

Decision 99-07-039 July 22, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Paul Richard Klein, dba Stereo's R Us,  
Complainant,

vs.

GTE California, Inc.,

Defendant.

Case 99-02-020  
(Filed February 17, 1999)

Joe A. Dickerson, Attorney at Law, for  
Stereos R Us, complainant.

Sandra Newmark, for GTE California, Inc.,  
defendant.

Rick Diamond and Ernest Martinez, for  
Dept. of Consumer Affairs, Bureau of  
Electronic & Appliance Repair,  
intervenors.

**O P I N I O N**

**Summary**

This decision denies the complaint of Paul Klein, doing business as Stereo's R Us (Complainant) against GTE California Incorporated (GTE) seeking restoration of business telephone numbers as an interim relief and service reconnection.

## **I. Background**

On February 17, 1999, Complainant filed this complaint against General Telephone and Electronics<sup>1</sup> seeking the following:

- a hearing before the Commission pursuant to Paragraph 2 of Rule 31; and
- interim restoration of service to the retail business pending the hearing and decision of the Commission.

The Instructions to Answer (Instructions), mailed on March 1, 1999, categorized this proceeding as adjudicatory and determined that an evidentiary hearing would be necessary. Further, the Instructions noted that this matter was assigned to Commissioner Josiah L. Neeper and Administrative Law Judge (ALJ) Joseph DeUlloa.

On December 30, 1998, the Honorable Ben Kayashima, Judge of the Superior Court, West Valley Division, County of San Bernardino, issued a magistrate's finding that there was probable cause to conclude that the telephone service provided to Complainant is being used by Paul Richard Klein, or any other individual(s), doing business as Stereo's R Us, as an instrumentality to violate or assist in the violation of criminal laws of the State of California, and that the character of the acts are such that, absent immediate and summary action in the premises, significant dangers to the public health, safety or welfare will result. Further, the finding of probable cause was directed to any communications utility operating under the jurisdiction of the Public Utilities Commission for the purpose of refusing service to the Complainant and for the purpose of disconnecting service to (909) 625-6193 and (909) 625-3682.

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<sup>1</sup> At hearing, counsel for Complainant moved to amend the complaint by dismissing General Telephone and Electronics as a defendant and instead name GTE as the defendant. There were no objections and the motion was granted.

GTE disconnected the above numbers on December 30, 1998.

Under GTE's Rule 31, an evidentiary hearing was held before ALJ DeUlloa on March 12, 1999,<sup>2</sup> to determine whether GTE should restore telephone service to (909) 625-6193 and (909) 625-3682. Both the Department of Consumer Affairs, Bureau of Electronic and Appliance Repair (Bureau) and Complainant served opening briefs on March 19, 1999.<sup>3</sup> On March 31, 1999, the Bureau served its reply brief.<sup>4</sup> The matter was submitted upon the filing of reply briefs.

Decision (D.) 91188, dated January 8, 1980, sets out the procedure whereby telephone service provided by a telephone utility is to be disconnected when the service is being used for illegal purposes. That decision required disconnection of existing service upon receipt from any authorized official of a law enforcement agency of a document, signed by a magistrate, finding that probable cause exists to believe that the service is or will be used to violate or assist in the violation of the law. Included in the magistrate's writing must be a finding that there is probable cause to believe not only that the subject telephone facilities have been

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<sup>2</sup> Under GTE's Tariff Rule 31, any person aggrieved by any action taken or threatened to be taken pursuant to Rule 31 has the right to file a complaint with the Commission. Consequently, the Commission must schedule a public hearing on the complaint within 20 calendar days of the filing of the complaint. In this instance, a public hearing was originally proposed on Friday, March 5, 1999 within 20 calendar days of the filing of the complaint. However, by letter dated February 26, 1999, counsel for Complainant waived his client's right to a speedy hearing and requested that the proposed hearing date be changed to Friday, March 12, 1999. Complainant's request was granted and a hearing was held on Friday, March 12, 1999.

<sup>3</sup> Both the Bureau and Complainant by mistake and inadvertence failed to properly file their briefs with the Commission's docket office. However, all parties were properly served on March 19. Both parties subsequently filed motions to file late briefs. Good cause being stated, the parties' motions to file late briefs should be granted.

<sup>4</sup> Reply briefs were originally due on March 26, 1999, but on March 26, 1999 Assistant Chief ALJ Wheatland authorized an extension.

or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action, significant dangers to the public health, safety, or welfare will result. (Id., pp. 98-99.)

The Bureau, as the concerned law enforcement agency under Schedule Cal. P.U.C. No. D&R 3rd Rev. Sheet 61 has:

28. 2 "4.(1) the burden of proving that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law and that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to the public health, safety, or welfare will result, and

28. 2 "(2) the burden of persuading the Commission that the service should be refused or not be restored."

#### **A. Testimony of the Bureau**

The Bureau participated in the hearings, providing documentary evidence and the testimony of Gary Jewell (Jewell). Further, by stipulation between the Bureau and Complainant, the written declaration of Mike Dwyer was accepted into evidence. Jewell, testifying on behalf of the Bureau, explained the circumstances leading up to the request for a court order to disconnect services.

In November 1995, in the course of his duties as an investigator for the Bureau, Jewell noticed advertising on the window of Complainant's business that led him to believe that Complainant was engaging in business as a "Service

Dealer.”<sup>5</sup> Jewell testified that after noticing the advertisements he made contact with Klein and asked Complainant if he was currently licensed or registered. Jewell testified that Complainant was not licensed and that he advised Klein of the statute requiring service dealers to be registered. Further, Jewell testified that he gave Complainant a violation notice, a cease and desist order, and a service dealer license application.

The cease and desist ordered Complainant to:

“immediately cease and desist accepting any and all repairs or doing service or installation of any kind until your are properly registered with the Bureau of Electronic and Appliance Repair.”  
(Exhibit 4.)

Subsequently, Complainant applied for registration as a service dealer. On March 25, 1998, the Department of Consumer Affairs issued an “Order of the Director” effective April 24, 1998, which denied the “application for registration received from applicant Paul Richard Klein, doing business as STEREOS R US, ... for the reasons stated in the First Amended Statement of Issues and the Findings of Fact and Determination of Issues herein.” (Exhibit 4.) The order was signed by Derry Knight, Deputy Director of Consumer Affairs. The First Amended Statement of Issues (referred to in the Order of March 25, 1998) listed, among other things, Complainant’s prior criminal convictions and a consumer complaint filed by Richard Thorpe.

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<sup>5</sup> Chapter 20 of the Business and Professions (B&P) Code is cited as the Electronic and Appliance Repair Dealer Registration Law. B&P Code § 9801(f) states that: “‘Service dealer’ means a person who, for compensation, engages in, or holds himself or herself out to the public as offering services in, the business of: ... (2) installing, repairing, servicing, or maintaining equipment or burglar alarm system for use in private motor vehicles.” B&P Code § 9801(g) defines “equipment” to include an “electronic set.” B&P Code § 9801(h) states that: “‘Electronic set’ includes but is not limited to any television, radio, audio or video recorder or playback equipment, video camera...”

The affidavit signed by Jewell that formed the basis of the magistrate's finding of probable cause recited Complainant's prior criminal convictions and the Thorpe consumer complaint contained in the First Amended Statement of Issues.

Jewell also testified that at the end of 1998, he inspected Complainant's place of business and observed window advertisements that led him to believe Complainant was still engaging in business as a service dealer.

The declaration of Dwyer states that on March 4, 1999, while working in an undercover capacity, he made a field visit to Stereo's R Us at 5200 Holt Boulevard, Montclair, to determine if Stereo's R Us was performing repairs and installations on auto stereos and alarms. Dwyer's declaration states that he visited the store and was offered both radio and alarm installation. Additionally, Dwyer paid for and had an alarm installed at Stereo's R Us on March 4, 1999. While at the store, Dwyer's declaration also states that he noticed that the telephone number on his invoice for his alarm purchase and installation had the phone number crossed out and replaced by (909) 318-6061. Similarly, Dwyer noticed that a business card on the counter also had (909) 318-6061 hand written on the back of the card. Lastly, Dwyer noticed a flyer for a grand opening on March 13, 1999, for Stereo's R Us at 550 S. "E" street, San Bernardino. The telephone on the flyer was (909) 888-3456. (Exhibit 5 contains the declaration of Dwyer and copies of the invoice dated March 4, the business card and flyer.)

#### **B. Testimony of Complainant**

The Complainant's counsel rested without offering any evidence or witness.

#### **C. Testimony of GTE**

GTE offered no evidence or witness.

## II. Discussion

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It has been determined that telephone service is an interest in property entitled to protection against taking without due process. To disconnect, there must be probable cause to believe that facilities are being or are to be used to commit illegal acts, and that the character of the acts is such that, absent summary action, significant dangers to public health, safety, and welfare will result. (Goldin v. Pub. Util. Comm., 23 C.3d 638, 663 (1979).)

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Prior to termination of service, the law enforcement agency must show an impartial tribunal that there is probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. (Sokol v. Pub. Util. Comm., 53 Cal. Rptr. 673, 679 (1966), 65 CPUC2d 247, 256 (1966).)

Probable cause for issuance of a search warrant is approximately the same as that justifying arrest without warrant; reasonable and probable cause exists if a person of ordinary care and prudence would be led to conscientiously entertain honest and strong suspicion that the accused is guilty or that contraband is present. (People v. Scott, 66 Cal. Rptr. 257, 259 CPUC2d 768 (1968).)

The Commission's obligation is to review the showing made before the magistrate in order to determine whether telephone service should be restored. The Commission might find sufficient basis for denying restoration on the magistrate's order based on the record before the magistrate. "In a civil administrative proceeding of this nature, where the liberty of the subscriber is not at stake, it is sufficient for purposes of the interim protection involved that the Commission limit itself to the face of the affidavits and an assessment of their adequacy to support the magistrate's finding." (Goldin v. Pub. Util. Comm. at 668.)

The United States Supreme Court has adopted the "totality of the circumstances" analysis to determine the sufficiency of an affidavit in support of a search warrant. According to the court:

"The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a 'substantial basis for...conclud(ing)' that probable cause existed." (Illinois v. Gates, 462 U.S. 213, 238 - 239 (1983).)

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In California, the totality of the circumstances test is used to assess whether a search warrant affidavit based on hearsay established probable cause (People v. Rothen, 203 CA 3d 684 (1988)); and whether hearsay or double hearsay information of criminal activity will support issuance of a search warrant depends not upon terminology or ritualistic formula, but upon the quality and persuasiveness of the information itself. (See People v. Superior Court of Santa Clara City, 91 Cal. App. 3d 463; 154 Cal. Rptr. 157 (1979).)

This Commission is not a forum to relitigate a magistrate's finding of probable cause; the Complainant must avail himself of procedures before the criminal courts to address that issue. (See D.87642 in the complaint of Marvin Goldin (Summerwind) v. Gen. Tel. Co. of Cal. 82 CPUC 332 at 339 (1977).)

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This proceeding is an administrative proceeding pursuant to a complaint seeking restoration of telephone service. This is a civil proceeding; it is not a quasi-criminal matter. There is no requirement of proof beyond a reasonable doubt that the subscriber of the telephone service committed a violation of any law. For discontinuance of service, Tariff Rule 31 requires a showing by the law enforcement agency that the use made or to be made of the service is prohibited

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by law, or that the service is being or is to be used directly or indirectly to assist in the violation of the law.

The Bureau under Rule 31 has the burden of convincing the CPUC of the threatened prohibited use of the telephone. The extent of certainty is a civil degree of certainty, not a criminal law requirement of certainty beyond a reasonable doubt. 28.2

In this case, the Bureau informed the magistrate that it determined that Complainant as of December 30, 1998, had continued to engage in business as a Service Dealer without a state registration in violation of Section 9840 of the Business and Professions Code. Further, the Bureau believes the conduct to be criminal and the character of the acts such that, absent immediate and summary action on the premises, specifically disconnection of the telephones, significant dangers to the public health, safety and welfare will result. Further, the Bureau contended that the usage of the telephones is a method which assists the individual directly in the commission of these crimes. Judge Kayashima issued a magistrate order finding that there was probable cause to believe that the Complainant's telephone facilities were used to commit or facilitate illegal acts, necessitating immediate and summary action to disconnect respondent's telephone facilities to protect the public health, safety and welfare.

In deciding whether to order restoration of service, we find it reasonable to analyze the case in the light of the totality of the circumstances to answer whether the situation in its totality persuades us to restore service.

#### **A. Error in Affidavit**

At hearing, Complainant established that one of the convictions listed in Jewell's affidavit contained an erroneous date. Complainant established that the correct year Klein was convicted of attempting to obtain property by false

pretense was 1983 not 1993 as stated in Jewell's affidavit. Based on the testimony of Jewell, it also appears that this error was unintentional.

Complainant's opening brief contends that the Bureau cited Klein's conviction of fraud in 1993 as a primary reason for its actions. Further, Complainant's brief states that there can be no doubt that the relative freshness or staleness of a fraud charge would be meaningful in persuading a judge as to whether there is a present danger to the public interest.

In analyzing the importance of this error, we note that the information in Jewell's affidavit regarding prior convictions serves an informational or background purpose. Jewell's affidavit reviewed the registration history of Complainant. Jewell's affidavit noted that Complainant's state registration as a Service Dealer was denied effective April 24, 1998. Further, Jewell's affidavit listed the grounds upon which the Department of Consumer Affairs denied registration. In this context, in summarizing the basis of the order denying registration, Jewell's affidavit mis-cites the conviction date of one of the convictions relied upon by the Department of Consumer Affairs in denying registration.

Neither the magistrate's nor this Commission's purpose is to review the order of the Department of Consumer Affairs denying registration. Thus, although Jewell's affidavit erroneously states that Klein was convicted in 1993 instead of 1983, Klein's prior conviction is not central to the illegal act being complained of in Jewell's affidavit.<sup>6</sup>

The illegal act being complained of is a violation of the B&P Code. Jewell's affidavit asserts that:

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<sup>6</sup> In its order denying registration, the Department of Consumer Affairs relied upon a correct conviction date of 1983.

"The contents of this affidavit and its supporting documents prove that California Business and Professions Code Sections 17500, 9840, 9841(a)(3), and 9842 have been violated in an ongoing manner through the direct use of telephones." (Exhibit 1. Jewell's affidavit at p. 4.)

Thus, the illegal acts being complained of, and for which the Bureau sought a finding of probable cause to disconnect Complainant's phone service, was not a past criminal conviction, but an alleged current and ongoing violation of the B&P Code. [B&P Code § 9840 makes it unlawful to act as a service dealer without a current valid registration.] Although the record supports a finding that the affidavit contains an unintentional error regarding the date of a prior conviction, the erroneous information is peripheral to the determination of whether Complainant's telephone is an instrument in an ongoing or threatened illegal act. Thus, this decision concludes that the error identified by Complainant in Jewell's affidavit is insufficient under the totality of the circumstances in itself to warrant restoration of service.

#### **B. Illegal Act**

Rule 31 requires the magistrate to make a finding that there is probable cause to believe that the subject telephone facilities have been or are being used in the commission or facilitation of illegal acts. 28.2

In this instance, the illegal act complained of is a violation of the B&P Code. At hearing and in its brief, Complainant does not appear to dispute the Bureau's assertion that Complainant is engaging in the business of a Service Dealer. Complainant's opening argument brief states that:

"The only legitimate complaint the Bureau has against Mr. Klein is that he was operating a portion of his retail electronics business without having a license to install or repair equipment. They provided no evidence that he was actually installing equipment. ..." (Complainant's March 19, 1999 opening argument at p. 4.)

Complainant's assertion that the Bureau provided no evidence of Stereo's R Us installing equipment is inaccurate, Dwyer's declaration clearly contends that Complainant installed an alarm system on March 4, 1999.

Jewell's testimony and the declaration of Mike Dwyer support a finding that Complainant is engaging in the business of a Service Dealer without proper registration. B&P Code § 9840 makes it unlawful to act as a Service Dealer without proper registration. B&P Code § 9850 establishes that a person that fails to comply with Electronic and Appliance Repair Registration Law is guilty of a misdemeanor that is punishable by a fine not to exceed \$1,000 or by imprisonment not exceeding six months, or by both fine and imprisonment.

Thus, based on the record and totality of the circumstances, this decision finds that Complainant is using telephone facilities in the commission or facilitation of illegal acts.

### **C. Character of Illegal Act**

282 In addition to the illegal act requirement, Rule 31 also requires that the *character* of the illegal act is such that, absent summary action, significant dangers to public health, safety, and welfare will result.

In its brief dated March 19, 1999, Complainant argues that B&P Code § 128:

"... provides criminal penalties for willful violation of licensing laws. Rather than take this straight forward route which would have entitled Klein to an evidentiary hearing with the constitutional protections of the court system, the Bureau decided to misuse as a regulatory device, the extraordinary and very limited avenue of shutting off Klein's business telephones exparte, with no notice, much less a hearing." (Complainant's March 19, 1999 opening argument at p. 4.) (Emphasis in original.)

Further, Complainant concludes that the Bureau has completely failed in its burden to show that there was any pressing immediate need for the use of such a drastic measure.

Complainant's opening argument raises the issue of whether the illegal act complained of by the Bureau meets the Rule 31 requirement that the *character* of the illegal act is such that, absent summary action, significant dangers to public health, safety, and welfare will result. The legislature enacted the Electronic Repair Dealer Registration Law in order to protect the public from fraudulent, incompetent and elusive service dealers. (Packard-Bell Electronics Corp. v. Department of Professional and Vocational Standards, 51 Cal.Rptr. 432, 242 Cal.App.2d 387 (App. 2 Dist. 1966).) By definition, the purpose of the Electronic Repair Dealer Registration Law is to protect the public health, safety, and welfare. Thus, a violation of B&P Code § 9840 poses a threat to the public health, safety, and welfare. Additionally, complainant's unwillingness to cease operations as a service dealer, despite explicit notice, exacerbates the seriousness of the violation.

#### **D. Bureau's April 2, 1999 Motion**

On March 31, 1999, the Bureau filed a motion, pursuant to Rule 73 of the Commission's Rules of Practice and Procedure, to take official notice of court documents. The documents submitted by the Bureau include:

1. Proposed Exhibit 6: Affidavit of Harold Chadwick and Finding of Probable Cause issued by Honorable Ben Kayashima dated March 18, 1999;
2. Application for temporary restraining order in Director v. Klein, RCV 39313, filed March 22, 1999; and
3. Order to Show Cause and Temporary Restraining Order issued ex parte on March 24, 1999, in Director v. Klein, RCV 39313.

The motion of the Bureau is denied. As discussed above, sufficient record evidence exists to deny the complaint. The documents submitted by the Bureau are not central to the resolution of issues raised herein. Moreover, we are concerned that Complainant would be denied a meaningful opportunity to challenge the relevance and importance of the documents submitted by the Bureau.

**E. Bureau's Request to Disconnect Additional Telephone Numbers**

In its opening brief, the Bureau also requested that the Commission order disconnection of two additional telephones, (909) 318-6061 and (909) 888-3456. As discussed earlier, (909) 318-6061 was the telephone number on the back of a Stereo's R Us business card (see Exhibit 5) given to Dwyer on March 4, 1999. Additionally, (909) 888-3456 was the telephone number appearing on a flyer (see Exhibit 5) that Dwyer picked up on March 4, 1999, at Stereo's R Us. The flyer prominently displays the name Stereo's R Us and announces a grand opening on March 13, 1999.

In Goldin v. Pubic Utilities Commission, 23 Cal.3d 638, 665, the California Supreme Court addressed the issue of whether the Commission had the authority to permit its final order of termination to contain a provision that future business service was to be refused pending further order. The Court answered the question in the affirmative. The Court reasoned that this approach was correct, otherwise, "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." (Id. at footnote 15.) Thus, the Commission has the authority to grant the more limited request of the Bureau to disconnect two specific telephone numbers it believes are being used as an instrumentality to violate the law.

However, we take official notice that on April 12, 1999, Complainant filed a second complaint (C.99-04-016) requesting reconnection of service of additional telephone lines. Further, that an evidentiary hearing on the second complaint was held in C.99-04-016 on April 26, 1999. Thus, the request to order disconnection of (909) 318-6061 and (909) 888-3456 is denied to provide complainant an additional opportunity to be heard and raise any new facts or arguments regarding the additional telephone numbers that were disconnected.

### **III. Conclusion**

Our conclusion based, on the evidence presented in this case, is that the use made of the service is prohibited by law, and that the service was used as an instrumentality, directly or indirectly, to violate or assist in the violation of the law. We find that law enforcement has satisfactorily met its burden of proof to justify maintaining the disconnection of telephone services of Complainant to (909) 625-6193 and (909) 625-3682.

### **IV. Appeal**

The decision of the presiding officer was mailed on April 30, 1999. Pursuant to Rule 8.2 of the Commission's Rules of Practice and Procedure (Rules), Complainant filed an appeal of the Presiding Officer's Decision (POD) on May 24, 1999. No responses to Complainant's appeal were filed.

Complainant's appeal asserts that the POD errs in three areas.

First, Complainant contends that the "test for issuance of the termination order is not identical for a search warrant, as suggested by the Decision." Complainant's first ground for appeal lacks merit, the POD correctly required the Bureau to make the showing set forth in Goldin. For discontinuation of service, the POD interpreted Tariff Rule 31 to require a showing by the law enforcement agency that the telephone service in question was used directly or indirectly to assist in the violation of law.

In Goldin, the California Supreme Court stated that the placement of the burden of proof upon the concerned law enforcement authorities, and not on the subscriber, "effects a constitutional accommodation of the conflicting interests of the parties." (Goldin at 665. fn. 13.) Although the POD properly followed Goldin, page eight of the POD is slightly modified to clarify that the above standard was applied in determining whether service should be discontinued.

Complainant's second claim of error is a single conclusory sentence that asserts that the "circumstances of the present case do not meet the constitutional requirements set down in Fuentes v. Shevin ..." Absent a more specific description of error, it is difficult to analyze Complainant's claim of error.

Fuentes v. Shevin, 407 U.S. 67 (1972), focused on the constitutionality of takings by creditors, pursuant to state replevin statutes, occurring prior to notice and an opportunity for the debtor to be heard. Fuentes held that Florida's and Pennsylvania's prejudgment replevin provisions work a deprivation of property without due process of law insofar as they deny the right to a prior opportunity to be heard before chattels are taken from their possessor. (Id. at 96.)

However, Fuentes also stated that "extraordinary situations" may exist that justify postponing notice and opportunity to be heard. (Id. at p. 90.) Fuentes established a three-prong test for determining whether an extraordinary situation exists to justify postponing notice and opportunity to be heard. First, the seizure must be directly necessary to secure an important governmental or general public interest. Second, a special need exists for prompt action. Third, the state has kept strict control over its monopoly of legitimate force. (Id. at 91.)

In Goldin, analyzing Rule 31, the Court focused on the Fuentes test of "strict control." (Goldin at p. 664.) The Goldin Court was concerned that Rule 31 may permit a governmental official to make a determination that summary action is warranted in a broad range of circumstances unrelated to the basic concern of



grave governmental necessity. (Id.)

The Goldin Court stated that, in order to comport with the Fuentes requirements for summary seizure,

“... the magistrate must find that there is probable cause to believe not only that the subject telephone facilities have been or are to be used in the commission of facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to the public health, safety, or welfare will result.” (Goldin at p. 664.)

The magistrate's order and the POD have both made the determinations required by Goldin. Complainant's assertion that the POD fails to meet the constitutional requirements set down in Fuentes lacks merit.

Lastly, Complainant urges that the POD's conclusions of law are in error in that they suggest that any prospective violation of regulatory or criminal law is sufficient grounds to terminate service to a business. Complainant misreads the POD. The POD explicitly analyzes the character of the illegal act and determines that it is sufficient to warrant discontinuance of service. Page 13 of the POD is slightly modified to acknowledge that the seriousness of the illegal act is exacerbated by complainant's unwillingness to cease operations despite explicit notice.

### **Findings of Fact**

1. Jewell's affidavit incorrectly states that Klein was convicted of attempting to obtain property by false pretense in 1993. The correct date of Klein's conviction is 1983.
2. Complainant installed an alarm system on March 4, 1999.
3. Complainant is engaging in the business of a Service Dealer without proper registration.

4. Complainant is using telephone facilities [(909) 625-6193 and (909) 625-3682] in the commission or facilitation of illegal acts.

### **Conclusions of Law**

1. The error identified by Complainant in Jewell's affidavit is insufficient under the totality of the circumstances in itself to warrant restoration of service.

2. The legislature enacted the Electronic Repair Dealer Registration Law in order to protect the public from fraudulent, incompetent, and elusive service dealers.

3. The purpose of the Electronic Repair Dealer Registration Law is to protect the public health, safety, and welfare.

4. A violation of B&P Code § 9840 poses a threat to the public health, safety, and welfare.

5. The Complainant's appeal of the presiding officer's decision lacks merit.

## **O R D E R**

### **IT IS ORDERED that:**

1. The Motion of Department of Consumer Affairs, Bureau of Electronic and Appliance Repair (Bureau), and Complainant to accept late filed opening briefs is granted.

2. The Motion of the Bureau to take official notice of court documents is denied.

3. The request of the Bureau to disconnect service to (909) 318- 6061 and (909) 888-3456 is denied.

4. The request of complainant Paul Klein, doing business as Stereo's R Us, for interim relief and reconnection of telephone service to (909) 625-6193 and (909) 625-3682 is denied.

5. The Complainant's appeal of the presiding officer's decision is denied.
6. Case 99-02-020 is closed.

This order is effective today.

Dated July 22, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
LORETTA M. LYNCH  
JOEL Z. HYATT  
Commissioners