

ORIGINAL

Decision No. 68448

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM L. ASTON, dba
 ASTON'S TOW SERVICE,
 Complainant,
 vs.
 PACIFIC TELEPHONE COMPANY,
 a Corporation, and WILLIAM
 A. PHELPS, dba QUALITY
 AUTO SERVICE,
 Defendants.

Case No. 8001
(Filed September 2, 1964)

John F. Stice, for complainant.
Arthur T. George; Pillsbury, Madison & Sutro
 by Richard W. Odgers, for The Pacific
 Telephone and Telegraph Company, defendant.
Tony J. Stathos, for William A. Phelps,
 defendant.

O P I N I O N

The complaint herein, heard and submitted on November 10, 1964, at Sacramento, before Examiner Gillanders, seeks an order directing The Pacific Telephone and Telegraph Company to transfer complainant's telephone service to his new address. As a second and alternative relief, complainant seeks an order directing The Pacific Telephone and Telegraph Company to install an interceptor service so that all calls on the telephone number Gladstone 5-3013 will be routed to the business enterprise intended by the caller.

The complaint alleges, in substance, that complainant first ordered telephone service in the latter part of 1949 or the early part of 1950; that the telephone number issued was Gladstone 5-3013; that continuous advertising in the phone book for towing service has been placed under Gladstone 5-3013; that between 1950

and 1960 complainant moved two times and that each time he moved, the telephone was transferred at his order and the number remained the same; that during the latter part of 1960, complainant operated his tow service and auto repair service at 5889 Stockton Boulevard, Sacramento; that in 1960, complainant sold his auto repair service to Harold F. Baker; that incident to the sale of the auto repair service was the assignment by complainant to Baker of the master lease on the premises located at 5889 Stockton Boulevard; that no provision concerning the right to or the use of the telephone service was included in the written sales contract; that complainant and Baker orally agreed that the telephone number would remain the property of complainant subject to the right of Baker to be a joint user; that Baker thereupon sublet a portion of the premises to complainant for the operation of his tow service; that the sublease provided that either party could terminate the sublease upon sixty days written notice to the other party; that early in 1962 Baker sold his automobile repair service and assigned the master lease on the premises to Floyd Nichols who in turn sold and assigned it to William A. Phelps in April, 1964; that in accordance with the terms of the aforementioned sublease Phelps gave complainant notice to quit the premises and accordingly on August 15, 1964 complainant removed his towing business to his current address of 5925 Stockton Boulevard, Sacramento; that on or about July 15, 1964, complainant made demand to The Pacific Telephone and Telegraph Company to transfer his telephone service, including the number Gladstone 5-3013, to his new business location; that the telephone company has and continues to refuse complainant's request for transfer of said service; that on or about August 16, 1964 William A. Phelps entered the tow business and commenced accepting tow calls by phone through Gladstone 5-3013; that Phelps, as a result of the failure of the telephone company to transfer the number, has derived an unfair business advantage over complainant and that Phelps has refused to enter into a

voluntary agreement for the installation of an interceptor service.

The answer of defendant, The Pacific Telephone and Telegraph Company, avers, in substance, that complainant was a subscriber to telephone service from 1955 to about June, 1960; that during this period the telephone number assigned to complainant was Gladstone 5-3013; that complainant has advertised in its Sacramento directory since 1955; that this advertising included the number Gladstone 5-3013; that such number was advertised in connection with Aston's Tow Service; that on or about August 14, 1964, complainant requested it to intercept calls placed to Gladstone 5-3013; that it was not authorized by William A. Phelps, the subscriber to service at Gladstone 5-3013, and was thus unable to satisfy said request; and that it was unable to transfer the number Gladstone 5-3013 to complainant's new business location because complainant was a joint user only.

For its defense, The Pacific Telephone and Telegraph Company avers, in substance, that according to its filed rules it is not bound by any alleged agreement between complainant and third parties respecting the right to use the telephone number Gladstone 5-3013, and that on or about July 15, 1964 complainant no longer qualified as a joint user of telephone service on telephone number Gladstone 5-3013. Defendant requests that the complaint be dismissed.

The answer of defendant, William A. Phelps, avers, in substance, that the auto repair and tow service were not severed; that Baker was assigned the master lease; that no provision concerning the right to or the use of the telephone service was included in the written sales contract; that there was no oral agreement between complainant and Baker concerning the telephone service; that he has no information that Baker did not sign documents transferring complainant's right to the telephone number; and that he did give complainant notice to quit the premises.

The record reveals no substantial variance between the pleadings and the supporting evidence of complainant and defendant Phelps. The record is clear that defendant, The Pacific Telephone and Telegraph Company, made a mistake when, in June 1960, it transferred the billing for telephone number Gladstone 5-3013 from Aston to Baker without an executed "Request for Supersedure". Supersedures of telephone service are governed by defendant's schedule 36-T, Rule 23-B, which requires written notice from both the subscriber and the applicant for telephone service. Defendant's witness admitted that no supersedure form for Gladstone 5-3013, signed by Aston and Baker, could be found in its records. Properly executed supersedure forms were obtained for subsequent subscriber changes to Gladstone 5-3013.

The record is clear that Aston believed he had a right to the telephone number Gladstone 5-3013 and arranged his business affairs in a manner to protect such right. The record shows, also, that Messrs. Nichols and Phelps believed that they were purchasing, as one of the assets of the business, the right to telephone number Gladstone 5-3013. All parties should have been aware of The Pacific Telephone and Telegraph Company's schedule Cal. P.U.C. No. 36-T, Rule 17-D which provides that:

"The assignment of a number to a subscriber's telephone service will be made at the discretion of the Company. The subscriber has no proprietary right in the number."

Defendant, The Pacific Telephone and Telegraph Company, states that complainant qualified as a joint user, under its schedule Cal. P.U.C. No. 20-T, from July 7, 1963 until July 15, 1964. Defendant however, did not produce evidence that complainant had applied for such service by completing the application form for such service shown in its schedule Cal. P.U.C. No. 38-T 6th Revised Sheet 37.

The Pacific Telephone and Telegraph Company's witness testified that it has no filed tariff for interceptor service. Counsel for the company stated it was his understanding that it was a very simple matter to provide interceptor service for Gladstone 5-3013 for as long as a year.

Defendant Phelps testified that, if an interceptor service was installed, he would lose business to complainant; that he refers 12 to 15 towing calls per month to his towing service and that he refers eight to ten towing calls per day to complainant, such calls having specifically requested Aston's Towing Service.

Based upon the record we find that:

1. Complainant has no proprietary right in telephone number Gladstone 5-3013.
2. Defendant William A. Phelps has no proprietary right in telephone number Gladstone 5-3013.
3. Defendant, The Pacific Telephone and Telegraph Company, precipitated the complaint herein by not obtaining a properly executed "Request for Supersedure" of telephone service at number Gladstone 5-3013 from complainant to Harold F. Baker.
4. That complainant was never a joint user of telephone service at Gladstone 5-3013.
5. Defendant, The Pacific Telephone and Telegraph Company, could have installed interceptor service upon the request of complainant.

We conclude that the request of The Pacific Telephone and Telegraph Company, to dismiss the complaint should be denied. Complainant should be granted relief as specified in the following order.

ORDER

IT IS ORDERED that:

1. The request of defendant, The Pacific Telephone and Telegraph Company, to dismiss the complaint is denied.

2. Defendant, The Pacific Telephone and Telegraph Company shall immediately install an interceptor service on telephone number Gladstone 5-3013, such that all calls intended for Aston's Towing Service will be routed to that business.

3. Interceptor service on telephone number Gladstone 5-3013 shall remain for a period of one year from date of installation.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 12th day of JANUARY, 1965.

Frederick B. Holladay
President

Paul E. Holladay

George L. Grover

William G. Bennett
Commissioners