

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

METROPCS CALIFORNIA, LLC,

Plaintiff,

v.

MICHAEL PICKER, *et al.*,

Defendants.

Case No. [17-cv-05959-SI](#)

**ORDER RE: SUPPLEMENTAL
BRIEFING**

The parties' cross-motions for summary judgment have been submitted to the Court. MetroPCS contends, *inter alia*, that the CPUC's adoption of a mandatory intrastate allocation factor conflicts with federal law because the FCC has expressly permitted wireless carriers to rely on traffic studies and individualized revenue allocations for purposes of determining their contributions to the federal Universal Service Fund ("USF"). MetroPCS relies on several FCC orders, including the *Universal Service Contribution Methodology Order*, 21 FCC Rcd. 7518 (2006) ("*Interim Contribution Methodology Order*"), the *Policy and Rules Concerning Interstate, Interexchange Marketplace*, 16 FCC Rcd. 7418 (2001) ("*Bundling Order*"). MetroPCS argues that these orders establish that when wireless carriers allocate the portions of their revenues that are attributable to interstate and international services vs. intrastate services to determine federal USF contributions, carriers may choose whether to use (1) their actual revenue allocations, (2) traffic studies, or (3) a "safe harbor" that is a set percentage set by the FCC.

Citing another FCC order, *In the Matter of Universal Service Contribution Methodology*, 25 FCC Fcd. 15651 (2010), MetroPCS contends that the CPUC's intrastate allocation factor violates federal law because the CPUC has imposed a "one-size-fits-all" methodology that does not allow carriers to rely on their actual revenue allocations or traffic studies for purposes of

1 contributing to California's Universal Service Fund. In that order, the FCC stated,

2 We further conclude that state universal service contribution requirements do not
3 conflict with federal rules to the extent that states calculate the amount of their
4 universal service assessments in a manner that is consistent with the rules adopted
5 in the *Interim Contribution Methodology Order*. Under the Commission's rules, an
6 interconnected VoIP provider contributes to the federal fund on the basis of its
7 revenues from interstate and international traffic; revenues from intrastate traffic
8 are excluded. As described above, the Commission's rules give providers three
9 options by which they can establish their federal universal service revenue base: (1)
10 use a safe harbor under which 64.9 percent of their revenues are deemed to be
11 jurisdictionally interstate (and therefore not intrastate); (2) conduct a traffic study to
12 allocate revenues by jurisdiction; or (3) develop a means of accurately classifying
interconnected VoIP communications between federal and state jurisdictions.
Therefore, to avoid a conflict with the Commission's rules, a state imposing
universal service contribution obligations on interconnected VoIP providers must
allow those providers to treat as intrastate for state universal service purposes the
same revenues that they treat at intrastate under the Commission's universal service
contribution rules. This will ensure that state contribution requirements will not be
imposed on the same revenue on which an interconnected VoIP provider is basing
its calculation of federal contributions. To the extent a state fails to comply with
this limitation in the future, it may be subject to preemption consistent with the
prospective Declaratory Ruling we issue today.

13 25 FCC Fcd. at 15658 ¶ 17 (internal footnotes omitted).

14 The CPUC distinguishes this order on the ground that the FCC was addressing VoIP
15 technology, not wireless. See CPUC's Motion at 29 (Dkt. No. 73). However, the CPUC does not
16 explain why this difference is meaningful in light of the fact that both VoIP and wireless carriers
17 provide interstate/international and intrastate service, and the FCC was addressing the question of
18 how a state could impose universal service contributions without violating federal law. The Court
19 is inclined to agree with MetroPCS that the usage of a mandatory intrastate allocation factor
20 conflicts with federal law for the reasons stated in the FCC order quoted above.

21 MetroPCS contends that the Court need not find the Prepaid Collection Act
22 unconstitutional, and that the Court should only enjoin the CPUC's Resolutions implementing the
23 intrastate allocation factor. MetroPCS asserts that the CPUC could still impose a uniform
24 Surcharge rate that is expressed as a percentage of the sales price (the base Surcharge rate) and
25 carriers would then rely on their FCC-approved methodologies (effectively, an individualized
26 intrastate allocation factor) to assess that uniform rate on only their intrastate telecommunications
27 service revenues. See MetroPCS's Reply at 28 (Dkt. No. 77).

28 The CPUC contends that if the Court concludes that the intrastate allocation factor is

1 preempted, the Court must declare the Prepaid Collection Act unconstitutional. However, the
2 CPUC's initial resolution implementing the Act did not adopt the mandatory intrastate allocation
3 factor, and allowed carriers to report prepaid wireless intrastate revenue subject to the Surcharge
4 and then remit the fees.

5 The Court directs further briefing on whether, in the event the Court finds that the
6 mandatory intrastate allocation factor conflicts with federal law, the Court could enjoin the further
7 implementation of a system using such a mandatory factor without declaring the Prepaid
8 Collection Act unconstitutional (as suggested by MetroPCS). If the parties do not have anything
9 to add on this matter beyond what is stated in the summary judgment papers, the parties may state
10 so. The parties shall also inform the Court of the CPUC's tentative schedule for releasing the draft
11 and final versions of the next resolution implementing the Prepaid Act. Finally, if the CPUC takes
12 the position that it is impossible to enjoin the usage of a mandatory intrastate allocation factor
13 without declaring the Prepaid Collection Act unconstitutional, the CPUC shall state its view of
14 what relief the Court should grant if the Court agrees with MetroPCS that the mandatory intrastate
15 allocation factor is preempted by federal law.

16 The parties shall submit the supplemental briefs no later than October 5, 2018.

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18 **IT IS SO ORDERED.**

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20 Dated: September 18, 2018



21 SUSAN ILLSTON
22 United States District Judge
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