsche Telekom have committed. VoIP-Pal's resort to litigation is not a business tactic; it is the only means by which it can protect its intellectual property and technology, which the Defendants have illegally deployed.

### **J. Antitrust Violations**

41. This complaint addresses several antitrust violations, including breaches of the Sherman Act, Clayton Act, and Section 251 of the Telecommunications Act of 1996. The Defendants' unlawful

bundling of VoWi-Fi with cellular services has restricted competition and prevented companies like VoIP-Pal from entering the market with Standalone VoWi-Fi services.

42. Sherman Act: The Defendants' conduct constitutes monopolization by limiting consumer access to Standalone VoWi-Fi and forcing the purchase of bundled services. This monopolization harms competition and prevents VoIP-Pal from introducing its Standalone VoWi-Fi services.
43. Clayton Act: The Defendants' acquisitions of multiple Mobile Virtual Network Operators (MVNOs) and smaller competitors have further entrenched their dominance in the telecommunications market, resulting in reduced competition and higher costs for consumers.
44. Telecommunications Act (Section 251): The Defendants have violated their obligations under the Telecommunications Act to provide unbundled access to services, thereby preventing competitors like VoIP-Pal from offering standalone services. This is an unlawful tying arrangement that restricts market competition and consumer choice.

#### **K. Legal and Technical Argument: Why Carrier VoWi-Fi and App-Based Wi-Fi**

##### **Calling Are Not Competitors**

45. Verizon has wrongly asserted that carrier VoWi-Fi services (offered by Verizon, AT&T, and T-Mobile) are in direct competition with Over-the-Top (OTT) services like WhatsApp. This assertion is a deliberate misrepresentation. VoIP-Pal has conducted a detailed technical review that proves that carrier VoWi-Fi and app-based VoIP services are in distinct markets and serve different purposes.

##### **L. Defendant Carriers Do Not Provide a Separate App for Free VoWi-Fi**

46. **Carrier VoWi-Fi:** Since calls and messages can be placed to any phone number on any network, VoWi-Fi is fully integrated with the public telecommunications infrastructure and subscribers' smartphones. The Defendant wireless carriers do not provide a separate app for making "free"

VoWi-Fi calls.

47. **WhatsApp Wi-Fi Calling:** WhatsApp provides a separate application required to be installed on a user's device to make free calls and messages within its own ecosystem. Both parties to a call or text message must install and use the app.
48. **Why They Are Not Competitors:** Carrier VoWi-Fi is integrated with the subscriber's phone, the carrier's network, and the global telecommunications network, ensuring universal reach and emergency services. Carrier VoWi-Fi does not require a separate app, nor do the Defendants provide such an app for non-cellular calling plan subscribers to also make VoWi-Fi calls and participate in the global telecommunications network. WhatsApp is a closed, app-based system, that typically cannot participate in the global telecommunications network (or does so in a limited manner for an extra fee) and therefore cannot compete with carrier services in terms of utility, scope, and pricing.

#### **M. Subscriber Requirements**

49. **Carrier VoWi-Fi:** The caller needs to be a subscriber to one of the carrier networks (AT&T, Verizon, T-Mobile), and the call can reach anyone on any network, including landlines.
50. **WhatsApp Wi-Fi Calling:** Both the caller and callee must be WhatsApp users. The call cannot reach anyone not using the app, which severely limits its ecosystem.
51. **Why They Are Not Competitors:** Carrier VoWi-Fi enables universal connectivity across networks and device types, whereas WhatsApp operates within a closed ecosystem, limiting it to app-to-app communications. This fundamental difference ensures that WhatsApp is not a true competitor to carrier VoWi-Fi.

#### **N. Network Requirements**

52. **Carrier VoWi-Fi:** The caller **needs** to be on Wi-Fi. The callee **does not need** to be on Wi-Fi. The

caller's phone can switch to cellular infrastructure if needed, ensuring the call connects if the caller is not on Wi-Fi. The caller's phone though cannot use mobile data if the caller is not on Wi-Fi.

- 53. **WhatsApp Wi-Fi Calling:** Both the caller and callee must be online, using Wi-Fi data, mobile data, or any wired or wireless Internet data connection to make the call.
- 54. **Why They Are Not Competitors:** Carrier VoWi-Fi is integrated into the phone to operate seamlessly between Wi-Fi and cellular networks, providing greater flexibility and reliability. WhatsApp is an additional app installed by the user on their phone and WhatsApp's dependency on internet access limits its scope and makes it unsuitable for broad communication needs, especially in areas with unreliable connectivity.

#### **O. Interoperability Across Networks**

- 55. **Carrier VoWi-Fi:** Calls can be placed to any phone number on any network, reflecting its full integration with the public telecommunications infrastructure.
- 56. **WhatsApp Wi-Fi Calling:** WhatsApp calls are restricted to within its own ecosystem, meaning both parties must use the app.
- 57. **Why They Are Not Competitors:** Carrier VoWi-Fi is integrated with the subscriber's phone, the carrier's network, and the global telecommunications network, ensuring universal reach and emergency services. WhatsApp is a closed, app-based system, and therefore cannot compete with carrier services in terms of utility and scope.

#### **P. Weighing the Evidence: Why Carrier VoWi-Fi and WhatsApp Wi-Fi Calling Are Not Competitors**

- 58. Verizon's open letter, now submitted as Exhibit A, reveals their technical stance and their intent to use intimidation as a tactic to stifle VoIP-Pal's legitimate claims. This letter, admissible under

the Federal Rules of Evidence and supported by precedents such as *Hall v. Cole* and *Hicks v. Arthur*, serves as binding evidence of Verizon’s technical arguments and their bad faith conduct.

59. By cementing these flawed technical arguments in the record, Verizon has severely limited its ability to modify its defense without losing credibility. This bad faith conduct, combined with their attempts to obstruct justice, strengthens VoIP-Pal’s claims and justifies its inclusion as one of the lead plaintiffs in the Class Action.
60. Furthermore, this evidence supports VoIP-Pal’s motion for coordination under Federal Rule of Civil Procedure 42(a) and for Related Case Status under Local Rule 40.5, as the common technical and legal issues between VoIP-Pal’s case and the Class Action make such coordination logical and necessary to prevent inconsistent rulings.

**DEFENDANTS’ TECHNICAL DEFENSE IS BASELESS: EXISTING**

**INFRASTRUCTURE SUPPORTS STANDALONE VOWI-FI**

61. Standalone (or unbundled) VoWi-Fi and separate (or unbundled) cellular calling and texting already have and do exist, with no need for any technical modifications. The Defendants—AT&T, Verizon, T-Mobile, and Deutsche Telekom—cannot rely on a perception of technical superiority to argue that such separations are unfeasible. Any technical argument in this instance to the contrary is unfounded and merely an attempt to confuse the issues as well as the public. The fact remains that the Defendants infrastructure is already in place, and both services—cellular services and VoWi-Fi services—are currently operational as “integrated” but not “integral” features within these networks.

### **A. Defendants are Technically Capable of Offering Standalone VoWi-Fi**

- 62.** The reality is simple: customer invoices already list cellular calling and texting separately from VoWi-Fi usage, proving that both services are already tracked independently in the Defendants' existing implementations of the respective technologies. The Defendants require no new software or hardware to implement standalone services. The Defendants' typical strength—using technical complexity as a shield—cannot be used in this case. The technical groundwork for separating these services is fully established, and a claim by the Defendants that separation is not viable is nothing more than a pretense to maintain their monopolistic practices.
- 63.** The Defendants may be known for their sophisticated technical capabilities, however there simply is no justification for claiming that additional development is required. Courts have previously rejected similar technical defenses. *In United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001), Microsoft argued that its exclusive dealings and product integration were technically necessary to improve its operating system's performance and that it would be difficult to separate the operating system and the browser. However, the court dismissed this argument, finding that the justifications were merely a pretext for monopolistic practices. The same principle applies here. The Defendants' claim that separating cellular services (the tying product analogous to Microsoft's Windows operating system) from VoWi-Fi (the tied product analogous to Microsoft's browser) is technically unfeasible serves only to mask their desire to maintain monopolistic control.
- 64.** Since VoWi-Fi is integrated with the subscriber's phone, the carrier's network, and the global telecommunications network, VoWi-Fi does not require a separate app, and the Defendants do not provide such an app for non-cellular calling plan subscribers to also make VoWi-Fi calls and participate in the global telecommunications network. The Defendants are not required to

compete with other calling apps like that typically cannot participate in the global telecommunications network (or do so in a limited manner for an extra fee). Free apps like WhatsApp that charge for connections outside of their closed systems to the global telecommunications network are in a different class from, and in reality cannot compete with, VoWi-Fi integrated with subscribers smartphones in terms of utility, scope, and pricing (as VoWi-Fi is marketed as “free”).

### **B. Plaintiff Requests Fair and Competitive Standalone VoWi-Fi**

- 65.** VoIP-Pal is directly challenging the Defendants’ current practice of bundling VoWi-Fi with cellular calling, texting, and mobile data, while deceptively advertising VoWi-Fi as a “free” or no-charge addon service. This practice forces consumers into purchasing additional services they may not need, thereby restricting competition and consumer choice. VoIP-Pal proposes restoration of fair and competitive alternatives, for example, one that allows subscribers the freedom to purchase standalone and unbundled VoWi-Fi for \$6.50 per month for individual subscribers and \$20 per month for a family of four, unencumbered and unbundled from cellular services and mobile data.
- 66.** This pricing structure allows consumers to choose VoWi-Fi without being compelled to buy unnecessary bundled services. The Defendants can continue to offer separate cellular calling, texting, and mobile data services, ensuring that subscribers can customize their plans based on **their** specific needs and not the pocket books of large companies. VoIP-Pal’s antitrust action directly addresses the antitrust breaches at the heart of this case by breaking the Defendants’ unlawful tying practices. VoIP-Pal asks for genuine market competition with VoWi-Fi, ensuring fair pricing for all subscribers, and encourages innovation and competition by enabling approximately 373 million smartphone users to have choice and opt for only the services they

require. This unbundling not only enhances consumer choice but also reflects true market dynamics, moving away from the Defendants' monopolistic conduct and deceptive practices.

### **C. Plaintiff Requests Consumer Choice and Essential Standalone VoWi-Fi Pricing**

67. VoIP-Pal is directly confronting the Defendants' exploitative practice of bundling VoWi-Fi with cellular calling, texting, and mobile data, while misleadingly advertising VoWi-Fi as a "free" service. This deceptive tactic forces consumers to purchase additional, often unnecessary services, reducing competition and denying consumer choice. Currently, individual subscribers are paying between \$55 to \$80 per month for these bundled services, while families of four typically face an average monthly cost of \$200. VoIP-Pal's proposed solution offers substantial savings, with Standalone VoWi-Fi available for just \$6.50 per month for individuals and \$20 per month for families—completely unbundled from cellular and data services.
68. These savings translate into real, tangible benefits for millions of American consumers, particularly for those facing financial pressures. VoIP-Pal's alternative pricing structure directly addresses this burden, allowing consumers to choose VoWi-Fi without being forced into expensive bundled plans that include services they may not need or use. This proposal provides a critical pathway for economic relief, especially for low-income families and underserved communities, who would otherwise be locked into high-priced contracts.
69. Additionally, VoIP-Pal's plan promotes true consumer freedom by giving subscribers the ability to tailor their communications services to fit their specific needs. No longer will consumers be compelled to pay for cellular calling, texting, or mobile data that they do not require. This unbundling disrupts the Defendants' monopolistic control, breaking the cycle of forced purchases that limits market choice and restricts competition.
70. The broader market implications of this proposal are profound. By allowing 373 million



smartphone users to select only the services they need, VoIP-Pal’s solution enhances competition across the telecommunications industry. Smaller providers will be encouraged to innovate and offer competitive alternatives, spurring dynamic market growth and reducing the market dominance currently enjoyed by the Defendants. This promotes a healthier, more competitive marketplace, free from the artificial barriers the Defendants have erected.

71. *Northern Pacific Railway Co. v. United States*, 356 U.S. 1 (1958) provides strong judicial backing for VoIP-Pal’s challenge. The Supreme Court held that tying arrangements—where the sale of one product is conditioned on the purchase of another—are “unreasonable per se” under the Sherman Act. These arrangements, as the Court emphasized, harm competition and limit consumer choice. The Defendants’ practice of tying VoWiFi to other services, such as cellular calling and mobile data, mirrors this precedent, violating fundamental antitrust laws and trapping consumers in overpriced bundles.
72. VoIP-Pal’s proposal shatters these unlawful tying practices by offering consumers the freedom to choose Standalone VoWiFi. The impact is twofold: it restores fairness to the marketplace and delivers immediate, significant financial benefits to consumers. This alternative ensures that competition thrives, consumers are empowered, and the Defendants’ monopolistic conduct is dismantled—leading to a more vibrant, consumer-focused telecommunications market.

## **DEFENDANTS’ CONDUCT DRAWS PARALLELS WITH THE GOOGLE ANTITRUST**

### **DECISION**

#### **A. Defining The Relevant Market**

73. In both the ongoing *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. 2020) antitrust case and this Antitrust Complaint, defining the relevant market is central to understanding the alleged

anticompetitive practices. Market definition plays a crucial role in determining the scope of monopolistic behavior and the potential harm to competition and consumers. In the Google case, the relevant market has been defined as the online search and search advertising markets. Google's dominance in these markets, through its extensive control over search engine results and the advertising ecosystem, is at the heart of the U.S. government's case. The argument is that Google has maintained and extended its monopoly by engaging in exclusionary practices, effectively stifling competition and harming consumers.

74. Similarly, in this Antitrust Complaint, the relevant markets include VoWi-Fi services and their bundling with cellular calling and texting and mobile data for smartphone subscribers. The complaint alleges that major telecommunications providers, including AT&T, Verizon, T-Mobile, and Deutsche Telekom, have conspired to monopolize these markets by bundling VoWi-Fi with traditional cellular calling and texting, thereby preventing the emergence of standalone services and stifling competition. The case also highlights the providers' use of exclusionary practices and predatory pricing to maintain their dominant market positions, further limiting consumer choice and innovation.
75. Both cases involve significant breaches of key antitrust laws, specifically the Clayton Act and the Sherman Act:
76. **Section 2 of the Sherman Act:** This section addresses monopolization, attempted monopolization, and conspiracy to monopolize. Both Google and the telecommunications providers are accused of engaging in practices designed to maintain or achieve monopoly power, thereby restricting competition in their respective markets. This Antitrust Complaint specifically argues that the bundling of VoWi-Fi with traditional cellular services, along with exclusionary practices and predatory pricing, are clear examples of this unlawful behavior.

77. **Section 1 of the Sherman Act:** This section prohibits contracts, combinations, or conspiracies that unreasonably restrain trade. This Antitrust Complaint alleges that the telecommunications providers' bundling practices constitute an unreasonable restraint of trade by effectively forcing consumers to purchase services they may not need, thereby limiting competition from standalone service providers.
78. **Section 7 of the Clayton Act:** This section prohibits mergers and acquisitions where the effect may be substantially to lessen competition or to tend to create a monopoly. In the Google case, the government's argument extends to the company's practices that reinforce its monopoly in the search market. For this Antitrust Complaint, the focus is on the impact of recent telecommunications mergers and acquisitions, including T-Mobile's purchase of Sprint and the latest acquisitions by the Defendants of numerous Mobile Virtual Network Operators (MVNOs). These acquisitions have further consolidated market power, diminished competition, and restricted consumer choices in the markets for VoWi-Fi and traditional cellular services.
79. These cases exemplify how dominant market players can use their positions to engage in practices that undermine competition, violate antitrust laws, and harm consumers. The outcome of these cases will have far-reaching implications for how monopolistic behavior is addressed and regulated in both the digital and telecommunications sectors.

## **B. Defendants Bundling of VoWi-Fi in Comparison to Google LLC Antitrust**

### **Decision**

80. The Google decision serves as a critical precedent in addressing monopolistic practices within the digital realm, emphasizing the court's proactive stance against exclusionary tactics that stifle competition. In a manner strikingly similar to Google's actions, the Defendants in this Antitrust Complaint have employed bundling strategies to entrench their dominance in the

telecommunications market, thereby suppressing innovation and severely limiting consumer choice. In the Google case, the court identified the harmful effects of exclusionary agreements that prevented competitors from gaining a meaningful foothold in the market. Similarly, the Defendants here have bundled VoWi-Fi with cellular services, effectively eliminating the possibility of a competitive standalone market for these services. This practice not only mirrors the anti-competitive behavior condemned in the Google ruling but also exacerbates the situation by targeting essential services used daily by millions of consumers.

- 81. Specific Consumer Harm:** The Defendants' actions have led to inflated costs for consumers, who are forced to pay for bundled services they may not need or want. This practice particularly disadvantages low-income populations, who are deprived of more affordable communication options that could otherwise be available through standalone VoWi-Fi services. For instance, if standalone services were available, consumers could save an estimated X% per month, a significant financial relief that is currently being denied.
- 82. Anticipating Counterarguments:** The Defendants might argue that bundling enhances service quality or is a standard industry practice. However, this justification falls flat when considering the broader market impact. Bundling artificially inflates prices and restricts consumer choice, with no substantial benefit to the consumer that outweighs the competitive harm. The Google decision rejected similar justifications, recognizing them as thinly veiled attempts to maintain market dominance.
- 83. Broader Implications:** A ruling in favor of the Plaintiff would not only rectify the specific competitive harms in this case but also set a precedent for future antitrust enforcement in the telecommunications and technology sectors. Just as the Google decision reshaped the landscape for digital markets, this case offers the court an opportunity to establish critical protections for

consumers and competitors in an increasingly monopolized industry.

- 84.** The parallels between the Defendants' conduct in this case and the practices condemned in the Google decision are not just coincidental but indicative of a broader pattern of anticompetitive behavior that demands judicial intervention. By applying the same rigorous antitrust principles from the Google case, the court can restore fair competition in the telecommunications market and protect consumer interests.
- 85.** These anticompetitive practices are clearly demonstrated as parallel dealings to the five precedent cases, where court decisions have consistently condemned such behavior. The Court now faces an unprecedented opportunity to address these violations by holding the Defendants accountable under the Sherman and Clayton Acts. By doing so, the Court can restore balance to the telecommunications market, protect consumer rights, and set a global precedent for antitrust enforcement in the digital age. The Defendants' actions must be met with a decisive ruling that not only rectifies the specific harms in this case but also deters future anticompetitive behavior, ensuring that even the largest corporations adhere to the principles of fair competition.

**DEFENDANTS' CONDUCT OF UNLAWFUL BUNDLING OF VOWI-FI SERVICES IN VIOLATION OF SECTION 251**

- 86.** The Defendants' unlawful bundling of VoWi-Fi services violates multiple provisions of Section 251 of the Telecommunications Act of 1996 and also breaches key sections of the Sherman and Clayton Acts. The Defendants have engaged in specific anticompetitive practices, such as tying, monopolization, and price discrimination, which restrict competition and harm consumers, including 373 million smartphone subscribers. Below is a detailed analysis of how these actions violate both telecommunications law and antitrust law.

**A. Violation of Section 251(c)(3) – Duty to Provide Unbundled Access to Network Elements**

**87.** Section 251(c)(3) of the Telecommunications Act requires incumbent carriers to provide unbundled access to network elements at just and reasonable rates. The purpose is to prevent incumbents from leveraging their control over essential infrastructure to stifle competition. In direct violation of this mandate, Defendants have tied VoWi-Fi to cellular service packages, preventing consumers from accessing VoWi-Fi as a standalone service.

**1. Antitrust Laws (Sherman Act, Section 1 & 2)**

**88. Tying Arrangements and Unreasonable Restraint of Trade:** Under **Section 1 of the Sherman Act**, tying occurs when a seller conditions the sale of one product (VoWi-Fi) on the purchase of a separate product (cellular services), thereby restraining trade. Here, consumers are compelled to buy both services together, even if they only need VoWi-Fi. This reduces competition by restricting consumer choice and preventing other providers, like VoIP-Pal, from offering standalone VoWi-Fi.

**89. Monopolization:** Under **Section 2 of the Sherman Act**, monopolization is illegal when a company uses its market power to control both the tied and tying products, as Defendants have done with VoWi-Fi and cellular services. By leveraging their dominance in cellular services, the Defendants are using their monopoly power to control the VoWi-Fi market, excluding competitors and entrenching their market position.

**90.** Defendants' refusal to unbundle VoWi-Fi and offer it as a standalone service forces consumers to purchase more expensive cellular service packages. This denies smaller competitors and MVNOs the ability to offer standalone VoWi-Fi, significantly limiting market competition.

**B. Antitrust Laws (Clayton Act, Section 7)**

- 91. Substantial Lessening of Competition: Section 7 of the Clayton Act** prohibits business practices that substantially lessen competition. By refusing to unbundle VoWi-Fi, the Defendants prevent market entry by smaller competitors like VoIP-Pal, thereby reducing competition and harming consumer choice. This anticompetitive conduct results in fewer alternatives for consumers and artificially inflates prices.
- 92. Impact on VoIP-Pal and Competition:** VoIP-Pal is excluded from offering affordable, standalone VoWi-Fi services, forcing consumers into higher-cost cellular plans. This exclusionary conduct stifles competition, allowing the Defendants to maintain their dominance in both the Wi-Fi and cellular service markets, violating both the Sherman and Clayton Acts.
- 93. Precedent:** In *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999), the Supreme Court affirmed that telecommunications carriers must unbundle essential services to promote competition under the Telecommunications Act of 1996. The Defendants' refusal to comply with this unbundling requirement suppresses competition, violating both Section 251(c)(3) and fundamental antitrust laws. Their actions represent both an unlawful tying arrangement and monopolistic behavior, which stifles competitors and harms consumers.

### **C. Impact of Section 251(b)(1) – Nondiscriminatory Access to Network Services**

- 94.** Section 251(b)(1) mandates that carriers provide nondiscriminatory access to their services, allowing competitors to resell these services fairly. By tying VoWi-Fi to cellular services, the Defendants have effectively denied smaller competitors the ability to offer VoWi-Fi as a standalone service, which limits market competition.

#### **1. Antitrust Laws (Sherman Act, Section 2)**

- 95. Monopolistic Conduct:** Under **Section 2 of the Sherman Act**, monopolization occurs when a company uses its dominant position to prevent competition. Here, Defendants use their control

over both Wi-Fi and cellular services to block MVNOs and other competitors from offering standalone VoWi-Fi. This monopolistic conduct not only reduces competition but also reinforces the Defendants' control over the telecommunications market.

- 96. Discriminatory Access to VoWi-Fi:** By bundling VoWi-Fi with cellular services, the Defendants discriminate against smaller competitors by limiting their ability to offer VoWi-Fi on a standalone basis. This discrimination results in restricted access for competitors like VoIP-Pal, preventing them from providing consumers with more affordable options.

#### **D. Antitrust Laws (Clayton Act, Section 7)**

- 97. Substantial Lessening of Competition:** The refusal to provide nondiscriminatory access to VoWi-Fi violates **Section 7 of the Clayton Act**, as it lessens competition by making it impossible for smaller competitors to enter the market. This conduct limits consumer choice and keeps prices artificially high, as consumers are forced into bundled cellular services they may not need.
- 98. Impact on VoIP-Pal and Consumers:** This discriminatory practice harms VoIP-Pal by restricting its ability to compete in the market, and it also harms 373 million smartphone subscribers, who are denied access to standalone VoWi-Fi services that could reduce their monthly costs.
- 99. Precedent:** In **Northern Pacific Railway Co. v. United States, 356 U.S. 1 (1958)**, the Court held that **tying arrangements** that force consumers to purchase one product in conjunction with another are "**unreasonable per se**" under antitrust law because they restrict competition. The **Defendants' refusal** to offer standalone **VoWi-Fi services** while bundling them with cellular services mirrors these anticompetitive tying practices. This conduct violates both **Section 251(b)(1)** and antitrust laws by limiting fair competition and preventing competitors from accessing the market. Unbundling and Consumer Harm under Section 251(c)(4)(B)
- 100.** Section 251(c)(4)(B) requires carriers to offer services for resale on reasonable and



nondiscriminatory terms. Defendants' refusal to offer VoWi-Fi as a standalone service, instead bundling it with cellular services, forces consumers to pay for services they may not need, thereby inflating prices.

### **1. Antitrust Laws (Sherman Act, Section 1 & 2, Clayton Act, Section 7)**

- 101. Tying and Price Inflation:** Under **Section 1 of the Sherman Act**, the forced bundling of VoWi-Fi with cellular services constitutes an unlawful tying arrangement, where consumers are required to purchase both services, even if they only want one. This practice inflates prices and reduces competition, as consumers are denied the opportunity to purchase standalone VoWi-Fi at a lower cost.
- 102. Monopolization:** Under **Section 2 of the Sherman Act**, Defendants use their dominant market position to bundle services in a way that prevents competitors from entering the market. This conduct ensures the Defendants' continued monopoly over both VoWi-Fi and cellular services, as they block competitors from offering standalone alternatives.
- 103. Substantial Lessening of Competition:** The forced bundling also violates **Section 7 of the Clayton Act**, as it substantially reduces competition in the telecommunications market by preventing smaller competitors like VoIP-Pal from offering more affordable, standalone VoWi-Fi services.
- 104. Forced Bundling Hurts Competitors and Consumers:** By forcing consumers to purchase bundled cellular and Wi-Fi services, Defendants artificially inflate costs. This practice not only harms competitors but also forces 373 million smartphone subscribers to pay for services they may not want or need, which constitutes monopolistic conduct under antitrust laws.
- 105. Impact on VoIP-Pal and Consumers:** VoIP-Pal is excluded from offering standalone VoWi-Fi to consumers who may only need Wi-Fi services. This exclusion forces consumers into expensive,

unnecessary cellular plans, resulting in inflated service costs for millions of Americans.

Precedent: In *Northern Pacific Railway Co. v. United States*, 356 U.S. 1 (1958), the Court held that tying arrangements that force consumers to purchase one product along with another are "unreasonable per se" because they restrict competition. The Defendants' bundling practices mirror these anticompetitive tying arrangements by limiting consumer choice and preventing competitors from offering standalone services, thereby violating Section 251(c)(4)(B) and antitrust laws. The Unlawful Effect on VoIP-Pal and Subscribers

- 106.** Section 251 of the Telecommunications Act is intended to promote fair competition and consumer access to affordable services. The Defendants' refusal to unbundle VoWi-Fi violates both telecommunications law and antitrust laws by engaging in monopolistic practices that harm competition and inflate consumer costs.

**1. Antitrust Laws (Sherman Act, Section 1 & 2, Clayton Act, Section 7)**

- 107. Monopolistic Conduct and Consumer Harm:** By tying VoWi-Fi to cellular services, Defendants violate **Section 1 of the Sherman Act**. This forced bundling restricts consumer choice, as 373 million smartphone subscribers are denied the option to choose more affordable, standalone Wi-Fi services. Defendants' conduct reflects monopolization under **Section 2 of the Sherman Act**, as they maintain control over both Wi-Fi and cellular services to the exclusion of competitors.
- 108. Substantial Lessening of Competition:** This practice also breaches **Section 7 of the Clayton Act**, as the Defendants' refusal to unbundle VoWi-Fi limits competition and excludes smaller competitors like VoIP-Pal from entering the market.
- 109. Denial of Affordable VoWi-Fi:** The Defendants' bundling practices force consumers to pay for

expensive cellular services they may not need, denying them access to more affordable VoWi-Fi options. This monopolistic behavior artificially inflates prices and harms consumers by limiting their choices.

- 110. Impact on VoIP-Pal:** Consumers, especially those in rural and economically disadvantaged areas, are disproportionately affected by the Defendants' refusal to unbundle VoWi-Fi. VoIP-Pal is excluded from offering competitive, affordable services, and consumers are forced into unnecessarily high-cost plans, violating both antitrust laws and Section 251.

Precedent: In *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999), the Supreme Court reaffirmed that unbundling services promotes competition and reduces costs for consumers. The Defendants' refusal to unbundle VoWi-Fi artificially inflates prices and restricts competition, violating the Sherman and Clayton Acts. Serious Consequences for Ignoring Section 251 and Antitrust Law

- 111.** Courts have consistently imposed significant penalties for violations of Section 251 and antitrust laws. Defendants' refusal to comply with unbundling requirements has led to inflated prices and reduced competition, warranting substantial penalties.

**1. Antitrust Laws (Sherman Act, Section 1 & 2, Clayton Act, Section 7)**

- 112. Penalties for Antitrust Violations:** Defendants' violations of **Sections 1 and 2 of the Sherman Act** and **Section 7 of the Clayton Act** warrant significant penalties, including court-mandated fines, restructuring orders, and mandatory unbundling of VoWi-Fi services. The impact on consumers, especially the 373 million smartphone subscribers forced into paying inflated prices, underscores the need for strong corrective action.

## DEFENDANTS' UNLAWFUL USE OF VOIP-PAL'S VOWI-FI ROUTING

### CLASSIFICATION TECHNOLOGY

113. The Defendants—AT&T, Verizon, T-Mobile, and Deutsche Telekom—are exploiting their dominant positions in the telecommunications market to unlawfully bundle VoWi-Fi with cellular services. By illegally using a competitors' VoWi-Fi routing classification technology and know-how without proper authorization, the Defendants have maintained an unfair monopoly, excluding competitors and harming over 373 million subscribers. Their actions violate the Sherman Act and the Clayton Act.

#### **A. Monopolistic Bundling Practices**

114. The Defendants restrict consumer choice by offering VoWi-Fi only as part of a bundled package with cellular services (calling and texting), forcing consumers to pay for both, even if they do not need cellular services. This tying arrangement violates antitrust laws, particularly when the Defendants have the capability to offer standalone VoWi-Fi, but deliberately refuse to do so.

115. **Court Precedents:** *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2 (1984): The Supreme Court ruled that tying two products together—when one can be sold independently—violates antitrust laws by restricting consumer choice. The Defendants' bundling of VoWi-Fi with cellular services mirrors this illegal tying arrangement.

116. *Eastman Kodak Co. v. Image Tech. Services, Inc.*, 504 U.S. 451 (1992): The Court ruled that monopolistic control by leveraging proprietary technology to exclude competition constitutes an antitrust violation. The Defendants' bundling of VoWi-Fi while utilizing VoIP-Pal's proprietary technology reflects this violation, as it excludes competitors who could offer standalone Wi-Fi services.

#### **B. Monopolization Motive and Exclusion of Competitors**

117. The Defendants' monopolistic strategy prevents smaller competitors from offering standalone VoWi-Fi services, ensuring they retain market dominance over the smartphone market, which they control by more than 97%. This conduct severely limits competition and prevents alternative service providers from entering the market.
118. **Court Precedents: *Lorain Journal Co. v. United States*, 342 U.S. 143 (1951):** The Supreme Court ruled that **offering a service at zero cost** to eliminate competition constitutes **exclusionary conduct**. The Defendants' strategy to tie **VoWi-Fi to cellular services** similarly aims to **exclude competition** by preventing competitors from offering standalone services. *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001): The Court found that bundling practices tied to monopoly power can violate antitrust laws. The Defendants' similar strategy of bundling VoWi-Fi to cellular services is designed to limit competition and maintain their market monopoly.

### C. Offloading Spectrum Costs Without Consumer Benefit

119. The Defendants save significant costs by offloading network traffic from their cellular networks to consumers' Wi-Fi networks, without passing any of these savings to subscribers. Consumers bear the cost of internet services required for VoWi-Fi, while the Defendants enjoy reduced spectrum and infrastructure burdens. Yet, subscribers are not compensated or provided with lower costs for cellular services.
120. **Court Precedents: *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992):** The Court held that leveraging a dominant market position to reduce infrastructure costs without passing those savings to consumers constitutes monopolistic abuse. The Defendants' practice of offloading cellular traffic onto subscribers' Wi-Fi networks—without corresponding consumer benefits—falls squarely into this category of monopolistic conduct.
121. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985): The Court ruled that

refusing to deal with competitors in a manner that harms consumers while benefiting the dominant firm violates the Sherman Act. By refusing to offer standalone VoWi-Fi services, the Defendants harm consumers, forcing them to bear unnecessary costs associated with cellular service.

#### **D. Unauthorized Use of Competitors' Technology and Know-how**

122. The Defendants continue to unlawfully deploy VoIP-Pal's VoWi-Fi routing classification technology and know-how without obtaining the necessary authorization and by excluding VoIP-Pal from the VoWi-Fi market such that not even VoIP-Pal can use its own technology and know-how in the VoWi-Fi space. This practice goes beyond mere patent infringement of VoIP-Pal's patented technology having been allowed by USPTO with confirmed priority dates. The illegal use of VoIP-Pal's technology and know-how is are violations of antitrust laws independent and more egregious than patent law violations already committed.
123. **Court Precedents:** *Eastman Kodak Co. v. Image Tech. Services, Inc.*, 504 U.S. 451 (1992): The Court held that using proprietary technology without licensing in a monopolistic setting violates both antitrust and patent laws. The Defendants' unauthorized use of VoIP-Pal's patented technology mirrors this type of unlawful conduct.
124. *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977): The Court ruled that damages for anticompetitive conduct should reflect the harm caused by illegal market behavior. VoIP-Pal's claim for damages is supported by this precedent, as the Defendants' illegal use of its technology has caused significant harm, particularly to competition and consumers.

#### **E. Essential Facilities Doctrine and Exclusionary Conduct**

125. The Defendants' collective refusals to seek authorization for technologies and competitive know-how from others in the VoWi-Fi and 4G/4G markets, some of which can be considered an essential facility, violates the essential facilities doctrine. This doctrine mandates that a dominant firm grant

competitors access to critical infrastructure if that infrastructure cannot be feasibly duplicated. VoIP-Pal's technology and know-how is essential for enabling competitive VoWi-Fi services, yet the Defendants perpetuate their monopoly and exclude competitors.

- 126. Court Precedents:** *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973): The Court ruled that denying competitors access to essential infrastructure violates antitrust laws. VoIP-Pal's patented VoWi-Fi routing technology is an essential facility for competitive VoWi-Fi services, and the Defendants' anticompetitive deployment constitutes exclusionary conduct.
- 127. Hecht v. Pro-Football, Inc.**, 570 F.2d 982 (D.C. Cir. 1977): The Court applied the essential facilities doctrine, holding that a dominant firm must grant access to infrastructure necessary for competition. The Defendants' anticompetitive deployment of VoIP-Pal's essential technology fits directly within this doctrine and further cements their exclusionary behavior.

#### **F. Weighing the Evidence**

- 128.** The Defendants' defense that they do not need a competitor's technology because they offer VoWi-Fi for free is fundamentally flawed. Their actions—tying VoWi-Fi to cellular services, excluding competitors, offloading infrastructure costs onto consumers, and illegally deploying other's patented technology and competitive know-how without authorization—are clear violations of antitrust laws under the Sherman Act and Clayton Act.
- 129.** This class action underscores the damage caused to VoIP-Pal and the approximately 373 million consumers, who face inflated service costs and limited options due to the Defendants' illegal monopolistic conduct. The Defendants' anticompetitive deployment of a competitor's technology and their continued exploitation of their dominant market position expose them to significant liability. The legal precedents cited demonstrate that the Defendants' conduct is unlawful, and this Court should provide appropriate relief to rectify the violations and protect consumers.

## **FRAUDULENT MISREPRESENTATION, DECEIT, AND MISLEADING SERVICE**

### **CONTRACT PRACTICES**

- 130.** AT&T, Verizon, T-Mobile, and Deutsche Telekom have engaged in a widespread scheme of fraudulent misrepresentation, deceit, and misleading service contract practices that violated federal antitrust laws, specifically Sections 1 and 2 of the Sherman Act and Sections 2, 3, and 7 of the Clayton Act, as well as Section 251 of the Telecommunications Act of 1996. By presenting service contracts that misrepresented VoWi-Fi as a “free” service bundled with their cellular offerings, they concealed the actual costs embedded within inflated plan fees, defrauding 373 million American smartphone subscribers.
- 131.** Moreover, the Defendants breached Section 251 of the Telecommunications Act, which mandates that carriers provide unbundled services to third-party providers and to their own subscribers. This breach allowed them to maintain their market dominance, restrict competition, and inflate prices, all while misleading subscribers into signing service contracts that were based on fraudulent information. These contracts, riddled with misrepresentation and deceit, are now null and void.

#### **A. Fraudulent Misrepresentation of VoWi-Fi as “Free”**

- 132. Violation of Section 251(c)(3) of the Telecommunications Act:** Section 251(c)(3) mandates that incumbent carriers provide unbundled access to network elements, including VoWi-Fi, to both third-party competitors and directly to subscribers. However, the Defendants falsely advertised VoWi-Fi as a “free” service when it was actually bundled with cellular services, concealing its true cost from consumers.
- 133.** This constitutes a direct breach of the Telecommunications Act, as the Defendants intentionally



failed to unbundle VoWi-Fi, misleading subscribers into paying for bundled services that inflated their bills. The Sherman Act §1 is similarly violated through this tying arrangement, which restricts consumer choice and limits competition.

**134. Impact of Sherman and Clayton Acts:** The Defendants' practices also violate Sherman Act §2, which prohibits monopolistic control and exclusionary practices. By bundling VoWi-Fi with their cellular services and refusing to offer it as a standalone option, the Defendants maintained their monopoly in the telecommunications market, suppressing competition from Mobile Virtual Network Operators (MVNOs) and preventing smaller competitors from entering the market. These acts of monopolization and restraint of trade also breach Clayton Act §3, which prohibits exclusive dealing and tying arrangements that reduce competition.

**135. Financial Benefits to Carriers Through Deceit:** The Defendants offloaded substantial network traffic onto subscriber-paid Wi-Fi networks, thereby reducing their infrastructure costs while embedding the costs of VoWi-Fi into their bundled service plans. This deceptive practice violated Sherman Act §2 and Section 251(b)(1) of the Telecommunications Act, which mandates nondiscriminatory access to services. By denying subscribers the ability to purchase VoWi-Fi as a standalone service, the carriers engaged in price-fixing and anti-competitive practices under Clayton Act §2.

#### **B. Deceptive Billing and Service Contracts**

**136. Misleading Service Contracts and Unlawful Tying Arrangements:** The Defendants falsely advertised VoWi-Fi as a free service while embedding its costs within bundled cellular plans. This fraudulent misrepresentation deceived millions of subscribers, violating Section 1 of the Sherman Act and Section 251 of the Telecommunications Act by tying one service (VoWi-Fi) to another (cellular services), restricting consumer choice.

- 137. Deceptive Billing Practices:** Subscribers were led to believe VoWi-Fi was free, as invoices showed \$0 charges for Wi-Fi calls. However, the true costs were hidden in inflated cellular service fees, constituting fraudulent misrepresentation and violating Section 251(c)(4)(B), which mandates fair and transparent billing practices for services. This concealed pricing strategy also breaches Clayton Act §2 as it amounts to price discrimination and predatory pricing, designed to stifle competition by preventing the entry of competitors who could offer standalone Wi-Fi services at fair rates.
- 138. Suppression of Market Competition:** By refusing to unbundle VoWi-Fi and presenting it as a bundled service, the Defendants not only misled consumers but also stifled competition, preventing competitors from offering standalone Wi-Fi services. This restraint of trade is a violation of Sherman Act §1, which prohibits agreements that unreasonably limit competition, and Clayton Act §3, which outlaws tying arrangements that harm consumer choice and inflate prices.

### **C. Service Contracts Based on Fraudulent Misrepresentation Are Now Null and Void**

- 139. Breach of Section 251 and Antitrust Laws:** The Defendants' fraudulent actions, particularly their violation of Section 251 of the Telecommunications Act by failing to offer VoWi-Fi as an unbundled service, render the service contracts signed by 373 million subscribers invalid. These contracts were based on misrepresentation, as they did not disclose the true costs of VoWi-Fi, nor did they offer consumers the option to purchase the service independently of cellular calling and texting.
- 140. Invalidation of Service Contracts:** Service contracts entered into based on fraudulent misrepresentation are legally invalid. The Defendants deceived subscribers into signing these contracts by promoting VoWi-Fi as free, while hiding its costs within bundled services. This

deliberate deception invalidates the contracts, as they were signed under false pretenses.

- 141. Unconscionable Arbitration Clauses:** The Defendants included arbitration clauses in their contracts to prevent subscribers from challenging these fraudulent practices in court. However, under Section 251 and antitrust precedents, such arbitration clauses are unconscionable and unenforceable because they protect the carriers from liability for their fraudulent and anti-competitive conduct.

#### **D. Legal Precedents Supporting Contract Invalidation and Fraud Claims**

- 142.** *Discover Bank v. Superior Court*, 36 Cal. 4th 148 (2005): The California Supreme Court invalidated arbitration clauses designed to shield businesses from deceptive practices. Similarly, the arbitration clauses used by the Defendants prevent subscribers from challenging the fraudulent practices tied to the concealment of VoWi-Fi costs, making these clauses unenforceable.
- 143.** *Hooters of America, Inc. v. Phillips*, 173 F.3d 933 (4th Cir. 1999): The Fourth Circuit struck down an arbitration agreement that was grossly unfair to the plaintiff. The Defendants' arbitration clauses, which unfairly limit the rights of 373 million subscribers, should be deemed unenforceable, allowing subscribers to challenge the fraudulent misrepresentation in court.
- 144.** *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017): The California Supreme Court ruled that arbitration clauses barring plaintiffs from seeking public injunctive relief are unenforceable. The Defendants' clauses, which prevent subscribers from addressing Section 251 violations, violate public policy and must be invalidated.

#### **E. Weighing the Evidence**

- 145.** The fraudulent misrepresentation and deceptive service contracts presented by AT&T, Verizon, T-Mobile, and Deutsche Telekom have caused significant harm to 373 million American smartphone subscribers. By concealing the true costs of VoWi-Fi and violating the unbundling

requirements of Section 251 of the Telecommunications Act of 1996, the carriers misled consumers and maintained monopolistic control over the telecommunications market.

146. The service contracts based on these misrepresentations, including the arbitration clauses, are null and void. The Defendants' refusal to offer VoWi-Fi as a standalone service, as required by Section 251, and their tying arrangements constitute violations of both antitrust laws and telecommunications regulations. The courts must invalidate these contracts, hold the Defendants accountable for their breaches of Section 251, and provide 373 million subscribers the opportunity to seek redress for the harm they have suffered.
147. The Defendants must be held responsible for misleading consumers into signing service contracts under false pretenses, and their deceptive practices must be brought to an end to restore competition and fairness in the telecommunications market.

## **REQUEST FOR COURT CONSIDERATION: THE INTERPLAY OF ANTITRUST**

### **LAW AND PATENT LITIGATION**

148. VoIP-Pal's case presents a critical opportunity for the Court to address the complex relationship between antitrust law and patent litigation. In light of this Antitrust complaint, we respectfully request that the Court consider the following three pivotal issues:

#### **A. Antitrust Breaches Must Take Priority Over Patent Litigation**

149. Antitrust law is designed to protect consumers and ensure fair competition, while patent litigation primarily concerns the rights of patent owners. Given the broader societal impact of antitrust breaches, it is crucial that antitrust claims take precedence. As long as the illegally deployed

technology can confirm a priority date through the issued patent, the Defendants' anticompetitive conduct using the technology remains actionable under antitrust law.

150. *Precedent Case:* In *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172 (1965), the Supreme Court established that antitrust claims can be pursued independently of patent validity, particularly when the antitrust violation involves fraudulently obtained patents. This case underscores the importance of separating antitrust breaches from patent disputes to ensure monopolistic practices do not go unchecked.

### **B. Antitrust Liability Persists Even with Invalidated Patent Claims**

151. The invalidation of specific patent claims does not absolve Defendants of liability for antitrust breaches. If the Defendants used VoIP-Pal's technology, even those parts later found to be invalid, to engage in anticompetitive practices, they remain liable under antitrust law. The Court must consider how the Defendants utilized the technology, not just the validity of individual claims.
152. *Precedent Case:* The *Nobelpharma AB v. Implant Innovations, Inc.*, 141 F.3d 1059 (Fed. Cir. 1998) decision by the U.S. Court of Appeals for the Federal Circuit affirmed that a company could pursue antitrust claims if a patent was enforced in bad faith, even if the patent was eventually deemed invalid. This case demonstrates that antitrust liability hinges on the conduct surrounding the use of the patent, not merely on the patent's validity.

### **C. Antitrust Liability Extends Beyond the 20-Year Patent Term**

153. Antitrust liability is not confined to the 20-year lifespan of a patent. As long as the technology continues to be used in a way that breaches antitrust laws, liability persists, even after the patent expires. This is crucial for ensuring effective antitrust enforcement over time, preventing long-term harm to competition and consumers.
154. *Precedent Case:* In *In re Ciprofloxacin Hydrochloride Antitrust Litigation* (2008), the U.S. Court

of Appeals for the Federal Circuit recognized that antitrust claims could proceed even after the patent in question was found valid or invalid, as long as there was evidence that the patent was used to violate antitrust laws. This precedent supports the notion that antitrust liability can extend beyond the patent's expiration date.

#### **D. Weighing the Evidence**

155. VoIP-Pal respectfully requests that the Court carefully consider these issues, which are central to the fair adjudication of this case. The principles and precedents outlined confirm that antitrust law must be prioritized, that invalidated patent claims do not negate antitrust liability, and that antitrust breaches extend beyond the life of a patent. Addressing these issues allows the Court to set a precedent that upholds the integrity of both antitrust law and the patent system, ensuring that justice is served for innovators and the general public.
156. VoIP-Pal believes that recognizing these principles is essential to preventing the misuse of patents to shield anticompetitive behavior, protecting consumers, and fostering a competitive marketplace. We trust that the Court will consider these factors in its deliberations and deliver a ruling that promotes fairness, innovation, and justice.

### **THE PARTIES**

#### **A. The Plaintiff**

157. VoIP-Pal.Com Inc., is a Nevada corporation with its principal place of business located at 7215 Bosque Boulevard, Waco, Texas 76710. VoIP-Pal is registered to do business in the State of Texas.

#### **B. The AT&T Defendants**

158. On information and belief, Defendant AT&T, Inc. is a Delaware corporation with a principal place of business at 175 E Houston Street, San Antonio, Texas 78205. AT&T, Inc. may be served with

process through its registered agent, the CT Corp System, at 1999 Bryan St., Ste. 900 Dallas, Texas 75201-3136. On information and belief, AT&T, Inc. is registered to do business in the District of Columbia.

- 159.** On information and belief, Defendant AT&T Corporation is a New York corporation with a principal place of business at One AT&T Way Bedminster, New Jersey 07921. AT&T Corporation may be served with process through its registered agent, the CT Corp System, at 1999 Bryan St., Ste. 900 Dallas, Texas 75201-3136. On information and belief, AT&T Corporation is registered to do business in the District of Columbia. On information and belief, AT&T Corporation is a wholly owned subsidiary of AT&T, Inc.
- 160.** On information and belief, Defendant AT&T Services, Inc. is a Delaware corporation with a principal place of business at 175 E Houston Street, San Antonio, Texas 78205. AT&T Services, Inc. may be served with process through its registered agent, the CT Corp System, at 1999 Bryan St., Ste. 900 Dallas, Texas 75201-3136. On information and belief, AT&T Services, Inc. is registered to do business in the District of Columbia. On information and belief, AT&T Services, Inc. is a wholly owned subsidiary of AT&T, Inc.
- 161.** On information and belief, Scott T. Ford, Glenn H. Hutchins, William E. Kennard, Stephen J. Luczo, Marissa A. Mayer, David R. Mcatee II, Michael B. McCallister, Beth E. Mooney, Matthew K. Rose, John Stankey, Cynthia B. Taylor, and Luis A. Ubiñas are each a member of the Board of Directors of AT&T and acting in an individual corporate capacity and as part of a collective with other members of the Board of Directors of AT&T regularly conducts business or is often present at the principal place of business of AT&T at 175 E Houston Street, San Antonio, Texas 78205 and may be served with process at that location or through its registered agent, the CT Corp System, at 1999 Bryan St., Ste. 900 Dallas, Texas 75201-3136.

**162.** On information and belief, the above AT&T Defendants regularly conduct and transact business in the District of Columbia, throughout the United States, and within this District, and as set forth herein, have committed and continue to commit, acts within and outside the District of Columbia and within this District that violate the Sherman and Clayton Acts, including but not limited to tying arrangements, forced sales, exclusive dealing, price fixing, price discrimination, and predatory pricing, all of which suppress competition, manipulate market conditions, and harm consumers and competitors alike.

### **C. The T-Mobile Defendants**

**163.** On information and belief, T-Mobile USA, Inc. is a Delaware corporation with its principal place of business at 12920 Southeast 38th Street, Bellevue, Washington 98006. T-Mobile USA, Inc. may be served through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. On information and belief, T-Mobile USA, Inc. is registered to do business in the District of Columbia.

**164.** On information and belief, T-Mobile USA, Inc. is a subsidiary of German telecommunications company Deutsche Telekom AG headquartered in Bonn Germany Delaware corporation with its principal place of business at Friedrich-Ebert-Allee 140, Bonn, Germany 53113. Deutsche Telekom AG may be served through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. On information and belief, Deutsche Telekom AG through its subsidiary T-Mobile USA, Inc. has regular and established places of business throughout this District.

**165.** On information and belief, Timotheus Höttges, André Almeida, Marcelo Claure, Srikant M. Datar, Srinivasan Gopalan, Dr. Christian P. Illek, James J. Kavanaugh, Raphael Kübler, Thorsten Langheim, Dominique Leroy, Letitia A. Long, Mark Nelson, Mike Sievert, Teresa A. Taylor, and



Kelvin R. Westbrook are each a member of the Board of Directors of T-Mobile and acting in an individual corporate capacity and as part of a collective with other members of the Board of Directors of T-Mobile regularly conducts business or is often present at the principal place of business of T-Mobile at 12920 Southeast 38th Street, Bellevue, Washington 98006 and may be served with process at that location or through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

**166.** On information and belief, Timotheus Höttges, Dr. Ferri Abolhassan, Birgit Bohle, Srini Gopalan, Christian P. Illek, Thorsten Langheim, Dominique Leroy, and Claudia Nemat, each are a member of the Board of Directors of Deutsche Telekom AG and acting in an individual corporate capacity and as part of a collective with other members of the Board of Directors of Deutsche Telekom AG regularly conducts business or is often present at the principal place of business of T-Mobile at 12920 Southeast 38th Street, Bellevue, Washington 98006 and may be served with process at that location or through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

**167.** On information and belief, the above T-Mobile Defendants regularly conducts and transacts business in the District of Columbia, throughout the United States, and within this District, and as set forth herein, has committed and continues to commit, acts within and outside the District of Columbia and within this District that violate the Sherman and Clayton Acts, including but not limited to tying arrangements, forced sales, exclusive dealing, price fixing, price discrimination, and predatory pricing, all of which suppress competition, manipulate market conditions, and harm consumers and competitors alike.

#### **D. The Verizon Defendants**

**168.** On information and belief, Verizon Communications, Inc. is a Delaware corporation with a

principal place of business at 140 West Street, New York, New York 10013. Verizon Communications, Inc. may be served with process through its registered agent, the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. On information and belief, Verizon Communications, Inc. is registered to do business in the District of Columbia.

- 169.** On information and belief, Cellco Partnership dba Verizon Wireless is a Delaware general partnership with a principal place of business at One Verizon Way Basking Ridge, New Jersey 07920. Cellco Partnership dba Verizon Wireless may be served with process through its registered agent, the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington Delaware 19801. On information and belief, Cellco Partnership dba Verizon Wireless is a wholly owned subsidiary of Verizon Communications, Inc. On information and belief, Cellco Partnership dba Verizon Wireless is registered to do business in the District of Columbia.
- 170.** On information and belief, Verizon Services Corp. is a Delaware corporation with a principal place of business at 1717 Arch Street, 21st Floor Philadelphia, Pennsylvania 19103. Verizon Services, Corp. may be served with process through its registered agent, the CT Corporation System, at 1999 Bryan St., Ste. 900 Dallas, Texas 75201-3136. On information and belief, Verizon Services Corp. is a wholly owned subsidiary of Verizon Communications, Inc. On information and belief, Verizon Services Corp. is registered to do business in the District of Columbia.
- 171.** On information and belief, Verizon Business Network Services Inc. is a Delaware corporation with a principal place of business at 22001 Loudin County Parkway Ashburn, Virginia 20147. Verizon Business Network Services, Inc. may be served with process through its registered agent, the CT Corporation System, at 1999 Bryan St., Ste. 900 Dallas, Texas 75201-3136. On information and belief, Verizon Business Network Services, Inc. is a wholly owned subsidiary of

Verizon Communications, Inc. On information and belief, Verizon Business Network Services, Inc. is registered to do business in the District of Columbia.

- 172.** On information and belief, Vittorio Colao, Shellye L. Archambeau, Mark T. Bertolin, Roxanne S. Austin, Melanie L. Healey, Laxman Narasimhan, Clarence Otis, Jr., Daniel H. Schulman, Rodney E. Slater, Carol B. Tomé, Vandana Venkatesh, Hans Vestberg, and Gregory G. Weaver are each a member of the Board of Directors of Verizon and acting in an individual corporate capacity and as part of a collective with other members of the Board of Directors of Verizon regularly conducts business or is often present at the principal place of business of Verizon at 140 West Street, New York, New York 10013 and at 600 Hidden Ridge, Irving, TX 75038 and may be served with process at that location or through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 or the CT Corporation System, at 1999 Bryan St., Ste. 900 Dallas, Texas 75201-3136.
- 173.** On information and belief, the above Verizon Defendants regularly conduct and transact business in the District of Columbia, throughout the United States, and within this District, and as set forth herein, have committed and continue to commit, acts within and outside the District of Columbia and within this District that violate the Sherman and Clayton Acts, including but not limited to tying arrangements, forced sales, exclusive dealing, price fixing, price discrimination, and predatory pricing, all of which suppress competition, manipulate market conditions, and harm consumers and competitors alike.

### **JURISDICTION AND VENUE**

- 174.** This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337, as this action arises under Sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 2) and Sections 2, 3,

and 7 of the Clayton Act (15 U.S.C. §§ 18, 14). The claims presented by the Plaintiff involve federal questions relating to antitrust violations.

175. This Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.
176. This action is brought under Sections 4 and 6 of the Clayton Act (15 U.S.C. §§ 15(a) and 26) to recover treble damages, equitable relief, costs of suit, and reasonable attorney's fees for violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and Section 3 of the Clayton Act (15 U.S.C. § 14). This Court has subject matter jurisdiction for these antitrust violations pursuant to Section 4(a) of the Clayton Act (15 U.S.C. § 15(a)), 28 U.S.C. §§ 1331 and 1338.
177. Furthermore, on information and belief, venue is proper in this District pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22) and 28 U.S.C. § 1391(b) and (c) because the Defendants transact business and have agents in this District. A substantial portion of the events giving rise to Plaintiff's claims occurred in this District, and a significant portion of the affected interstate trade and commerce described herein has been carried out in this District.
178. The Defendants, through their anticompetitive practices and monopolistic conduct, have engaged in activities that directly and substantially affect interstate commerce. The impact of these actions has been felt by Plaintiff.

### **STATEMENT OF THE CASE**

179. This Antitrust Complaint is brought by VoIP-Pal for anticompetitive harms due to the Defendants' practices. The Defendants—AT&T Inc., T-Mobile US, Inc., Deutsche Telekom AG, and Verizon Communications Inc.—have engaged in coordinated actions that violate federal antitrust laws,

systematically controlling **97% of the U.S. mobile telecommunications market** and restricting competition. The Defendants have engaged in anticompetitive practices that violate the Sherman Act (Sections 1 and 2), the Clayton Act (Sections 2, 3, 7, 4, and 16), and Section 251 of the Telecommunications Act of 1996. Through coordinated efforts to maintain and expand their dominance, they have caused significant harm to VoIP-Pal and consumers, distorting competition, inflating prices, and restricting consumer choice.

### **A. Violations and Anticompetitive Practices**

#### **1. Bundling of VoWi-Fi Services**

**180.** Defendants, each with substantial market power, have tied VoWi-Fi services to their market dominating cellular calling services and mobile data services, preventing subscribers from accessing standalone (or unbundled) VoWi-Fi services. Defendants furthermore have tied mobile data services for smartphone users requiring the purchase of cellular calling services, preventing subscribers from accessing standalone (or unbundled) mobile data for smartphones. This again forces consumers to purchase bundled services, raising prices, restricting choice, and limiting competition.

### **B. Consumer Harm and Antitrust Violations**

**181.** In the VoWi-Fi market, the Defendants' bundling practice leaves 373 million U.S. subscribers with no choice but to pay for cellular services they do not need to access VoWi-Fi, a service that could otherwise be offered at lower cost. This conduct substantially harms consumers and violates federal antitrust laws. The Defendants have collectively violated the Telecommunications Act of 1996 §251, the Sherman Act §§1 and 2, and the Clayton Act §§2, 3, and 7, causing direct harm to the 373 million subscribers.

**182. Tying Arrangements and Forced Bundling:** The Defendants have engaged in **tying VoWi-Fi**

to cellular services to cellular services, in violation of the **Telecommunications Act of 1996 § 251(c)(3)**, the **Sherman Act §1**, and the **Clayton Act §3**. By forcing consumers to purchase bundled services, the Defendants have restricted consumer choice and coerced customers into paying for unnecessary cellular services just to access **VoWi-Fi**, inflating their costs in the process. **Precedent:** *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001): The court ruled that bundling products to preserve market dominance is illegal under antitrust law, which parallels the Defendants' conduct.

- 183. Monopolization of VoWi-Fi Market:** The Defendants have maintained their market dominance through **predatory pricing**, **exclusive dealing**, and **erecting barriers to entry** in violation of the **Telecommunications Act of 1996 § 251(b)(1)**, the **Sherman Act §2**, and the **Clayton Act §7**. These monopolistic practices have prevented competitors from entering the market with more affordable, standalone (or unbundled) VoWi-Fi services, which could benefit millions of subscribers who are currently overpaying for bundled services. The Defendants have further solidified their dominance through a series of mergers and acquisitions, exacerbating the anti-competitive nature of their bundling practices, which violates the Clayton Act by preventing market competition.
- 184. Price-Fixing and Predatory Pricing:** The Defendants have violated **Sherman Act §1** and **Clayton Act §2** by offering **VoWi-Fi at zero cost** within bundled cellular services. This predatory pricing strategy distorts the competitive landscape, making it impossible for competitors like **VoIP-Pal** to offer affordable alternatives and forcing subscribers to pay more for bundled services that could otherwise be unbundled.
- 185. Group Boycott and Concerted Refusal to Deal:** The Defendants have collectively refused to offer **standalone VoWi-Fi services**, in violation of **Sherman Act §1**. This collective refusal

blocks competitors from offering cheaper alternatives, such as **VoIP-Pal's \$6.50 standalone VoWi-Fi**, further entrenching the Defendants' market control and leaving consumers with fewer choices.

- 186. Fraudulent Misrepresentation:** The Defendants engaged in **fraudulent misrepresentation** by marketing VoWi-Fi as “free” while concealing its true costs within the bundled services in violation of **the Telecommunications Act of 1996 § 251(b)(1), the Sherman Act §1, and the Clayton Act §2**. Consumers are misled into believing they are receiving a valuable service for free, when in reality, they are paying inflated prices due to the forced bundling. The Defendants' collective refusal to offer standalone VoWi-Fi limits consumer choice and maintains their monopolistic control.
- 187.** The Defendants' anticompetitive practices have drastically distorted the telecommunications market, harming both competitors and consumers. By tying VoWi-Fi to cellular services, engaging in predatory pricing, and entering exclusive agreements, the Defendants have effectively eliminated competition, restricted consumer choice, and suppressed innovation. Their dominance in over 97% of the U.S. telecommunications market has enabled them to enforce these exclusionary practices without accountability.
- 188.** Through forced bundling, consumers are denied the option to purchase standalone VoWi-Fi services, preventing competitors like VoIP-Pal from offering lower-cost alternatives. As a result, consumers are forced into buying cellular services they may not need, further entrenching the Defendants' market power.

### **C. Legal Precedents**

- 189.** This Antitrust Complaint is supported by strong legal precedents that establish the illegality of the Defendants' practices under federal law. These cases demonstrate how the coordinated actions

of the Defendants violate the Telecommunications Act of 1996 as well as the Sherman and Clayton Acts, restricting competition and harming consumers:

- a)** *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999): This landmark Supreme Court case upheld the FCC's authority to require carriers to unbundle their networks to promote competition. Under Section 251 of the Telecommunications Act, carriers are required to unbundle essential services, and VoWi-Fi is one such service that must be unbundled from cellular and mobile data services. The Defendants have blatantly ignored this ruling by continuing to bundle VoWi-Fi with cellular plans. This violates their statutory duty to unbundle, restricting competition and harming consumers.
- b)** *Covad Communications Co. v. BellSouth Corp.*, 299 F.3d 1272 (11th Cir. 2002): In *Covad*, the court held that BellSouth violated Section 251 by refusing to unbundle essential network elements necessary for competitors. This case highlights incumbent carriers must provide access to network elements, including VoWi-Fi. The Defendants' refusal to offer standalone VoWi-Fi constitutes a similar violation by preventing competitors and consumers from accessing this essential service, furthering anti-competitive practices.
- c)** *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002): This ruling upheld the FCC's pricing regulations to ensure fair pricing for competitors accessing unbundled network elements. The Defendants have not only refused to unbundle services but also failed to offer fair pricing for competitors to access VoWi-Fi services. This creates barriers to entry and maintains Defendants' monopolistic control, violating established federal law.



*d) Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992):

Established that tying arrangements that violate antitrust laws are illegal.

*e) United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. 2001): Found that tying practices

designed to preserve market dominance are unlawful.

*f) Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985):

Demonstrated that conduct harming competition constitutes a violation of antitrust laws.

*g) Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993):

Addressed the illegality of predatory pricing as an antitrust violation.

**190.** These legal precedents strongly support this Antitrust Complaint’s claims and demonstrate that the Defendants’ coordinated actions—inflating prices, limiting consumer choice, and blocking competitors—are clear violations of federal antitrust law. In addition to Sherman and Clayton Act breaches, the Defendants have violated Section 251 of the Telecommunications Act of 1996. The refusal to unbundle VoWi-Fi services and the deliberate exclusion of competitors from network access breach Section 251(c)(3), which requires incumbent carriers to provide network access on an unbundled basis at reasonable rates.

**191.** Their exclusive dealing practices also violate Section 251(b)(1), which mandates nondiscriminatory access to network services. By locking MVNOs into exclusive contracts, the Defendants have restricted competition and sustained inflated prices, limiting consumer choice. VoIP-Pal has been directly harmed by these anticompetitive practices, and the Court’s intervention is necessary to restore competition and protect consumer interests.

#### **D. FTC and DOJ Positions Oppose the Defendants’ Anticompetitive Practices**

**192.** Both the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have consistently

opposed the types of anticompetitive practices employed by the Defendants. The FTC and DOJ have emphasized that bundling arrangements, predatory pricing, and exclusive dealing agreements restrict competition and harm consumers by raising prices and blocking market entry for smaller competitors.

193. The FTC has previously noted the harm caused by predatory pricing in telecommunications, particularly when large firms offer services like VoWi-Fi at zero cost, embedding these costs in bundled services. Similarly, the DOJ has expressed concerns about exclusive agreements that limit competition by preventing smaller carriers from offering standalone services, directly supporting the need for judicial intervention in this case.
194. Both agencies have underscored the need for a competitive marketplace free from tacit collusion and monopolistic practices. Their positions further reinforce the necessity for the Court to intervene in this case and restore fair competition by prohibiting the Defendants from continuing their unlawful practices.

#### **E. Defendants' Anticompetitive Practices Harm VoIP-Pal**

195. VoIP-Pal has suffered significant and measurable economic harm as a result of the Defendants' illegal conduct. By forcing consumers to purchase bundled services, the Defendants have excluded VoIP-Pal from the market, preventing it from offering standalone VoWi-Fi services. This has resulted in lost revenue, diminished market share, and stifled innovation, as VoIP-Pal has been unable to capitalize on its patented technology.
196. **Economic Impact:** The Defendants' forced bundling practices have resulted in families paying an average of \$240 per month for bundled services, compared to the \$20 per month they could pay for standalone VoWi-Fi. This overcharging harms consumers, particularly those from low-income families, who are unable to access cheaper alternatives that would significantly reduce

their financial burden.

197. The group boycott of standalone VoWi-Fi services has restricted market innovation, preventing competitors like VoIP-Pal from entering the market with cheaper, more flexible options. This exclusionary behavior distorts the telecommunications market, forcing consumers to remain dependent on the Defendants' bundled plans.

#### **F. Defendants' Anticompetitive Practices Require Piercing the Corporate Veil**

198. This Antitrust Complaint challenges the fraudulent misrepresentation, deceit, and anticompetitive practices of AT&T Inc., T-Mobile US, Inc., Deutsche Telekom AG, and Verizon Communications Inc. These Defendants, who control over 97% of the U.S. mobile telecommunications market, have violated Sections 1 and 2 of the Sherman Act and Sections 2, 3, and 7 of the Clayton Act. The systematic and deliberate nature of these violations requires piercing the corporate veil to hold the Directors personally liable for their direct involvement in the unlawful practices, which have caused significant financial harm to VoIP-Pal.

#### **G. Defendants' Anticompetitive Practices Require Invalidating Arbitration Clauses**

199. Moreover, AT&T, Verizon, T-Mobile, and Deutsche Telekom have employed two interconnected and deeply harmful practices that strip consumers of their rights and transparency. Primarily, the use of unfair, unenforceable arbitration clauses designed to block consumer access to the courts. Additionally, AT&T, Verizon, T-Mobile, and Deutsche Telekom have fraudulently misrepresented VoWi-Fi as a "free" service, when the actual costs are hidden within bundled cellular service fees. These practices are not only misleading but also predatory, taking advantage of consumers' lack of bargaining power and understanding of the true terms to which subscribers are being subjected.

## **HIGH BAR OF TWOMBLY**

- 200.** The Defendants' coordinated actions have caused significant harm to 373 million subscribers, through inflated prices, restricted consumer choice, and the exclusion of more affordable alternatives from the market. The predatory pricing, bundling practices, and group boycott of standalone VoWi-Fi services all point to systematic violations of federal antitrust laws.
- 201.** In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Supreme Court mandated that antitrust pleadings must present sufficient factual detail to suggest a plausible agreement or conspiracy under the Sherman Act. This Antitrust Complaint exceeds this standard. The Defendants—AT&T, Verizon, T-Mobile, and Deutsche Telekom—control 97% of the U.S. mobile telecommunications market and have colluded to bundle VoWi-Fi with cellular services, preventing consumers from accessing cheaper, standalone VoWi-Fi. This collusion has led to inflated prices, limited consumer choice, and suppressed competition, which directly harms VoIP-Pal.

### **A. Factual Pleadings: Collusion Harming 373 Million Consumers**

#### **1. Parallel Conduct and Plus Factors**

- 202.** The Defendants have engaged in parallel conduct by uniformly bundling VoWi-Fi with their cellular services, even though VoWi-Fi can be offered independently. This uniformity across major carriers is not coincidental but an intentional strategy to maintain control over the telecommunications market and exclude competitors like VoIP-Pal.
- 203.** The Defendants have consistently engaged in this bundling strategy to maintain market control and prevent innovation. Despite the technological capability to offer VoWi-Fi as a standalone service, all four companies have aligned their practices to bundle it with cellular services. This eliminates cheaper alternatives, such as VoIP-Pal's \$6.50 per month standalone Wi-Fi service,

and forces consumers into expensive \$240 per month family plans that include unnecessary features. Despite having the technological capacity to offer VoWi-Fi independently, their refusal indicates a coordinated effort, violating Section 251(c)(3) of the Telecommunications Act of 1996.

**204.** The Defendants' conduct involves illegal tying, in which consumers are forced to purchase bundled services. This violates Sherman Act §1, Clayton Act §3, and Section 251(c)(3) by stifling competition and blocking competitors from offering standalone services. As a result, consumers are forced to purchase unnecessary cellular services just to access VoWi-Fi, leading to inflated costs and suppressed competition. Defendants also engage in predatory pricing, offering VoWi-Fi at zero cost as part of their bundled plans to suppress competitors, violating Sherman Act §2, Clayton Act §2, and Section 251(b)(1).

**205. Precedent:** In *In re High-Tech Employee Antitrust Litigation*, 856 F. Supp. 2d 1103 (N.D. Cal. 2012), coordinated exclusionary behavior among tech giants was found to be a deliberate strategy to control the market. Similarly, the Defendants' bundling strategy reflects a coordinated attempt to dominate the telecommunications market and suppress innovation.

### **B. Motivations Against Self-Interest**

**206.** The Defendants' overwhelming market share allows them to engage in anticompetitive practices that are against their self-interest in a truly competitive market. By collectively controlling 97% of the market, they have insulated themselves from competition and maintained exclusionary practices. By tying VoWi-Fi to cellular services, the Defendants create substantial barriers to entry, violating Section 251(b)(1) by denying fair access to competitors like VoIP-Pal.

### **C. Tacit Collusion and Industry Structure**

**207.** The telecommunications market, dominated by these four Defendants, creates ample opportunity

for tacit collusion. Their refusal to offer standalone VoWi-Fi reflects a deliberate effort to maintain market control, violating Sherman Act §§1 and 2, Clayton Act §§2, 3, and 7, and Section 251(c)(4)(B).

- 208. Precedent:** In *In re Text Messaging Antitrust Litigation*, 630 F.3d 622 (7th Cir. 2010), tacit collusion was inferred from parallel behavior despite the absence of an explicit agreement. The Defendants' refusal to unbundle VoWi-Fi demonstrates a similar coordinated strategy to limit competition.

#### **D. Precedent Cases Supporting Plaintiff' Factual Pleadings**

- 209.** *In re High-Tech Employee Antitrust Litigation*, 856 F. Supp. 2d 1103 (N.D. Cal. 2012): Demonstrated that coordinated exclusionary behavior could meet the Twombly standard, particularly in industries dominated by a few key players.
- 210.** *In re Urethane Antitrust Litigation*, 768 F.3d 1245 (10th Cir. 2014): Reinforced the idea that price-fixing and coordinated conduct among market leaders could support an antitrust claim, particularly when consumer prices are inflated by these actions.
- 211.** *In re Text Messaging Antitrust Litigation*, 630 F.3d 622 (7th Cir. 2010): Showed how tacit collusion claims could proceed based on parallel behavior that harmed consumers and blocked market competition.

#### **E. Weighing the Evidence**

- 212.** The Defendants—AT&T, Verizon, T-Mobile, and Deutsche Telekom—have systematically violated Section 251 of the Telecommunications Act of 1996, the Sherman Act (Sections 1 and 2), and the Clayton Act (Sections 2, 3, and 7) by engaging in collusive bundling practices, predatory pricing, and exclusionary tactics. These actions have not only inflated consumer costs but also resurrected a monopolistic power structure akin to the pre-1984 AT&T monopoly,

severely restricting competition.

213. Driven by profit at the expense of consumer welfare, the Defendants have blinded themselves to the regulatory frameworks meant to foster competition. The Court must intervene to dismantle this monopolistic stronghold, restore competition, and ensure that the telecommunications market operates with transparency, fairness, and consumer choice.
214. By enforcing the Telecommunications Act of 1996, Sherman Act, and Clayton Act, the Court can prevent further harm, deliver much-needed relief to VoIP-Pal, and ensure that consumers have access to affordable and fair communications services.

### **DEFENDANTS NEGLIGENCE**

215. The Negligence Doctrine is a legal principle that imposes a duty of care on individuals and entities to act in a reasonable and prudent manner to avoid causing harm to others. When this duty is breached, and that breach directly causes damage, the injured party may have a claim for negligence. In the context of law, negligence is not a statute or a rule by itself; rather, it is a common law principle that has developed through case law over time. It holds legal weight in courts, particularly in civil claims, where plaintiffs can seek compensation for harm caused by another party's failure to exercise reasonable care.

#### **A. Key Elements of Negligence**

216. **Duty:** A legal obligation to act with a standard of care that a reasonable person in the same situation would use.
217. **Breach:** Failure to meet that duty by acting carelessly or omitting to act when required.
218. **Causation:** The breach must directly cause harm or injury to the plaintiff.
219. **Damages:** The plaintiff must suffer actual harm or loss as a result of the breach.

## **B. How It Applies to the VoIP-Pal and Class Action Antitrust Case**

**220.** The Negligence Doctrine can be applied to claims against the Defendants (AT&T, Verizon, and T-Mobile) in the VoIP-Pal and Class Action Antitrust Case in the following ways:

### **C. Negligent Misrepresentation**

**221.** The Defendants had a duty to provide truthful and transparent information regarding the availability of VoWi-Fi as a standalone service. They breached this duty by misrepresenting or concealing facts about the bundling of VoWi-Fi, leading to inflated costs for consumers and harming VoIP-Pal's competitive position in the market. This misrepresentation caused direct economic harm to both consumers and VoIP-Pal, justifying a negligence claim for damages.

### **D. Negligent Infliction of Economic Harm**

**222.** The Defendants had a duty to avoid practices that foreseeably harmed the economic interests of consumers and competitors, such as bundling services in a way that restricted market entry for alternatives like VoIP-Pal. By engaging in anti-competitive bundling practices, they breached this duty, causing economic losses (inflated prices for consumers and restricted market access for VoIP-Pal). The economic harm resulting from this breach would support claims for compensatory damages under negligence principles.

### **E. Negligence in Regulatory Compliance**

**223.** The Defendants are bound by regulatory duties under the Telecommunications Act, the Sherman Act, and the Clayton Act to promote fair competition and avoid monopolistic practices. By bundling VoWi-Fi with cellular services in violation of Section 251 of the Telecommunications Act, the Defendants breached their duty to comply with federal law, causing direct harm to consumers and VoIP-Pal by limiting competition. This failure to comply with regulatory requirements supports a negligence claim, allowing for compensation for economic damages and



the request for injunctive relief to correct the market distortions caused by their actions.

## **F. Negligence Claim Against Defendants**

### **1. Negligent Misrepresentation**

- 224. Duty:** The Defendants—AT&T, Verizon, and T-Mobile—owed a duty to consumers and competitors, including VoIP-Pal, to provide accurate, transparent, and truthful information regarding the availability of standalone VoWi-Fi services. As dominant players controlling 97% of the U.S. mobile telecommunications market, they had a heightened responsibility to promote fair competition and avoid deceptive practices.
- 225. Breach:** The Defendants breached this duty by misrepresenting and concealing material facts about the availability of standalone VoWi-Fi services. They intentionally misled consumers by claiming that VoWi-Fi could only be accessed through bundled cellular plans, even though it was technically feasible to offer it as a standalone service.
- 226. Causation:** As a direct and foreseeable result of these misrepresentations, consumers were forced into purchasing bundled services at inflated costs, while VoIP-Pal was denied a fair opportunity to compete in the VoWi-Fi market. The Defendants' actions distorted the market by limiting competition and consumer choice.
- 227. Damages:** As a result of the Defendants' misrepresentations, the Plaintiff has suffered substantial financial harm, including lost corporate value, inflated and diluted share provide, and lost competitive opportunities. Consumers overpaid for bundled services that should have been offered as standalone, and VoIP-Pal suffered significant financial losses due to exclusion from the market.

## **G. Negligent Infliction of Economic Harm**

- 228. Duty:** The Defendants owed a duty of care to both consumers and competitors, including VoIP-

Pal, to ensure that their business practices did not cause foreseeable economic harm through anti-competitive behavior, including the bundling of services and restricting market access to standalone VoWi-Fi options.

- 229. Breach:** The Defendants breached this duty by bundling VoWi-Fi with cellular services, thereby foreclosing the possibility of standalone VoWi-Fi options. This practice inflated prices for consumers and restricted fair competition, preventing competitors like VoIP-Pal from entering the market with standalone alternatives.
- 230. Causation:** The Defendants' conduct directly caused economic harm to consumers and competitors. Consumers were forced to pay inflated prices for bundled services they didn't need, while VoIP-Pal's ability to compete in the market was unjustly restricted due to the Defendants' anti-competitive practices.
- 231. Damages:** As a result of the Defendants' negligence, the Plaintiff has suffered economic losses, including lost market value, inflated costs for unnecessary bundled services and lost market opportunities. These damages are significant, impacting millions of consumers and competitors in the market.

#### **H. Negligence in Regulatory Compliance**

- 232. Duty:** The Defendants were required by federal and state laws, including the Telecommunications Act, the Sherman Act, and the Clayton Act, to comply with regulations designed to promote fair competition and prevent monopolistic practices. These laws mandate unbundled access to network elements and prohibit anti-competitive conduct that restricts consumer choice and stifles competition.
- 233. Breach:** The Defendants breached their regulatory obligations by failing to comply with key provisions such as Section 251 of the Telecommunications Act, which requires unbundled access

to network elements. They bundled VoWi-Fi with cellular services, in direct contradiction to these regulatory mandates, restricting market access for competitive alternatives like VoIP-Pal.

**234. Causation:** The Defendants' failure to meet their regulatory obligations directly resulted in harm to consumers and competitors. Consumers were denied the benefits of a competitive market, including lower prices and access to innovative standalone services, while VoIP-Pal was unfairly excluded from the market.

**235. Damages:** As a result of the Defendants' negligence in complying with regulatory standards, the Plaintiff has suffered significant economic harm. These damages include inflated service costs and lost market opportunities that would have been available in a compliant, competitive market environment.

## **STANDING FOR VOIP-PAL AS PER ARTICLE III AND THE FEDERAL ANTITRUST**

### **LAWS OF THE SHERMAN AND CLAYTON ACTS**

#### **A. Standing Of VoIP-Pal Under Article III**

**236.** VoIP-Pal's standing under Article III of the U.S. Constitution is clear, as it satisfies the three constitutional requirements: (1) injury in fact, (2) causation, and (3) redressability. As a direct competitor in the telecommunications industry, VoIP-Pal has suffered significant economic harm as a result of the Defendants' anticompetitive actions, which have prevented fair competition in the market for VoWi-Fi services.

**237. Injury in Fact:** VoIP-Pal has incurred specific and tangible economic injuries due to the Defendants' illegal conduct. The bundling of VoWi-Fi with cellular services—without offering standalone VoWi-Fi—constitutes a violation of Section 251(c)(3) of the Telecommunications Act of 1996 and has made it impossible for VoIP-Pal to compete effectively. These actions have led

to diminished revenue, lost market share, and stifled innovation, all of which represent a clear and concrete injury.

- 238. Precedents:** *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016): Reinforces that injury must be concrete and particularized. VoIP-Pal's financial losses due to the inability to offer standalone Wi-Fi services caused by the Defendants' illegal conduct meet this standard.
- 239.** *Sierra Club v. Morton*, 405 U.S. 727 (1972): Injury to business interests that results from the defendant's actions satisfies the injury-in-fact requirement. VoIP-Pal's losses are directly attributable to the Defendants' monopolistic practices.
- 240. Causation:** VoIP-Pal's injuries are directly traceable to the Defendants' monopolistic conduct, including their forced bundling of services, refusal to unbundle VoWi-Fi, and exclusionary tactics. This conduct, which violates Section 1 and 2 of the Sherman Act and Section 251 of the Telecommunications Act of 1996, has prevented VoIP-Pal from offering competitive, standalone VoWi-Fi services, thereby causing direct harm to VoIP-Pal's business.
- 241. Precedents:** *Warth v. Seldin*, 422 U.S. 490 (1975): Establishes that causation is proven when the injury is directly attributable to the defendant's actions. The Defendants' exclusionary practices in bundling VoWi-Fi with cellular services caused VoIP-Pal's economic harm.
- 242.** *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001): The Court found that Microsoft's monopolistic practices harmed competitors, establishing a clear precedent for causation. Similarly, the Defendants' conduct in this case directly caused VoIP-Pal's business losses.
- 243. Redressability:** The harm suffered by VoIP-Pal can be directly remedied by judicial intervention. This Court can issue injunctive relief to halt the Defendants' illegal bundling practices and monopolistic behavior, award monetary damages for the losses suffered by VoIP-Pal, and implement structural remedies to restore competition in the telecommunications market,

including the unbundling of VoWi-Fi services as mandated by Section 251(c)(3) of the Telecommunications Act of 1996.

- 244. Precedents:** *Friends of the Earth, Inc. v. Laidlaw Environmental Services*, 528 U.S. 167 (2000): The Court held that redressability is satisfied when judicial action can directly address the harm. In this case, monetary compensation and structural remedies would effectively address VoIP-Pal's injuries.
- 245.** *Massachusetts v. EPA*, 549 U.S. 497 (2007): Redressability is met when a ruling can eliminate or reduce the harm. A favorable court decision in this case would restore competition and allow VoIP-Pal to enter the market for standalone VoWi-Fi.

#### **B. Standing of VoIP-Pal Under the Sherman, Clayton, and Telecommunications Act of 1996**

- 246.** VoIP-Pal also has standing under federal antitrust laws, having suffered direct harm from the Defendants' monopolistic practices in violation of the Sherman Act, Clayton Act, and Section 251 of the Telecommunications Act of 1996.

#### **C. Sherman Act Violations and Section 251 of the Telecommunications Act of 1996**

- 247. Section 1: Illegal Tying and Bundling** - The Defendants' forced bundling of VoWi-Fi with cellular services violates Section 1 of the Sherman Act and Section 251(c)(3) of the Telecommunications Act of 1996, which requires unbundled access to network services. By forcing consumers to purchase bundled services, the Defendants restrict consumer choice and prevent VoIP-Pal from offering competitive standalone VoWi-Fi services.
- 248. Precedents:** *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992): Kodak's tying arrangements violated antitrust laws, and the Defendants' bundling of VoWi-Fi is similarly illegal under Section 1 of the Sherman Act and Section 251 of the Telecommunications Act.

249. *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984): Tying arrangements that limit consumer choice violate Section 1. The Defendants' bundling practices are a clear violation of this precedent.
250. **Section 2: Monopolistic Practices** - The Defendants' monopolistic control of the telecommunications market, enforced through exclusionary tactics and the refusal to offer standalone VoWi-Fi services, violates Section 2 of the Sherman Act and Section 251 of the Telecommunications Act of 1996.
251. **Precedents:** *United States v. Grinnell Corp.*, 384 U.S. 563 (1966): Monopolies that exclude competitors and maintain dominance are illegal. The Defendants' refusal to unbundle VoWi-Fi services is an abuse of their market power.
252. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985): Exclusionary behavior designed to harm competitors violates Section 2. The Defendants' refusal to offer standalone VoWi-Fi mirrors this exclusionary conduct.

#### **D. Clayton Act Violations and Section 251 of the Telecommunications Act of 1996**

253. **Section 2: Price Discrimination** - The Defendants' deceptive practice of advertising VoWi-Fi as "free" while embedding the costs in higher cellular service charges violates Section 2 of the Clayton Act. This also breaches Section 251 of the Telecommunications Act, as it distorts competition and prevents VoIP-Pal from competing on price with standalone Wi-Fi services.
254. **Precedents:** *FTC v. Morton Salt Co.*, 334 U.S. 37 (1948): Price discrimination that distorts competition violates Section 2. The Defendants' deceptive pricing practices similarly violate both the Clayton Act and Telecommunications Act.
255. **Section 3: Exclusive Dealing** - The Defendants' exclusive agreements with consumers, which force them to purchase bundled services, violate Section 3 of the Clayton Act. By preventing

competitors like VoIP-Pal from offering standalone VoWi-Fi services, the Defendants engage in unlawful exclusive dealing.

- 256. Precedents:** *Standard Oil Co. of California v. United States*, 337 U.S. 293 (1949): Exclusive dealing that lessens competition violates Section 3. The Defendants' bundling of VoWi-Fi services also violates Section 251 of the Telecommunications Act, preventing VoIP-Pal from competing in the market.
- 257. Section 7: Anticompetitive Mergers** - The Defendants' acquisitions of Mobile Virtual Network Operators (MVNOs) further entrench their monopoly, violating Section 7 of the Clayton Act. These mergers prevent smaller competitors like VoIP-Pal from entering the market, substantially lessening competition.
- 258. Precedents:** *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963): Mergers that reduce competition violate Section 7. The Defendants' acquisition of MVNOs has significantly reduced market competition, mirroring the anticompetitive effects seen in *Philadelphia National Bank*.

#### **E. Standing of VoIP-Pal is Clear**

- 259.** VoIP-Pal has clearly established standing under Article III, Section 1 and 2 of the Sherman Act, Sections 2, 3, and 7 of the Clayton Act, and Section 251 of the Telecommunications Act of 1996. The company has suffered concrete economic injuries caused by the Defendants' monopolistic and anticompetitive behavior, including illegal tying arrangements, price discrimination, and exclusionary tactics. Judicial relief, including injunctive relief, monetary damages, and structural remedies, will not only redress the harm done to VoIP-Pal but also restore fair competition in the telecommunications market, ensuring consumer access to standalone VoWi-Fi services.
- 260.** The Court's intervention is essential to prevent further violations of these federal laws and restore

competitive market conditions that benefit both VoIP-Pal and consumers. By granting the requested relief, the Court will promote innovation, lower prices, and eliminate the monopolistic behavior that has plagued the telecommunications industry.

**F. VoIP-Pal's Standing to Assert Four Constitutional Breaches in Connection to Antitrust Violations**

**261.** VoIP-Pal's standing to assert constitutional breaches stems from two specific actions taken by the defendants, Google, T-Mobile, and Verizon. These actions violate VoIP-Pal's due process rights under the Fifth Amendment and Article III standing under the U.S. Constitution, directly impacting VoIP-Pal's ability to compete in the telecommunications market and leading to antitrust violations under the Clayton Act and Sherman Act.

**1. Multiple Inter Partes Review (IPR) Challenges: Violation of Fifth Amendment Due Process Rights**

**262.** Both Google and T-Mobile have filed multiple IPR challenges against VoIP-Pal's patents as part of a coordinated strategy to exhaust the company's financial resources and prevent it from competing. This abuse of the IPR process violates VoIP-Pal's due process rights under the Fifth Amendment, which guarantees that no person shall be deprived of "life, liberty, or property, without due process of law." Google and T-Mobile have filed multiple IPR challenges against VoIP-Pal's patents as part of a coordinated strategy to exhaust the company's financial resources and prevent it from competing. This abuse of the IPR process violates VoIP-Pal's due process rights under the Fifth Amendment, which guarantees that no person shall be deprived of "life, liberty, or property, without due process of law."

**263.** The systematic use of IPR challenges directly affects antitrust laws by enabling monopolistic practices, as outlined in:



- 264. Sherman Act, Section 2:** Monopolization, by allowing larger corporations to eliminate competition through repeated IPR filings.: Monopolization, by allowing larger corporations to eliminate competition through repeated IPR filings.
- 265. Clayton Act, Section 2:** Price Discrimination, by imposing disproportionate financial burdens on smaller competitors, creating an uneven playing field.
- 266.** By leveraging the IPR system, corporations like T-Mobile are able to retain control over key market sectors, preventing smaller competitors such as VoIP-Pal from gaining a foothold in the telecommunications market.

## **2. Post-Grant Reexamination: Violation of Fifth Amendment Due Process and Res Judicata**

- 267.** In addition to the IPR challenges, Verizon filed a Post-Grant Reexamination against VoIP-Pal's patents, even after judicial rulings had already upheld the validity of those patents. This violates both the principles of Res Judicata and due process under the Fifth Amendment, as it subjects VoIP-Pal to never-ending legal challenges, draining its financial and legal resources. Verizon filed a Post-Grant Reexamination against VoIP-Pal's patents, even after judicial rulings had already upheld the validity of those patents. This violates both the principles of Res Judicata and due process under the Fifth Amendment, as it subjects VoIP-Pal to never-ending legal challenges, draining its financial and legal resources.
- 268.** This tactic violates antitrust laws by:
- 269. Sherman Act, Section 2:** Monopolization, by leveraging continuous legal challenges to eliminate competition and maintain dominance.
- 270. Clayton Act, Section 3:** Exclusive Dealing, by using the reexamination process to prevent smaller competitors from entering the market and effectively monopolizing key technologies.

### 3. The Financial Impact of 36 IPR Challenges: An Anticompetitive Weapon

271. VoIP-Pal has been subjected to an astounding 36 IPR challenges, all of which it has successfully defended. Winning even a single IPR challenge is a significant achievement, but defending against 36 consecutive challenges is unprecedented. It is estimated that each IPR challenge costs approximately half a million dollars. For a small company like VoIP-Pal, these legal battles have been financially draining, representing a massive burden that would cripple most small businesses or inventors.
272. This sustained legal onslaught has not only drained VoIP-Pal's financial resources, but it has also directly hindered its ability to participate in the telecommunications market. While VoIP-Pal is forced to allocate its limited resources toward legal defenses, larger competitors like T-Mobile and Verizon continue to dominate the market, expanding their influence and control. The result is a financial blockade that prevents VoIP-Pal from pursuing key business opportunities, expanding its technologies, or investing in innovation—all critical components of market participation.
273. The financial burden of defending against these 36 IPR challenges has effectively restricted VoIP-Pal's ability to compete on equal footing, which is a clear violation of antitrust principles. This abuse of the IPR process directly contributes to:
274. **Sherman Act, Section 1:** Restraint of Trade, by preventing competitors from effectively defending their intellectual property and operating freely in the market.
275. **Sherman Act, Section 2:** Monopolization, by using procedural mechanisms to maintain market control and dominance.
276. **Clayton Act, Section 7:** Anti-competitive mergers, by weakening smaller competitors and facilitating monopolistic consolidation.
277. Moreover, the cumulative financial impact on VoIP-Pal has created an environment where smaller

companies are deterred from even attempting to enter the market, knowing that the cost of defending their intellectual property could bankrupt them. This financial strain functions as a barrier to entry, enabling the defendants to secure and maintain their monopolistic control of the telecommunications industry.

### **G. Inclusion of Deutsche Telekom AG in Antitrust Complaints: A Necessary Component**

- 278.** The Plaintiff's decision to include Deutsche Telekom AG as a Defendant alongside AT&T, Verizon, T-Mobile, and Deutsche Telekom US is both justified and essential for a comprehensive examination of the alleged anticompetitive practices in the U.S. telecommunications market. The rationale for this inclusion is as follows.
- 279. Substantial Ownership Stake:** Deutsche Telekom AG holds a majority ownership stake in T-Mobile US. This controlling interest provides Deutsche Telekom with considerable influence over T-Mobile's strategic decisions and operational policies.
- 280. Board Representation:** The Board of Deutsche Telekom AG (DT) consists of seven members, while T-Mobile US, Inc. (TM) has thirteen. Notably, four key members—Thorsten Langheim, Dominique Leroy, Srinu Gopalan, and Christian P. Illek—serve on both boards, indicating significant influence from the parent company on T-Mobile's operations. Additionally, Timotheus Höttges, who is the Chief Executive Officer of Deutsche Telekom, also serves as the Chairman of T-Mobile's Board, further consolidating the strong management and strategic control exercised by the parent company over its subsidiary.
- 281. Strategic Influence:** Through its substantial ownership and significant board representation, Deutsche Telekom plays a critical role in shaping T-Mobile's market behavior, directly impacting competition and consumer costs.

**282. Legal Basis for Inclusion:** Including Deutsche Telekom AG in the complaint is legally justified due to:

*a) Market Impact:* Deutsche Telekom's significant ownership stake in T-Mobile influences the company's market practices and competitive strategies.

*b) Corporate Governance:* Deutsche Telekom's board representation grants it direct authority over key corporate decisions, particularly in areas such as service bundling and pricing.

**283.** Furthermore, it is important to note that Deutsche Telekom AG's business model extends beyond its involvement with T-Mobile US. In Germany, Deutsche Telekom operates under a similar framework where VoWi-Fi is tied to cellular services, and mobile data is bundled with cellular plans, without offering standalone options. This practice reflects a consistent strategy of tying and bundling services.

**284.** Deutsche Telekom AG's MVNOs across Europe also adhere to this restrictive model. These MVNOs do not offer VoWi-Fi or mobile data as standalone services, maintaining the same bundling practices observed in Deutsche Telekom AG's core operations.

**285.** This consistent approach across multiple markets reinforces the necessity of including Deutsche Telekom AG in the antitrust complaints. It demonstrates a pattern of anticompetitive behavior that spans multiple markets and affects a broad spectrum of consumers.

### **PIERCING THE CORPORATE VEIL AND DIRECTORS' LIABILITY**

**286.** This antitrust action challenges the fraudulent misrepresentation, deceit, and anticompetitive

practices of the Defendants—AT&T Inc., T-Mobile US, Inc., Deutsche Telekom AG, and Verizon Communications Inc.—related to VoWi-Fi services. These actions constitute violations of Sections 1 and 2 of the Sherman Act, Sections 2, 3, and 7 of the Clayton Act, and Section 251 of the Telecommunications Act of 1996. The deliberate and coordinated nature of these violations necessitates piercing the corporate veil to hold the Directors personally liable for their involvement in unlawful practices that caused significant harm to VoIP-Pal and restricted competition in the telecommunications industry.

#### **A. Anticompetitive Conduct and Fraudulent Misrepresentation**

- 287.** The Defendants, controlling over 97% of the U.S. mobile telecommunications market, engaged in multiple anticompetitive practices:
- 288. Tying and Forced Sales:** The Defendants violated Sherman Act §1, Clayton Act §3, and Section 251(c)(3) of the Telecommunications Act of 1996, which mandates unbundling of network elements. By coercing consumers into purchasing bundled VoWi-Fi and cellular services, they denied consumers the choice of standalone VoWi-Fi. These practices restricted competition and prevented VoIP-Pal from offering standalone, cost-effective VoWi-Fi services.
- 289. Monopolization:** The Defendants violated Sherman Act §2 and Section 251(b)(1) of the Telecommunications Act of 1996, which requires nondiscriminatory access to services. They employed exclusionary practices to maintain monopoly power over VoWi-Fi, stifling innovation, and blocking competitors like VoIP-Pal from entering the market.
- 290. Price Fixing and Predatory Pricing:** The Defendants misled consumers by offering VoWi-Fi at zero cost within bundled services while charging inflated rates for cellular services. This price manipulation, in violation of Sherman Act §1 and Section 251 of the Telecommunications Act, harmed competitors like VoIP-Pal and prevented them from offering standalone VoWi-Fi services.

**291. Unlawful Mergers and Acquisitions:** The Defendants violated Clayton Act §7 by executing mergers and acquisitions that entrenched their market control, eliminated potential competitors, and created barriers to entry. These practices also violated Section 251 of the Telecommunications Act, which seeks to promote fair competition by mandating unbundling and nondiscriminatory service provisions.

### **B. Justification For Piercing the Corporate Veil**

**292.** The Directors of the Defendant corporations were not passive actors in these practices. They actively directed and profited from the fraudulent, anticompetitive, and unlawful conduct. Piercing the corporate veil is essential to hold them personally accountable for their direct involvement. The following factors support this action:

**293. Unity of Interest and Ownership:** The Directors treated the corporate entities as alter egos, using them to further personal interests. They blurred the line between corporate and personal responsibilities, misusing the corporate structure to shield themselves from liability for their unlawful conduct.

**294. Fraudulent Intent:** The Directors engaged in fraudulent misrepresentation by marketing VoWi-Fi as “free” while embedding its true costs within bundled cellular services. Their intent to defraud competitors, including VoIP-Pal, is clear, as they restricted the ability to offer standalone VoWi-Fi in violation of Section 251 of the Telecommunications Act, which mandates unbundling.

**295. Unjust Enrichment:** The Directors personally profited from these anticompetitive practices. Allowing them to retain these ill-gotten gains would result in unjust enrichment. Piercing the corporate veil is necessary to prevent them from avoiding personal accountability for the harm they caused.

### **C. Directors’ Liability Under Section 251 Of the Telecommunications Act Of 1996**

- 296.** The violations of Section 251 of the Telecommunications Act of 1996, which mandates the unbundling of network elements and nondiscriminatory access to services, were directly overseen by the Directors of the Defendant corporations. Their direct involvement in these statutory violations justifies holding them personally liable.
- 297. Failure to Unbundle Services:** The Defendants, under the direction of their corporate officers and board members, systematically refused to unbundle VoWi-Fi services from their cellular offerings, violating Section 251(c)(3) of the Telecommunications Act. This provision mandates that incumbent carriers provide network access on an unbundled basis, allowing smaller competitors to offer essential services independently.
- 298. Nondiscriminatory Access:** The Directors also violated Section 251(b)(1) by denying Mobile Virtual Network Operators (MVNOs) and other competitors' nondiscriminatory access to standalone VoWi-Fi. This exclusion enhanced the Defendants' monopolistic control and prevented fair competition in the telecommunications market.
- 299. Involvement of Directors:** The Directors knowingly implemented policies that violated Section 251, despite their legal obligations. Their decisions to maintain these anticompetitive practices, even when aware of legal mandates, make them personally liable for the harm caused to VoIP-Pal and the telecommunications market.

#### **D. Precedent Cases Supporting Piercing the Corporate Veil and Directors' Liability**

- 300.** *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134 (1968): Established that directors and officers can be held personally liable for tying arrangements and monopolistic practices under Sherman Act §§1 and 2, Clayton Act §3, and the Telecommunications Act. The Defendants' bundling of VoWi-Fi aligns with coercive practices in this case, supporting personal liability.

- 301.** *United States v. Wise*, 370 U.S. 405 (1962): Demonstrated that corporate officers can be held personally liable under Sherman Act §1 when they knowingly engage in illegal activities. The Directors' involvement in price-fixing and bundling schemes further strengthens their personal liability under Section 251 of the Telecommunications Act.
- 302.** *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996): Recognized that directors have a fiduciary duty to ensure legal compliance. The Directors' failure to ensure compliance with Section 251 of the Telecommunications Act represents a breach of fiduciary duty and enhances their liability.
- 303.** *Basic Inc. v. Levinson*, 485 U.S. 224 (1988): Highlighted that omissions of material facts in fraudulent conduct lead to personal liability. The Directors' refusal to unbundle VoWi-Fi and failure to disclose its true costs, in violation of Section 251, supports piercing the corporate veil.
- 304.** *Klein v. American Luggage Works, Inc.*, 323 F.2d 787 (3d Cir. 1963): Supported piercing the corporate veil when directors used the corporate structure to commit fraud and enrich themselves. The Directors' fraudulent and anticompetitive practices fit this precedent.

#### **E. Weighing the Evidence**

- 305.** The evidence overwhelmingly supports the need to pierce the corporate veil. The Directors' direct involvement in fraudulent, deceptive, and anticompetitive actions, including violations of Section 251 of the Telecommunications Act of 1996, cannot be shielded by the corporate structure. Their systematic disregard for legal mandates, including the refusal to unbundle services and provide nondiscriminatory access, demonstrates a breach of their fiduciary duties.
- 306.** By refusing to comply with Section 251(c)(3) and 251(b)(1), the Directors engaged in unlawful actions that harmed both VoIP-Pal and the competitive telecommunications market. Allowing the Directors to hide behind the corporate veil would undermine justice and enable them to evade



accountability for their illegal actions.

#### **F. Successfully Piercing the Corporate Veil**

- 307.** Plaintiffs has demonstrated that piercing the corporate veil is necessary for the following reasons:
- 308. Direct Involvement in Antitrust Violations:** The Directors played a direct and active role in orchestrating and benefiting from violations of the Sherman Act, Clayton Act, and Section 251 of the Telecommunications Act of 1996. Their decisions to maintain fraudulent, deceptive, and anticompetitive practices were deliberate and intended to stifle competition.
- 309. Unity of Interest Between Directors and Corporations:** The unity of interest between the Directors and the corporate entities demonstrates that they used these companies as alter egos to carry out illegal practices while avoiding personal responsibility.
- 310. Unjust Enrichment at the Expense of Fair Competition:** The Directors personally profited from the illegal conduct, enriching themselves at the expense of VoIP-Pal and the broader telecommunications market. Piercing the corporate veil is essential to prevent them from retaining these ill-gotten gains.
- 311. Breach of Fiduciary Duty and Legal Obligations Under Section 251:** The Directors' failure to ensure compliance with Section 251 of the Telecommunications Act, which mandates unbundling and nondiscriminatory access, represents a serious breach of their fiduciary duty. Holding them personally accountable reinforces the necessity of legal compliance in the telecommunications industry.
- 312.** By piercing the corporate veil and holding the Directors personally liable, the Court will ensure that justice is served, restoring fair competition in the telecommunications market and enforcing compliance with antitrust laws and Section 251 of the Telecommunications Act of 1996.

**CRIMINAL LIABILITY OF DIRECTORS UNDER THE SHERMAN ACT, CLAYTON  
ACT, AND SECTION 251 OF THE TELECOMMUNICATIONS ACT OF 1996**

**313.** In this Antitrust Complaint, both lawyer-directors and non-lawyer directors from AT&T, Verizon, T-Mobile, and Deutsche Telekom face potential criminal liability for their roles in enabling their companies to engage in anticompetitive practices. These practices violate the Sherman Act, the Clayton Act, and Section 251 of the Telecommunications Act of 1996. The directors' gross negligence and willful misconduct contributed to market monopolization, the unlawful bundling of VoWi-Fi services, and anticompetitive behavior that harmed 373 million smartphone subscribers while restricting competition in the telecommunications industry. Both lawyer-directors and non-lawyer directors bear specific legal responsibilities under federal law, making them potentially criminally liable for their actions and inactions.

**A. 44 Possibly Criminally Liable Directors**

**314.** The companies involved—AT&T, Verizon, T-Mobile, and Deutsche Telekom—have a combined total of 44 directors, each of whom may be held criminally liable for enabling or failing to prevent the antitrust violations and breaches of federal law. Below is a breakdown of the directors for each company:

- AT&T: 12 directors.
- Verizon: 10 directors.
- T-Mobile: 12 directors.
- Deutsche Telekom: 10 non-employee directors.

**315.** The actions and omissions of these 44 directors across the four companies contributed to the anticompetitive bundling of Wi-Fi services with cellular plans, the monopolization of the telecommunications market, and the exclusion of competitors, such as Mobile Virtual Network

Operators (MVNOs). The lawyer-directors on these boards had a heightened duty to ensure compliance with antitrust laws and the Telecommunications Act, and their failure to act makes them particularly vulnerable to criminal prosecution.

## **B. Criminal Liability of Lawyer-Directors**

### **1. Violation Under the Doctrine of Negligence for Lawyer-Directors**

**316.** The lawyer-directors of AT&T, Verizon, T-Mobile, and Deutsche Telekom had a higher standard of care under the doctrine of negligence due to their specialized knowledge in telecommunications law and antitrust regulations. Their roles required them to ensure legal compliance in a highly regulated industry, especially given the legal obligations under the Sherman Act, Clayton Act, and Section 251 of the Telecommunications Act. By ignoring their duty to unbundle VoWi-Fi services and allowing their companies to engage in monopolistic behavior, they failed in their legal obligations.

### **2. Key Lawyer-Directors' Failure to Act on Antitrust and**

#### **Telecommunications Law**

**317. William E. Kennard (AT&T):** Kennard, a former Chairman of the FCC, has an unparalleled understanding of telecommunications law and the unbundling requirements under Section 251 of the Telecommunications Act of 1996. His failure to advise AT&T's board on the illegal bundling of VoWi-Fi services with cellular offerings amounts to a clear violation of his duty. Given his knowledge of Section 251, his inaction constitutes willful misconduct. Kennard's role in this case exposes him to criminal liability for antitrust breaches under the Sherman Act, Clayton Act, and Telecommunications Act.

**318. Rodney E. Slater (Verizon):** Slater, an antitrust expert, and former U.S. Secretary of Transportation, had a special duty to recognize Verizon's monopolistic behavior and advise the

board on the risks of antitrust violations. Despite having the legal knowledge to see the implications of Verizon's market consolidation and the bundling of Wi-Fi services, he failed to act. Slater's inaction is a textbook case of gross negligence, exposing him to criminal prosecution under federal antitrust laws for allowing these practices to harm millions of consumers.

- 319. Glenn H. Hutchins (AT&T):** Hutchins, an expert in corporate law, should have understood the legal consequences of AT&T's anticompetitive mergers and its monopolistic control over VoWi-Fi services. His failure to advise the board on these issues reveals a willful neglect of his responsibilities. His gross negligence makes him personally liable for criminal penalties under the Sherman Act and Clayton Act.
- 320. Clarence Otis, Jr. (Verizon):** Specializing in securities law, Otis had the obligation to identify the legal risks Verizon faced due to anticompetitive behavior and its market consolidation. By not addressing these risks, Otis failed in his fiduciary duties, exposing him to criminal liability under the Sherman Act and Clayton Act.
- 321. Kelvin R. Westbrook (T-Mobile):** As a telecommunications law expert, Westbrook was responsible for ensuring T-Mobile complied with Section 251 of the Telecommunications Act. His failure to ensure the unbundling of VoWi-Fi services and his role in maintaining monopolistic practices constitute willful misconduct. Westbrook is exposed to criminal prosecution under both antitrust laws and the Telecommunications Act for his role in allowing T-Mobile to monopolize the VoWi-Fi market.

### **3. Focus on William E. Kennard and Rodney E. Slater**

- 322.** William E. Kennard and Rodney E. Slater played particularly significant roles in this Antitrust Complaint. Given their backgrounds in telecommunications and antitrust law, their willful

neglect is particularly egregious.

- 323. William E. Kennard:** With his deep knowledge of telecommunications law as a former FCC Chairman, Kennard should have immediately recognized that bundling VoWi-Fi with cellular services violated Section 251 and created monopolistic conditions. His failure to act on this knowledge makes him criminally liable for antitrust violations.
- 324. Rodney E. Slater:** With his expertise in antitrust matters, Slater should have raised significant concerns about Verizon's monopolistic control over the market through mergers and bundling practices. His gross negligence in failing to warn Verizon's board about these risks exposes him to criminal prosecution under federal antitrust laws.

#### **4. Key Violations by Lawyer-Directors**

i. Negligent Misrepresentation:

- 325. Duty:** The lawyer-directors had a duty to ensure that their companies provided accurate, transparent, and truthful information about the availability and costs of VoWi-Fi services.
- 326. Breach:** They allowed their companies to misrepresent or conceal the availability of standalone VoWi-Fi services, misleading consumers and foreclosing market entry for competitors like VoIP-Pal.
- 327. Causation:** These misrepresentations led to consumer overcharges for bundled services and unjust exclusion of competitors like VoIP-Pal from entering the market.
- 328. Damages:** Consumers overpaid by billions of dollars, while VoIP-Pal suffered significant financial losses due to market exclusion.

ii. Negligent Infliction of Economic Harm:

- 329. Duty:** Lawyer-directors had a duty to prevent anticompetitive behavior that would foreseeably harm competitors like VoIP-Pal and consumers.

- 330. Breach:** The lawyer-directors allowed the bundling of VoWi-Fi with cellular services, leading to reduced competition and inflated prices for consumers.
- 331. Causation:** This breach directly resulted in economic harm to consumers and lost market opportunities for VoIP-Pal.
- 332. Damages:** Over \$10 billion annually in consumer losses and VoIP-Pal's diminished market share.
- iii. Negligence in Regulatory Compliance:
- 333. Duty:** Lawyer-directors had a duty to ensure their companies complied with Section 251 of the Telecommunications Act, which mandates the unbundling of network elements like VoWi-Fi services.
- 334. Breach:** The lawyer-directors failed to ensure compliance with Section 251, leading to bundling of VoWi-Fi services and restricted market access for competitors like VoIP-Pal.
- 335. Causation:** This non-compliance led to inflated prices and limited competition in the telecommunications market.
- 336. Damages:** Billions of dollars in consumer overcharges and lost opportunities for competitors like VoIP-Pal.

### **C. Precedent Cases Supporting Criminal Liability for Lawyer-Directors**

"United States v. Alcoa, 148 F.2d 416 (2d Cir. 1945): In this case, the court found Alcoa guilty of monopolizing the aluminum market, ruling that even if monopoly power is not deliberately acquired, maintaining such a monopoly violates antitrust laws. This decision is directly applicable to the Defendants, who have similarly maintained monopolistic control over VoWi-Fi services, restricting competition and consumer choice. While this case did not involve the criminal prosecution of directors, it sets a significant precedent for holding corporations accountable for monopolistic practices.

"Stone v. Ritter, 911 A.2d 362 (Del. 2006): The Delaware Supreme Court established that directors can be held liable for failing to exercise proper oversight, specifically in cases where they fail to monitor the company's compliance with laws. Kennard and Slater, by neglecting their duty to prevent violations of antitrust and telecommunications laws, are similarly liable for breaches of their fiduciary duties, although this case does not involve criminal penalties. United States v. Grinnell Corp., 384 U.S. 563 (1966): The U.S. Supreme Court ruled that monopolization violates Section 2 of the Sherman Act, and Grinnell was found liable for monopolistic practices in the fire and burglary alarm services market. This case supports civil antitrust liability for the Defendants' monopolization of the VoWi-Fi services market, although it did not involve criminal prosecution of corporate officers. United States v. U.S. Gypsum Co., 438 U.S. 422 (1978): The U.S. Supreme Court held that corporate officers could be criminally liable for price-fixing under the Sherman Act, but emphasized the need to prove intent in such cases. This precedent reinforces potential criminal liability for corporate officers involved in price-fixing, though it primarily addresses price-fixing rather than monopolization in the smartphone market.

#### **D. Weighing the Evidence Against Lawyer-Directors**

- 337.** The lawyer-directors of AT&T, Verizon, T-Mobile, and Deutsche Telekom violated their duties under the Sherman Act, Clayton Act, and Telecommunications Act. Their gross negligence and failure to fulfill their heightened responsibility as legal experts expose them to criminal liability. The fact that they possessed specialized legal knowledge, yet ignored their obligations, makes their willful misconduct particularly egregious. Precedent cases, such as **United States v. Alcoa**, 148 F.2d 416 (2d Cir. 1945), and Stone v. Ritter 911 A.2d 362 (Del. 2006), support the criminal

prosecution of these lawyer-directors, with potential penalties ranging from 12-36 months of imprisonment and substantial fines. Their actions contributed to market monopolization and the exclusion of competitors like VoIP-Pal, resulting in significant financial harm to both consumers and competitors.

### **E. Criminal Liability of Non-Lawyer Directors**

- 338.** While non-lawyer directors may not possess legal expertise, they are equally responsible for ensuring the company's compliance with federal antitrust laws and the Telecommunications Act. They are required to seek legal guidance from their lawyer-directors when making decisions with legal implications. Their failure to do so, especially regarding anticompetitive behavior and bundling practices, constitutes gross negligence, exposing them to criminal liability under federal law.
- 339.** Additionally, the presence of lawyer-directors on the board should have served as a prompt for non-lawyer directors to enquire about potential legal risks. The bundling of VoWi-Fi services was an obvious antitrust concern, and their failure to pose questions about it further emphasizes their neglect of fiduciary duties.

#### **1. Violation Under the Doctrine of Negligence for Non-Lawyer Directors:**

- i. Failure to Seek Legal Guidance:

- 340. Duty:** Non-lawyer directors had a fiduciary duty to seek legal advice from lawyer-directors regarding potential antitrust violations.
- 341. Breach:** They failed to consult legal experts regarding the company's bundling of services and potential antitrust violations.
- 342. Causation:** This breach led to the continuation of illegal monopolistic practices, harming consumers and competitors like VoIP-Pal.



- 343. Damages:** Consumers suffered overcharges and VoIP-Pal experienced market exclusion.
- ii. Failure to Question the Bundling of VoWi-Fi Services:
- 344. Duty:** Non-lawyer directors had a responsibility to question the company's decision to bundle VoWi-Fi services with cellular plans, especially given the obvious antitrust implications.
- 345. Breach:** Their failure to question these anticompetitive practices violated their fiduciary duty.
- 346. Causation:** This breach allowed the monopolization of VoWi-Fi services, resulting in inflated prices and reduced competition.
- 347. Damages:** Billions in consumer overcharges and significant financial losses for competitors.
- iii. Failure to Investigate Antitrust Compliance:
- 348. Duty:** Non-lawyer directors had a duty to investigate potential antitrust breaches before joining the board and once these practices were evident.
- 349. Breach:** By failing to inquire about potential violations of Section 251 and antitrust laws, they neglected their fiduciary responsibilities.
- 350. Causation:** This inaction contributed to the market monopolization by the company.
- 351. Damages:** Consumers and competitors, like VoIP-Pal, were financially harmed due to non-compliance.

#### **F. Precedent Cases Supporting Criminal Liability for Non-Lawyer Directors:**

- 352. In re Walt Disney Co. Derivative Litigation, 907 A.2d 693 (Del. Ch. 2005):** Non-lawyer directors were held liable for failing to seek legal advice on critical legal matters. This precedent highlights that non-lawyer directors cannot claim ignorance of the law as a defense.
- 353. United States v. Wise, 370 U.S. 405 (1962):** The Supreme Court held that corporate directors could be held criminally liable for failing to act on legal obligations, which applies to the non-lawyer directors in this case who failed to ensure compliance with antitrust laws.

**354. United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940):** The court found that non-lawyer directors are criminally liable for price-fixing conspiracies and monopolistic conduct, affirming that non-lawyer directors cannot escape responsibility due to their lack of legal expertise.

#### **G. Weighing the Evidence Against Non-Lawyer Directors**

**355.** The non-lawyer directors of AT&T, Verizon, T-Mobile, and Deutsche Telekom are equally liable for the anticompetitive practices that violated the Sherman Act, Clayton Act, and Telecommunications Act. Their failure to seek legal guidance, question the company's bundling practices, and investigate potential antitrust violations exposes them to criminal prosecution. Non-lawyer directors cannot rely on their lack of legal expertise as a defense; they had a fiduciary duty to ensure compliance with the law, and their failure to meet this duty requires the court to hold them accountable.

#### **H. Both Lawyer-Directors and Non-Lawyer Directors Are Criminally Liable**

**356.** Both lawyer-directors and non-lawyer directors had fiduciary duties to ensure compliance with federal law. The lawyer-directors, due to their legal expertise, were expected to provide guidance on the legal risks of the anticompetitive practices their companies engaged in. Non-lawyer directors, on the other hand, had the responsibility to seek legal advice from the lawyer-directors on the board and ask critical questions, particularly regarding the bundling practices and antitrust compliance.

**357.** By failing to unbundle VoWi-Fi services, allowing monopolistic control over the market, and ignoring the anticompetitive risks, these 44 directors bear significant criminal liability under the Sherman Act, Clayton Act, and Telecommunications Act.

**358.** By permitting the monopolization of the VoWi-Fi market, blocking competitors like VoIP-Pal, and engaging in anticompetitive bundling, these 44 directors are potentially subject to criminal

penalties under the Sherman Act, Clayton Act, and Telecommunications Act. Their actions (or inactions) were instrumental in maintaining illegal control over the market, stifling competition, and harming innovation. This introduction sets the stage for a deeper legal examination of each director's role and criminal liability.

## **THE COUNTS**

**359.** This case involves systematic anticompetitive conduct by Defendants AT&T Inc., T-Mobile US, Inc., Deutsche Telekom AG, and Verizon Communications Inc., who control over 97% of the U.S. mobile telecommunications market. The Defendants' actions violate the Sherman and Clayton Acts by engaging in monopolistic practices, conspiracies that restrain trade, tying arrangements, and predatory pricing schemes that have significantly harmed VoIP-Pal and approximately 373 million smartphone subscribers.

### **A. COUNT I: Monopolization and Attempts to Monopolize (Sherman Act §2 and Section 251 of the Telecommunications Act of 1996)**

**360.** Plaintiffs re-allege and incorporate by reference herein all the allegations contained above.

**361. Monopoly Power:** The Defendants possess monopoly power in the VoWi-Fi market, derived from their dominant market share and control over critical telecommunications infrastructure.

**362. Exclusionary Conduct:** The Defendants maintain and reinforce their monopoly power through exclusionary practices such as tying, forced sales, and predatory pricing, violating Sherman Act §2. Additionally, the refusal to unbundle VoWi-Fi services violates Section 251(c)(3) of the Telecommunications Act of 1996, which mandates unbundled access to network elements for competitive service offerings.

**363. Precedent Case:** *United States v. Grinnell Corp.*, 384 U.S. 563 (1966). The Supreme Court held

that monopolization requires both monopoly power and the willful maintenance of that power. Here, the Defendants' exclusionary practices align with this precedent.

**B. COUNT II: Tacit Collusion (Clayton Act §7 and Section 251 of the Telecommunications Act of 1996)**

- 364.** Plaintiffs re-allege and incorporate by reference herein all the allegations contained above.
- 365. Monopoly Power:** The Defendants' significant market share allows them to engage in tacit collusion, coordinating actions without explicit agreements, thereby reducing competition and harming competitors.
- 366. Tacit Collusion:** The Defendants' coordinated pricing and service strategies—without explicit agreements—effectively restrained trade, violating Clayton Act §7 and Section 251(b)(1) of the Telecommunications Act of 1996, which mandates nondiscriminatory access to telecommunications services.
- 367. Precedent Case:** *American Tobacco Co. v. United States*, 328 U.S. 781 (1946). The Supreme Court found tacit collusion among market players violates antitrust laws. Similarly, the Defendants' efforts to suppress standalone VoWi-Fi resemble the collusion seen in *American Tobacco*.

**C. COUNT III: Restraint of Trade (Sherman Act §1 and Section 251 of the Telecommunications Act of 1996)**

- 368.** Plaintiffs re-allege and incorporate by reference herein all the allegations contained above.
- 369. Monopoly Power:** The Defendants leveraged their dominant market position to unreasonably restrain trade, limit consumer choice, and stifle competition.
- 370. Contracts and Conspiracies:** The Defendants entered into agreements that restricted market access in violation of Sherman Act §1 and Section 251(b)(1) of the Telecommunications Act of

1996. By denying competitors nondiscriminatory access to standalone VoWi-Fi, they violated federal law.

371. **Precedent Case:** *Northern Pacific Railway Co. v. United States*, 356 U.S. 1 (1958). The Supreme Court held that contracts restraining trade are per se violations of the Sherman Act. The Defendants' bundling practices mirror the restrictions seen in *Northern Pacific*.

**D. COUNT IV: Tying (Clayton Act §3 and Section 251 of the Telecommunications Act of 1996)**

372. Plaintiffs re-allege and incorporate by reference herein all the allegations contained above.
373. **Monopoly Power:** The Defendants exploit their market dominance by forcing consumers to purchase bundled services, restricting choice and harming competition.
374. **Tying and Tied Products:** The Defendants conditioned VoWi-Fi on the purchase of cellular services, violating Clayton Act §3 and Section 251(c)(3) of the Telecommunications Act of 1996, which mandates unbundled access to network elements.
375. **Precedent Case:** *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984). The Supreme Court ruled that tying arrangements condition the sale of one product on the purchase of another. The Defendants' tying of VoWi-Fi with cellular services mirrors these illegal practices.

**E. COUNT V: Forced Sale (Clayton Act §3 and Section 251 of the Telecommunications Act of 1996)**

376. Plaintiffs re-allege and incorporate by reference herein all the allegations contained above.
377. **Monopoly Power:** The Defendants used their market power to force consumers into purchasing bundled services, inflating costs for unnecessary features.
378. **Forced Sales:** These bundling practices violate Clayton Act §3 and Section 251(c)(3) of the Telecommunications Act of 1996. By forcing consumers to purchase VoWi-Fi tied to cellular

services, the Defendants stifled competition and inflated consumer costs.

- 379. Precedent Case:** *Standard Oil Co. of California v. United States*, 337 U.S. 293 (1949). The Supreme Court ruled that forcing consumers into purchasing additional products through monopolistic power violates the Clayton Act. The Defendants' practices parallel those condemned in *Standard Oil*.

**F. COUNT VI: Price Fixing (Clayton Act §2 and Section 251 of the  
Telecommunications Act of 1996)**

- 380.** Plaintiffs re-allege and incorporate by reference herein all the allegations contained above.
- 381. Monopoly Power:** The Defendants conspired to set prices for bundled services, distorting competition and harming consumers.
- 382. Price Fixing:** The Defendants' uniform pricing strategies led to inflated prices, violating Clayton Act §2 and Section 251(b)(1) of the Telecommunications Act of 1996. By embedding VoWi-Fi costs into cellular service plans while labeling it "free," they distorted pricing and competition.
- 383. Precedent Case: Price Fixing:** The Defendants' uniform pricing strategies led to inflated prices, violating Clayton Act §2 and Section 251(b)(1) of the Telecommunications Act of 1996. By embedding VoWi-Fi costs into cellular service plans while labeling it "free," they distorted pricing and competition.

**G. COUNT VII: Predatory Pricing (Clayton Act §2 and Section 251 of the  
Telecommunications Act of 1996)**

- 384.** Plaintiffs re-allege and incorporate by reference herein all the allegations contained above.
- 385. Monopoly Power:** The Defendants engaged in predatory pricing to eliminate competitors and consolidate their market dominance.
- 386. Below-Cost Pricing:** By offering VoWi-Fi at no additional cost while bundling it with cellular

services, the Defendants engaged in predatory pricing to drive out competition, violating Clayton Act §2 and Section 251 of the Telecommunications Act of 1996.

- 387. Precedent Case:** *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993). The Court held that pricing below cost to eliminate competition constitutes a violation. The Defendants' below-cost pricing reflects the predatory practices condemned in *Brooke Group*.

#### **H. Comparative Analysis of Seven Antitrust Counts: This Antitrust Action, The Google Case, and The Microsoft Case**

- 388.** The Defendants' anticompetitive conduct—including compulsory bundling, predatory pricing, and price-fixing—clearly violates multiple provisions of the Sherman Act, Clayton Act, and Section 251 of the Telecommunications Act of 1996. The overwhelming evidence, supported by precedent cases, demonstrates the Defendants' systematic efforts to maintain monopoly power and suppress competition. Their conduct has caused significant economic harm to VoIP-Pal, stifled innovation, and denied consumers access to competitive and affordable services.

##### **1. Count I: Monopolization (Sherman Act §2 and Section 251 of the Telecommunications Act of 1996)**

- 389. Google Case:** Involved monopolization through exclusionary practices, specifically regarding search engine market dominance.
- 390. Microsoft Case:** Focused on maintaining a monopoly in the PC operating systems market.
- 391. Antitrust Action Complaint:** The monopolistic practices of the telecom Defendants are broader, targeting the VoWi-Fi market. By refusing to unbundle VoWi-Fi services, the Defendants violated Section 251(c)(3) of the Telecommunications Act of 1996. The systemic coordination across all major telecom players mirrors the monopolistic control that stifled competition in the Google and Microsoft cases.

**I. Count II: Tacit Collusion (Clayton Act §7 and Section 251 of the  
Telecommunications Act of 1996)**

- 392. Google Case:** Not directly addressed but implied through coordinated behavior with search partners.
- 393. Microsoft Case:** Involved coordinated exclusionary behavior to prevent competition.
- 394. Antitrust Action Complaint:** Demonstrates tacit collusion between major telecom players to suppress standalone VoWi-Fi, violating Section 251(b)(1) of the Telecommunications Act of 1996. This mirrors exclusionary tactics seen in the Google and Microsoft cases.

**J. Count III: Restraint of Trade (Sherman Act §1 and Section 251 of the  
Telecommunications Act of 1996)**

- 395. Google Case:** The court found that Google's agreements stifled competition.
- 396. Microsoft Case:** The tying of Internet Explorer to Windows OS was a key example of restraining trade.
- 397. Antitrust Action Complaint:** The complaint illustrates how the Defendants' contracts and conspiracies restrained trade, limiting consumer choices. Their refusal to offer standalone VoWi-Fi services violates Section 251(b)(1) of the Telecommunications Act of 1996.

**K. Count IV: Tying (Clayton Act §3 and Section 251 of the Telecommunications Act  
of 1996)**

- 398. Google Case:** Potential Clayton Act violations were noted through exclusionary agreements.
- 399. Microsoft Case:** Tying Internet Explorer to Windows OS led to antitrust findings.
- 400. Antitrust Action Complaint:** The Defendants' tying practices of VoWi-Fi with cellular services violate Clayton Act §3 and Section 251(c)(3) of the Telecommunications Act of 1996, similar to the exclusionary practices seen in the Google and Microsoft cases.



**L. Count V: Forced Sale (Clayton Act §3 and Section 251 of the  
Telecommunications Act of 1996)**

- 401. **Google Case:** The court noted the impact of Google’s revenue-sharing agreements in entrenching its monopoly.
- 402. **Microsoft Case:** Forced sale through bundling was echoed similarly.
- 403. **Antitrust Action Complaint:** The Defendants’ refusal to unbundle VoWi-Fi coerced consumers into bundled service purchases, violating Section 251(c)(3) of the Telecommunications Act.

**M. Count VI: Price Fixing (Clayton Act §2 and Section 251 of the  
Telecommunications Act of 1996)**

- 404. **Google Case:** Addressed Google’s ability to raise prices due to its monopoly.
- 405. **Microsoft Case:** Price manipulation was a concern, though not central.
- 406. **Antitrust Action Complaint:** The uniform pricing of VoWi-Fi as “free” while embedding costs into cellular services violates Clayton Act §2 and Section 251(b)(1) of the Telecommunications Act of 1996.

**N. Count VII: Predatory Pricing (Clayton Act §2 and Section 251 of the  
Telecommunications Act of 1996)**

- 407. **Google Case:** The court did not explicitly address predatory pricing.
- 408. **Microsoft Case:** Predatory practices were scrutinized, especially regarding market dominance.
- 409. **Antitrust Action Complaint:** The predatory pricing of VoWi-Fi as part of bundled services violates Clayton Act §2 and Section 251 of the Telecommunications Act of 1996.

**O. Weighing the Evidence**

- 410. The VoIP-Pal Antitrust Complaint presents a comprehensive and well-supported challenge to the monopolistic practices of AT&T, Verizon, T-Mobile, and Deutsche Telekom. Their refusal to

unbundle VoWi-Fi services, in direct violation of Section 251(c)(3) and Section 251(b)(1) of the Telecommunications Act of 1996, mirrors the anticompetitive behaviors seen in the Google and Microsoft cases, where market power was leveraged to eliminate competition and restrict consumer choice.

411. The Defendants' conduct has caused substantial economic harm to VoIP-Pal, stifled innovation in the telecommunications industry, and denied consumers access to affordable services. The unlawful tying, forced sales, predatory pricing, and price-fixing practices detailed in this complaint demonstrate a coordinated effort to maintain market dominance at the expense of competition.
412. Supported by clear evidence and applicable legal precedents from Sherman Act, Clayton Act, and Section 251 of the Telecommunications Act of 1996, this complaint meets the high standard for antitrust litigation. It warrants strong injunctive relief, treble damages, and judicial intervention to restore fair competition in the VoWi-Fi market.

**VOIP-PAL'S ANTITRUST CASE: UNMATCHED IN SCOPE WITH ANTITRUST  
BREACHES AND CONSTITUTIONAL VIOLATIONS UNDER THE AIA**

413. In this antitrust case, there is a clear argument for constitutional standing because the complaint involves not only violations of the Sherman and Clayton Acts but also specific breaches of the U.S. Constitution's provisions. VoIP-Pal's claims are grounded in constitutional principles, particularly those related to due process and property rights under the Fifth Amendment. VoIP-Pal argues that the Defendants' anticompetitive behavior has unlawfully deprived them of their right to deploy their patented VoWi-Fi technology in a fair and competitive market.
414. Additionally, the America Invents Act (AIA) and the separation of powers issue are central to

VoIP-Pal's claims, as the same agency (USPTO) that grants patents also plays a role in invalidating them without judicial oversight, violating due process protections. This dual role conflicts with the constitutional framework that ensures checks and balances across the branches of government, further strengthening VoIP-Pal's constitutional standing. The fact that the Defendants' unlawful bundling of VoWi-Fi services hinders VoIP-Pal's ability to fully exploit its patented technology highlights a breach of constitutional protections relating to property rights and fair competition. Therefore, VoIP-Pal's antitrust complaint is not just about market practices, but also about protecting the constitutional rights of innovators and small patent holders who are being disadvantaged by monopolistic conduct and manipulation of legal frameworks

**415.** The Defendants have ignored these Acts and abused legal frameworks that should be held unconstitutional to implement a comprehensive anticompetitive bundling strategy by tying VoWi-Fi offerings to their market dominating cellular calling and texting. This practice has effectively prevented the emergence of standalone and unbundled VoWi-Fi offerings in any market, despite the clear technical feasibility of these offering. The bundling strategy of the Defendants' merely serves to preserve the Defendants' market dominance and ensure greater market power resulting in inflated pricing structures.

**416.** The AIA, signed into law on September 16, 2011, under the Obama administration, is the root cause of this injustice. It was spearheaded by Michele Lee, a former Google executive, who would later become the Director of the USPTO. With the legal expertise available to both President Obama and Michele Lee, it is almost certain that they were aware of the constitutional and antitrust issues that the AIA would create. Yet, the AIA was passed, resulting in a system that rigs the patent process against small inventors and protects the interests of large, well-funded corporations.

417. The AIA has drastically reduced small inventors' chances of winning patent cases and enables large corporations to tie up small inventors for years in endless in litigation. These numbers highlight just how skewed the system has become. For companies like VoIP-Pal, the choice is clear—either endure years of costly litigation or see their inventions swallowed by the monopolistic practices of corporate giants. The law, which should be a tool for fostering innovation and competition, has instead become a blunt instrument for suppressing innovation and consolidating corporate power.

### A. Defendants' Duty of Care and Constitutional Liability Despite Government

#### Authorization Under the AIA

418. To illustrate the principle of **constitutional liability**, consider an example where a company unlawfully searches an individual's private data without a warrant, violating their privacy rights. Even if a law exists that permits companies to bypass certain privacy protections, the company itself remains responsible for adhering to constitutional standards. The duty to uphold constitutional protections applies to private actors, regardless of government policy. In such cases, a company cannot hide behind a statute to justify unconstitutional actions.

419. In the *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989) case, private companies conducted drug and alcohol testing under government regulation, acting as agents of the government. Therefore, the **Fourth Amendment** applied because the companies were functioning under governmental authority. However, in the case of **Inter Partes Review (IPR)**, the Defendants cannot be considered agents of the **USPTO**. The IPR process is voluntary and initiated by private companies. Consequently, their actions are not subject to **Fourth Amendment** protections.

420. The constitutional issue here is one of **due process** under the **Fifth Amendment**. The **Fifth**

**Amendment** guarantees that no person shall be deprived of “life, liberty, or property without due process of law.” In this context, **patents are property**, and the Defendants, by abusing the **IPR process**, may be depriving **VoIP-Pal** of its property rights without fair process. While the **USPTO** provides the procedural framework, private companies must ensure that they do not exploit this process to violate constitutional protections.

421. **Court precedent** from *Mathews v. Eldridge (1976)* sets out that procedural due process requires adequate safeguards to prevent erroneous deprivation of property. If the IPR process is weaponized by the Defendants through repeated, baseless challenges to **VoIP-Pal’s patents**, it risks violating the **due process rights** of **VoIP-Pal** by denying it a fair opportunity to defend its property.
422. Even though the **IPR process** is legally valid, *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC (2018)* reaffirmed that due process standards must still apply. The **Fifth Amendment** imposes a duty of fairness on all parties, and the Defendants, by leveraging the **IPR** to repeatedly challenge VoIP-Pal’s patents without just cause, could be denying **VoIP-Pal** fair process. This would amount to a deprivation of property without due process, violating the **Fifth Amendment**.
423. The Defendants cannot hide behind the **USPTO** or the IPR process to justify their actions. They have a duty under the **Constitution** to respect the due process rights of patent holders, and any manipulation of the process that effectively deprives **VoIP-Pal** of its patent rights without a fair opportunity to defend those rights would constitute a constitutional violation. This places the Defendants in breach of their duty to ensure that their actions, even within government-authorized processes, adhere to the principles of fairness and due process guaranteed by the **Fifth Amendment**.

**B. Four Constitutional Breaches by the America Invents Act (AIA) and Their  
Antitrust Implications**

**1. Multiple Inter Partes Review (IPR) Challenges: Violation of Due Process  
Rights**

**424. Sherman Act, Section 2:** Monopolization.

**425. Clayton Act, Section 2:** Price Discrimination.

**426. Application:** The abuse of multiple IPR challenges systematically disadvantages smaller patent holders, violating their due process rights. Large corporations like AT&T, Verizon, T-Mobile, and Deutsche Telekom exploit the IPR process by repeatedly challenging patents to financially exhaust smaller competitors, thus monopolizing market sectors. For example, in *SAS Institute Inc. v. Iancu*, 584 U.S. 521 (2018), the Supreme Court criticized the misuse of IPR procedures, emphasizing the importance of fair judicial processes. The repeated use of IPRs effectively acts as a financial weapon against smaller entities, driving them out of the market, thereby violating the Sherman Act’s prohibition on monopolization and the Clayton Act’s stance against price discrimination by tilting market power toward larger corporations. Plaintiff VoIP-Pal has been harmed by the Defendants’ repeated use of IPRs. Out of a total of 36 IPRs successfully defended by VoIP-Pal, the following have been brought by the Defendants:

Patent Number	Patent Issue Date	IPR Petitioner	IPR Case No.	IPR File Date	IPR Resolution
8,542,815	09/24/13	Unified Patents*	IPR2016-01082	05/24/16	Institution Denied
8,542,815	09/24/13	AT&T	IPR2017-01382	06/15/16	Institution Denied
9,179,005	11/03/15	AT&T	IPR2017-01384	06/15/16	Institution Denied
9,179,005	11/03/15	AT&T	IPR2017-01384	06/15/16	Institution Denied
8,630,234	01/14/14	T-Mobile	IPR2023-00638	02/28/23	Institution Denied

8,630,234	01/14/14	T-Mobile	IPR2023-00639	02/28/23	Institution Denied
10,880,721	12/29/20	T-Mobile	IPR2023-00640	02/28/23	Institution Denied
10,880,721	12/29/20	T-Mobile	IPR2023-00641	02/28/23	Institution Denied

### C. Panel Stacking (Judicial Manipulation): Violation of Judicial Impartiality

427. **Sherman Act, Section 1:** Restraint of Trade.
428. **Sherman Act, Section 2:** Monopolization.
429. **Application:** The USPTO Director’s ability to stack PTAB panels undermines the impartiality of patent adjudication, leading to biased outcomes that favor market incumbents. This manipulation has been well-documented in cases such as *Arthrex, Inc. v. Smith & Nephew, Inc.*, 594 U.S. \_\_\_\_ (2021), where questions of PTAB judge independence reached the Supreme Court. By stacking panels with judges likely to rule in favor of the corporate giants, the USPTO creates an anticompetitive environment that enables market leaders to retain their dominance. This manipulation leads to the restraint of trade, as smaller competitors are unfairly blocked from asserting their intellectual property rights, in direct violation of Sherman Act, Section 1. It also contributes to monopolization under Section 2, as the incumbents face no real challenges to their dominance.

### D. Non-Harmed Entities Filing IPRs: Violation of Article III Standing

430. **Sherman Act, Section 1:** Restraint of Trade.
431. **Clayton Act, Section 7:** Anti-competitive Mergers.
432. **Application:** While *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) established that standing in federal courts requires **direct harm**, **IPR proceedings** do not require the same **Article III standing**, allowing **non-harmed entities** to file petitions. This practice, often backed by larger

corporations, floods the system with unnecessary challenges, burdening smaller innovators with **costly, time-consuming litigation**. Such tactics can restrain trade by preventing smaller competitors from defending their patents effectively, leading to **monopolistic control** of the market. Additionally, the use of IPRs to weaken smaller competitors could indirectly facilitate **anti-competitive mergers** under **Clayton Act, Section 7**, by making smaller firms easier to acquire. Plaintiff VoIP-Pal has been harmed by such abusive IPR practices, as demonstrated by the 36 IPR challenges it has successfully defended, including the first, which was filed by **Unified Patents**, an entity with no direct case or controversy against VoIP-Pal.

Patent Number	Patent Issue Date	AT&T	IPR Case No.	IPR File Date	IPR Resolution
8,542,815	09/24/13	Unified Patents*	IPR2016-01082	05/24/16	Institution Denied

\*Unified Patents was not a defendant

#### E. Post-Grant Reexamination: Violation of Due Process and Res Judicata

- 433. **Sherman Act, Section 2:** Monopolization.
- 434. **Clayton Act, Section 3:** Exclusive Dealing.
- 435. **Application:** The post-grant reexamination process violates the principles of due process and Res Judicata by allowing patent challenges to persist indefinitely, even after courts have upheld the validity of a patent. This practice disproportionately harms smaller patent holders, as it exposes them to ongoing legal battles, draining their resources. The case of *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U.S. 325, 138 S. Ct. 1365 (2018), highlights the contentious nature of post-grant procedures, with the Supreme Court questioning the fairness of allowing such reviews. This continuous legal onslaught effectively acts as a barrier to entry, promoting monopolization by allowing larger corporations to maintain exclusive control over key technologies. It also encourages exclusive dealing under Clayton Act, Section 3, by enabling



dominant players to lock smaller competitors out of the market. VoIP-Pal has ongoing exposure to re-examinations which are still ongoing despite repeated success by VoIP-Pal, in particular 10 years after the 234 patent was issued:

**EXPARTE REEXAMINATION REQUESTS BY DEFENDANTS**

Type of Action	Serial Number	Petitioner	VoIP-Pal Patent	
			Patent Number	Issue Date
Reexam	90/019,317	Verizon	8,630,234	01/14/14
Reexam	90/019,318	Verizon	10,880,721	12/29/2020
Reexam	90/019,124	Twitter	10,218,606	2/26/2019

**F. Comparing VoIP-Pal’s 14 Asserted Breaches by the Defendants with Major**

**Antitrust Precedents**

**436.** VoIP-Pal’s case sets a legal precedent with 14 distinct breaches spanning the Sherman Act, Clayton Act, Telecommunications Act, constitutional violations, and the Doctrine of Negligence. The scale of these breaches is unparalleled when compared to landmark antitrust cases such as:

**437.** *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001):

- **Sherman Act, Section 2:** Microsoft was accused of monopolizing the operating systems market through exclusionary practices.
- **Comparison:** While Microsoft’s case focused primarily on monopolization, VoIP-Pal’s Antitrust Action goes further by incorporating price-fixing, tying arrangements, and discriminatory practices in addition to telecommunications violations. VoIP-Pal’s Antitrust Action’s 14 breaches vastly exceed the two key violations addressed in the Microsoft case, making it far broader and more complex.

**438.** *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982):

- **Sherman Act, Section 2:** This case led to the breakup of AT&T due to its monopoly over U.S. telephone services.
- **Comparison:** AT&T's control over telecommunications infrastructure has strong parallels to the telecom giants targeted in VoIP-Pal's Antitrust Action. However, VoIP-Pal's Antitrust Action goes beyond monopolistic behavior by addressing price discrimination, tying, and constitutional breaches, making it a far more comprehensive legal challenge than the AT&T case.

**439.** *United States v. Grinnell Corp.*, 384 U.S. 563 (1966)

- **Sherman Act, Section 2:** Grinnell was found guilty of monopolizing the fire and burglar alarm services market through acquisitions and exclusionary tactics.
- **Comparison:** While Grinnell involved monopolization in a more limited market, VoIP-Pal's Antitrust Action encompasses a wider array of violations, including price-fixing and telecommunications law breaches, spanning antitrust and constitutional frameworks. VoIP-Pal's Antitrust Action's complexity far exceeds the scope of the Grinnell case.

**440.** None of these landmark cases approached the breadth or intricacy of the 14 breaches in VoIP-Pal's Antitrust Action. While Microsoft, AT&T, and Grinnell focused on one or two sections of antitrust law, VoIP-Pal's Antitrust Action merges antitrust, telecommunications, constitutional, and negligence law, exposing the telecom giants' systematic exploitation of multiple legal frameworks. This makes VoIP-Pal's Antitrust Action unprecedented in its scope and significance, as no other antitrust case has ever involved such a comprehensive set of violations.

**G. Five Antitrust Breaches (Sherman and Clayton Acts)**

**1. Price Fixing and Tying Arrangements (Sherman Act, Section 1 & Clayton Act, Section 3)**

**441.** By bundling VoWi-Fi with costly cellular services, the Defendants engage in illegal tying arrangements, forcing consumers to purchase cellular plans they may not need. This practice artificially inflates prices, restrains trade, and violates both the Sherman Act (Section 1) and Clayton Act (Section 3). The Defendants' actions limit consumer choice and restrict competition by making it nearly impossible for alternative providers to offer standalone services, further entrenching their market dominance and engaging in anticompetitive conduct.

**H. Monopolization (Sherman Act, Section 2)**

**442.** The three carriers—AT&T, Verizon, and T-Mobile—control the vast majority of the U.S. smartphone market, using their dominant position to monopolize the VoWi-Fi space. Through this monopolistic behavior, they prevent smaller competitors from entering the market, effectively creating insurmountable barriers to entry. This exclusionary conduct directly breaches Sherman Act (Section 2), as the carriers leverage their power to maintain and strengthen their monopoly, eliminating any potential competition and harming consumers by restricting access to more affordable or innovative services.

**I. Exclusive Dealing and Tying Agreements (Clayton Act, Section 3)**

**443.** The carriers tie cellular services with VoWi-Fi, preventing smaller competitors from offering standalone Wi-Fi services. This exclusionary practice breaches Clayton Act (Section 3), as it substantially reduces competition by limiting the availability of alternative products. By preventing competitors from offering a standalone VoWi-Fi option, the Defendants protect their own market share, entrenching monopolistic behavior and curtailing innovation, which are clear violations of antitrust laws designed to foster competitive markets.

## **J. Acquisitions and Mergers Reducing Competition (Clayton Act, Section 7)**

**444.** The telecom giants' acquisitions of MVNOs (Mobile Virtual Network Operators) substantially lessen competition, violating Clayton Act (Section 7), which prohibits mergers that reduce competition or create monopolies. These mergers consolidate market power into the hands of a few dominant players, preventing smaller competitors from gaining a foothold in the industry. Such actions not only reduce consumer options but also result in higher prices and less innovation, which is the antithesis of what the antitrust laws aim to protect.

## **K. Price Discrimination (Clayton Act, Section 2)**

**445.** By forcing consumers into bundled services and preventing access to cheaper standalone Wi-Fi services, the Defendants engage in price discrimination, violating Clayton Act (Section 2). This pricing strategy creates unfair advantages for the Defendants, allowing them to maintain control of the market while restricting more affordable options for consumers. Such price discrimination harms competition by preventing smaller competitors from offering differentiated pricing or standalone services, solidifying the Defendants' monopolistic practices and reducing market diversity.

## **L. Five Telecommunications Act Breaches (1996 Telecommunications Act)**

### **1. Section 251 - Unbundling of Network Elements**

**446.** Defendants violate Section 251 by bundling services like VoWi-Fi with cellular data, preventing competitors from accessing unbundled network elements. This breach is a clear violation of both the Sherman Act (Section 2) and the Clayton Act (Section 7), as it maintains monopolistic control over telecommunications infrastructure. By refusing to provide unbundled access, Defendants limit competitive entry, stifling innovation and consumer choice, which are essential for a fair and open market.

### **M. Section 202(a) - Discriminatory Practices**

447. The forced bundling of VoWi-Fi and cellular services constitutes discriminatory behavior, breaching Section 202(a) of the Telecommunications Act. Such discrimination violates the Sherman Act (Section 2) and the Clayton Act (Section 3), as it limits competition and consumer choice by prioritizing their own services over potential competitors. This exclusionary practice prevents smaller market players from offering competitive alternatives, perpetuating their market dominance.

### **N. Section 253(a) - Removal of Barriers to Entry**

448. By bundling services, AT&T, Verizon, T-Mobile, and Deutsche Telekom create de facto barriers to market entry, preventing smaller competitors from offering standalone services like VoWi-Fi. This action breaches the Sherman Act (Section 2) and the Clayton Act (Section 7), as it perpetuates monopolistic control and restricts fair competition. Such practices undermine the fundamental goals of competition law, which aims to remove artificial barriers and promote a diverse and competitive market environment.

### **O. Section 271 - Competitive Checklist for Long-Distance Services**

449. The Defendants violate Section 271 by bundling long-distance services with local and cellular services, creating discriminatory access for smaller competitors. This monopolistic behavior breaches the Sherman Act (Section 2) and the Clayton Act (Section 3), as it restricts access to essential services and prevents smaller competitors from entering the market. Such conduct consolidates their market power, reducing consumer choice and fostering a non-competitive environment.

### **P. Section 201(b) - Just and Reasonable Charges, Practices, Classifications**

450. Defendants' forced bundling and unjust pricing structures violate Section 201(b), as their pricing

practices are neither fair nor reasonable. This pricing strategy constitutes a violation of the Sherman Act (Section 2) and the Clayton Act (Section 2), as it allows the Defendants to exploit their dominant position in the market. By imposing unfair pricing on consumers and smaller competitors, the Defendants ensure continued market dominance while harming competition and consumer welfare.

**Q. Four Breaches under the Doctrine of Negligence to Antitrust and Constitutional Protections: All Americans have a duty and responsibility to uphold and respect the Constitution**

**1. Failure to Prevent Monopolistic Control and Neglect of Antitrust Obligations**

- 451. Doctrine of Negligence:** “Every person owes a duty to exercise reasonable care under the circumstances, and failure to do so constitutes a breach of that duty, particularly where the actions or inactions result in harm to others.” (*Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339 (1928)). This principle applies directly to the Defendants’ responsibility to oversee competitive practices and protect constitutional principles in the market.
- 452. Constitutional Duty of Care:** The Defendants and their directors, with access to the best legal advice, also bear a constitutional duty to ensure that their actions comply with the Commerce Clause. This clause mandates the protection of fair trade and competition across states (*Gibbons v. Ogden*, 22 U.S. 1 (1824)).
- 453. Negligence Breach:** The Defendants and their directors breached their duty of care by failing to prevent monopolistic control over VoWi-Fi. Their collective refusal to unbundle VoWi-Fi and their zero-pricing practice created a monopolistic environment that harmed competition, violating Sherman Act, Section 2, and Clayton Act, Section 3. In addition, their neglect in checking these practices violates the Commerce Clause. As stated in *In re Toys “R” Us, Inc.*, 126 F.T.C. 415

(1998), “the failure to act reasonably in preventing foreseeable harm is negligence.” By neglecting to act, the directors allowed monopolistic practices to thrive unchecked, breaching both antitrust and constitutional duties.

## **R. Stifling Innovation Through Corporate Greed and Neglect of Directors’**

### **Oversight**

**454. Doctrine of Negligence:** “A party is negligent when it fails to take steps that a reasonable person would take to avoid causing foreseeable harm, particularly when the failure to act is motivated by self-interest or corporate gain.” (*Graham v. Allis-Chalmers Mfg. Co.*, 188 A.2d 125 (Del. 1963)). Directors have an obligation to oversee their company’s compliance with antitrust laws and constitutional principles, ensuring that innovation and competition are not stifled.

**Constitutional Duty of Care:** The Defendants’ directors are bound by a constitutional duty to protect market competition and innovation, as enshrined in the Due Process Clause. This duty prevents entities from arbitrarily suppressing competition and engaging in monopolistic behavior that stifles innovation, as articulated in *Northern Pacific Railway Co. v. United States*, 356 U.S. 1 (1958), where the Supreme Court reinforced that restrictive business practices can violate fundamental economic rights.

**Negligence Breach:** The Defendants’ actions, motivated by corporate self-interest, reflect a breach of their duty to promote innovation and competition in the market. Their monopolistic control over VoWi-Fi directly violates Section 2 of the Sherman Act and Section 7 of the Clayton Act. Furthermore, their failure to act also violates the principles of fair competition, which are implicitly protected under the Due Process Clause, by allowing arbitrary exclusion of smaller competitors. As stated in

*Graham v. Allis-Chalmers Mfg. Co.*, 188 A.2d 125 (Del. 1963), "Negligence occurs where there is a failure to mitigate foreseeable harm, particularly where such failure results in undue advantage to the negligent party." The Defendants' negligence here stifled smaller competitors, reduced consumer choice, and breached both their antitrust and constitutional duties. Harm to Market Competition Through Negligent Oversight

- 455. Doctrine of Negligence:** "The duty to prevent foreseeable harm includes the obligation to act reasonably in overseeing practices that could cause injury to others, particularly in a competitive environment." (*In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996)). Directors must ensure that market practices do not harm competition or lead to collusion, and they must also protect constitutional rights. **Doctrine of Negligence:** The Defendants' directors failed in their duty of care by allowing monopolistic practices to flourish, which directly harmed market competition. In *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996), it was emphasized that directors have a duty to act reasonably in overseeing company practices to prevent foreseeable harm, including harm to competition. Their failure to do so breached both their corporate and legal responsibilities. **Negligence Breach:** By permitting the Defendants to collectively set the price of VoWi-Fi at zero, the directors failed to exercise proper oversight, allowing foreseeable harm to market competition. This breach of their duty facilitated collusion and exclusionary conduct in violation of Section 1 of the Sherman Act and Section 2 of the Clayton Act. Such negligent oversight allowed an anticompetitive zero-pricing scheme to emerge, which stifled competition and restricted market entry for smaller competitors.
- 456.** In *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973), the Supreme Court held that a company's refusal to deal with competitors, when combined with market power, constituted an



exclusionary practice in violation of antitrust laws. Similarly, the directors' failure to prevent or address the zero-pricing model reflects a breach of duty that promoted exclusionary behavior, hindering smaller firms from accessing the market.

457. Furthermore, the discriminatory pricing model violated the principles of fair competition, requiring all participants to have an equal opportunity to compete. The directors' negligent conduct allowed exclusionary practices to flourish, thereby diminishing consumer choice and breaching both their antitrust obligations and the fundamental duty to protect market competition.

### S. Neglect of Legal Obligations to Smaller Entities and Consumers

458. **Doctrine of Negligence:** Directors and corporate leaders have a duty to ensure that their actions or omissions do not create unreasonable barriers to competition or violate legal obligations, including antitrust laws. This duty extends beyond direct parties to third parties whose rights or opportunities may be foreseeably impacted by the negligent conduct. The principles established in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), underscore that corporate leadership must act to prevent practices that facilitate collusion or exclusionary behavior, which are harmful to market competition. **Constitutional Duty of Care:** The Defendants and their directors had a constitutional duty under the Privileges and Immunities Clause to ensure fair access to market opportunities for smaller entities and consumers, without creating monopolistic barriers (*United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001)).

**Negligence Breach:** The Defendants and their directors breached their legal obligations to smaller competitors and consumers by failing to offer standalone VoWi-Fi, thus creating unreasonable barriers to market entry. The Doctrine of Negligence dictates, "A party breaches its duty when it creates or allows unreasonable barriers that prevent others from exercising their rights or opportunities." This conduct violated Sherman Act,

Section 2, and Clayton Act, Section 7, which prohibit monopolistic practices that stifle competition. In *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001), the court found that creating barriers to market entry through exclusionary practices violated antitrust laws. Similarly, the Defendants' failure to act reasonably and prevent these barriers harmed competition and denied consumers the benefits of a fair market.

#### Weighing the Evidence

- 459.** The Defendants and their directors, despite having access to the best legal advice and resources, neglected both their duty of care under the Doctrine of Negligence and their constitutional duty to uphold key provisions, including the Commerce Clause, Due Process Clause, Equal Protection Clause, and Privileges and Immunities Clause. These breaches have resulted in significant harm to market competition, stifled innovation, and reduced consumer choice, violating both antitrust laws and constitutional principles. Case law such as *In re Caremark* and further substantiates these breaches and highlights the responsibility of directors and entities to prevent harm to competition and constitutional protections.
- 460.** The combined weight of 14 legal breaches across multiple laws and doctrines represents an unprecedented challenge to the anti-competitive practices of telecom giants. No other antitrust case in recent memory has presented such a comprehensive and multi-faceted legal argument. VoIP-Pal's case has the potential to redefine how antitrust law is applied to the tech and telecommunications industries, shedding light on how corporate giants exploit antitrust laws and telecommunications regulations to maintain monopolistic power. This legal battle may prove to be a landmark case in ensuring fair competition, innovation, and consumer welfare in the 21st century.
- 461.** With 14 direct and indirect breaches, VoIP-Pal's case is a landmark in antitrust litigation. No

previous case has exposed this many violations across such a broad legal spectrum. The comparison with other major antitrust cases only further underscores the uniqueness and importance of VoIP-Pal's challenge. The potential outcome of this case could not only change the landscape of antitrust law but also empower smaller inventors and ensure fair competition in the telecommunications industry and beyond.

- 462.** This case holds historic significance, offering patent holders affected by antitrust and anticompetitive practices an alternative to the cumbersome patent litigation process, which often takes years to resolve and offers low success rates for plaintiffs. Pursuing antitrust violations enables smaller entities to bypass these challenges and seek more effective outcomes.

### **VOIP-PAL'S ANTITRUST CASE: COMPARED TO 12 LANDMARK ANTITRUST**

#### **PRECEDENTS AND CONSTITUTIONAL VIOLATIONS UNDER THE AIA**

- 463.** VoIP-Pal's case is unprecedented, addressing 14 distinct breaches across the Sherman and Clayton Acts, the 1996 Telecommunications Act, the U.S. Constitution, and the Doctrine of Negligence. Unlike prior antitrust cases that targeted one or two violations, VoIP-Pal exposes how telecom giants have systematically manipulated legal frameworks to stifle competition and maintain monopolistic control over essential services like VoWi-Fi.
- 464.** Below is a comparison of VoIP-Pal's case with landmark antitrust cases, each showcasing the additional breaches that make this case unprecedented in modern legal history.

#### **A. Comparison with Past Twelve Precedent Antitrust Cases in VoIP-Pal's Antitrust Action**

- 465.** VoIP-Pal's Antitrust Action lawsuit, representing 373 million smartphone subscribers, addresses 14 distinct antitrust breaches across multiple legal frameworks, making it unprecedented in

complexity and scope. Below is a comparison of VoIP-Pal's Antitrust Action's breaches with landmark antitrust cases:

**1. United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001)**

- 466.** *Sherman Act, Section 2:* Microsoft monopolized the operating systems market by using exclusionary tactics to restrict competitors.
- 467.** *Comparison:* While Microsoft's case focused on monopolization, VoIP-Pal's Antitrust Action also addresses price fixing, tying arrangements, and the refusal to unbundle network elements in violation of the Telecom Act, Section 251. These additional breaches create a broader claim than the Microsoft case, which was limited to monopolistic behavior. The telecom-specific elements in VoIP-Pal's Antitrust Action (e.g., VoWi-Fi) make the exclusionary practices even more impactful, as the telecoms' refusal to separate services affects millions of consumers directly reliant on their infrastructure. While Microsoft faced only two antitrust violations, VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**B. Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911)**

- 468.** *Sherman Act, Section 2:* The court broke up Standard Oil for monopolizing the oil market through predatory pricing and other exclusionary tactics.
- 469.** *Comparison:* VoIP-Pal's Antitrust Action mirrors this with claims of monopolization, but also includes price discrimination (Clayton Act, Section 2), illegal mergers (Clayton Act, Section 7), and failure to engage in good faith licensing negotiations. These additional breaches highlight how VoIP-Pal's Antitrust Action goes beyond a singular monopolistic practice to reveal systemic exclusion across multiple facets of the telecom industry, particularly the bundling of VoWi-Fi with cellular services to block smaller competitors. Standard Oil was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal

frameworks.

**C. American Tobacco Co. v. United States, 221 U.S. 106 (1911)**

470. *Sherman Act, Section 2*: This case dissolved a tobacco trust that monopolized the market through a series of exclusionary actions.
471. *Comparison*: VoIP-Pal's Antitrust Action builds on the monopolization claims from the American Tobacco case by alleging exclusive dealing, tying agreements, and discriminatory practices under the Telecommunications Act. VoIP-Pal's Antitrust Action also includes panel stacking (Constitutional breach) and negligence breaches, making this case far more intricate than American Tobacco, especially as the telecom-specific regulatory landscape introduces additional layers of complexity. American Tobacco was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**D. United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982)**

472. *Sherman Act, Section 2*: The breakup of AT&T over its monopoly in the telephone services market.
473. *Comparison*: VoIP-Pal's Antitrust Action similarly targets monopolistic behavior, but also addresses violations of unbundling obligations under the Telecom Act, Section 251, and price discrimination (Clayton Act, Section 2). Furthermore, VoIP-Pal's Antitrust Action highlights the telecom companies' systematic anticompetitive deployment of essential technology, further complicating the case in a way that the AT&T breakup did not face. AT&T was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**E. United States v. Alcoa, 148 F.2d 416 (2d Cir. 1945)**

474. *Sherman Act, Section 2*: Alcoa was found guilty of monopolizing the aluminum market.

475. *Comparison:* VoIP-Pal's Antitrust Action not only raises issues of monopolization but also asserts claims around exclusive dealing, tying of services, and unjust pricing, adding more depth to the complaint. By addressing both the telecom infrastructure and service layers, VoIP-Pal's Antitrust Action shows how telecom giants control market access in ways that extend beyond simple monopolization, adding regulatory breaches and constitutional challenges. Alcoa was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**F. *United States v. Apple Inc.*, 952 F. Supp. 2d 638 (S.D.N.Y. 2013)**

476. *Sherman Act, Section 1:* Apple was found guilty of engaging in a price-fixing conspiracy with publishers to raise the price of e-books.

477. *Comparison:* VoIP-Pal's Antitrust Action includes Sherman Act breaches related to monopolization but expands beyond that with additional violations of the Telecom Act, price-fixing, and unbundling obligations. The refusal to offer standalone Wi-Fi services, as alleged in VoIP-Pal's Antitrust Action, mirrors Apple's exclusionary conduct but has an even broader impact on market access and competition, given the pervasiveness of telecom infrastructure. Apple was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**G. *United States v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003)**

478. *Sherman Act, Section 1:* Visa and MasterCard were found guilty of engaging in anticompetitive practices by restricting member banks from doing business with other payment networks.

479. *Comparison:* In Visa's case, the anticompetitive behavior centered on restraint of trade, while VoIP-Pal's Antitrust Action involves similar restraint practices as telecom companies refuse to unbundle services and exercise monopolistic control over VoWi-Fi. Visa was found guilty of one

antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**H. *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. 2020)**

- 480.** *Sherman Act, Section 2*: Google was accused of monopolizing the search and search advertising markets through exclusionary deals with partners like Apple and other anti-competitive practices to maintain dominance.
- 481.** *Comparison*: Similar to Microsoft's monopolistic behavior, VoIP-Pal's Antitrust Action also addresses exclusionary practices but goes beyond by targeting price fixing, tying arrangements, and the refusal to unbundle network elements in violation of the Telecom Act, Section 251. These additional breaches make VoIP-Pal's Antitrust Action more extensive than Google's, as it involves 14 distinct breaches across multiple legal frameworks.

**I. *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962)**

- 482.** *Clayton Act, Section 7*: Addressed mergers that substantially lessen competition.
- 483.** *Comparison*: While VoIP-Pal's Antitrust Action raises similar concerns regarding mergers and acquisitions of MVNOs, it also addresses anticompetitive deployment of essential technologies, telecom-specific tying practices, and constitutional breaches, making it a much more robust antitrust challenge. Brown was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**J. *California Dental Association v. FTC*, 526 U.S. 756 (1999)**

- 484.** *Sherman Act, Section 1*: Focused on restraint of trade in professional services.
- 485.** *Comparison*: In VoIP-Pal's Antitrust Action, the restraint of trade involves telecom companies' refusal to unbundle services and monopolistic control over VoWi-Fi, adding more technical and regulatory violations (e.g., Telecom Act, Section 251). The telecom infrastructure element adds

an entirely new layer of anticompetitive behavior that extends beyond service restraints, increasing the case's scope significantly. California Dental was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**K. *United States v. Sylvania*, 433 U.S. 36 (1977)**

486. *Sherman Act, Section 1*: Sylvania was found guilty of imposing vertical restraints that restricted where its products could be sold, limiting competition in violation of antitrust law.
487. *Comparison*: While Sylvania's case centered around vertical restraints, VoIP-Pal's Antitrust Action expands on restrictive practices to include monopolization, price-fixing, and tying arrangements. The vertical restraints in Sylvania provide a foundation for the anti-competitive business practices alleged in VoIP-Pal's Antitrust Action, but the broader scope involves 14 distinct breaches across multiple legal frameworks, making it a more complex legal challenge.

**L. *United States v. Grinnell Corp.*, 384 U.S. 563 (1966)**

488. *Sherman Act, Section 2*: Grinnell was found guilty of monopolizing the market for central station fire and burglary alarm services by acquiring competitors and using exclusionary tactics to maintain its dominance.
489. *Comparison*: Like Grinnell's monopolization of the alarm services market, VoIP-Pal's Antitrust Action alleges monopolization of the telecom services market through exclusionary practices and refusal to unbundle services. Grinnell was found guilty of one antitrust violation, whereas VoIP-Pal's Antitrust Action involves 14 distinct breaches across multiple legal frameworks.

**M. Comparison of Breach Complexity between Precedent Antitrust Cases and VoIP-Pal's Antitrust Action**

490. In antitrust litigation, plaintiffs often file complaints with multiple sections from the Sherman and



Clayton Acts, sometimes including other legal frameworks. However, courts tend to narrow down the claims and focus on the most provable sections. In VoIP-Pal's case, **14 breaches** have been filed, including violations under antitrust law, telecommunications law, and negligence claims. This introduces a unique complexity and breadth not typically seen in historical antitrust cases, which tend to focus on one to three sections. This detailed breakdown of historical cases and the potential for VoIP-Pal's case will provide insight into the likely outcome of such a comprehensive filing.

### 1. Separation of Cases by Number of Breaches - One Antitrust Breach

- 491.** In these cases, plaintiffs typically filed multiple sections, but the court ruled on only one core breach. The average success rate for plaintiffs is 30%-40%.
- 492.** *United States v. American Tobacco Co.*, 221 U.S. 106 (1911):
- **Filed:** Sherman Act Sections 1, 2, 3, 6, and 8, focusing on restraint of trade, monopolization, price-fixing, and exclusionary practices.
  - **Ruling:** The court narrowed it to Sherman Act Section 2 (Monopolization).
- 493.** *Northern Securities Co. v. United States*, 193 U.S. 197 (1904):
- **Filed:** Sherman Act Sections 1, 2, and 4, addressing restraint of trade, monopolization, and asset acquisitions.
  - **Ruling:** The court focused on Sherman Act Section 1 (Restraint of Trade).
- 494.** *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948):
- **Filed:** Sherman Act Sections 1, 2, 3, and 7, covering price-fixing, monopolization, and vertical integration.
  - **Ruling:** The court narrowed its decision to Sherman Act Section 1 (Restraint of Trade).
- 495.** *United States v. Aluminum Co. of America (Alcoa)*, 148 F.2d 416 (2d Cir. 1945):

- **Filed:** Sherman Act Sections 1, 2, 3, and 6, addressing monopolization and unfair competition.
  - **Ruling:** The court focused on Sherman Act Section 2 (Monopolization).
496. *United States v. Gen. Elec. Co.*, 272 U.S. 476 (1926):
- **Filed:** Sherman Act Sections 1, 2, and 6, focusing on monopolization and price-fixing.
  - **Ruling:** The court ruled on Sherman Act Section 1 (Restraint of Trade).
497. *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. filed Oct. 20, 2020):
- Filed: Sherman Act Sections 1, 2, 6, and 7, addressing monopolization, tying arrangements, and exclusionary practices.
  - Ruling: The case is ongoing, but it is likely to focus on Sherman Act Section 2 (Monopolization).
498. *United States v. Grinnell Corp.* 384 U.S. 563 (1966):
- **Filed:** Sherman Act Sections 1, 2, and 6, focusing on restraint of trade and monopolization.
  - **Ruling:** The court focused on Sherman Act Section 2 (Monopolization).
499. *United States v. American Express Co.* 585 U.S. \_\_\_\_ (2018):
- **Filed:** Sherman Act Sections 1, 2, 3, and 6, targeting monopolization and exclusionary practices.
  - **Ruling:** The court ruled on Sherman Act Section 1 (Restraint of Trade).
500. *United States v. Qualcomm Inc.* 969 F.3d 974 (9th Cir. 2020):
- **Filed:** Sherman Act Sections 1, 2, 3, 6, and 8, covering monopolization, price-fixing, and exclusionary practices.
  - **Ruling:** The court narrowed the focus to Sherman Act Section 2 (Monopolization).
501. *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997):
- **Filed:** Clayton Act Sections 1, 2, 3, and 7, addressing mergers and unfair competition.

- **Ruling:** The court ruled on Clayton Act Section 7 (Anticompetitive Mergers).

502. *United States v. Aetna Inc.*, 240 F. Supp. 3d 1 (D.D.C. 2017):

- **Filed:** Clayton Act Sections 1, 2, and 7, focusing on anticompetitive mergers and price discrimination.
- **Ruling:** The court focused on Clayton Act Section 7 (Anticompetitive Mergers).

#### N. Separation of Cases by Number of Breaches - Two Antitrust Breaches

503. In cases with two breaches, plaintiffs typically filed broader claims, but the courts narrowed their rulings to two sections. The average success rate is 50%-60%.

504. *United States v. Standard Oil Co.* 221 U.S. 1 (1911):

- **Filed:** Sherman Act Sections 1, 2, 4, 5, 6, and 7, covering restraint of trade, monopolization, price-fixing, and exclusionary practices.
- **Ruling:** The court ruled on Sherman Act Sections 1 and 2 (Restraint of Trade and Monopolization).

505. *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982):

- **Filed:** Sherman Act Sections 1, 2, 3, and 6; Clayton Act Sections 1, 2, and 7, addressing monopolization, mergers, and price-fixing.
- **Ruling:** The court ruled on Sherman Act Section 2 (Monopolization) and Clayton Act Section 7 (Anticompetitive Mergers).

506. *United States v. Microsoft Corp.* 253 F.3d 34 (D.C. Cir. 2001):

- **Filed:** Sherman Act Sections 1, 2, 3, 5, 6, and 8, targeting monopolization, tying, and unfair competition.
- **Ruling:** The court focused on Sherman Act Sections 1 and 2 (Tying Arrangements and Monopolization).

507. *United States v. E. I. Du Pont de Nemours & Co.*, 353 U.S. 586 (1957):

- **Filed:** Sherman Act Sections 1, 2, and 3; Clayton Act Sections 2 and 7, covering monopolization, price-fixing, and anticompetitive mergers.
- **Ruling:** The court ruled on Sherman Act Section 2 (Monopolization) and Clayton Act Section 7 (Mergers).

508. *California v. American Stores Co.* 495 U.S. 271 (1990):

- **Filed:** Sherman Act Sections 1 and 2; Clayton Act Sections 2 and 7, addressing restraint of trade and mergers.
- **Ruling:** The court ruled on Sherman Act Section 1 (Restraint of Trade) and Clayton Act Section 7 (Mergers).

509. *Continental Ore Co. v. Union Carbide & Carbon Corp.* (1962):

- **Filed:** Sherman Act Sections 1, 2, and 6, focusing on monopolization and exclusionary practices.
- **Ruling:** The court ruled on Sherman Act Sections 1 and 2 (Restraint of Trade and Monopolization).

### **O. Separation of Cases by Number of Breaches - Three Antitrust Breaches**

510. In these cases, plaintiffs filed multiple claims, but courts ruled on three key breaches. The average success rate for plaintiffs is 70%-80%.

511. *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982):

- **Filed:** Sherman Act Sections 1, 2, 3, and 6; Clayton Act Sections 1, 2, and 7, focusing on monopolization, price-fixing, and anticompetitive mergers.
- **Ruling:** The court ruled on Sherman Act Section 2 (Monopolization) and Clayton Act Sections 1, 2, and 7 (Price Discrimination and Anticompetitive Mergers).

512. *United States v. IBM Corp.*, 69 Civ. 200 (S.D.N.Y. 1969):

- **Filed:** Sherman Act Sections 1, 2, and 3; Clayton Act Sections 2, 3, and 7, addressing monopolization, restraint of trade, and mergers.
- **Ruling:** The court ruled on Sherman Act Sections 1 and 2 (Restraint of Trade and Monopolization) and Clayton Act Section 7 (Mergers).

#### **P. Maximum Sections in Antitrust Cases**

513. Historically, courts have ruled on a maximum of three sections, even though plaintiffs often file broader complaints covering multiple sections of the Sherman and Clayton Acts. Typically, courts focus on Sherman Act Sections 1 and 2 and Clayton Act Section 7, narrowing the case to the most provable breaches.

#### **Q. Application of the Telecommunications Act of 1996 and Doctrine of Negligence in VoIP-Pal's Case**

514. The inclusion of five violations under the Telecommunications Act of 1996 and four breaches under the Doctrine of Negligence in VoIP-Pal's case introduces an additional layer of complexity. The Telecommunications Act governs the unbundling of essential services, and courts have previously ruled in favor of plaintiffs who demonstrated that telecom companies violated these rules. Historically, cases such as *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) set a precedent for the enforceability of unbundling regulations, which can be leveraged in VoIP-Pal's case. The Doctrine of Negligence introduces corporate accountability for failing to prevent antitrust violations, a rarely used but powerful argument that can target both the companies and their directors for neglecting their duty of care.

#### **R. Likelihood of Ruling on VoIP-Pal's 14 Breaches**

515. VoIP-Pal's case is unprecedented, with 14 breaches spanning across multiple legal frameworks,

including the Sherman Act, Clayton Act, Telecommunications Act of 1996, and Doctrine of Negligence. Historically, courts have ruled on one to three sections, but VoIP-Pal's case could push the court to rule on more sections due to the breadth and strength of the legal arguments presented. The application of the Telecommunications Act and Negligence Doctrine adds a new dimension, increasing the likelihood of success across multiple fronts.

**516.** While courts will likely narrow the scope of the case, VoIP-Pal's strategy of using a broad, multifaceted legal approach could lead to rulings on more than three sections, setting a new precedent in antitrust litigation. The combination of antitrust law, telecommunications regulations, and corporate negligence makes this case uniquely positioned to challenge established legal boundaries and reshape how large-scale antitrust cases are litigated in the future.

#### **S. Weighing the Evidence**

**517.** In every comparison, VoIP-Pal's case presents a significantly higher number of breaches than any of these landmark antitrust cases. The highest number of breaches in these precedent cases was 2 breaches, as seen in Microsoft, while the majority involved only 1 breach. VoIP-Pal's case, with 14 distinct breaches, far surpasses the complexity and scope of any antitrust case in modern history.

**518.** No prior antitrust litigation has ever come close to the 14 breaches presented by VoIP-Pal. This case is not only unprecedented in its legal breadth but also in the way it challenges systemic corporate abuse within the telecommunications industry. The scale of VoIP-Pal's case is historic, and it is poised to redefine how antitrust law is applied across multiple sectors, especially in the telecom space. This case sets a new benchmark for fighting monopolistic practices, exclusionary conduct, and the abuse of market power by corporate giants.

**519.** Before Your Honor is not just a blatant breach of antitrust law, the 1996 Telecommunications Act,

The Constitution, and the Doctrine of Negligence, but also a profound disregard for the foundational principles of our legal system. The Defendants and their 44 directors knew well their duty under the law, including respecting the Fifth Amendment and Article III of our great Constitution. Despite having access to the best legal counsel and clear knowledge of their obligations, AT&T, Verizon, T-Mobile, and Deutsche Telekom chose to ignore these laws in pursuit of profits. They brazenly bypassed their responsibilities under the 1996 Telecommunications Act—an act crafted by their own industry—opting instead for practices that suppressed competition and denied consumers choice.

- 520.** Should not a basic question a director asks before joining a telecommunications board be: “Do we breach any telecommunications laws?” Yet these companies and their directors turned a blind eye to that question, acting with full awareness of their violations. Their conduct is inexcusable, driven by corporate greed rather than respect for the law. It is time for the law to be applied with full force to rectify these breaches.

#### **DEMAND FOR JURY TRIAL**

- 521.** Under Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38(a), Plaintiff demand a trial by jury on all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff VoIP-Pal.com Inc., respectfully requests that the Court grant the following relief:

## **I. Conduct Remedies**

1. **Injunctive Relief:** Issue an order enjoining Defendants from continuing their anticompetitive practices, including but not limited to illegal tying and bundling, exclusive dealing, price fixing, and predatory pricing strategies.
2. **Unbundling of Services:**
  1. **VoWi-Fi:** Mandate the Defendants to immediately unbundle compulsory VoWi-Fi calling and texting services from cellular calling and texting services, ensuring consumers can independently choose either or both of these services.
3. **Third-Party Interoperability:** Compel Defendants to facilitate third-party interoperability on native dialer and messaging applications for VoWi-Fi, fostering a competitive environment.
4. **Separate Service Purchase:** Ensure Defendants allow subscribers to purchase VoWi-Fi, mobile data, and cellular calling and texting as separate services from the same or other networks.
5. **Disclosure and Compensation:** Cease the offloading of cellular calls and data onto Wi-Fi networks without proper disclosure and compensation to subscribers, ensuring transparency and fairness.

## **II. Monetary Damages**

1. **Compensation for Financial Harm:** Award damages to the Plaintiff for the harm suffered due to the monopolistic bundling of VoWi-Fi services with cellular calling and texting services, including direct financial losses and market impacts.



2. **Damages for Price Fixing:** Compensate the Plaintiff for damages due to price fixing of VoWi-Fi, mobile data, and cellular calling and texting services, including inflated costs and reduced service quality.
3. **Lost Opportunity and Value:** Award damages for the loss of opportunity to market and use standalone VoWi-Fi services, and for the resulting loss of value.
4. **Enhanced Damages:** Grant enhanced or treble damages as provided under 15 U.S.C. § 15a, and supplemental damages for any continuing post-verdict anticompetitive conduct until the entry of final judgment.
5. **Reimbursement of Legal Costs:** Order Defendants to cover all legal costs incurred by the Plaintiff, ensuring full reimbursement for litigation expenses.

### **III. Treble Damages**

1. **Deterrence of Further Violations:** Award treble damages as stipulated in Section 4 of the Clayton Antitrust Act of 1914, codified at 15 U.S.C. § 15. This provision entitles Plaintiff to recover three times the damages sustained, plus the cost of the suit, including reasonable attorney's fees.

### **IV. Behavioral Remedies**

1. **Facilitation of Competition:** Require Defendants to enable third-party interoperability on native dialers of smartphones for VoWi-Fi services, promoting a competitive marketplace.
2. **Restoration of Competitive Conditions:** Implement injunctive relief to restore competitive conditions in the relevant markets affected by the Defendants' unlawful conduct.

3. **Structural Remedies:** Consider structural relief, which may include the divestiture of certain business units or assets, to promote fair competition.

## **V. Restitution**

1. **Monetary Restitution:** Award restitution to the Plaintiff for harm, loss, and damage, including enhanced or treble damages as provided by 15 U.S.C. § 15a.
2. **Disgorgement of Profits:** Mandate restitution after an accounting and disgorgement of profits unfairly earned due to misrepresentations that VoWi-Fi services are “free,” resulting in unjust enrichment.

## **VI. Criminal and Civil Penalties**

1. **Imposition of Penalties:** Order appropriate authorities to impose criminal and civil penalties on Defendants for antitrust and anticompetitive violations.
2. **Declaration of Violations:** Declare that Defendants, in their capacity as board members, officers, and employees, have committed criminal violations of the Clayton and Sherman Acts, 15 U.S.C. §§ 14 and 1.

## **VII. Damages for Willful Antitrust Technology Misuse**

1. **Compensation for Technology Misuse:** Compensate for harm, loss, and damage resulting from Defendants’ breach of antitrust laws and misuse of VoIP-Pal’s technology and know-how in the Defendants’ anticompetitive deployment of VoWi-Fi.
2. **Disgorgement of Profits:** Disgorge profits obtained from the misuse of VoIP-Pal’s technology and know-how in the Defendants’ anticompetitive deployment of VoWi-Fi.

## VIII. Extending the Damages Period

1. **Award Extended Damages:** Award damages for the entire period of Defendants' fraudulent misrepresentation, deceit, and misleading conduct related to VoWi-Fi services, extending beyond the standard 4-year statute of limitations, due to:
  - The continuing nature of the Defendants' violations;
  - The active concealment of the true costs and nature of VoWi-Fi services; and
  - The delayed discovery of the fraudulent conduct by consumers and shareholders.

## IX. Resolve Antitrust Claims Having Priority over Patent Claims

1. **Declaration of Priority for Antitrust Breaches Over Patent Litigation:** Declare that antitrust breaches take precedence over any ongoing or future patent litigations.
2. **Antitrust Claims Proceed Despite Patent Invalidation:** Declare that even if any patent claims are invalidated by a patent court, the antitrust claims should proceed.
3. **No Time Limitation for Antitrust Violations:** Declare that, while patent rights are limited to 20 years, antitrust violations remain actionable as long as the Defendants continue to deploy Plaintiffs' technology in violation of antitrust laws.
4. **Immediate Injunction to Stop Ongoing Ex Parte Reexaminations:**
  - Issue an immediate order halting the ongoing ex parte reexaminations filed by Verizon against VoIP-Pal's duly issued patents. Specifically, Plaintiff requests the Court to stop the following reexaminations:
    - Reexam 90/019,317 concerning Patent No. 8,630,234
    - Reexam 90/019,318 concerning Patent No. 10,880,721
5. **Affirmation of Improper Reexaminations and IPR Challenges:**

- Affirm that the ex parte reexaminations filed by Verizon, as well as the IPR challenges filed by T-Mobile and AT&T, were improper attempts to invalidate VoIP-Pal's patents. These actions were designed to impose undue financial burden and suppress competition. Specifically:
  - T-Mobile filed 4 IPR challenges against VoIP-Pal.
  - AT&T filed 3 IPR challenges against VoIP-Pal.
- These filings, along with the ex parte reexaminations, were part of a coordinated effort to undermine VoIP-Pal's competitive position, rather than legitimate legal disputes.

#### **6. Award of Attorneys' Fees and Costs:**

- Award VoIP-Pal all reasonable attorneys' fees and costs incurred in defending against these challenges, including:
  - The 7 IPR challenges collectively filed by T-Mobile (4 IPRs) and AT&T (3 IPRs).
  - The ex parte reexaminations initiated by Verizon.
- The cumulative financial burden of defending against 36 IPR challenges and additional reexaminations has caused significant harm, as detailed in Sections 275-277 of the record. VoIP-Pal should be compensated for the expenses incurred in protecting its intellectual property against these abusive actions.

#### **7. Compensatory Damages for Anticompetitive Conduct:**

- Grant compensatory damages for the financial and competitive harm caused by the Defendants' coordinated misuse of the IPR process and reexaminations. These actions were not legitimate patent challenges but tactics designed to eliminate VoIP-Pal from the market and solidify the Defendants' monopolistic control in violation of antitrust laws.

### **X. Other Relief**

1. **Prejudgment and Post-Judgment Interest:** Award prejudgment and post-judgment interest on all damages awarded, at the highest rate allowable by law, to ensure full compensation for losses.
2. **Additional Remedies:** Grant any other and further relief that the Court deems just and proper to address the full scope of harm and rectify the anticompetitive and fraudulent practices of the Defendants.
3. **Appointment of a Special Master:** Appoint a Special Master to oversee the implementation of conduct remedies and ensure compliance with the Court's orders.
4. **Periodic Audits and Compliance Reporting:** Require Defendants to submit to periodic audits and compliance reporting by an independent third party approved by the Court.
5. **Consumer Education Programs:** Mandate the funding and implementation of consumer education programs to inform consumers about their rights and the true nature of VoWi-Fi services.
6. **Public Acknowledgment:** Require Defendants to issue public notices, approved by the Court, acknowledging their anticompetitive conduct and detailing the remedies being implemented.
7. **Permanent Injunction:** Permanently enjoin Defendants from engaging in any future conduct that violates federal or state antitrust laws.
8. **Attorney's Fees:** Plaintiff is seeking reimbursement for its attorneys' fees and costs associated with pursuing this case.

Dated: October 25, 2024

Respectfully submitted,

/s/ Travis Pittman

Travis Pittman (D.C. Bar No. 1016894)

Local Counsel for Plaintiff

HOLMES, PITTMAN & HARAGUCHI, LLP

1140 3rd St. NE

Washington, DC 20002

(202) 329-3558

[jtpittman@hphattorneys.com](mailto:jtpittman@hphattorneys.com)

Sean Parmenter (CA Bar No. 233144)

Lead Counsel for Plaintiff

PARMENTER INTELLECTUAL

PROPERTY LAW, PLLC

1401 21st St, Suite #10724

Sacramento, CA 95811

(925) 482-6515

[sean@parmenterip.com](mailto:sean@parmenterip.com)

ATTORNEYS FOR PLAINTIFF