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Decision 91-05-031 May 8, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bobby J. Herndon for
Calvin Dural Pritchett,

Complainant,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 90-10-039
(Filed October 15, 1990)

Bobby J. Herndon, for complainant.
Colleen M. O'Grady, Attorney at Law, for
defendant.
Joseph Lehr, for San Diego Police Department,
interested party.

OPINION

Complainant seeks permission to have one residential telephone line installed at 1575 42nd Street, San Diego, California. The telephone service to seven telephone numbers, which previously serviced the premises, namely 263-6002, 263-2726, 263-6795, 266-9686, 266-2345, 266-9773, and 266-9675 all in area code 619 was disconnected on August 22, 1990.

The telephone service was disconnected pursuant to a finding of probable cause issued by the San Diego Municipal Court on August 21, 1990.

The finding, issued by the San Diego Municipal Court, found probable cause to believe that the subject telephone numbers were being used by the owner of the premises and his business associates as an instrument to violate and assist in the violation of the penal laws of the State of California, and that the character of the acts is such that, absent immediate and summary

action in the premises, and significant danger 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 (Pac Bell), which disconnected the numbers in accordance with its Tariff Rule 31 (Rule 31), which was established in its present form by Decision 91188 (1980) 3 Cal. PUC 2d 87.¹

Public hearing was held before Administrative Law Judge O'Leary on November 7, 1990 in San Diego. The matter was submitted with the filing of the transcript on December 5, 1990.

Bobby J. Herndon (Herndon) testified that he is the brother-in-law of Calvin Dural Pritchett (Pritchett). Pritchett owns the property at 1575 42nd Street in San Diego. The property contains two buildings, one being a three or four bedroom house, the other being a mother-in-law apartment.

Herndon also testified as follows:

"Mr. Pritchett is in jail and his trial is in December. He, by being incarcerated, has no personal income at this time that is known to me and bills go on and the payment for bills and mortgages for the house continue.

"In an effort for the family to have him manage his affairs to create some income, a member of the family has agreed to move from an apartment where they rent into his house on a lease for a year to assist in meeting some of the bills and payments that are routinely incurred in a residence, and that is why we need the telephone.

"To ask anyone to move a family into a house without a telephone in today's society is--just don't work too well.

1 This is not the first time telephone lines assigned to the premises have been disconnected under these circumstances. Nine lines were disconnected on September 21, 1987 and four on March 23, 1988. We dealt with those disconnections in *Parklane Services v. Pacific Bell* (1989) D.89-01-016, headnoted at 30 Cal.P.U.C.2d 569; 1989 Cal. PUC LEXIS 16).

"I would like to submit the uncompleted leasing agreement, if you are willing." And continued upon whether we get a telephone or not, as to whether the members of my family could move into the house, they will do so or can do so. They cannot do so without a telephone.

"So what we're asking for, not restoration of any of the phone numbers under Mr. Pritchett. We have no argument with the police department doing what they have done. As in the statement I read, they have removed the telephones from him. They happened to be at that residence. We have no argument with that. He is under charges, not convicted yet, and life goes on. We must make some efforts to survive as best we can."

A proposed lease between Pritchett and Mr. & Mrs. Clarke, III and their two children (Clarkes) which was not executed by the Clarkes was received in evidence as Exhibit 1.

Pacific Bell presented uncontested evidence that there are outstanding charges against Pritchett on his disconnected numbers, totaling over \$1,500.

The investigator testified that the telephone service was discontinued pursuant to the request of the City. The investigator also testified that Pac Bell received a letter from the City objecting to restoration of the affected telephone service. Neither made any allegation, or brought any evidence to show, that the request for new service should be considered a request for the restoration of prior numbers.

The business office supervisor testified that, subsequent to the discontinuance of the affected telephone service, she received requests for service at the same address from four separate people. None of the names identified were the Clarkes. She also testified that she had received a request for use of the telephone numbers at a different address. None of the requests were granted by Pac Bell.

A detective from the City testified as follows:

"I would like to testify to the probable cause that we have in the affidavit for the phone disconnect in which for the previous year, I had run numerous undercover operations regarding prostitution with Park Lane Services being the main company and the owner being Calvin Dural Pritchett.

"It is to my knowledge that Mr. Pritchett purchased Park Lane Services from a Wiley Miltzberg in September of 1987 for \$50,000.

"Since then, the vice unit has conducted undercover operations into the prostitution and organized pimping and pandering charges related to Mr. Pritchett as being the owner of the company.

"In such, the telephone numbers that we have gotten from Pacific Bell and the prostitutes that have managed the companies themselves are stated here in Exhibit No. 2 and in the affidavit.

"A lot of these undercover details, approximately five to nine of them, were prostitutes sent out from 1575 42nd Street, from Mr. Pritchett's address, to undercover operations in the City of San Diego in which prostitution arrests were made.

"During this undercover investigation, within the last year, we have had prostitutes that have worn tape recordings that have contacted Mr. Pritchett regarding pimping and pandering violations. And the phone lines, as such, were being used by Mr. Pritchett to engage in his prostitution activity.

"As the investigation continued, Mr. Pritchett was arrested in August and has since remained in custody at that time. A lot of the phone lines were disconnected.

"And in my opinion, as a police officer working for the City of San Diego, it would be in the best interest that these phone lines or any phone service at all not be connected to 1575 42nd Street. I believe the public health and

welfare would be jeopardized by any restoration of any phone lines.

"Also, if I may add, in the commission hearing where Pacific Telephone was not to restore any service to Park Lane Service at all exists as evidence.

"I, again, believe that the public health and welfare would be in jeopardy if any phone lines were restored. We have Park Lane Services in evidence in the police station that Mr. Pritchett is the sole owner of that company as well as nine other fictitious business names. He even had a business license for an answering service which is 266-2345, which is one of the business lines that were disconnected."

Mr. Herndon in his testimony has stated that:

"We have no argument with the police department doing what they have done."

We note that our decision in *Parklane* specifically ordered that Pacific Bell refuse all future service to Parklane Corporation, and to any entity in which it had financial or managerial control, until our further order. *Parklane*, Ordering Paragraph 2, *mimeo.* at p. 14. We must therefore assume, as no one alleges otherwise, that the numbers disconnected on August 22, 1990 were not listed as belonging to any corporation fitting that description.

In *Goldin v. Public Utilities Commission* (1979) 23 Cal.3d 638, the California Supreme 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". (*Golden, supra*, footnote 15, p. 655.)

In *Parklane*, we specifically declined to make this order against the individuals involved, including Pritchett, because he had taken over management of the corporation only briefly before the matter of disconnection arose, and because of the lack of direct evidence of his involvement in the prostitution activities taking place in the corporation. *Parklane*, mimeo. at p. 11. The first of these circumstances obviously no longer applies. As for the second, the affidavit (contained in Exhibit 2) supporting the finding of probable cause provides ample direct evidence that Pritchett was both aware of and actively promoting illegal uses being made of this phone lines.

As we said in *Parklane*, it is not our task to determine guilt or innocence as a criminal court would, but only to ask whether there is probable cause to believe that telephone lines are being used, directly or indirectly, to assist in the violation of the law. *Id.*, pp. 9-10. We hold that, in the present case, the affidavit supporting the finding of probable cause is adequate under Rule 31 to support an order denying future business service to Pritchett as we did to Goldin. Because Pritchett has not distinguished business uses from residential ones, he will have the burden of establishing to Pacific Bell, or before us in case of a dispute, that any further telephone service he asks for as an individual will not be used for business purposes.

However, neither the finding nor the affidavit provides any reason to deny service to Herndon or to the temporary tenants contemplated at the premises in question. Considerations of fundamental fairness prevent us from allowing Pacific Bell to

refuse service to the premises while Pritchett remains incarcerated and unable to gain access to the premises. Further, complainant is clearly aware of the provisions of Rule 31 and that, if a finding of probable cause is brought against him during this period, we may order future service curtailment to him, and to other lessees, as well as to Pritchett.

Accordingly, we will order Pacific Bell to install residential telephone service to that portion of the premises which Herndon proposes to lease to family members. The line is to be disconnected on information from the San Diego police department on presentation of a finding of probable cause to believe, under Rule 31, that the line is being used for illicit purposes.

Findings of Fact

1. Pritchett has been engaged in providing outcall services in the areas of escort service, modeling, nude entertainment, and massage.
2. Pritchett's business operated by the use of seven telephone numbers until August 1990, when all of them were terminated by Pac Bell in compliance with Rule 31.
3. Pac Bell has received requests for telephone service at 1575 42nd Street from various people subsequent to the August 1990 disconnection.
4. All of the lines used by Pritchett have been used, directly or indirectly, to assist in the violation of the laws of California against prostitution.
5. Acts of prostitution are such as to pose a significant danger to the public health, welfare, and safety.
6. Pacific Bell has presented uncontradicted claims for unpaid telephone charges against Pritchett's disconnected numbers.

Conclusions of Law

1. In a hearing for interim relief, 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. 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.

3. Pacific Bell executed the disconnection of August 22, 1990 in compliance with Rule 31. Pacific Bell has refused new service at the premises based on a mistaken good-faith belief that new service would constitute restoration of prior service under Rule 31.

4. 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.

5. We have not been asked to restore service but to allow new service for temporary tenants who will hold the premises during Pritchett's incarceration.

6. The affidavit, contained in Exhibit 2, supporting the magistrate's finding of probable cause is adequate to support the disconnection of August 22, 1990.

7. The affidavit is not adequate to support refusal of service to Herndon or to temporary tenants.

8. Considerations which, in *Parklane*, led us to decline to order Pacific Bell to refuse service to Pritchett as an individual no longer apply.

ORDER

IT IS ORDERED that:

1. Pacific Bell shall deny future business telephone service to Calvin Dural Pritchett, and to any entity in which he has financial or managerial control, without our further order. Pritchett shall have the burden of showing that any telephone service he applies for is personal rather than for business purposes.

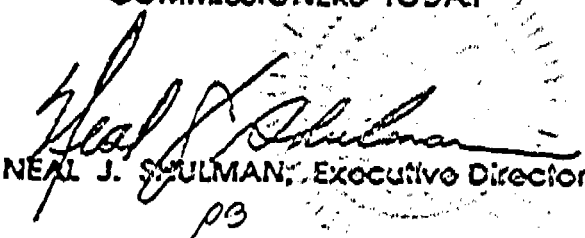
2. Pacific Bell shall connect residential telephone service on that portion of the premises which Herndon proposes to lease. The service is to be disconnected upon presentation of a finding of probable cause to believe that the service is being used for illicit purposes.

This order is effective today.

Dated May 8, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SULMAN, Executive Director
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