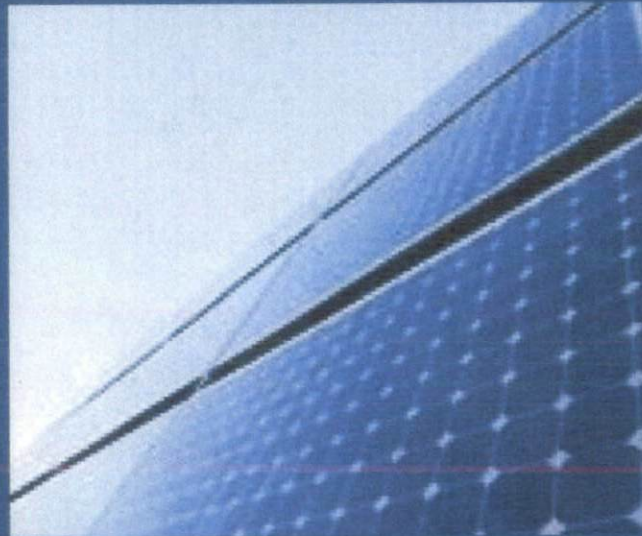




California Public Utilities Commission

# REPORT ON THE STATUS OF THE CPUC AS A JUDGMENT CREDITOR



Pursuant to Section 688.020 and 688.030 of the Code of Civil Procedures and Section 2104



## **Report on The Commission's Collection Efforts, the SCO Report and its Status as a Judgment Creditor**

**History:** Beginning with the broad restructuring and deregulation of the telecommunications industry in the last half of the 1990s, the telecommunications industry underwent a broad transition, particularly in the provision of long-distance services through the conventional public switch network. Unfortunately, a group of unscrupulous purveyors of communications services were attracted to the industry at the same time. These firms engaged in a variety of illegal practices to attempt to defraud long-standing customers of the traditionally regulated wire-based communications carriers. Among their tactics were the widespread use of "slamming" and/or "cramming".

"Slamming" involves the illegal transfer of a customer's long distance carrier by a competitive communications carrier without the customer's consent. "Cramming" occurs when a communications carrier (or a billing aggregator) places charges on a customer's telephone bill that have not been authorized by the customer. Unfortunately for a number of years both of these practices were fairly widespread, and a significant number of California telecommunications customers were defrauded by these fraudulent carriers.

In response to this situation, the Commission's Legal Division, in conjunction with the predecessor to the Consumer Protection and Safety Division, began a series of investigations and/or prosecutions against these carriers. The prosecutions were notably successful and resulted in some large judgments against these carriers. In addition, in several instances, in addition to ordering the carriers to pay fines to the Commission, the Commission ordered these firms to pay restitution to defrauded customers. Altogether the Commission ordered approximately \$40 million in fines and/or restitution to be paid to either the state or defrauded customers. Unfortunately, the Commission was notably unsuccessful in collecting virtually any of these fines or restitution amounts. Its collection efforts were frustrated by a variety of factors, including the amount of time that had elapsed since when the initial penalty was levied and the commencement of collection efforts, the fact many of the firms were located out-of-state, the defunct status of many of these firms, the difficulty in obtaining cooperation from our counterparts in other states in collecting past-due fines and restitution figures, and the unfamiliarity of Commission Legal Division staff with Superior Court collection procedures.

One source of frustration for the Commission's staff is the lack of a centralized body within the state of California that assists state agencies to collect fines and penalties due to the agency. While the Franchise Tax Board and the Board of Equalization have sophisticated collection operations, the same cannot be said of other state agencies. It is extremely challenging for state agencies to develop expertise in collection techniques when one considers a specialized industry has developed to pursue "deadbeat" creditors. It should be noted that in the Commission's experience prior to the late 1990s when the

Commission ordered one of its traditional utilities, e.g., AT&T, Verizon, PG&E, San Diego Gas and Electric, SoCal Gas or Southern California Edison, to pay a fine or penalty the utility involved would (however grudgingly) pay the penalty. Thus, the Commission had no experience of having one of the utilities it regulates not pay one of the fines it had ordered. The "restructured" or deregulated telecommunications industry that emerged in the late 1990s was markedly different in structure and function than traditional utilities. Many of these firms consisted of little more than a couple of individuals in a "boiler-room" who spent their time telemarketing their services to consumers who were unfamiliar with these types of predatory marketing operations.

When the Commission investigated these firms of consumer fraud, their typical response was to close operations and either declare bankruptcy or otherwise dissolve the corporation. Most of these firms made little or no effort to pay any fines or restitution ordered by the Commission. Thus, the Commission faced the difficult situation of attempting to collect fines and restitution amounts from out-of-state (or out-of-the country) firms that may or may not still be in operation. Unfortunately, conferring "judgment creditor" status on the Commission did little to facilitate the collections process since insolvent creditors are still insolvent regardless of the Commission's legal status.

#### **The State Controller's Office's Audit**

On July 2007, The State Controller's Office (SCO) reviewed California Public Utilities Commission (CPUC) 'Fines and Restitutions Accounting and Collection' practices and procedures for accounting and collecting fines and restitution imposed against the companies it regulates. This review was initiated to address concerns raised in the news media that the CPUC failed to collect millions of dollars in fines and restitutions, some since 1999, by not vigorously pursuing collection efforts. As a result, \$31.6 million fines and restitutions imposed on 29 carriers have not been collected. The \$31.6 comprises of 27 fines totaling \$20 million, 4 investigative costs totaling \$38,000 and 9 restitutions totaling \$11 million.

The SCO's Audit documented various problems the Commission had encountered in trying to collect from various firms such as Coral Communications, Accutel, and USP&C Corporation. The Auditor's report noted that the Commission makes little effort to ensure that prospective communications carriers are financially viable before it grants a certificate of public convenience of need and necessity.

SCO made four (4) findings:

- The CPUC's collection effort was ineffective against certain companies that ceased to operate and/or filed for bankruptcy when fines were imposed.

- The CPUC had no process or procedure in place to ensure that companies actually make restitution to consumers.
- The CPUC had no means of ensuring the accuracy and completeness of the amount of fines imposed or collected, as such transactions are not recorded or reflected in its formal accounting records.
- The CPUC had not undergone a comprehensive audit of its fiscal operations and internal control processes and procedures in many years.

## **WHAT HAS HAPPENED SINCE THE SCO REPORT**

The CPUC now have procedures and policies in place to pursue fines and penalties in its Fiscal Office. CPUC has employed (2) full-time employees and put in place monitoring systems software to track companies' accounts receivable letters or payments against its accounting records. The Fiscal Office records all fines imposed or collected in its formal accounting system.

In 2008, The CPUC Fiscal Office had a comprehensive Internal Control Review of its fiscal operations and internal control processes and procedures by the Department of Finance, Office of State Audits and Evaluations.

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In the attached spreadsheet labeled Chart A, B and C:

Chart A and Chart B describes SCO original fines, fees and restitutions findings. There were 32 carriers that were imposed fines, fees & restitutions amounting to \$31.6 million. Out of the 32 carriers, 20 carriers were fines (\$20,389,709), 9 carriers were restitutions (\$11,106,571) and 3 carriers were CPUC investigations (\$31,315.50).

The attached charts columns describe the following:

- Company/Carrier name
- CPUC document identification (i.e. decision, resolution etc.)
- Date the fined was imposed
- Dollar amount of the fined
- Identified restitution carriers only

- The amount of the fines written off
- The amount of the fines collected
- The current balance
- Carriers operation status within California
- Comments from CPUC – Fiscal Office, Collection Unit collection efforts.

How much is owed to the state? \$20,389,709

How much is owed to the consumer? \$11,106,571 (Restitutions)

How much has been written off? \$93,292.50

How much has been collected? \$1,000

How much remains to be written off? \$20,389,709

Chart B separates CPUC investigation fines for Household Good (HHG) and Public Utilities Commission Transportation Carriers (PUCTRA) from Chart A.

Chart C also separates CPUC fines from CHART A that are restitutions only.

The items highlighted in ‘yellow’ are bankruptcies that were approved by the SCO, Department of Justice (DOJ) and the Victim Compensation and Government Claims Board (VCGCB) to be written off CPUC accounting system. The Fiscal Office, Collection Unit has removed (3) three bankruptcies from the state accounting system amounting to \$93,292.50. The items in Chart C are identified as restitution in the amount of \$11.1 million which are not fines and penalties owed to the State but are restitution orders requiring carriers to issue payments due to consumers.

The CPUC staff has written off (3) three bankruptcies amounting to \$93,292.50. The \$11.1 million classified as restitutions and not as fines and penalties owed to the State. Restitutions are orders requiring carriers to issue payments due consumers. A detailed accounting of these fines and restitution orders is attached to this report, along with a copy of the state controller’s audit, the Commission’s request for proposals and its contract with Bonded Collections Corporation (see below for details about Bonded Collections Corporation).

### **Issuing a Collections Request for Proposals**

In response to the audit report in 2008 the Commission issued a request for proposals for a firm to perform collections on behalf of the outstanding unpaid fines and restitution. The Commission received a number of responses to its solicitation and ultimately selected a Chicago-based firm, Bonded Collection Corporation, to attempt to recover past-due penalties and restitution amounts.

Bonded Collection began working in November of 2008 through October 15, 2010. Despite the statutory provision giving the Commission judgment creditor status with regard to outstanding penalties and restitution amounts, Bonded Collection's efforts to locate and collect payments from these various debtors were by and large unsuccessful. Most of the firms that had been fined by the Commission were either out of business, insolvent, in bankruptcy or otherwise defunct. The few that were located, owed small amounts and the expense of pursuing collection (in view of the small amounts owed) led Bonded Collection to conclude that the funds were not worth collecting.

## **Conclusion**

While the Commission has continued to issue various fines and penalties against the entities it regulates, its ability to collect penalties and/or restitution amounts has historically been dependent upon the financial wherewithal of the entity being penalized. Contrary to our hopes with the statute was passed, granting the Commission judgment creditor status did not make it easier for the Commission to collect from fly-by-night communications carriers. While when the Commission issues a penalty against a long-established utility such as Southern California Edison, the utility grudgingly has always paid what is due,<sup>1</sup> when predatory new entrants into the communications field in the early part of this century and the late 1990s typically ceased operations in California once they received a penalty or restitution order. As was noted earlier, while the Commission has a large legal staff, none of the individuals involved are experienced in pursuing collections of unpaid fines or restitution orders. Pursuing these types of collections requires determination, a familiarity with forensic accounting, superior court procedure and litigation, and the ability to pursue firms that may be either in bankruptcy and/or located out-of-state or even out-of-country.

The expiration of the Commission's judgment creditor status will probably not make a substantial difference in its ability to collect past-due fines, penalties or restitution amounts. The Commission has significantly improved its ability to track and initiate collection actions against defendants who have unpaid fines, penalties or restitution amounts. Over the past several months some new unpaid fines have arisen and the Commission will begin formal collection efforts in the near future. The Commission continues to believe it would be beneficial to better coordinate all of the state's collection activities through a centralized collection process, possibly run through the Franchise Tax Board.

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<sup>1</sup> Under existing Commission procedures, entities that have been fined by the Commission may appeal the fines via an application for rehearing, or in the case of a citation, via an appeal request.

## Fines, Fees, Restitutions - CHART A

### Document Information

Company - Fund 0001	Document	Doc Date	Fine	Investigative Costs	Total Due State	Restitution	Total	Written Off	Collected	Balance	Status	Comments
Accutel Communications	00207034-00	7/17/2002	\$1,500,000.00		\$1,500,000.00		\$1,500,000.00			\$1,500,000.00	Bankrupt	Filed Bankruptcy. Bankruptcy discharged
Ace of Base (MTR-188990)	00108035-00	8/21/2001	\$40,000.00		\$40,000.00		\$40,000.00			\$40,000.00		Resent Letters, unable to locate
ACT Communications	D0004012-01	6/24/1999			\$0.00	\$200,000.00	\$200,000.00			\$200,000.00	No longer in business	
Almata, Inc. LA (Case HHG1027)	FC-00055-00	10/17/2006	\$4,000.00		\$4,000.00		\$4,000.00			\$4,000.00	Dissolved	All Letters Returned
Bell Moving Co., Inc/MTR189251	FC-00036-00	5/26/2006	\$2,500.00		\$2,500.00		\$2,500.00		\$1,000.00	\$1,500.00	SUSPENDED - 00	All Letters Returned
Best Movers	D0205028-01	5/1/2002	\$11,500.00		\$11,500.00		\$11,500.00			\$11,500.00		All Letters Returned
Bill & Gloria Dennis/TCP-12910	D0310079-00	10/30/2003	\$10,200.00		\$10,200.00		\$10,200.00			\$10,200.00		All Letters Returned
Clasey Limo Service/TCP-18584	FC-00048-00	9/17/2006	\$1,250.00		\$1,250.00		\$1,250.00			\$1,250.00		All Letters Returned
Coral Communications, Inc.	D0104035-00	4/19/2001	\$5,100,000.00		\$5,100,000.00	\$4,600,000.00	\$9,700,000.00			\$9,700,000.00	No longer in business	All Letters Returned
Escape Limo Bus, Inc/TCP-15975	FC-00120-00	10/15/2007	\$1,000.00		\$1,000.00		\$1,000.00			\$1,000.00		All Letters Returned
Future Electric Network	D9906055-00	6/10/1999	\$2,600,000.00		\$2,600,000.00		\$2,600,000.00			\$2,600,000.00	FORFEITED/SUSPENDED - 96-97	All Letters Returned
Future Telephone Communications	D9906001-00	6/3/1999	\$500,000.00		\$500,000.00	\$500,000.00	\$1,000,000.00			\$1,000,000.00		Resent Letters, unable to locate
Globe Van Lines of CA/T189207	D0508033-00	8/25/2005	\$50,000.00		\$50,000.00		\$50,000.00	\$50,000.00		\$0.00	CH.13 BANKRUPTCY	WRITTEN OFF 7/11/2011
Gold Coach Limousine/TCP-15499	FC-00041-00	6/14/2006	\$5,000.00		\$5,000.00		\$5,000.00			\$5,000.00		All Letters Returned
Hamilton Salls/T180146-HHG1395	FC-00102-00	4/28/2007	\$1,000.00		\$1,000.00		\$1,000.00			\$1,000.00		CONTACTED - NO VM, resent letters
Lucky Moving Company/T189546	D0507037-00	7/8/2004	\$4,500.00		\$4,500.00		\$4,500.00			\$4,500.00		COURT ORDER established
Metro Express Inc./TCP-20947Z	FC-00105-00	5/10/2007	\$2,000.00		\$2,000.00		\$2,000.00			\$2,000.00	DISSOLVED - 86	Resent Letters
Michael Kevin Martin/TCP-11704	FC-00017-00	9/21/2005	\$1,000.00		\$1,000.00		\$1,000.00			\$1,000.00		Resent Letters
Miko Communications	D0502001-00	2/22/2005	\$45,350.00		\$45,350.00		\$45,350.00			\$45,350.00	No longer in business	Resent Letters
Mon Van Moving/Premier Van Lin	D0006013-01	4/1/2003			\$0.00	\$15,799.00	\$15,799.00			\$15,799.00		All Letters Returned
New Century Telecom	D0604048-00	4/27/2006	\$55,000.00		\$55,000.00		\$55,000.00			\$55,000.00		All Letters Returned
Pacific Coast Moving/T189607	D0505004-00	5/5/2005	\$40,000.00		\$40,000.00	\$8,712.00	\$48,712.00			\$48,712.00		Resent Letters
Roberto Rojas/Preferred Limo	FC-00008-00	8/25/2005	\$500.00		\$500.00		\$500.00	\$500.00		\$0.00	VCGB approved	WRITTEN OFF 12/6/2010
Ronan Perez/Ford Moving-189632	D0504008-00	4/1/2005	\$30,000.00		\$30,000.00	\$5,000.00	\$35,000.00	\$30,000.00		\$5,000.00	CH. 7 BANKRUPTCY	WRITTEN OFF 11/29/12
Telmatch Communications	D0208077-00	6/27/2002	\$1,740,000.00		\$1,740,000.00	\$5,500,000.00	\$7,240,000.00			\$7,240,000.00	Forfeited 97	All Letters Returned
Titan Telecommunications	D0301079-00	1/30/2003	\$35,000.00		\$35,000.00		\$35,000.00			\$35,000.00		Suspended 01/01/99. No longer in business
USP&C	D0104036-00	4/19/2001	\$1,750,000.00		\$1,750,000.00		\$1,750,000.00			\$1,750,000.00		All Letters Returned
Vince's Moving Serv. T-189879	FC-00069-00	12/21/2006	\$3,000.00		\$3,000.00		\$3,000.00			\$3,000.00		All Letters Returned
Vista Group International, Inc.	D0208074-00	8/22/2002	\$7,000,000.00		\$7,000,000.00	\$215,469.00	\$7,215,469.00			\$7,215,469.00		All Letters Returned
<b>Total Fund 0001-General Fund</b>			<b>\$20,532,800.00</b>	<b>\$0.00</b>	<b>\$20,532,800.00</b>	<b>\$11,044,980.00</b>	<b>\$31,577,780.00</b>	<b>\$80,500.00</b>		<b>\$1,090.00</b>		<b>\$31,496,280.00</b>

\*Fines are deposited in General Fund and restitutions are returned to consumer

\* \$1,000 collected per Bell Moving file

## Investigative Costs- CHART B

### Document Information

Company - Fund 0412 (HHG)	Document	Doc Date	Fine	Investigative Costs	Total Due State	Restitution	Total	Written Off	Collected	Balance	Status	Comments
Globe Van Lines of CA/T189207	D0508033-01	8/25/2005		\$13,292.50	\$13,292.50	\$61,591.00	\$74,883.50	\$13,292.50		\$61,591.00	CH.13 BANKRUPTCY	Written-Off 7/11/2011
Lucky Moving Company/T189546	D0507037-0	7/1/2005		\$9,500.00	\$9,500.00		\$9,500.00			\$9,500.00		Court Order established
Pacific Coast Moving/T189607	D0505004-00	5/5/2005		\$6,932.00	\$6,932.00		\$6,932.00			\$6,932.00		Resent Letters
<b>Total Fund 0412-HHG</b>				<b>\$0.00</b>	<b>\$29,724.50</b>	<b>\$28,724.50</b>	<b>\$61,591.00</b>	<b>\$91,315.50</b>	<b>\$13,292.50</b>	<b>\$0.00</b>		<b>\$91,315.50</b>

Company - Fund 0461 (PUCTRA)	Document	Doc Date	Fine	Investigative Costs	Total Due State	Restitution	Total	Written Off	Collected	Balance	Status	Comments
Bill & Gloria Dennis/TCP-12910	D0310079-03	10/1/2003		\$8,633.00	\$8,633.00		\$8,633.00			\$8,633.00		

**Grand Total**      **\$20,532,800.00**      **\$38,357.50**      **\$20,571,157.50**      **\$11,106,571.00**      **\$31,677,728.50**      **\$93,792.50**      **\$1,000.00**      **\$31,596,228.50**

\* Investigative costs are returned to program Funding source and restitutions are returned to consumer