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Decision 89-01-016 January 11, 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PARKLANE SERVICES CORPORATION, Complainant, vs. PACIFIC BELL, Defendant.	ORIGINAL Case 87-10-032 (Filed October 23, 1987)
And Related Matter.	Case 88-04-007 (Filed April 4, 1988)

Daniel R. Irving, Attorney at Law, for Parklane Services Corporation, complainant.
David P. Discher, Attorney at Law, for Pacific Bell, defendant.
John W. Witt, City Attorney, by Grant Richard Telfer, Deputy City Attorney, for the City of San Diego, interested party.

O P I N I O N

Parklane Services Corporation (Parklane), a California corporation doing business under various names, requests restoration of telephone services for nine telephone numbers[1] disconnected on September 21, 1987 (the September disconnection),

1 These were 275-2984, 275-5599, 280-7200, 295-4694, 295-8266, 563-0056, 563-6000, 583-8452, and 584-4800, all in the (619) area code.

and for four telephone numbers[2] disconnected on March 23, 1988 (the March disconnection), based upon a finding of the San Diego Municipal Court.

That document found probable cause to believe that the subject telephone numbers were being used as an instrument to commit acts which violated and assisted in the violation of the penal laws of California, and that the character of the acts in question was such that, absent immediate and summary action in the premises, significant dangers to the public health, safety, or welfare would result. The police department of the City of San Diego (City) served the finding on Pacific Bell (Pacific), which disconnected the numbers according to Tariff Rule 31 (Rule 31), established in its present form by our Decision 91188 (1980) 3 Cal. PUC 2d 87.

Parklane's request was made in two separate complaints. The first, C.87-10-032, was filed on October 23, 1987 in response to the September disconnection. Hearings were held on November 10, 1987 and on April 14, 1988. These four telephone numbers were disconnected on March 23, 1988, prior to the second hearing in C.87-10-032, and the second complaint, C.88-04-007, was filed on April 24, 1988. The matters were consolidated for a third hearing on April 26. All hearings were held in San Diego before Administrative Law Judge (ALJ) Orville I. Wright.

Procedural Standards

Parklane's complaints request interim relief from both disconnections under the rule set forth by the California Supreme Court in Goldin v. Public Utilities Commission (1979) 23 Cal. 3d 638, implemented by the Commission in D.91188's amendment of Rule 31. Neither complaint asks for permanent restoration of

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service, although the parties at hearing occasionally treated the question as one of permanent relief.

The Goldin court made it clear that, in applying Rule 31 to a request for interim relief, we must determine whether the finding of probable cause is adequately supported. We need go no farther in our determination of whether interim relief is justified than to examine the face of the affidavit for adequacy, i.e., whether it contains a sufficiently objective and credible basis for the magistrate's finding. (23 Cal. 3d at 668-669.) However, the affidavit must identify all the numbers to be disconnected and state their locations. Goldin also required that a hearing on a request for new service under Rule 31 be held, and a decision issued, promptly. (Id. at 666 (footnote 15).)

In D.91188, we adopted the current version of Rule 31 to encompass the requirements specified in Goldin. The rule now provides that a hearing is to be held within 20 days of the filing of a complaint, and that the Commission is to provide notice of the hearing to the law enforcement agency which presented the finding of probable cause and request for disconnection to the telephone utility. Rule 31 gives the law enforcement agency responsible for a disconnection the burden of (1) showing that the use of the service is unlawful per se, or is used directly or indirectly to violate or assist in the violation of the law; (2) showing that the character of the violations is such that significant dangers to public health, safety, or welfare would result if immediate and summary action were not taken; and (3) persuading us that the service should not be restored. On a question of interim relief, the first two requirements will be met by a facially adequate affidavit, since, under Goldin, the finding of probable cause itself must specify these elements, and an affidavit which supports such a finding will necessarily be sufficient to support these required showings.

Facts

Parklane, prior to the September disconnection, was licensed by the City of San Diego to provide outcall services in the areas of escort service, modeling, nude entertainment, and massage.[3] Parklane used several business names and nine telephone numbers, any of which when dialed would connect the caller to Parklane's office by means of a rotating system. According to the testimony of the City's vice detective, Mark Foreman, the City investigated Parklane beginning in January, 1987 for possible prostitution on the part of Parklane's employees. The investigation was prompted by an arrest of a Parklane employee in October of 1986 on prostitution charges.

Foreman testified that the method used in the investigation of Parklane was the same as that used to investigate other similar services. Under that methodology, two detectives would obtain a hotel room and call the agency under investigation to request that a model, nude entertainer, or masseuse be sent to the room. When the agency employee arrived, one detective would engage her in conversation to determine whether or not she practiced prostitution, while the other detective monitored the conversation electronically from another room.

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In the course of these investigations, five such calls were made, three of which resulted in arrests for prostitution.[4] One of the women arrested was convicted on a guilty plea and another bargained her guilty plea to the lesser offense of carrying a switchblade knife. The outcome of the third arrest was not stated at the hearing.

Foreman presented an affidavit to a Judge of the San Diego Municipal Court on September 17, 1987, and obtained a finding of probable cause, which the City then sent to Pacific. In compliance with Rule 31, Pacific disconnected the numbers on September 21. Meanwhile, on September 18, Parklane's president, Donald Millsberg (Millsberg) transferred the ownership of the corporation to C. Dural Pritchett (Pritchett).[5] Pritchett filed

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4 With respect to one of the other two calls, the City brought evidence to show that the Parklane employee allowed detective Foreman to photograph her while she was nude, and in the process violated a municipal ordinance by allowing the "customer" to approach her to a distance of less than six feet. Again, there is no evidence to show that any such violation would, of itself, pose a significant danger to the public.

5 Although the ownership did not settle clearly for some time after that date, we are satisfied that Pritchett is now the owner and president of Parklane, and that the temporary instability of the corporation's ownership is irrelevant to the issues before us. In any case, there was management in common before and after Pritchett's purchase; Alan Wylie (Wylie) was Secretary of the corporation under Millsberg and continues under Pritchett.

C.87-10-032 on October 23, 1987, and the first hearing was held eighteen days later, in accordance with Rule 31.[6]

At the first hearing, the City attacked Parklane's standing to complain under Rule 31 on grounds that, due to certain technical deficiencies in licensing, Parklane was not a "viable corporation" at the time the complaint was filed. The City also brought witnesses to show that the disconnected numbers had been used to assist in the violation of the law in such a way as to pose a danger to the public health, safety and welfare. Although the City submitted the finding of probable cause at this hearing, it did not submit the supporting affidavit into evidence. Because the ALJ had sustained Parklane's objection to admission of a City witness' prior testimony, and because the City's failure to produce the witness was a result of the late notice to the City combined with the City's reading of our own Rules of Practice and Procedure to allow admission of all hearsay evidence, the ALJ continued the matter to a second hearing at a later date.[7]

Before the hearings, Parklane's licenses expired (30 days after the change of ownership, pursuant to a provision of the City's code). When Pritchett applied for new licenses, he was

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6 Although Rule 31 provides that we are to give notice of such hearings to the relevant law enforcement agency, the City received notice by telephone only five days prior to the hearing, and written notice did not reach the City until the day before hearing. Certainly the City cannot claim ignorance of Rule 31, having invoked it to disconnect Parklane's telephones, nor can it claim unfair timing, since timing was in the City's control as the initiator of this series of events. Nevertheless, we consider our failure to give prompt notice unfortunate, and will direct our ALJ Division to take steps to prevent the recurrence of such a delay.

7 The ALJ intended to set hearing for early December. As it turned out, the second hearing could not be arranged earlier than April 14, 1988.

denied, due to the fact that arrests had been made and an investigation was pending against the corporation. Parklane then bought a few similar businesses, and applied for and received licenses under the new names, operating with the four telephone numbers which are the subject of the second complaint, C.88-04-007. The City investigated these numbers by the methodology previously used. Three calls were made by the detectives. Of these, one of the women refused all requests for prostitution; the other two were arrested for violation of Penal Code § 647(b), which makes it a misdemeanor to agree to engage in prostitution. The case against one of the arrested women was still pending at the time of the hearing. The other woman failed to appear for her arraignment and has failed to comply with a subpoena to appear and testify in this proceeding; the City characterizes her as a fugitive from justice.

Following this investigation, the City obtained another finding of probable cause and served it on Pacific, occasioning the March disconnection. Parklane filed C.88-04-007 on April 4, 1988, and hearing was held on April 26.[8] In this hearing, the City submitted neither the finding of probable cause nor its supporting affidavit in evidence. Instead, it presented testimony as it had done in the prior hearings. The City's closing brief was received on July 5, 1988, and Parklane's six days later.

Discussion

This case presents several issues under Rule 31 for our consideration. The City, in hearing and brief, argues that Parklane is not entitled to complain under Rule 31 because it was

8 We note that this date does not fall within the 20-day deadline set by Rule 31. April 24 was a Sunday and not available for hearings; thus, the latest proper date for hearing was April 25. However, as the parties had been present at the April 14 hearing when this date was set, and as they did not object, we see that no harm was done by the delay.

not a "viable corporation" due to licensing deficiencies, and that Pritchett does not have standing to complain on Parklane's behalf because his ownership was in doubt at the time of the filing of the first complaint.

We are unconvinced. Rule 31 gives the right to complain to "any person aggrieved" by the disconnection or refusal of service, and specifies that "[t]he term 'person,' as used herein, includes a subscriber to communications service, an applicant for such service, a corporation, a company, a copartnership, an association, a political subdivision, a public officer, a governmental agency, and an individual." Both Parklane and Pritchett fall within these definitions. The Rule does not specify that only viable corporations are included, but even if it did and Parklane were found nonviable, the corporation was clearly a subscriber, and could possibly fit other categories. Pritchett is clearly an individual. Both were "aggrieved" by the disconnections in that neither was able to conduct the business of the corporation without telephone service. We find that both Parklane and Pritchett as its president have standing to pursue remedies under Rule 31.

As we have noted, Goldin and Rule 31 require us to go no farther than the face of the affidavit supporting the finding of probable cause, in order to make our determination on the question of interim relief. However, neither affidavit was submitted by the City or by Parklane in these cases; therefore, we must look to the testimony and other evidence submitted at the hearings. With respect to C.87-10-032, as there has been a conviction on one of the arrests, it is established that Parklane's numbers were used as an instrumentality in violating the laws of this state against prostitution.

At the hearings, Parklane attempted to establish that its corporate policy is directly opposed to prostitution or any illegal acts. We find it unnecessary to determine Parklane's collusion, or

lack of it, in acts of prostitution, having determined that such acts did take place. We are not a criminal court; our concern in a Rule 31 case is not with guilt or innocence, but with whether the telephone lines in question were being used, directly or indirectly, to assist in the violation of the law. If their use for this purpose is indirect (without management knowledge or approval) rather than direct (on management's orders or with its blessing), it still forms a basis for disconnection under Rule 31.

The testimony of the City's witness Foreman indicates that the one conviction obtained by the City in the cases underlying the September disconnection was not an isolated instance. None of the arrested women appeared at any of the hearings to contradict Foreman's testimony concerning their own behavior during the investigation. We find that the City has met its burden of showing that the lines disconnected in September were being used, at least indirectly, to assist in the commission of acts of prostitution.

We note that Parklane is the same kind of business involved in the Goldin case, and that the illegal acts committed here are identical in nature to those in Goldin. The Goldin court made it clear that under these circumstances prompt action is called for to promote the important public interest of "preventing the continued use of public utility facilities for the purpose of implementing the violation of criminal statutes affecting public welfare, health, and decency." (23 Cal. 3d 638, 663.) Thus we find that the City has also met its burden of showing that immediate and summary action was needed to prevent significant dangers to the public health or welfare.

With respect to the March disconnection, the City brought testimony to show that Pritchett indicated to the City, when he took over the corporation, that he wished to run the company using the same personnel and in the same manner. Parklane brought no evidence to contradict this indication. It is irrelevant for our

purposes whether Pritchett intended to carry on a tradition of condoning prostitution, as the City would have it, or intended to keep the business fully legal, as Parklane contends. The September disconnection was the result of acts of prostitution committed by Parklane personnel with the help of Parklane's telephone service. Given the facts leading to the March termination, it is clear that regardless of Pritchett's intent, Parklane's telephones continued to be used for soliciting acts of prostitution.

In addition, there were two arrests made in connection with these numbers also. At hearing, Parklane made much of the fact that no convictions have resulted from those arrests. We are not convinced by this argument, given the facts that one of the cases was still pending at the time of the hearing, and that the other was aborted due to the defendant's disappearance following her failure to appear at her arraignment. Moreover, we do not require convictions to make our determination of whether probable cause existed to turn off the telephone lines. Again, none of the women arrested appeared at the hearing to contradict the detective's evidence. The City has met its burden of showing that the four lines subject to the March disconnection were used to assist in the violation of the law, and that these violations were of the same character as those committed prior to the September disconnection.

Finally, we are persuaded that, regardless of Parklane's management policy or intent, its operating methods are such that, if service is restored, similar use of the telephone lines will result. In Goldin, the Court upheld our order that all future business service to the complainant, or to any entity in which he had financial or managerial control, at any location in California, be refused until our further order. The Court said:

> "This interpretation [of Rule 31] was in our view correct, for any other interpretation would have the effect of rendering an order of the Commission refusing restoration of service wholly ineffective, in that it could be quickly

> avoided by the simple expedient of applying for new service. Moreover, we think that no infringement of constitutional rights results from the use of such a provision in a case which like this one involves purely commercial speech in the form of 'business service.'" (Goldin, supra, footnote 15, p. 665.)

The complainant in the Goldin case was operating his business as a sole proprietorship and under his own name. In this case, however, the complainant is a corporation, not an individual. Given this fact, the circumstances of changing management, and the lack of direct evidence as to the level of involvement of Pritchett, Millsberg, or Wylie, we hesitate to make this order concerning any of them, based only on the evidence before us. However, we have no such reservations with respect to Parklane. We will order that the corporation be refused all business service in California until our further order.

Findings of Fact

1. Parklane, Pritchett, Millsberg and Wylie have been engaged in providing outcall services in the areas of escort service, modeling, nude entertainment, and massage.

2. Parklane's business operated by the use of nine telephone numbers until September, 1987, when all of them were terminated by Pacific in compliance with Rule 31. Parklane then obtained other businesses and operated through the use of their four telephone lines until Pacific similarly terminated them in March, 1988.

3. All of the lines used by Parklane have been used, directly or indirectly, to assist in the violation of the laws of California against prostitution.

4. Acts of prostitution are such as to pose a significant danger to the public health, welfare, and safety.

Conclusions of Law

1. In a hearing for interim relief under our tariff Rule 31, Goldin and Rule 31 require us to examine the face of the affidavit

supporting the finding of probable cause on which the termination of service is based, in order to determine its adequacy.

2. In a hearing for interim relief under Rule 31, a finding that the supporting affidavit is inadequate will require us to grant interim relief; a finding that the affidavit is adequate will require us to deny interim relief.

3. In a hearing for interim relief under Rule 31, an adequate supporting affidavit must identify the telephone lines to be disconnected by number, and must specify their locations, and it must contain a sufficiently objective and credible basis for the magistrate's finding.

4. Hearings and decisions for interim and permanent relief under Rule 31 should be prompt. A question of interim relief, as it requires only an examination of the affidavit, must be resolved more promptly than a question of permanent relief, which may require detailed showings.

5. Rule 31 gives the law enforcement agency responsible for a disconnection the burden of (1) showing that the use of the service is unlawful per se, or is used directly or indirectly to violate or assist in the violation of the law; (2) showing that the character of the violations is such that significant dangers to public health, safety, or welfare would result if immediate and summary action were not taken; and (3) persuading the Commission that the service should not be restored.

6. On the question of interim relief, a facially adequate affidavit will be sufficient to meet the law enforcement agency's burden of proof as to the illegal use of the telephone lines and as to the need for immediate and summary action to prevent danger to the public.

7. Pacific executed both the September disconnection and the March disconnection in compliance with Rule 31.

8. Both Parklane and Pritchett as its president have standing to pursue remedies under Rule 31.

9. When no affidavit is submitted for our review on a question of interim relief under Rule 31, we must look to the testimony and other evidence submitted at the hearings to make our determination.

10. It is unnecessary to determine Parklane's management's collusion, or lack of it, in acts of prostitution, for even if the acts took place without management knowledge or approval, the use of the telephone lines to assist in illegal acts is indirect and still falls within Rule 31.

11. Acts of prostitution are such as to pose a significant danger to the public health, welfare, and safety, and where it is discovered that telephone lines are being used to assist in their commission, immediate and summary action in the premises is required to prevent further such danger to the public.

12. Criminal convictions are not required for us to make our determination of whether probable cause existed to terminate service to telephone lines under Rule 31.

13. The City has met its burden of showing that Parklane's telephone service was used, directly or indirectly, to assist in the violation of the law, prior to both the September and March disconnections.

14. The City has met its burden of showing that the character of the violations for which Parklane's telephone lines were used is such that significant dangers to public health, safety, or welfare would have resulted if immediate and summary action had not been taken in both the September and March disconnections.

15. We are persuaded that, regardless of Parklane's management policy or intent, its operating methods are such that, if service is restored, similar use of the telephone lines will result, and that service should therefore not be restored.

16. The procedural errors and delays in this case were harmless under the circumstances, but we should take steps to prevent their occurrence in the future.

O R D E R

IT IS ORDERED that:

1. Pacific Bell shall not restore service to Parklane Services Corporation at any of the following telephone numbers in the (619) area code: 275-2984, 275-5599, 280-7200, 295-4694, 295-8266, 563-0056, 563-6000, 583-8452, 584-4800, 266-8521, 266-8522, 266-8523, or 266-8524.

2. Pacific Bell shall deny future business telephone service to Parklane Services Corporation, and to any entity in which it has financial or managerial control without our further order.

This order is effective today.

Dated January 11, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
Commissioners

Commissioner Stanley W. Hulett, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director

ALJ/OIW/vdl ALT-COM-JBO

ORIGINAL

Decision 89 01 016 JAN 11 1989

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4 With respect to one of the other two calls, the City brought evidence to show that the Parklane employee allowed detective Foreman to photograph her while she was nude, and in the process violated a municipal ordinance by allowing the "customer" to approach her to a distance of less than six feet. Again, there is no evidence to show that any such violation would, of itself, pose a significant danger to the public.

In the course of these investigations, five such calls were made, three of which resulted in arrests for prostitution.[4] One of the women arrested was convicted on a guilty plea and another bargained her guilty plea to the lesser offense of carrying a switchblade knife. The outcome of the third arrest was not stated at the hearing.

Foreman presented an affidavit to a judge of the San Diego Municipal Court on September 17, 1987, and obtained a finding of probable cause, which the City then sent to Pacific. In compliance with Rule 31, Pacific disconnected the numbers on September 21. Meanwhile, on September 18, Parklane's president, Donald Millsberg transferred the ownership of the corporation to C. Dural Pritchett.[5] Pritchett filed C.87-10-032 on October 23,

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5 Although the ownership did not settle clearly for some time after that date, we are satisfied that Pritchett is now the owner and president of Parklane, and that the temporary instability of the corporation's ownership is irrelevant to the issues before us. In any case, there was management in common before and after Pritchett's purchase; Alan Wylie was secretary of the corporation under Millsberg and continues under Pritchett.

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At the first hearing, the City attacked Parklane's standing to complain under Rule 31 on grounds that, due to certain technical deficiencies in licensing, Parklane was not a "viable corporation" at the time the complaint was filed. The City also brought witnesses to show that the disconnected numbers had been used to assist in the violation of the law in such a way as to pose

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6 Although Rule 31 provides that we are to give notice of such hearings to the relevant law enforcement agency, the City received notice by telephone only five days prior to the hearing, and written notice did not reach the City until the day before hearing. Certainly the City cannot claim ignorance of Rule 31, having invoked it to disconnect Parklane's telephones, nor can it claim unfair timing, since timing was in the City's control as the initiator of this series of events. Nevertheless, we consider our failure to give prompt notice unfortunate, and will direct our ALJ Division to take steps to prevent the recurrence of such a delay.

1987, and the first hearing was held 18 days later, in accordance with Rule 31.[6]

At the first hearing, the City attacked Parklane's standing to complain under Rule 31 on grounds that, due to certain technical deficiencies in licensing, Parklane was not a "viable corporation" at the time the complaint was filed. The City also brought witnesses to show that the disconnected numbers had been used to assist in the violation of the law in such a way as to pose a danger to the public health, safety, and welfare. Although the City submitted the finding of probable cause at this hearing, it did not submit the supporting affidavit into evidence. Because the ALJ had sustained Parklane's objection to admission of a City witness' prior testimony, and because the City's failure to produce the witness was a result of the late notice to the City combined with the City's reading of our own Rules of Practice and Procedure to allow admission of all hearsay evidence, the ALJ continued the matter to a second hearing at a later date.[7]

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7 The ALJ intended to set hearing for early December. As it turned out, the second hearing could not be arranged earlier than April 14, 1988.

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Before the hearings, Parklane's licenses expired (30 days after the change of ownership, pursuant to a provision of the City's code). When Pritchett applied for new licenses, he was denied, due to the fact that arrests had been made and an investigation was pending against the corporation. Parklane then bought a few similar businesses, and applied for and received licenses under the new names, operating with the four telephone numbers which are the subject of the second complaint, C.88-04-007. The City investigated these numbers by the methodology previously used. Three calls were made by the detectives. Of these, one of the women refused all requests for prostitution; the other two were arrested for violation of Penal Code § 647 (b), which makes it a misdemeanor to agree to engage in prostitution. The case against one of the arrested women was still pending at the time of the hearing. The other woman failed to appear for her arraignment and has failed to comply with a subpoena to appear and testify in this proceeding; the City characterizes her as a fugitive from justice.

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Following this investigation, the City obtained another finding of probable cause and served it on Pacific, occasioning the March disconnection. Parklane filed C.88-04-007 on April 4, 1988, and hearing was held on April 26.[8] In this hearing, the City submitted neither the finding of probable cause nor its supporting affidavit in evidence. Instead, it presented testimony as it had done in the prior hearings. The City's closing brief was received on July 5, 1988, and Parklane's six days later.

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8 We note that this date does not fall within the 20-day deadline set by Rule 31. April 24 was a Sunday and not available for hearings; thus, the latest proper date for hearing was April 25. However, as the parties had been present at the April 14 hearing when this date was set, and as they did not object, we see that no harm was done by the delay.

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Discussion

This case presents several issues under Rule 31 for our consideration. The City, in hearing and brief, argues that Parklane is not entitled to complain under Rule 31 because it was not a "viable corporation" due to licensing deficiencies, and that Pritchett does not have standing to complain on Parklane's behalf because his ownership was in doubt at the time of the filing of the first complaint.

We are unconvinced. Rule 31 gives the right to complain to "any person aggrieved" by the disconnection or refusal of service, and specifies that "[t]he term 'person,' as used herein, includes a subscriber to communications service, an applicant for such service, a corporation, a company, a copartnership, an association, a political subdivision, a public officer, a governmental agency, and an individual." Both Parklane and Pritchett fall within these definitions. The Rule does not specify that only viable corporations are included, but even if it did and Parklane were found nonviable, the corporation was clearly a

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As we have noted, Goldin and Rule 31 require us to go no farther than the face of the affidavit supporting the finding of probable cause, in order to make our determination on the question of interim relief. However, neither affidavit was submitted by the City or by Parklane in these cases; therefore, we must look to the testimony and other evidence submitted at the hearings. With respect to C.87-10-032, as there has been a conviction on one of the arrests, it is established that Parklane's numbers were used as

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At the hearings, Parklane attempted to establish that its corporate policy is directly opposed to prostitution or any illegal acts. We find it unnecessary to determine Parklane's collusion, or lack of it, in acts of prostitution, having determined that such acts did take place. We are not a criminal court; our concern in a Rule 31 case is not with guilt or innocence, but with whether the telephone lines in question were being used, directly or indirectly, to assist in the violation of the law. If their use for this purpose is indirect (without management knowledge or approval) rather than direct (on management's orders or with its blessing), it still forms a basis for disconnection under Rule 31.

The testimony of the City's witness Foreman indicates that the one conviction obtained by the City in the cases underlying the September disconnection was not an isolated instance. None of the arrested women appeared at any of the hearings to contradict Foreman's testimony concerning their own behavior during the investigation. We find that the City has met

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We note that Parklane is the same kind of business involved in the Goldin case, and that the illegal acts committed here are identical in nature to those in Goldin. The Goldin court made it clear that under these circumstances prompt action is called for to promote the important public interest of "preventing the continued use of public utility facilities for the purpose of implementing the violation of criminal statutes affecting public welfare, health, and decency." 23 Cal. 3d 638, 663. Thus we find that the City has also met its burden of showing that immediate and summary action was needed to prevent significant dangers to the public health or welfare.

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With respect to the March disconnection, the City brought testimony to show that Pritchett indicated to the City, when he took over the corporation, that he wished to run the company using the same personnel and in the same manner. Parklane brought no evidence to contradict this indication. It is irrelevant for our purposes whether Pritchett intended to carry on a tradition of condoning prostitution, as the City would have it, or intended to keep the business fully legal, as Parklane contends. The September disconnection was the result of acts of prostitution committed by Parklane personnel with the help of Parklane's telephone service. Given the facts leading to the March termination, it is clear that regardless of Pritchett's intent, Parklane's telephones continued to be used for soliciting acts of prostitution.

In addition, there were two arrests made in connection with these numbers also. At hearing, Parklane made much of the fact that no convictions have resulted from those arrests. We are not convinced by this argument, given the facts that one of the cases was still pending at the time of the hearing, and that the other was aborted due to the defendant's disappearance following

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In addition, there were two arrests made in connection with these numbers also. At hearing, Parklane made much of the fact that no convictions have resulted from those arrests. We are not convinced by this argument, given the facts that one of the cases was still pending at the time of the hearing, and that the other was aborted due to the defendant's disappearance following her failure to appear at her arraignment. Moreover, we do not require convictions to make our determination of whether probable cause existed to turn off the telephone lines. Again, none of the women arrested appeared at the hearing to contradict the detective's evidence. The City has met its burden of showing that the four lines subject to the March disconnection were used to assist in the violation of the law, and that these violations were of the same character as those committed prior to the September disconnection.

Finally, we are persuaded that, regardless of Parklane's management policy or intent, its operating methods are such that, if service is restored, similar use of the telephone lines will result. In Goldin, the Court upheld our order that all future business service to the complainant, or to any entity in which he

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Finally, we are persuaded that, regardless of Parklane's management policy or intent, its operating methods are such that, if service is restored, similar use of the telephone lines will result. In Goldin, the Court upheld our order that all future business service to the complainant, or to any entity in which he had financial or managerial control, at any location in California, be refused until our further order. The Court said:

> This interpretation [of Rule 31] was in our view correct, for any other interpretation would have the effect of rendering an order of the Commission refusing restoration of service wholly ineffective, in that it could be quickly avoided by the simple expedient of applying for new service. Moreover, we think that no infringement of constitutional rights results from the use of such a provision in a case which like this one involves purely commercial speech in the form of "business service."

Goldin, supra, footnote 15, p. 665.

The complainant in the Goldin case was operating his business as a sole proprietorship and under his own name. In this case, however, the complainant is a corporation, not an individual. Given this fact, the circumstances of changing management, and the lack of direct evidence as to the level of involvement of Pritchett, Millsberg, or Wylie, we hesitate to make this order concerning any of them, based only on the evidence before us.

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Findings of Fact

1. Parklane, Pritchett, Millsberg and Wylie have been engaged in providing outcall services in the areas of escort service, modeling, nude entertainment, and massage.

2. Parklane's business operated by the use of nine telephone numbers until September, 1987, when all of them were terminated by Pacific in compliance with Rule 31. Parklane then obtained other businesses and operated through the use of their four telephone lines until Pacific similarly terminated them in March, 1988.

3. All of the lines used by Parklane have been used, directly or indirectly, to assist in the violation of the laws of California against prostitution.

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4. Acts of prostitution are such as to pose a significant danger to the public health, welfare, and safety.

Conclusions of Law.

1. In a hearing for interim relief under our tariff Rule 31, Goldin and Rule 31 require us to examine the face of the affidavit supporting the finding of probable cause on which the termination of service is based, in order to determine its adequacy.

2. In a hearing for interim relief under Rule 31, a finding that the supporting affidavit is inadequate will require us to grant interim relief; a finding that the affidavit is adequate will require us to deny interim relief.

3. In a hearing for interim relief under Rule 31, an adequate supporting affidavit must identify the telephone lines to be disconnected by number, and must specify their locations, and it must contain a sufficiently objective and credible basis for the magistrate's finding.

4. Hearings and decisions for interim and permanent relief under Rule 31 should be prompt. A question of interim relief, as it requires only an examination of the affidavit, must be resolved more promptly than a question of permanent relief, which may require detailed showings.

5. Rule 31 gives the law enforcement agency responsible for a disconnection the burden of (1) showing that the use of the service is unlawful per se, or is used directly or indirectly to violate or assist in the violation of the law; (2) showing that the character of the violations is such that significant dangers to public health, safety, or welfare would result if immediate and summary action were not taken; and (3) persuading the Commission that the service should not be restored.

6. On the question of interim relief, a facially adequate affidavit will be sufficient to meet the law enforcement agency's burden of proof as to the illegal use of the telephone lines and as to the need for immediate and summary action to prevent danger to the public.

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6. On the question of interim relief, a facially adequate affidavit will be sufficient to meet the law enforcement agency's burden of proof as to the illegal use of the telephone lines and as

to the need for immediate and summary action to prevent danger to the public.

7. Pacific executed both the September disconnection and the March disconnection in compliance with Rule 31.

8. Both Parklane and Pritchett as its president have standing to pursue remedies under Rule 31.

9. When no affidavit is submitted for our review on a question of interim relief under Rule 31, we must look to the testimony and other evidence submitted at the hearings to make our determination.

10. It is unnecessary to determine Parklane's management's collusion, or lack of it, in acts of prostitution, for even if the acts took place without management knowledge or approval, the use of the telephone lines to assist in illegal acts is indirect and still falls within Rule 31.

11. Acts of prostitution are such as to pose a significant danger to the public health, welfare, and safety, and where it is discovered that telephone lines are being used to assist in their commission, immediate and summary action in the premises is required to prevent further such danger to the public.

12. Criminal convictions are not required for us to make our determination of whether probable cause existed to terminate service to telephone lines under Rule 31.

13. The City has met its burden of showing that Parklane's telephone service was used, directly or indirectly, to assist in the violation of the law, prior to both the September and March disconnections.

14. The City has met its burden of showing that the character of the violations for which Parklane's telephone lines were used is such that significant dangers to public health, safety, or welfare would have resulted if immediate and summary action had not been taken in both the September and March disconnections.

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15. We are persuaded that, regardless of Parklane's management policy or intent, its operating methods are such that, if service is restored, similar use of the telephone lines will result, and that service should therefore not be restored.

16. The procedural errors and delays in this case were harmless under the circumstances, but we should take steps to prevent their occurrence in the future.

O R D E R

IT IS ORDERED that:

1. Pacific Bell shall not restore service to any of the following telephone lines in the (619) area code: 275-2984, 275-5599, 280-7200, 295-4694, 295-8266, 563-0056, 563-6000, 583-8452, 584-4800, 266-8521, 266-8522, 266-8523, or 266-8524.

2. Future business telephone service is to be denied to Parklane Services Corporation, and to any entity in which it has financial or managerial control, at any location in California, without our further order.

This order is effective today.

Dated _____, at San Francisco, California.

14. The City has met its burden of showing that the character of the violations for which Parklane's telephone lines were used is such that significant dangers to public health, safety, or welfare would have resulted if immediate and summary action had not been taken in both the September and March disconnections.

15. We are persuaded that, regardless of Parklane's management policy or intent, its operating methods are such that, if service is restored, similar use of the telephone lines will result, and that service should therefore not be restored.

16. The procedural errors and delays in this case were harmless under the circumstances, but we should take steps to prevent their occurrence in the future.

O R D E R

Therefore, IT IS ORDERED that:

1. Pacific Bell shall not restore service to Parklane Services Corporation at any of the following telephone numbers in the (619) area code: 275-2984, 275-5599, 280-7200, 295-4694, 295-8266, 563-0056, 563-6000, 583-8452, 584-4800, 266-8521, 266-8522, 266-8523, or 266-8524.

2. Pacific Bell shall deny future business telephone service to Parklane Services Corporation, and to any entity in which it has financial or managerial control without our further order.

This order is effective today.
Dated JAN 11 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
Commissioners

Commissioner Stanley W. Hulett being necessarily absent, did not participate.