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MAIL DATE

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Decision 98-11-031

November 5, 1998

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own
Motion Into Mobile Telephone Service
and Wireless Communications.

I.93-12-007

(Filed December 7, 1993)

ORDER DENYING APPLICATION FOR REHEARING

Applications for rehearing of Decision (D.) 96-12-071 ("Decision") were filed by: (1) GTE Mobilnet of California, GTE Mobilnet of Santa Barbara LP, GTE Mobilnet of San Diego, Inc., Fresno MSA LP, and Contel Cellular of California, Inc.; (2) Sprint Spectrum LP and Cox California, Inc.; (3) Airtouch Cellular, Los Angeles SMSA LP, Sacramento Valley LP, and Modoc RSA LP ("Airtouch"); (4) Cellular Carriers Association of California ("Cellular Carriers"); and (5) AT&T Wireless Services, Inc. ("AT&T"). Rehearing applicants will be collectively referred to as "Carriers".

D.96-12-071 addresses certain issues regarding federal preemption of our cellular commercial mobile radiotelephone service (CMRS) regulation. In relevant part, the Decision concludes that we retain authority to continue our cellular CMRS wholesale unbundling and reseller interconnection requirements. The Decision also orders further proceedings to adopt consumer protection rules for the industry.

We have carefully considered all the arguments presented by the Carriers, and are of the opinion that good cause for rehearing of D.96-12-071 has not been demonstrated. Accordingly, we are denying Carriers' applications.

The Carriers allege that the Commission's cellular CMRS wholesale wholesale unbundling and reseller interconnection programs are preempted by federal law regarding regulation of wireless carriers. We considered most of these arguments extensively in the underlying Decision, and we refer applicants to that discussion of our rationale. (D.96-12-071, at pp. 12-14, 24-26.) Carriers fail to present additional arguments or authority which would alter our conclusions, and we note that no more recent authorities undermine our holdings. Therefore, we reaffirm our conclusion that we retain authority to implement these programs.

In addition, Carriers' arguments challenging the substance of the Commission's unbundling and interconnection requirements are misplaced. Carriers allege that these requirements are out of date, unnecessary, unclear, and based on insufficient findings. Carriers fail to recognize that D.96-12-071 did not adopt or develop the unbundling and interconnection requirements, but rather resolved certain limited preemption issues. The requirements were adopted and refined in D.94-08-022, D.95-03-042, and D.95-03-043, and the Carriers had the opportunity to challenge the Commission's findings at that time. Applications for rehearing of D.96-12-071 are not an appropriate vehicle to challenge these requirements.

Certain Carriers also challenge the Commission's announced intent to adopt consumer protection rules in place of tariff regulation. Carriers argue that the Commission's holdings are not based on sufficient evidence or findings. These challenges are entirely premature. D.96-12-071 did not adopt rules or require anything of Carriers regarding consumer protection. Rather, we expressed a belief that consumer protection rules were necessary and ordered further proceedings. When further proceedings are held, Carriers will have an opportunity to voice their objections, and an appropriate record will be developed.

No further discussion is required of the Carriers' allegations of error. Accordingly, upon reviewing each and every allegation of error we conclude that sufficient grounds for rehearing of D.96-12-071 has not been shown.

Therefore, **IT IS ORDERED** that the rehearing of D.96-12-071 is hereby denied.

This order is effective today.

Dated November 5, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I dissent.

/s/ **JESSIE J. KNIGHT, JR.**
Commissioner