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MAIL DATE

12/8/97

Decision 97-12-051

December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tom Horsley,

Complainant

vs.

Pacific Bell,

Defendant

ORIGINAL

(ECP)

Case 96-06-046

(Filed June 17, 1996)

ORDER DENYING REHEARING

Tom Horsley, Complainant, has applied for rehearing of Decision 96-10-010 which dismissed his complaint which alleged that Defendant Pacific Bell had violated its tariff for coin operated payphone (COPT) by not providing full access to refunds when a COPT is out of order. He requested that Defendant be required to clearly indicate on payphones, a telephone number, including an 800 number, to be used to obtain refunds.

In a prior case Tom Horsley vs Pacific Bell and Nucom, a Continental Pay Tel Company (D.96-06-017) Horsley raised the same issues. The Commission found as a fact that Nucom, a company that provides coin operated telephones for public and private use, provides an 800 number conspicuously on a placard attached to its telephone and that Nucom had refunded Horsley his money.

In this present case Defendant, Pacific Bell filed a motion to dismiss.

In answer to the motion to dismiss Horsley argues that the complaint in this case names only Pacific as Defendant whereas the prior complaint named

Nucom. In the prior complaint however, we named Pacific as one additional defendant owing to the nature of the legal issues raised.

The instant complaint involves the same parties and raises the same issues adjudicated and resolved in D.96-06-017. The doctrines of res judicata and collateral estoppel, as well as Public Utilities Code § 1709, therefore bar relief.

In his application for rehearing Horsley argues that even if it is conceded that an 800 number is conspicuously placed on a telephone placard, nonetheless the 800 number is not labeled as available for refunds. The fact is that Horsley received his refund. The 800 number provided access for customer complaints and for customer relief.

Therefore, **IT IS ORDERED** that rehearing is hereby denied.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners