

# PTFC - 764 • 9

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA 1333 H STREET, NW, WASHINGTON, D.C. 20005

IN THE MATTER OF: )  
 )  
 ALEXANDER M. PADRO, )  
 Commissioner, ANC 2C-01, )  
 Complainant, )  
 v. )  
 )  
 VERIZON WASHINGTON, D.C. INC., )  
 Respondent. )

No.: PTFC 764  
 Date: September 14, 2001

### DECISION

#### I. BACKGROUND

1. On February 27, 2001, Advisory Neighborhood Commission Chairperson, the Honorable Alexander M. Padro ("ANC Commissioner," "ANC" or "Mr. Padro"), of ANC 2C-01, filed a complaint with the Office of Consumer Services ("OCS") of the Public Service Commission of the District of Columbia ("Commission") alleging that the ten indoor and outdoor pay telephones located at "O Street Market"<sup>1</sup> at 707 O Street, N.W., Washington, D.C. ("pay telephone"), were the site of illegal activity.<sup>2</sup> The ANC Commissioner alleged that intense drug trafficking takes place in and around the pay telephones. He further states that according to the Metropolitan Police Department ("MPD") these pay telephones play an integral role in the criminal activity in the area. As a result of drug activity, the ANC stated that many residents have asked him to take action to bring this threat to public health, safety and welfare under control. The ANC requests that the pay telephones be removed.<sup>3</sup> The pay telephones are owned by Verizon Washington, D.C. Inc., ("Verizon") located at 1710 H Street, N.W., Washington, D.C. 20006.

<sup>1</sup> The "O Street Market" was opened in 1886 and is one of the few remaining public farmers and produce markets remaining in the District of Columbia. The District's public food markets are where the citizens of the District shopped in the days before supermarkets. See Transcript at 11; Courtland Milloy, *O Street Market Reopens*, Washington Post, February 24, 1980, (Metro), at C3; Jerry Knight, *Public Food Markets' Comeback*, Washington Post, September 3, 1978, (Business and Finance), at G1.

<sup>2</sup> Pay Telephone Formal Case ("PTFC") No. 764, Letter of Honorable Alexander M. Padro, ANC Commissioner, to District of Columbia Public Service Commission, dated February 26, 2001. PTFC 7764-1 at 24.

<sup>3</sup> Id.

2. On April 19, 2001, OCS held an informal hearing on the ANC Commissioner's complaint, pursuant to 15 DCMR § 612.1 (February 9, 2001).<sup>4</sup> Both parties were present. At the informal hearing, Verizon testified that during their many inspections of the indoor pay telephone site they did not witness any unusual activity at that location.<sup>5</sup> Verizon further testified that they recognized there exists a lack of police manpower but that their pay telephones are not a problem.<sup>6</sup> The ANC Commissioner testified that he had witnessed the indoor and outdoor telephones being used to return calls to the pagers of drug dealers at that site, and he stated that the problem was greater at the outdoor pay telephone.<sup>7</sup> The ANC entered into the record of the informal hearing a petition signed by 80 members of the community who had requested removal of all ten pay telephones.<sup>8</sup> In addition, the ANC entered into the record of the informal hearing a letter of support from the Honorable Jack Evans, Member of the Council of the District of Columbia.<sup>9</sup> The ANC's claims were supported by Lieutenant Michael A. Smith, MPD-3rd District.<sup>10</sup>

3. The parties were unable to reach an agreement and the ANC Commissioner filed a Request for a Formal Hearing ("Request").<sup>11</sup> Specifically, the ANC Commissioner requests that ten indoor and outdoor pay telephones be permanently removed.<sup>12</sup> The Request was forwarded to the Commission's Office of the General Counsel on May 31, 2001.<sup>13</sup> On June 4, 2001, this Hearing Officer was designated to hear this matter.

4. A formal hearing was convened on June 29, 2001.<sup>14</sup> Present at the Hearing were the ANC, Attorney Joy Ragsdale of OPC, MPD<sup>15</sup> Lieutenant Michael Andrew Smith, MPD

<sup>4</sup> The informal hearing was originally scheduled for March 29, 2001 but was postponed to April 12, 2001 upon the request of OPC. On April 8, 2001, Verizon requested a postponement of the informal hearing until April 19, 2001, and this request was also granted.

<sup>5</sup> PTFC 7764-1, at 4.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. Letter was reintroduced into evidence at the formal hearing as Complainant's Exhibit No. 15.

<sup>10</sup> Lt. Smith testified that he had witnessed the indoor pay telephones being used to answer pager calls by drug dealers. Id.

<sup>11</sup> PTFC-764-1 at 5.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Notices of the Hearing were sent to the parties, MPD, and complainant's attorney, on June 15, 2001. PTFC Nos. 764-2 thru 7.

<sup>15</sup> Metropolitan Police Department ("MPD").

Officers Abdul Greene and Dexter Malloy, Attorney Curtis B. Hane for Verizon, and Yolanda McCoy<sup>16</sup> from Verizon. Observers to the proceedings included Scott Boatman and Bill Boatman of B & B Payphones, Lawrence F. Jones an OPC Policy Analyst, two individuals affiliated with OPC and several MPD Officers.

## II. TESTIMONY AND ISSUES

5. The ANC Commissioner testified that he has lived at 1519 8<sup>th</sup> Street, N.W., Washington, D.C. since 1997 and has been a resident of the "Shaw" community since 1994.<sup>17</sup> The ANC was elected to that position in November of 2000 and took office on January 2, 2001.<sup>18</sup> He lives less than one block from the O Street Market<sup>19</sup> and has noticed on several occasions what he perceived to be drug transactions in the area of the indoor and outdoor pay telephones<sup>20</sup> He testified that across the street from the O Street Market ("Market") is the Kennedy Playground, which is used by many children and the drug activity from the Market spills over to this facility.<sup>21</sup> The ANC Commissioner further testified that two of the the pay telephones he would like removed are located at the northeast corner of the O Street Market building facing 7<sup>th</sup> Street, three more at the northwest corner of O and 7<sup>th</sup> Streets, three other pay telephones at the west entrance to the O Street Market that are facing the Giant Supermarket, and two pay telephones inside the west entrance of the O Street Market (i.e., inside the O Street Market).<sup>22</sup>

6. Mr. Padro further testified that soon after he moved to the neighborhood he personally witnessed the drug activity in the O Street Market.<sup>23</sup> He stated that while campaigning for Advisory Neighborhood Commission Chairperson of ANC 2C-01, he began to make a number of personal observations relating to drug activity at that location, including that the pay telephones were being used by drug dealers and played a role in the drug activity.<sup>24</sup> He stated that from 8:00-9:00 P.M. on October 11, 2000, he observed individuals loitering around the pay telephones located at the southeast corner of the O Street Market,<sup>25</sup> and that some of the

<sup>16</sup> A regulatory specialist at Verizon.

<sup>17</sup> Transcript at 10.

<sup>18</sup> Id.

<sup>19</sup> The O Street Market is located at 707 O Street, N.W., Washington, D.C. and it is also known as 1400 7<sup>th</sup> Street. Transcript at 11.

<sup>20</sup> Id. at 17-19.

<sup>21</sup> Id. at 29 and 40.

<sup>22</sup> Transcript at 11-16; Complainant's Exhibit Nos. 1-6,9.

<sup>23</sup> Transcript at 10-29.

<sup>24</sup> Id.

<sup>25</sup> The pay telephones where this alleged activity took place are visible in Complainant's Exhibit No. 3.

individuals were going to the pay telephones after receiving an audible page.<sup>26</sup> The ANC further testified that after some of those individuals completed using the pay telephones, they proceeded to the 7<sup>th</sup> Street corner of the Market and within five minutes were met by automobiles, often with Virginia and Maryland license plates.<sup>27</sup> He further testified that the individuals he had observed receiving the page and making a call on the pay telephones would approach either the passenger or the driver's side of the vehicles met and he observed what he believed to be a drug transaction take place between them.<sup>28</sup> Another type of activity that the ANC testified he observed at that location on October 11, 2000, was the use of coin slots of the pay telephones for storing what he believes were drugs and the substance would be removed from the phone slot only after what he believed to be a sale of drugs took place.<sup>29</sup>

7. Mr. Padro also testified that on October 17, 2000, between 9:30 A.M. and 11:30 A.M., at two different locations, he saw drug-related activity similar to what he had observed taking place on October 11, 2000.<sup>30</sup> He witnessed this drug activity taking place at the west entrance of the Market (i.e., southeast corner of 707 O Street, N.W.)<sup>31</sup> and front of the O Street Market (i.e., west behind 707 O Street, N.W.).<sup>32</sup> He also testified that he not only noticed "drops" of what he believed to be drugs being made in the coin slot or on the shelf of the bottom of the pay telephones, but that he also saw items he believed to be drugs being placed behind those pay telephones and subsequently retrieved.<sup>33</sup> The ANC testified that he observed what he believed to be similar drug transactions taking place in and around the pay telephones located inside the O Street Market entrance.<sup>34</sup>

8. The ANC testified that his next set of personal observations took place on October 20, 2000, between the hours of 3:00 P.M. and 4:30 P.M., at the northeast corner of the O Street Market as shown in Complaint's Exhibits Nos. 1 and 2.<sup>35</sup> He observed a total of three transactions which he categorized as being drug transactions taken placing in and around the area of the pay telephones at this location.<sup>36</sup> Afterwards, he went to the west entrance, as shown in

<sup>26</sup> Transcript at 20-21. The Commissioner testified that he heard the audible pages but was unable to make out the conversations.

<sup>27</sup> Id. at 21.

<sup>28</sup> Id. at 21-22.

<sup>29</sup> Id. at 22-23.

<sup>30</sup> Id. at 23-25.

<sup>31</sup> Complainant's Exhibit No. 4.

<sup>32</sup> Id. at 23-25.

<sup>33</sup> Id. at 23-24.

<sup>34</sup> Id. at 24-25. Complainant's Exhibit No. 9.

<sup>35</sup> Id. at 24-25.

<sup>36</sup> Id. at 25.

Complainant's Exhibits 4-5, where he saw three transactions he believed to be drug transactions taking place in and around the pay telephones at that location.<sup>37</sup>

9. It was the testimony of Mr. Padro that the crime and drug activity in the area of the O Street Market is "facilitated by pay phones in the area."<sup>38</sup> The last personal observations made by the ANC Commissioner took place between 2:00 P.M. and 3:00 P.M. on October 21, 2000 at the southeast corner of the Market as shown in Complainant's Exhibit 3-4.<sup>39</sup> On that occasion, Mr. Padro observed three transactions similar to the ones he had previously testified to taking place in around the pay telephones.<sup>40</sup>

10. In support of the removal of the pay telephones, the ANC testified that there were other pay telephones available in the general vicinity that could be used by the residents of the area of the O Street Market.<sup>41</sup> He testified that he wanted to establish that in the event that the pay telephones are removed from the O Street Market, that there would be other pay telephones available to area residents.<sup>42</sup>

11. To support his request for permanent removal of the pay telephones, the ANC Commissioner submitted a signed petition from residents requesting permanent removal of the pay telephones.<sup>43</sup> Moreover, Mr. Padro submitted letters in support of the removal of the pay telephones from Honorable Jack Evans, Member of the Council of the District,<sup>44</sup> the Honorable Vicky Leonard-Chambers, ANC Commissioner Chairperson of 5C04,<sup>45</sup> and Peter Rhodes Easley, Esquire, Chair of the Friends of Kennedy Playground, Inc.<sup>46</sup>

12. Lieutenant Michael Andrew Smith testified that he was assigned to Patrol Service Area 314 in the Third Distribution of MPD 303 where the pay telephone are located.<sup>47</sup> He lives within two blocks from the O Street Market and has been employed during off duty hours in the

<sup>37</sup> Id. at 25-26.

<sup>38</sup> Id. at 28.

<sup>39</sup> Id. at 26-27.

<sup>40</sup> Id. at 27.

<sup>41</sup> Id. at 33-39; Complainant's Exhibit No. 10.

<sup>42</sup> Id. at 38.

<sup>43</sup> PTFC 7764-1, at 11; Complainant's Exhibit No. 16 containing four additional pages with signatures from community residents in the Shaw neighborhood.

<sup>44</sup> Complainant's Exhibit No. 15.

<sup>45</sup> Complainant's Exhibit No. 17.

<sup>46</sup> Complainant's Exhibit No. 11.

<sup>47</sup> Transcript at 62.

vicinity.<sup>48</sup> He testified that the O Street Market is notorious for drug sales and gang activity. Lt. Smith displayed official call of service print-outs from the 3<sup>rd</sup> District showing arrests in and around the O Street Market with the calls that he believed related to drug activity marked.<sup>49</sup> Lt. Smith's first exhibit had numerous calls at 707 O Street, 1414 8<sup>th</sup> Street and 7<sup>th</sup> Street NW & O Street NW for robbery, disorderly conduct, property damage, trouble investigations, and aggravated assault, between December 16, 1999 and April 14, 2001.<sup>50</sup> However, Lt. Smith's second exhibit revealed arrests in the vicinity and it was testified that many non-residents are being arrested for drug sales, shoplifting and assaults in the O Street Market in the vicinity of the pay telephones.<sup>51</sup> It was Lt. Smith's testimony that, based upon his knowledge and experience, the pay telephones in the O Street Market contribute to the drug activity and constitute a nuisance at the site.<sup>52</sup>

13. MPD Officer Abdul Greene testified that he is presently assigned to Patrol Service Area 314 in the Third Distribution but was formerly assigned to the Drug Enforcement Unit of MPD for four years.<sup>53</sup> He testified that he has personally recovered drugs, within the last year, from the coin slots of some of the pay telephones located and depicted in Complainant's Exhibit No. 6.<sup>54</sup> Officer Greene stated that the location was an area in which individuals were known to congregate, sell and distribute narcotics, and engage in disorderly conduct.<sup>55</sup> He testified that he believed the pay telephones at O Street Market contribute to the drug market in the area and their removal will "change the ways that they sell drugs in the area."<sup>56</sup>

14. MPD Officer Dexter Malloy, who works in the Third MPD District, testified that he patrols the O Street Market area.<sup>57</sup> He indicated he has personally observed the pay telephones at the corner of 7<sup>th</sup> Street and O Street used for drug-related transactions.<sup>58</sup> Two weeks prior to the formal hearing, Officer Malloy testified that he had observed, on a surveillance tape from Giant Supermarket at O Street Market, what he considered to be drug sale

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<sup>48</sup> Id. at 63.

<sup>49</sup> Complainant's Exhibit 12; Transcript at 82.

<sup>50</sup> Id.

<sup>51</sup> Complainant's Exhibit 13; Transcript at 73-75, 76-77.

<sup>52</sup> Transcript at 76-77, 87-88.

<sup>53</sup> Id. at 89-90.

<sup>54</sup> Id. at 91-95.

<sup>55</sup> Id. at 95-97.

<sup>56</sup> Id. at 97.

<sup>57</sup> Id. at 99.

<sup>58</sup> Id. at 99 102.

transactions near the pay telephones.<sup>59</sup> He stated that the pay telephones are a tool used by drug dealers and that their removal would “definitely take one leg from the drug dealers.”<sup>60</sup>

15. On behalf of Verizon, testimony was given by Yolanda McCoy, a regulatory specialist at Verizon. Mrs. McCoy stated that her responsibilities include investigating the instant complaint.<sup>61</sup> She testified that she did not observe any illegal activity at the site of the pay phones and found the pay telephones to be in compliance with Commission regulations.<sup>62</sup> Ms. McCoy added that Verizon had not received any requests or complaints from merchants in the O Street Market regarding the pay telephones located outside the Market.<sup>63</sup>

### III. SUMMARY OF LAW, EVIDENCE, AND FINDINGS OF FACT

16. Section 611.1 of Title 15 of the District of Columbia Municipal Regulation (January 29, 2001), provides that “[p]ay telephones associated with illegal activity or found to be a public nuisance may be subject to termination or alteration of service.”<sup>64</sup> The burden of proof shall be by a preponderance of the evidence.<sup>65</sup> A preponderance of the evidence is that degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.<sup>66</sup> The complainant met his burden of proof by showing by a preponderance of the evidence that the pay telephones located outside of the O Street Market are associated with illegal purposes and constitute a public nuisance.<sup>67</sup> Finding no compelling reason to do otherwise, I accorded great weight to the testimony of the MPD officers that, based on their knowledge and experience, the continued operation of the outdoor pay telephones significantly contributes to criminal activity in the O Street Market neighborhood and, thereby, adversely affects the health, safety and welfare of the residents.<sup>68</sup> The MPD officers that testified specifically identified the outdoor pay telephone as a site of illegal activity. Furthermore, the testimony of the ANC and MPD officers pointed to an

<sup>59</sup> Id. at 102-103.

<sup>60</sup> Id. at 109.

<sup>61</sup> Id. at 111-113.

<sup>62</sup> Id. at 113-114.

<sup>63</sup> Id. at 114.

<sup>64</sup> This hearing officer only has jurisdiction over the removal of outdoor telephones. 15 D.C.M.R. § 600.1 (January 29, 2001).

<sup>65</sup> Id. at § 614.1.

<sup>66</sup> Id. at § 614.2.

<sup>67</sup> Id. at § 614.4.

<sup>68</sup> Id. at § 614.5.

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overall climate of illegal activity and criminal behavior at the site, engendered by the presence of the pay telephones. The provisions of the Commission's pay telephone regulations and likewise, the specific provisions for pay telephone removal, are only applicable to outdoor pay telephone and not indoor pay telephones.<sup>69</sup> Accordingly, the only appropriate action is to order that the outdoor pay telephones be permanently removed.

#### IV. DECISION AND ORDER

17. The outdoor pay telephones at the O Street Market, 707 O Street, N.W., Washington, D.C. shall be permanently **DISCONNECTED** and Verizon shall **REMOVE** its pay telephone and any pedestals at O Street Market, 707 O Street, N.W., Washington, D.C. within ten (10) days of this Decision pursuant to 15 DCMR § 608.2 (January 29, 2001) ;

18. Any party affected by this decision may appeal this decision to the Commission within ten (10) days of personal service or twelve (12) business days of service by mail of the decision. 15 DCMR § 615.2 (January 29, 2001).



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Antonio Arocho  
Hearing Officer

<sup>69</sup> Id. at § 600.1