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Decision 96-10-010 October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tom Horsley,)	
)	
Complainant,)	
)	
vs.)	(ECP)
)	Case 96-06-046
Pacific Bell,)	(Filed June 17, 1996)
)	
Defendant.)	
_____)	

ORDER OF DISMISSAL

Tom Horsley, complainant, alleges that Pacific Bell (Pacific), defendant, has violated its tariff for coin operated payphone telephones (COPT) by not providing free access to refunds when a telephone is out of order. Complainant requests that Pacific require NuCom, a subscribing COPT, to: (1) provide free access to a refund when a NuCom telephone is out of order; (2) clearly indicate on payphones the telephone number, including its 800 number, to be used to obtain a refund; and (3) pay to complainant \$1 for money lost in out-of-order telephones. A hearing on this expedited complaint was scheduled for July 31, 1996, at 10 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.

Pacific filed a Motion To Dismiss on July 11, 1996, requesting that the hearing date be vacated and this complaint dismissed with prejudice. Pacific argues that the complaint fails to state sufficient facts upon which relief may be granted,

fails to show unlawful acts and repackages the same allegations and request for relief in a prior complaint, Case 95-11-042, which was dismissed by Decision (D.) 96-06-017.

In a ruling, the assigned Administrative Law Judge removed the matter from the Commission's calendar and set a date for complainant to respond to the motion. In his response which was filed on July 23, 1996, complainant argues that this complaint names only Pacific as the defendant whereas the prior complaint named NuCom. However, in the prior complaint we ordered Pacific to file an answer given the legal issues raised regarding its tariff. We found that NuCom provides free access to refunds via an 800 telephone number which is conspicuously placed on all types of NuCom telephones and complainant's money was refunded. Thus, we agree that the instant complaint raises the same issues already resolved by D.96-06-017.

In the interest of avoiding similar filings in the future, we grant Pacific's request to dismiss this complaint with prejudice.

IT IS ORDERED that this complaint is dismissed with prejudice and (ECP) Case 96-06-046 is closed.

This order is effective today.

Dated October 9, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners