

Decision 96-06-017 June 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tom Horsley,

Complainant,

Pacific Bell and NuCom, a

Continental Paytel Company,

Defendants.

ORIGINAL

Case 95-11-042

(Filed November 27, 1995)

ORDER OF DISMISSAL

This decision resolves complainant's request to recalendar this matter as an expedited complaint and defendants' motions to dismiss. We conclude that this complaint should be dismissed.

Background

On November 27, 1995, complainant, Tom Horsley, filed an expedited complaint against NuCom, a company which supplies coin-operated pay telephones for public and private use. Tom Horsley alleged that no "out-of-order" notices are placed on NuCom's coin-operated telephones or they are inconspicuous, and the telephone numbers not listed on the telephone for a refund can only be used on another NuCom payphone. Horsley requests that NuCom be ordered to list a refund telephone number that can be dialed free of charge from any telephone, such as an 800 number. He also requests \$1,000 as an estimated loss from out-of-order NuCom telephones.

Under the expedited complaint procedure, the defendant was served notice of the complaint the next day. However, because the complaint raised legal issues regarding Pacific Bell's (Pacific) tariff, the assigned Administrative Law Judge (ALJ) recalendared the expedited complaint as a regular complaint, and

Pacific was also named as a defendant, along with NuCom, in the caption of the case. Pacific was ordered to answer the complaint.

In its answer, Pacific explained that NuCom is provided service (telephone lines) under its customer-owned pay telephone (COPT) tariff and is required to comply with the terms of service in that tariff. One requirement is to provide free access to refunds from any COPT payphone. The manner in which free access for refunds is provided is within the COPT provider's discretion. Free access can be provided by allowing customers to dial 211, by allowing collect calls for refunds, by providing an 800 number for refunds, or by other means. The tariff does not mandate any specific manner for access to free refunds.

In its answer, Pacific asserted that NuCom complies with the tariff by providing both an 800 number and a 211 code to be dialed from its pay telephones for a refund. Pacific attached a copy of two different placards which are fixed on NuCom's payphones. These placards provide refund information with either the 211 or 800 telephone numbers. The 800 number for refunds is boldly displayed at the top of both placards. Pacific also attached a letter from NuCom to Horsley which was mailed after the complaint was filed. The letter indicates NuCom enclosed a check for \$1 to compensate Horsley.

In a letter on January 15, 1996, Horsley returned the check and contended that he reached AT&T when he dialed the 800 number. AT&T indicated it does not provide refunds for privately owned telephones.

NuCom responded and indicated that Horsley had dialed the AT&T telephone number provided on its telephones for long distance information. NuCom returned the refund check to Horsley. Horsley again returned the check to NuCom arguing that a reasonable person using the telephone would not recognize that the number provided for refunds is for that purpose.

2. The complaint fails to state sufficient facts to constitute a tariff or rule violation upon which relief may be granted.

O R D E R

IT IS ORDERED that NuCom is dismissed as a defendant in this proceeding and this complaint is dismissed because it fails to state sufficient facts to constitute a cause of action for which relief may be granted. This proceeding is closed.

This order is effective today.

Dated June 6, 1996, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate.