Thomas P. DiNapoli
COMPTROLLER

OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

DIVISION OF STATE POLICE

CROWN COMMUNICATIONS, NEW YORK (CONTRACT X00761)

Report 2007-R-8

AUDIT OBJECTIVES

Our audit objectives were to determine whether Crown Communications, New York (Crown) remitted the appropriate share of contract revenues to New York State, and whether Crown developed and marketed State-owned communication structures to enhance contract revenues.

AUDIT RESULTS - SUMMARY

In November 1997, the Division of State Police (DSP), on behalf of New York State (State), entered into a 20-year contract with Crown to manage and maintain New York State-owned communication structures (structures) (e.g., towers, roof tops, signage, etc.) for the purpose of licensing them to private carriers and generating revenues. Revenues generated from such licenses are shared between Crown and the State. The contract calls for Crown to rehabilitate existing structures and/or build new structures, as appropriate, and to market these structures to private carriers (carriers). Crown is also responsible for executing licensing agreements (agreements) with interested carriers.

A DSP representative serves as the project manager (PM) for this contract. The PM is responsible for overseeing Crown's compliance with contract terms, including the proper remittance of State revenues. As of February 27, 2008, Crown was managing 66 structures on behalf of eight participating State agencies.

Crown is required to remit to DSP a fixed percentage of the gross monthly rental revenue received from each carrier agreement. In turn, DSP distributes the revenues collected to participating agencies based on their respective structures and associated agreements.

Based on our audit testing, we determined that Crown accurately calculated and remitted the appropriate share of contract revenue to DSP in accordance with contract terms, and that DSP distributed the correct amounts to participating agencies. In addition, we conclude that Crown was in material compliance with its structure developing and marketing responsibilities pursuant to contract. However, we found that the database used by DSP to track remittances from Crown based on its carrier agreements was not reliable in all aspects and contained numerous errors. For example, DSP had not regularly updated the database amounts to reflect base-rent escalations and other base-rent adjustments, nor were all Crown/State revenue sharing percentages input correctly.

Our audit report contains one recommendation addressing the accuracy and maintenance of DSP's revenue-tracking database. In response to our draft report, DSP officials agreed to implement our recommendation.

This report, dated January 16, 2009, is available on our website at: http://www.osc.state.ny.us.
Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The State of New York (State) has hundreds, if not thousands, of communication structures (towers, roof tops, signage, etc.) located on various State grounds and facilities throughout the State. Many of these structures provide wireless communication services for various State agencies. In November 1997, the State entered into a 20-

year contract with Crown Communications, New York (Crown) to maximize utilization of its structures. The State's primary goals for entering into this contract were: (1) to assure that the communication needs of State agencies, departments and authorities are met while simultaneously providing private sector communications carriers (carriers) access to the State's vast communication network; and (2) to generate revenue for the State. Upon expiration of the current contract, the State and Crown have the option to extend the contract four additional times, each in five year increments.

According to the contract, Crown is responsible for maintaining the condition of existing State-owned structures, rehabilitating those in need of repair, and constructing new structures as needed. In addition, Crown is to market the structure locations with the goal of entering into licensing agreements (agreements) with private carriers (carriers) for revenue generating antennae space (sites). All State agencies and NYS-based public authorities may participate in the contract.

As of December 31, 2007, eight State agencies were participating in the contract: Department of Corrections (Corrections), Department of Transportation (Transportation), Office of General Services (General Services), Office of Mental Health (Mental Health), Office of Mental Retardation and Developmental Disabilities (Mental Retardation), Office of Parks, Recreation and Historical Preservation (Parks & Recreation), State Police (DSP) and the State University of New York (SUNY). Each of the eight can have anywhere from one to multiple agreements with carriers depending on the number of antennae sites (sites) attached to their respective structures - as each site warrants a separate agreement. As of December 31, 2007, 66 locations with a total of 183 revenue producing sites were managed by Crown under this contract. During our audit period, the State's share of contract revenues totaled $4.1 million. Five private carriers (AT&T, IWO, NEXTEL, Omnipoint, and Verizon) generated 77 percent of these revenues.

Once funds are remitted to DSP, they are then distributed to participating agencies based on the number of sites attached to their respective structures and the terms of each agreement.

In addition to its revenue-generating agreements, Crown executed 13 non-revenue generating agreements with DSP and other agencies for public safety purposes.

Contract Revenues Received by Participating Agencies

	2006	2007	TOTAL
Transportation	$522,724	$602,009	$1,124,733
Parks & Recreation	295,756	337,926	633,682
Mental Health	303,279	322,260	625,539
General Services	301,272	306,261	607,533
Corrections	219,765	227,129	446,894
State Police	160,925	165,691	326,616
SUNY	120,782	128,608	249,390
Mental Retardation	41,288	47,140	88,428
Total	$1,965,791	$2,137,024	$4,102,815

AUDIT FINDINGS AND RECOMMENDATION

Contract Revenue

Each month Crown is required to collect and remit to DSP a fixed percentage of the gross rental revenue collected pursuant to each agreement. The percentage of revenue due the State for each agreement is based on whether the associated structure pre-existed the agreement and was in useable condition as is, or whether Crown needed to renovate an existing structure or construct a new one. If the structure pre-existed the contract, the State receives 50 percent of the agreement revenues for the various sites affixed thereto. If Crown had to renovate or build a new structure, the State receives 30 percent of the revenues for the first 10 years of the associated agreements, and 50 percent of the revenues thereafter. This revenue sharing arrangement allows Crown to recapture its capital costs since ownership of the structure(s) remain with the State upon contract termination. Each carrier agreement sets forth the payment terms for each site including the base rent, escalation rates (if applicable), and the frequency of carrier remittances (i.e., monthly, quarterly, annually) to Crown.

To determine whether Crown received the proper payments from carriers, and in turn was remitting the appropriate share of contract revenues to DSP, we selected a sample of 50 agreements in effect during calendar years 2006 and 2007. The sampled agreements produced an aggregate of $521,741 in State revenue for 2006, and $573,986 for 2007. For each of the 50 agreements, we determined the payments that were to be made to Crown by each sampled carrier during the review period, and calculated the State's share thereof based on agreement particulars. Our calculations included escalation clauses and other payment adjustments as appropriate.

Based on our calculations and copies of the checks remitted to DSP by Crown, we determined that the correct amount of licensing revenue was received by DSP for each of the 50 sampled agreements. For example, pursuant to one agreement, the carrier was to pay Crown $4,000 per month per its antenna site on a preexisting roof top. As such, the State's share of the monthly revenue derived from this agreement is $2,000 (50 percent). Pursuant to another agreement, where a communications structure (tower) had to be erected by Crown, the carrier was remitting $2,652 per month to Crown which in turn was remitting $796 per month (30 percent) to DSP.

Distributions to Participating Agencies

Along with each remittance to DSP, Crown sends a remittance "advice" which details the amount of revenue it received for each site. DSP uses this information to determine the appropriate amount for distribution to each participating agency. DSP distributes agency shares as follows:

- Funds for Mental Health and Mental Retardation are sent to the Dormitory Authority of the State of New York (DASNY), pursuant to the Facilities Development Corporation Act. DASNY in turn deposits the appropriate amounts into Mental Health and Mental Retardation agency accounts. For the two year period ending December 31, 2007, total revenues remitted to DASNY by DSP approximated $714,000.
- Funds for the remaining six agencies are transferred to them electronically by DSP via journal transfers through the State's Central Accounting System. For the two year period ending December 31, 2007, total revenues remitted in this manner approximated $3.4 million.

To determine whether DSP distributed the correct amounts to participating agencies, we traced a sample of the remittances received by DSP (for six judgmentally selected months within our two year scope period - totaling

$990,895) to DSP's cancelled checks, journal transfers, and deposit slips to agency accounts as appropriate, as well as to the State Comptroller's Cash Receipts Reconciliation Report. We found that DSP distributed the appropriate amounts to each agency.

Data Reliability

Crown uses a Master Payment File to track the payments due from carriers each month. Crown forwards a copy of the file to the DSP along with the State's monthly share of agreement revenues. The Master Payment File keeps track of any and all adjustments to agreement revenues (e.g., new agreements, expired agreements, changes in base rent, etc.). DSP maintains its own tracking file of monthly payments received from Crown. In reviewing both databases, we found that DSP's tracking file, although accurately reporting revenues received from Crown, contained numerous errors in agreement-related data. For example, for the 50 sampled agreements:

- The base rents were listed incorrectly for 5 sites;
- The agreement commencement dates were incorrect for 13 sites;
- The escalation rates were incorrect for 11 sites; and
- The State's revenue percentage was incorrect for 15 sites;

When discussing these deficiencies with DSP officials, we were informed that they do not use their own tracking file to monitor contract revenues. Instead they rely on the information they receive from Crown. Further, at the time of our fieldwork, DSP did not have written policies and procedures regarding the reconciliation and tracking of Crown revenues.

Although, as noted above, our detailed testing found that Crown has been accurately keeping track of contract revenues and making the appropriate payments to DSP, DSP officials are not in a position to independently know this based on its own tracking file. It is imperative for DSP to enhance its tracking system to independently account for such revenues to ensure continued contractor compliance, as well as to detect any potential underreported revenues.

Developing and Marketing Sites

According to contract terms, Crown is required to develop and market the State's communication structures to carriers. Developing structures includes performing all necessary environmental assessments, preparing and submitting license applications for their intended use, as well as the actual construction and/or rehabilitation of the physical structures. Crown's marketing responsibilities include identifying, investigating, and contacting potential users to negotiate agreements that would maximize revenues.

According to Crown's 2007 Annual Report, Crown uses "public and proprietary databases to develop targeted marketing programs focused on carrier network build-outs, modifications, site additions and network services. Information about carriers' existing locations of antenna space, leases, marketing strategies, capital spending plans, deployment status, and actual wireless carrier signal strength measurements taken in the field is analyzed to match specific towers in our portfolios with potential new site demand."

We found that Crown has complied with its required developing and marketing responsibilities by exploring areas for new sites, rehabilitating existing structures, and reaching out to carriers to discuss potential agreements. In fact, according to available records, we determined that the State's share of contract revenues increased from $40,000 in 1999, to $2.1 million for the year ended December 31, 2007 as result of Crown's efforts.

Recommendation

1. Develop and implement written policies and procedures to ensure DSP's tracking file is accurate and up to date.

   (In response to our draft report, DSP officials informed us that they have already developed the recommended policies and procedures. They further stated that they plan on regularly updating DSP's database commencing January 2009.)

AUDIT SCOPE AND METHODOLOGY

We audited Contract X00761 between the DSP and Crown to determine whether the State received its appropriate share of revenue from carrier agreements, and whether Crown complied with its communication structures developing and marketing responsibilities. Our audit covered the period January 1, 2006 through May 22, 2008.

To accomplish our objectives, we reviewed the contract and associated documents, and met with officials from DSP, Crown and the eight participating State agencies receiving contract revenues. We also met with officials from DASNY and OSC's Bureaus of Contracts and Accounting Operations.

To determine whether the State received its correct share of contract revenues, we reviewed a sample of Crown's carrier agreements, Crown's contract-related revenue records and DSP's database which tracks contract revenues due and received. We traced revenues receivable from selected carrier agreements and traced them to information showing revenue actually received by DSP. We also calculated the State's share based on the selected agreements and traced the associated remittances to DSP and the participating agencies.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits.

AUTHORITY

Our audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

REPORTING REQUIREMENTS

A draft of copy of this report was provided to DSP and Crown officials for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Superintendent of the State Police shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and if the recommendation was not implemented, the reason(s) why.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Frank Patone, Ed Durocher, Theresa Nellis-Matson, Mark Radley and Sue Gold.

HARRY J. CORBITT
SUPERINTENDENT

NEW YORK STATE POLICE
BUILDING 22
1220 WASHINGTON AVENUE
ALBANY, NEW YORK 12226-2252

December 22, 2008

Mr. Frank Patone, CPA
Audit Director
Division of State Government Accountability
Office of the State Comptroller
123 William Street – 21st Floor
New York, New York 10038

Dear Mr. Patone:

We have received your Draft Audit (Report 2007-R-8) of Contract X00761 – Crown Communications New York, Inc. (Crown). We have reviewed your finding that we develop and implement written policies to ensure that our tracking file is accurate and up to date.

We have formalized our policies and trained appropriate staff. With the beginning of the 2009 calendar year, in accordance with the terms of each license, as licenses reach the anniversary of the commencement date or are renewed or amended, the database will be updated to ensure that the tracking file correctly reflect the revenues due. This tracking file will then be used to monitor revenues received from Crown each month.

If you have any questions or require any additional information, feel free to contact me at 457-6622.

Sincerely,

William J. Callahan
State Police Administrative Director