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TELECOM - CALIFORNIA

Assurance Wireless USA, L.P. v. Reynolds

United States Court of Appeals, Ninth Circuit - April 26, 2024 - F.4th - 2024 WL 1819657 - 2024 Daily Journal D.A.R. 3576

Telecommunications carriers filed suit challenging California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers based on number of active accounts, called access lines, rather than based on revenue, thereby changing mechanism for charging telecommunications providers to fund California's universal service program expanding public access to communications services, and claiming that new rule was expressly preempted by Telecommunications Act, as inconsistent with Federal Communications Commission's (FCC) rules that preserved and advanced universal service on equitable and nondiscriminatory basis, which FCC interpreted to require competitive neutrality, and as inequitable and discriminatory contrary to Telecommunications Act, which charged carriers by revenue.

The United States District Court for the Northern District of California denied carriers' motion for preliminary injunction preventing enforcement of access line rule, and denied stay pending appeal. Carriers appealed.

The Court of Appeals held that:

- In matter of first impression, Telecommunications Act's preemption of state regulations inconsistent with FCC rules requires abrogation or abandonment of federal rule;
- Carriers were not likely to succeed on merits of claim that access line rule was preempted as inconsistent with FCC rules;
- Carriers were not likely to succeed on merits of claim that access line rule was preempted as inequitable and discriminatory contrary to Telecommunications Act; and
- Preliminary injunctive relief was precluded regardless of irreparable harm to carriers from new access line rule.

The Telecommunications Act's use of "inconsistent with," in preempting state regulations promulgated to ensure the preservation and advancement of universal service in that state that are inconsistent with Federal Communications Commission (FCC) rules that preserve and advance universal service, unambiguously requires abrogation or abandonment of the federal rules.

Telecommunications carriers seeking preliminary injunction preventing enforcement of California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers to fund California's universal service program based on number of active access lines rather than revenue, were not likely to succeed on merits of their claim that rule was expressly preempted by Telecommunications Act as "inconsistent with" Federal Communications Commission (FCC) rule imposed on carriers for funding interstate universal service programs, even though CPUC's access line was different from FCC rule, since CPUC's access line rule did not burden interstate universal service programs funded by FCC rule, that said nothing about funding of state universal service programs.

Telecommunications carriers seeking preliminary injunction preventing enforcement of California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers to fund California's universal service program based on number of active access lines rather than revenue, were not likely to succeed on merits of their claim that rule was expressly preempted by Telecommunications Act as "inequitable and discriminatory," since CPUC's access line rule was not unfairly discriminatory, as it treated all customers, including wireline, voice over internet protocol, and wireless, the same regardless of service type, it applied to all carriers, and it was fair response to real problem of declining revenues generated from landline services.

Telecommunications carriers seeking preliminary injunction against enforcement of California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers to fund California's universal service program based on number of active access lines rather than revenue, were not likely to succeed on merits of their claim that rule was expressly preempted by Telecommunications Act as "inequitable and discriminatory" by treating carriers that received support under federal Affordable Connectivity Program (ACP) differently than carriers serving low-income participants in California LifeLine Program; federal and state programs were materially distinct as they were funded differently, only one member of household was eligible for LifeLine benefits, and carriers receiving ACP support could also join LifeLine.

Although telecommunications carriers faced irreparable harm, from lack of goodwill and injury to their pro-consumer brands by passing surcharge on to their customers or from inability to recover surcharges later from California, due to its Eleventh Amendment immunity, they still were not entitled to preliminary injunction preventing enforcement of California Public Utilities Commission's (CPUC) new access line rule, imposing surcharges on carriers based on number of active access lines rather than revenue, since carriers were not likely to succeed on merits of their claims that access line rule was preempted by Telecommunications Act.