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MetroPCS California, LLC v. Picker

United States Court of Appeals, Ninth Circuit - August 14, 2020 - F.3d - 2020 WL 4726364 - 20 Cal. Daily Op. Serv. 8433 - 2020 Daily Journal D.A.R. 8787

Prepaid wireless telephone service provider brought action against members of the California Public Utilities Commission (CPUC) in their official capacities, alleging that requirement in CPUC's resolution that prepaid providers use the intrastate allocation factor to determine intrastate revenue subject to state universal service surcharges pursuant to California's Prepaid Mobile Telephony Services Surcharge Collection Act conflicted with federal law and was therefore preempted.

The United States District Court granted summary judgment in favor of provider. Members appealed.

The Court of Appeals held that:

- Expiration of Act did not render moot provider's action;
- Requirement in CPUC's resolution that prepaid wireless providers use intrastate allocation factor to determine intrastate revenue was not facially preempted by Federal Communications Commission's (FCC) policy that universal service support rules cannot not unfairly advantage one provider over another; and
- Requirement in CPUC's resolution was not facially preempted by FCC's ruling permitting states to impose universal service contribution requirements on intrastate interconnected Voice over Internet Protocol (VoIP) providers.