

DEAF AND DISABLED TELECOMMUNICATIONS PROGRAM

Insufficient Monitoring of Surcharge Revenues Combined With Imprudent Use of Public Funds Leave Less Money Available for Program Services

REPORT NUMBER 2001-123, JULY 2002

California Public Utilities Commission's and Deaf and Disabled Telecommunications Program's responses as of August 2003

Audit Highlights . . .

Our review of the Deaf and Disabled Telecommunications Program (DDTP) concludes that:

- Neither the DDTP nor the California Public Utilities Commission (CPUC) is fulfilling its responsibilities to ensure that telephone companies (carriers) are remitting required surcharges, possibly resulting in hundreds of thousands of dollars going uncollected.*
 - Only about 32 percent of certified carriers remitted surcharge payments over the last two years.*
 - Some of the DDTP's expenditures are for unreasonable or unnecessary items.*
 - The salaries of select DDTP employees average 24 percent higher than those of comparable state positions.*
 - Most DDTP contracts we reviewed comply with the Public Contract Code and contain adequate standards for contractors to adhere to.*
-

The Joint Legislative Audit Committee requested that we conduct an audit of the Deaf and Disabled Telecommunications Program (DDTP) and California Public Utilities Commission's (CPUC) accounting controls to determine whether they are sufficient to ensure the proper accounting of program revenues and expenditures. We were also asked to assess the DDTP's procedures for ensuring that its contracting practices comply with Public Contract Code and its methods for ensuring that the scope of its contracted work is sufficient, meets the needs of its customers, and is cost effective.

We determined that neither the DDTP nor the CPUC is fulfilling its responsibilities to ensure that telephone companies (carriers) are collecting and remitting required surcharges on intrastate telecommunications charges, possibly resulting in hundreds of thousands of dollars going uncollected. Moreover, the DDTP does not always further its mission when expending public funds, potentially leaving less money available for program services.

Finding #1: Neither the DDTP nor the CPUC maintain a reliable record of carriers that are providing services subject to the surcharge.

Although the DDTP and the CPUC share responsibility for ensuring that all mandated surcharges are remitted to the Deaf Equipment Acquisition Fund (DEAF) Trust, neither entity has a firm grasp on which carriers should be collecting and remitting these surcharges. As of April 2002, the CPUC's list of active carriers—or those currently certified to operate and/or provide telecommunications services in California—totaled 1,483. At least 68 percent of the carriers on the CPUC's active list did not remit surcharge revenue for 2000 or 2001. However,

the CPUC is not sure how many or which of these carriers are actively providing the intrastate services that are subject to the surcharge. Consequently, the CPUC could provide no definitive reason for why these carriers did not remit during the past two years. Some options include (1) they do not provide services subject to the surcharge, (2) they stopped operating before January 2000 or did not begin operating until after December 2001, (3) they do not collect the surcharge from their customers, or (4) they simply do not remit the surcharges they collect. No one knows for sure what the reason is. In any event, it is likely that some, if not many, of these carriers should be submitting surcharge revenue.

We recommended that the DDTP work with the CPUC to develop and maintain a reliable record of carriers that are providing services subject to the surcharge. We also recommended that the CPUC should require that all active carriers that do not submit surcharge revenues certify that they in fact do not provide services subject to the surcharge.

DDTP and CPUC Action: Partial corrective action taken.

As of January 1, 2003, CPUC staff assumed responsibility for developing and maintaining a reliable record of carriers providing services and monitoring the payment history of these carriers. The CPUC secured a programming vendor to develop a Telecommunications Carrier Surcharge Database, which encompasses all functions of carrier activity, including carrier reporting and carrier remittance monitoring. The database reviews bank deposits to ensure carriers' monthly reporting of their billings that are subject to surcharges as well as to determine the correct payment of surcharges by the carriers. Further, the CPUC stated it has improved its own Telecommunications Division Carrier Database, which currently has 1,758 licensed telecommunications carriers. The CPUC flagged 368 carriers as having invalid mailing addresses and will investigate these carriers for compliance with CPUC orders. The CPUC did not specifically comment on our recommendation that it should require all carriers that do not submit surcharge revenues certify that they in fact do not provide services subject to the surcharge.

Finding #2: The DDTP does not adequately review or record the payments it receives.

The DDTP is responsible for reviewing incoming transmittal forms, which detail remittances, and for maintaining an accurate record of payments so it can recognize which carriers have not remitted as frequently as required. Although the DDTP receives transmittal forms, it does little more than a cursory spot check of these forms before filing them away. In addition to not reviewing these forms adequately, the DDTP does not maintain an accurate record of payments or a payment history of carriers. As a result, it has been remiss in identifying both small and large carriers that have missed payments, potentially resulting in hundreds of thousands of dollars of uncollected funds. For example, the DDTP did not recognize that one large carrier missed submitting a payment for June 2000. As of April 2002, the carrier still had not submitted the payment, which—if similar to subsequent payments—should have been approximately \$200,000. Also, because the DDTP does not maintain accurate records based on the transmittal records it receives, it is unable to investigate potential discrepancies between the information recorded on the transmittal form and that in the DEAF Trust statements provided by the Bank of America, leaving potential errors unspotted.

We recommended that the DDTP track the payment history of each carrier and monitor these records to identify delinquent carriers. Also, beginning on July 1, 2003, the CPUC will ultimately be responsible for ensuring that it collects all surcharges. Thus, the CPUC will also have to monitor payment history records to ensure that carriers are remitting surcharges as required.

CPUC Action: Corrective action taken.

In order to effectively monitor surcharges remitted by carriers, the CPUC secured a programming vendor to develop a Telecommunications Carrier Surcharge Database. As described in corrective action for Finding 1, this database is to assist in carrier reporting and carrier remittance monitoring. The database reviews bank deposits to ensure carriers' monthly reporting of their billings that are subject to surcharges as well as determines the correct payment of surcharges by the carriers.

Finding #3: The DDTP does not identify late payments or report them to the CPUC.

The DDTP is to send out past-due notices to carriers when they have failed to remit as required and contact the CPUC concerning all delinquent surcharges. However, the DDTP does not carry out any of these procedures. Although the CPUC has ultimate enforcement power, the DDTP neither tracks which carriers are late in submitting payments nor confirms that the carriers are remitting the appropriate late-payment penalty. As a result, large amounts of revenue in the form of late-payment penalties go uncollected, and the DDTP has missed out on thousands of dollars of revenue that could be used to provide services to the deaf and disabled communities. For example, one large carrier failed to submit surcharge remittances for September and October 2001. When it finally did so on April 2, 2002—142 and 111 days late, respectively—the carrier did not submit any late-payment penalties, which should have been almost \$31,000.

We recommended that the DDTP regularly notify delinquent carriers and the CPUC of all past-due amounts. We also recommended to the CPUC that it enforce late-payment penalties.

CPUC Action: Partial corrective action taken.

The CPUC stated that it continues to endorse the enforcement of late penalties and carrier certification of nonservice. Over the past year, the CPUC developed a checklist of requirements, which are placed on each carrier and imposed by the CPUC in the carrier's grant of authority. These requirements cover, among others, whether the carrier is subject to surcharge and whether it must file a written acceptance letter. According to the CPUC, having this information allows it to evaluate its expectations against carrier performance and to take actions to revoke the authority of nonperforming carriers. After reviewing the requirements of each carrier, the CPUC relayed this information to the Administrative Law Judge Division, and communicated the compliance requirements to all carriers, allowing for carrier follow-up. Nonresponsive carriers were listed in a 30-day notice period in the CPUC's daily calendar to alert them to the potential for the CPUC to revoke their authority.

In the first eight months of 2003, 16 licensed carriers contacted the CPUC on their own volition to ask the CPUC to take back the authority it had granted to the carrier to do business in California. In addition, the CPUC revoked another 135 licenses. To do so, the CPUC identifies carriers that are nonperforming according to the requirements mentioned above. After a due process, the CPUC typically revokes the authority of these carriers. In most of these cases, these carriers are no longer in business and simply do not respond to official communications, telephone calls, etc.

Lastly, we mentioned earlier that the CPUC secured a programming vendor to develop a Telecommunications Carrier Surcharge Database. The vendor will also develop a program that will monitor the database for carriers that have not reported Total Intrastate Billings Subject to Surcharge for a particular month. The program will also monitor for underpayment of surcharges by carriers. A letter will be sent to the carrier to resolve each outstanding problem.

Finding #4: The CPUC could improve its oversight of the DDTP and the program.

The CPUC, despite being the governing body over the program and the DDTP, does not always demonstrate consistent oversight over the carriers or the revenue collection functions performed by the DDTP. For example, the CPUC does not ensure that carriers are following its instructions regarding the collection and remittance of surcharge revenues. Specifically, we found that carriers did not consistently apply the surcharges to the different types of intrastate service charges. In addition, carriers apply different methods when reporting and paying late-payment penalties. This may be occurring because the guidance provided by the CPUC is not detailed enough. As a result, there is a great deal of inconsistency and inefficiency in the surcharge process.

Also, the CPUC is beginning to conduct remittance review audits of various carrier practices and procedures for some of its universal service programs, but it does not do so for the DDTP. Although the DDTP claims it does unofficial “spot reviews” of transmittal forms to ensure accuracy, these reviews pale in comparison to a highly detailed remittance audit. No such formal review has taken place since 1997. Unchecked carrier practices and procedures create the potential for errors that would hamper the DDTP’s ability to carry out its mission.

We recommended that the CPUC rewrite its transmittal form instructions in explicit detail, ensuring consistency among carriers. In addition, the CPUC should conduct periodic remittance audits of DDTP surcharge revenues.

CPUC Action: Partial corrective action taken.

The CPUC stated that it engages consultants and in-house staff to conduct audits of its public programs, including financial audits of the DDTP program and audits of carriers' compliance with required surcharges. The CPUC recently utilized the hiring freeze exemption process to hire two Financial Examiners to work on some of these audits. Audit fieldwork by the Financial Examiners has been completed for four small local exchange carriers, and audit results are being reviewed and reports are being prepared. A contract with the Department of Finance (DOF) to perform audits on some larger carriers beginning early this fiscal year was approved in July 2003. The DOF will focus on a mid-sized local exchange carrier, a large inter-exchange carrier, and a large wireless carrier. The CPUC did not comment on rewriting its transmittal form instructions in more explicit detail.

Finding #5: The DDTP does not always further the program's mission when expending public funds.

The DDTP sometimes spends public funds on items that are unrelated to program services or that do not further the program's mission. Specifically, the DDTP has spent excessive amounts on food for training sessions, committee meetings, and other events. In addition, many program employees have DDTP credit cards, sometimes charging imprudent expenditures such as gifts and meals. Also, the DDTP has in the past reimbursed employees for expenses typically not permitted in public service, such as moving expenses and temporary rent payments. As a result, less money is available for the individuals it serves. However, the DDTP has initiated corrective action by adopting new policies on allowable expenditures.

To ensure the prudent use of public funds in furtherance of the program's mission, we recommended that the DDTP adhere to its newly revised internal control procedures that define allowable expenses.

DDTP Action: Corrective action taken.

Assembly Bill 1734, signed into law on June 20, 2002, authorized the CPUC to enter into contract(s) for the provision of the DDTP services. In July 2003, the Department of General Services (DGS) approved a contract between the CPUC and the California Communications Access Foundation (CCAF) to provide the personnel to operate the DDTP. As a result, the DDTP no longer exists in its previous form; rather the CCAF provides services previously provided the DDTP. The DDTP implemented a new policy specifically defining allowable and nonallowable expenses.

Finding #6: The DDTP has not always reported taxable fringe benefits and needs additional controls to prevent personal use of vehicles.

Previously, the DDTP failed to report to the proper taxation authorities taxable fringe benefits received by some of its employees. These benefits include paid parking and what appears to be personal use of leased vehicles. When we informed DDTP management of this, it began to initiate corrective action, including reporting parking benefits as additional income to the employee. However, the DDTP can strengthen its internal controls to prevent or record and report employees' personal use of leased vehicles.

Thus, we recommended that the DDTP develop additional procedures to prevent personal use of DDTP-leased vehicles. For example, the DDTP should label all its vehicles and require employees to maintain daily log records of miles driven. When personal use occurs, the DDTP should report it as a taxable fringe benefit to the proper taxation authorities. We also recommended that the DDTP follow its new procedures to report parking fringe benefits as taxable income on employees' W-2 forms.

DDTP Action: Corrective action taken.

As stated earlier, the DDTP no longer exists in its previous form; rather the CCAF provides services previously provided the DDTP. The DDTP's payroll service reported to the employee and the proper taxation authorities the taxable amount of any parking benefits per IRS rules. Also, the DDTP developed and implemented mileage logs, employees had

begun to log miles driven and locations visited on a daily basis, and supervisors verified the mileage driven. Finally, the DDTP also ordered decals for its leased vehicles, which state, "For Official Use Only," along with the DDTP logo.

Finding #7: Some DDTP contracts lack adequate benchmarks or standards to measure contractor performance.

Some of the contracts that we tested lacked specific performance standards for contractors as well as provisions for monetary penalties for nonperformance. The fact that the DDTP has expressed some dissatisfaction with some of the services provided exacerbates this problem. Had the DDTP established appropriate service levels, performance measures, and provisions to collect for noncompliance in the original contract, the vendors might have performed at acceptable levels or the DDTP might have collected penalties for their failure to do so.

We recommended that the DDTP ensure that all future contracts have established performance standards as well as provisions to collect damages from nonperforming contractors. Also, the program's administration will undergo some changes over the next year, including the CPUC potentially contracting out for many of the services the DDTP currently provides. Whether the CPUC contracts out for all or some of the day-to-day provision of program services, it should include specific provisions in its contracts that require contractors to comply with state laws, regulations, and policies related to reimbursable expenses. In addition, it should include specific performance standards in its contracts and monitor whether the contractors are meeting those standards. Finally, the CPUC should include provisions in its contracts that will allow it to collect damages from nonperforming contractors.

DDTP and CPUC Action: Partial corrective action taken.

Assembly Bill 1734, signed into law on June 20, 2002, authorized the CPUC to enter into contract(s) for the provision of the DDTP services. The CPUC reported that it conducted a competitive bidding process to contract for the personnel to operate the DDTP. The CPUC reported that its competitive bidding process and subsequent contract adhered to all required state contracting rules including requirements related to reimbursable expenses. According to

the CPUC, its contract with the CCAF includes performance measures to be met by CCAF and penalties for noncompliance. The CPUC also stated that it holds all contracts providing services or goods for the DDTP. Program contracts that existed prior to July 1, 2003, have been or are currently being transitioned to state contracts. The transition of these contracts includes submission for review and approval by DGS. The CPUC said that all future program contracts will also be submitted for DGS review and approval.

