

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 11, 2018

Mr. Joseph J. Lhota
Chairman
Metropolitan Transportation Authority
2 Broadway
New York, NY 10004

Re: Efforts to Collect Tolls and Fees Using
License Plate Images and Law Firms
Report 2017-S-70

Dear Mr. Lhota:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we audited the Metropolitan Transportation Authority – Triborough Bridge and Tunnel Authority's efforts to collect unpaid tolls and fees using outside law firms and to minimize unbillable toll transactions. The audit covered the period January 1, 2013 to August 20, 2017.

Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation chartered by the New York State Legislature. The Triborough Bridge and Tunnel Authority (TBTA), also known as MTA Bridges and Tunnels, is an MTA agency that operates seven toll bridges and two tunnels that interconnect parts of New York City. Created in 1933, TBTA serves more than 310 million vehicles per year and carries more traffic than any other bridge or tunnel authority in the nation. Toll revenues from TBTA help subsidize MTA's transit and commuter rail services. TBTA's total operating revenue for 2016 was approximately \$1.9 billion. According to New York Codes, Rules and Regulations, Title 21, Section 1023.7, "No vehicle shall cross the bridges and tunnels without payment of the toll prescribed by the Triborough Bridge and Tunnel Authority at the regularly established places for collection of such tolls."

In November 2012, TBTA implemented the All Electronic Tolling (AET) system at the Henry Hudson Bridge (HHB) as an efficient way to collect tolls, provide seamless travel for drivers, and benefit the environment. While the toll booths remained, there were no Bridge and Tunnel Officers for toll collection or other services. Under AET, as the driver drove through channelized gates and lanes, the E-ZPass would be read and images would be taken of the front and rear of the vehicle (to capture the license plates). E-ZPass is an electronic toll collection system that allows

customers to either prepay their tolls or automatically have tolls charged to a checking account at the end of the day. As of November 2016, the HHB moved to the Open Road Tolling (ORT) system; the toll booths and gates were removed and a gantry system was installed, meaning drivers no longer needed to slow down.

Open Road Tolling Gantry



In both systems, tolls are collected through E-ZPass and Tolls by Mail. (All vehicles traveling through a crossing without an E-ZPass transponder will be sent a toll bill for facility usage.) To do this, TBTA contracted with three vendors for the AET and ORT processes. Vendor A was responsible for capturing all transactions (E-ZPass and license plate images) during the period January 2011 to November 2016. Vendor B (ORT) took over these activities in November 2016. Vendor C operates the E-ZPass New York Customer Service Center (NYCSC) and performs tag distribution, account maintenance, payment processing, call and walk-in center operations, and violations processing. For Tolls by Mail, the license plate images are used to retrieve the motorist's registration information in order to mail the bill. ORT was extended to the other eight TBTA crossings throughout 2017.

TBTA defines "leakage" or "rejected images" as transactions that cannot be collected. Examples include license plate images that are not captured or are illegible, vehicles that have E-ZPass tags that are not detected (and the plates cannot be associated with a valid E-ZPass account), and legible license plate images for which TBTA does not have an agreement with the out-of-state Department of Motor Vehicles (DMV) to get the registered owner's address for billing purposes.

As of November 2016, the ORT in-lane toll collection system captures up to six images per vehicle (two front and four rear); however, the NYCSC accepts only two (one front and one rear). Vendor B's system selects the "best" front and rear images and sends them to the NYCSC system electronically, where they are reviewed to identify the license plate and state associated

with the vehicle. If either of these cannot be identified, the image is “rejected.” NYCSC labels rejected images with 1 of 14 different codes from three different categories: Maintenance, Non-Maintenance, and Not-Defined. The Maintenance category includes system hardware issues that can be fixed by TBTA or its system contractor. TBTA attributes the Non-Maintenance (mismatched plates or weather conditions) and Not-Defined (temporary license plates or malicious obstruction) as customer-related issues.

Accounts with uncollected tolls for over 90 days are sent to a collection agency, while those with balances of \$2,300 or more are reassigned to outside counsel. On February 7, 2013, TBTA retained the services of one firm (Firm A) solely to prepare a prototype complaint to pursue action against a persistent violator, and to create a model for future lawsuits. TBTA ended its agreement with Firm A on April 7, 2016. On January 10, 2014, TBTA entered into retainer agreements with two other firms (Firm B and Firm C) to perform legal services on an “as-needed” basis. The agreements state: “The services of counsel shall generally consist of taking legal action against TBTA patrons that demonstrate a lack of responsiveness to efforts to collect unpaid tolls and E-ZPass violation administrative fees and other amounts due.”

Results of Audit

For the period January 1, 2013 to August 20, 2017, we found that TBTA did not maximize toll collection because license plate images could not always be processed, resulting in potential lost revenue of \$2.4 million. The number of unbilled toll transactions increased exponentially during 2017 as ORT expanded to all TBTA facilities and will likely increase in the future as ORT is now systemwide. Additionally, TBTA’s contracted law firms were not effective in collecting outstanding receivables from persistent toll violators.

Leakage

Image Issues

TBTA’s Tolling Operations unit reviews transactions from NYCSC’s “Image Review Rejects” reports to determine if there are any improperly rejected images. TBTA provided us with details of the unbilled toll transactions from rejected images, which totaled 340,851 from January 1, 2013 through August 20, 2017. These included transactions for the HHB for that entire period as well as six of TBTA’s other crossings for 2017 as they switched to ORT. We estimated that \$2.4 million was lost due to these transactions (calculated at the car rate), as follows:

Unbilled Toll Transactions and Estimated Revenues 2013–2017

Year	2013*	2014*	2015*	2016*	Jan. 1 – Aug. 20, 2017	Total
No. unbilled toll transactions	24,800	30,514	38,670	47,240	199,627	340,851
Value at car toll rate	\$124,000	\$152,570	\$212,685	\$259,820	\$1,649,714	\$2,398,789

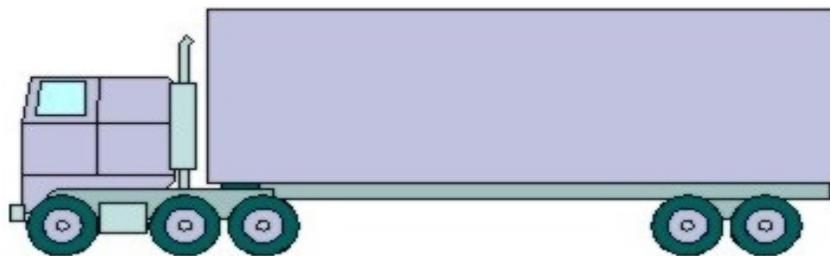
*Only for HHB, which is only for passenger cars.

As indicated in the table, the number of unbilled toll transactions increased exponentially as ORT expanded to all TBTA facilities, and will likely continue to increase as ORT is now available systemwide. Furthermore, as the HHB is a passenger vehicle-only facility, lost revenue would be substantially higher if we factored in the higher tolls from commercial vehicles that are allowed on other TBTA crossings. Our calculation represents a conservative estimate of leakage as it assumes all unbilled transactions were cars. The toll for a five-axle tractor trailer is 5.4 times that of a car.

In 2017, TBTA analyzed three of NYCSC's Image Review Rejects reports for the period May 2, 2017 through May 4, 2017. From this analysis, Tolling Operations compiled a report, dated July 6, 2017, which showed better images were available in 89 of 962 cases. This report was not shared outside of the Tolling Operations unit.

In light of this report, we reviewed a judgmental sample of 61 images (40 images from a list of 2,082 transactions on an Image Review Rejects report dated August 23, 2017 and 21 from a population of 199,627 rejected images from the period of January 1, 2017 through August 20, 2017). We determined:

- Four images were incorrectly rejected. In their response to our preliminary findings, TBTA officials disagreed with two:
 - One image, they noted, was "covered by a plastic shield intended to obstruct the ability to capture an image of the license plate." However, we re-examined the image and could clearly read the license plate.
 - The second image was a tractor trailer combination, which TBTA indicated was rejected because the license plate of the power unit (tractor) could not be viewed (which is part of its policy). According to the TBTA, it cannot bill the owner of the trailer under business rules. An unbilled five-axle tractor trailer combination's toll at any of the Bronx-Queens crossings represents a loss of \$46 (cash toll), versus \$8.50 for a car. As this represents a significant potential loss of revenue, TBTA needs to take additional steps to reduce the occurrence of such unbilled trucks.



Tractor Trailer Combination
Toll must be charged to power unit.

We believe that TBTA can improve its ability to collect tolls if it uses all available information. For example, TBTA could require entities in its Fleet Program to register their trailers so that they can be charged if the power unit cannot be identified. For tractor trailers that are not part of the Fleet Program, TBTA could collect information on unbilled trailers and analyze the information for any usage patterns. These results

could then be used to identify and contact the trailer owner and request information about the owner of the tractor.

- We reviewed an additional judgmental sample of 25 license plate images (from a population of 1,811) that were categorized as “Malicious Obstruction” during 2016. We found four images were actually legible for billing and were not obstructed as NYCSC had categorized. While TBTA disagreed with three, we questioned why TBTA has not done more to address maliciously obstructed plates. TBTA officials advised us that when a uniformed member of service observes a license plate visibility and/or integrity violation and can safely execute a vehicle stop, a summons is issued to the operator for a violation of the New York State Vehicle and Traffic Law, which is returnable to the Traffic Violations Bureau.
- Seven transactions had better images on file with Tolling Operations, and therefore could have been billed. However, NYCSC currently does not request other images to review.

We questioned why all six images of vehicles are not sent to NYCSC. TBTA officials stated that they do not have the bandwidth to transfer the data. They added that, as of November 2017, some of the cables have been upgraded in an effort to resolve the bandwidth issue. However, TBTA officials said that they will continue to send only the two best images to NYCSC, and intend to implement Optical Character Recognition software to improve the quality of images selected for transmission. However, if the bandwidth is now available, it is unclear why the additional images cannot be sent.

- Twenty-three transactions were categorized incorrectly. For example, an image of a bridge worker was coded as “Corrupt.” TBTA officials agreed with 16, but felt that 7 were rejected with the correct category, explaining that reviewers can exercise judgment as to the category. While a certain amount of judgment is reasonable, there should be consistency in categorizing rejected images to better identify systemic problems.

Temporary Plates

During the audit, TBTA stated that it was unable to bill a vehicle that has temporary plates, except for those issued by New Jersey or Maryland, which provide NYCSC with the information required to bill such plates. However, we found that even when a temporary plate can be read, TBTA has not made every attempt to retrieve the address and bill the owner of the vehicle. We reviewed a judgmental sample of 25 rejected images (from a population of 11,332) categorized as “temporary plates” and found that 6 were actually legible, including one from Maryland. According to TBTA officials, the Maryland plate could have been billed, but was not, due to an error. We requested documentation of TBTA’s and its vendor’s efforts to obtain billing information from the other states, including inquiries into whether the DMVs have a temporary license plate database or house the information in another format. TBTA provided emails dated September and October 2017 (after our inquiry) showing communication between Vendor C and two DMVs (Connecticut and Florida), which stated this information is not available. In reading the email from Connecticut, it appeared that the information is available, but is not included in the database used for routine registration inquiries.

Additionally, in response to our preliminary findings, contrary to what we were told during the audit, TBTA indicated that New Jersey and Maryland temporary plates could not be billed because the method of obtaining the information could only be used for E-ZPass violations, not toll bills. TBTA relies on Vendor C to retrieve license plate registration information, and not all states make temporary plate registration information available. However, we question the limited efforts by TBTA and its vendor to work with other states to obtain registration information for temporary plates. On the websites for Virginia's and Pennsylvania's DMVs, we found that they have temporary license plate databases. At TBTA officials' request, we shared this information and they advised us that they will follow up. TBTA needs to improve its efforts to reduce "leakage" due to temporary plates, with a focus on adjoining states and those along the East Coast.

Maintenance-Related Issues

We found that when NYCSC reported that images were rejected due to maintenance issues, neither Tolling Operations nor Vendors A and B could provide documentation (such as work orders) to support that the maintenance issues were resolved. We reviewed a judgmental sample of 15 (out of a total population of 8,724) maintenance-related images that were rejected during the period January 1, 2016 to December 31, 2016. However, no work orders were available for the items in our sample. Additionally, Tolling Operations did not have documentation that they regularly reviewed NYCSC reports, and could demonstrate only one instance where they reviewed a report. TBTA officials stated that reliance on the NYCSC Image Review Rejects reports is not a feasible method for determining lane maintenance issues. They argued that the current process, which includes real-time review of traffic and images, is a more timely and accurate way to determine if toll equipment maintenance is required. However, using NYCSC reports is a good check to ensure that outstanding maintenance issues are addressed and is a vital part of system maintenance and improvement. It provides increased assurance that issues are not being overlooked. Moreover, documenting such reviews helps ensure that issues have been appropriately addressed.

Law Department Oversight of Toll and Fee Collection

Use of Outside Counsel

TBTA engaged the services of three outside law firms to collect outstanding tolls and administrative violation fees from persistent toll violators. As of May 2, 2017, there were 241 cases with a total demand amount of \$5.5 million assigned to two firms (Firms B and C). Of that amount, \$1.9 million was settled for \$653,390, and only \$181,890 of that had been collected. There were 11 cases closed, 15 paid in full, and 215 that had either partial or no payments made. TBTA paid these two law firms \$69,027. The other firm (Firm A) had one case with a total settlement amount of \$438,215, of which only \$53,182 had been collected. TBTA stopped sending cases to Firm B on May 5, 2016, citing the firm's lack of responsiveness to its directions. All new cases have since been referred to Firm C.

TBTA granted the law firms the ability to negotiate on its behalf with the expectation of collecting 100 percent of the tolls due and a portion of administrative violation fees owed.

However, the law firms were not provided written guidance for discounting the administrative fees; all settlements had to be approved by TBTA's Law Department. In one example, a violator who owed \$77,089 in tolls and administrative fees settled for \$20,000, of which TBTA has received \$1,200 as of January 30, 2017.

Transition to In-House Counsel

During a meeting on October 27, 2016, TBTA officials informed us of their disappointment with the outside law firms, citing that they had been doing a significant portion of the legal work that should have been done by outside counsel, and that they were bringing the effort in house. In February 2016, TBTA hired a per diem attorney with a specialized background in legal collection. In September 2016, TBTA prepared a worksheet justifying its need for two additional Assistant General Counsels. The three new positions (two Assistant General Counsels and one Legal Specialist) in the Law Department were posted with a resume submission date of May 12, 2017. The salaries for these positions totaled approximately \$320,000 (excluding about 50 percent in fringe benefits). We requested a cost-benefit analysis for bringing the legal collection efforts in house, but were told that it was unnecessary.

In response to our preliminary findings, the Law Department maintained its position on bringing the work in house, stating that it could not rely on the firms to appropriately process its cases from inception through trial/appeal, and that it was not cost-effective to use public funds to pay attorneys for work that is primarily clerical and administrative. It further stated that the individuals hired would not only be responsible for handling civil lawsuits against toll violators, but would provide legal advice and representation in connection with wide-ranging, toll-related matters.

While we note that the cost of, and returns from, using the outside law firms was low, TBTA's justification did not describe how bringing the effort in house would be cost-effective or increase the amount collected. As of March 6, 2018, TBTA still has not brought this work in house or hired staff for the three positions. At the closing conference, TBTA insisted its professional staff had provided much of the expertise they expected the outside firms to provide, and did not believe it was prudent to continue doing the work while paying the outside firms to just file and process the cases. We were advised that the cost for the firms was a contingency fee (25 percent of the amounts collected + fees). For Firm C, this was \$89,715 [(\$129,766 x .25) + \$57,273] as of April 24, 2017. TBTA continued to refer cases to Firm C while attempting to create new positions for additional in-house attorneys.

Billing and Payments

We requested the documentation of the oversight efforts used to track the cases referred to the outside law firms. TBTA stated that its oversight efforts are conducted by telephone and email. The email efforts were not provided due to client confidentiality; however, TBTA stated that the firms submit periodic status reports by email. However, we have no assurance that TBTA's oversight of its outside counsels' case tracking was accurate.

Per their retainer agreements, the outside law firms are not required to submit supporting documentation for expense reimbursement, but should retain it for a period of three years after case completion. We found that expenses were submitted with little or no supporting documentation. TBTA responded that Firm C provides copies of invoices, and that this documentation is reviewed. It further stated that process services represented 73 percent of the expenses.

Additional Efforts to Collect Judgment

The Statewide Offset Program (SWOP) is a legal means to collect a judgment by imposing a lien against future State income tax refunds. TBTA's sister agency, New York City Transit (Transit), uses SWOP to collect fines from rules of conduct violations. Transit also uses the New York City Sheriff and the New York City Marshal (Marshal) as part of its collection efforts. On June 1, 2017, TBTA informed us that it sent an application to use SWOP to the Department of Taxation and Finance on May 23, 2017. Once a response is received, TBTA can set up the electronic records interface. In addition, TBTA officials stated that their outside counsel will be reaching out to the Marshal for assistance in enforcing civil judgments.

TBTA stated that unlike Transit, who can enforce final decisions and orders of its adjudication board as if they were money judgments without court proceedings, TBTA must obtain a judgment from the court to use SWOP. At our closing conference on March 6, 2018, we were informed that TBTA had still not been approved to use SWOP.

Recommendations

1. Improve NYSCC access to the complete image files to decrease leakage.
2. Periodically review and monitor the rejected image review process to ensure staff is accurately categorizing the rejected images.
3. Require entities in TBTA's Fleet Program to register their trailers so that they can be charged if the registration information from the power unit cannot be identified.
4. Collect and analyze the information for any usage patterns of unbillable tractor trailers that are not part of a Fleet Program. Use these results to identify and contact the trailer owner and to request information about the owner of the tractor.
5. Require that the vendor take action (and document such actions) to obtain temporary license plate registration information from out-of-state DMVs.
6. Document the review of reports sent by NYSCC to show what, if anything, was done to correct identified maintenance issues.
7. Document the business practice changes as a result of transitioning from outside to in-house counsel, prepare cost-benefit analysis, and establish a completion date for the transition. Perform periodic audits of the outside counsels' invoices as outlined in the retainer agreements.

8. Follow up on additional efforts to ensure enforcement of judgment to enable the agency's plan of actions to collect judgments to be completed.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether TBTA has taken action to collect unpaid tolls and fees using outside law firms and to minimize unbillable toll transactions. The audit covered the period January 1, 2013 to August 20, 2017.

To accomplish our objectives and evaluate the relevant internal controls, we reviewed TBTA's related policies, procedures, and guidelines as well as applicable regulations and laws. We interviewed officials and employees of TBTA, DMV, and a third-party contractor to evaluate the controls over the unbillable toll transactions and the Law Department's oversight of toll and fee collection.

We conducted our performance 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 of program performance.

Reporting Requirements

A draft copy of this report was provided to MTA officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it.

MTA officials agreed with most of our recommendations and to their credit, the TBTA has already taken action to implement some of them. MTA officials did not agree with our description of the growth in the number of unpaid tolls after the implementation of Open Road Tolling at all of TBTA's nine facilities between January 2017 and September 30, 2017. Our responses to certain MTA-TBTA comments are included in the State Comptroller's Comments.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Metropolitan Transportation Authority 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 recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Major contributors to this report were Robert C. Mehrhoff, Erica Zawrotniak, Anthony Belgrave, Brenda Maynard, and Svitlana Morokhovych.

We wish to thank the management and staff of the Metropolitan Transportation Authority – Triborough Bridge and Tunnel Authority for the courtesy and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado
Audit Director

cc: M. Fucilli, MTA Auditor General
D. Jurgens, MTA Audit Director
NYS Division of the Budget

Agency Comments

2 Broadway
New York, NY 10004
212 878-7000 Tel

Joseph J. Lhota
Chairman



Metropolitan Transportation Authority

State of New York

June 19, 2018

Ms. Carmen Maldonado
Audit Director
The Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: Draft Report #2017-S-70 (Bridges & Tunnels: Efforts to Collect Tolls and Fees Using License Plate Images and Law Firms)

Dear Ms. Maldonado:

This is in reply to your letter requesting a response to the above-referenced draft report.

I have attached for your information the comments of Cedrick Fulton, President, MTA Bridges & Tunnels, which address this report.

Sincerely,

A handwritten signature in black ink that reads "Joseph J. Lhota".

Joseph J. Lhota

c: Veronique Hakim, MTA Managing Director
Michael J. Fucilli, Auditor General, MTA Audit Services

Attachments

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

2 Broadway
New York, NY 10004
646 252-7000 Tel

Cedrick T. Fulton
President



June 15, 2018

Mr. Joseph Lhota
Chairman
Metropolitan Transportation Authority
2 Broadway, 20th Floor
New York, NY 10004

Re: New York Office of the State Comptroller
Draft Audit Report #2017-S-70

Dear Mr. Lhota:

The Triborough Bridge and Tunnel Authority (TBTA), an affiliate of the Metropolitan Transportation Authority (MTA), reviewed the New York State Comptroller's draft audit report, *"Efforts to Collect Tolls and Fees Using License Plate Images and Law Firms"* (#2017-S-70). TBTA has the following comments to the draft audit findings and recommendations.

As more fully described below, TBTA continues its efforts to maximize revenue recovery through the collection of tolls and violation fees using license plate images and outside collection counsel.

General Comments

TBTA takes exception to several statements in the audit report. First, the statement that the number of unbilled toll transactions increased "exponentially" during 2017 is a misstatement. "Exponential" implies that the number of unbilled toll transactions increased from approximately 47,000 transactions in 2016 to millions of transactions in 2017, which is certainly not the case. Despite the rollout of Cashless Tolling to all TBTA facilities in 2017, the image reject rate as a percentage of all Cashless Tolling transactions remained under 0.3% for both 2016 and 2017.

Second, the statement that the rejected image process has resulted in potential lost revenue of \$2.4 million from 2013 through August 2017 is misleading. This statement suggests that TBTA could have collected the total value of all rejected images, which is not correct. Rejected images classified in categories such as "No Plate Available" or "Obstruction" represent images where the toll is not recoverable and is considered a reject category outside of TBTA's control.

* Comment 1

*See State Comptroller's Comments, Page 18.

Rejected images and leakage are inherent in the process for any Cashless Tolling environment. It is reasonable and makes practical business sense to assume a certain amount of revenue risk to enhance customer service safety, while improving the environment. The revenue risk is mitigated by other measures, such as registration suspension programs enforced by TBTA officers and the New York State Police, out-of-state Department of Motor Vehicles (DMV) reciprocity agreements (which have only recently been authorized by the state legislature), exclusion orders for out-of-state vehicles, collection efforts and civil actions.

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Specific Responses to Draft Report regarding Leakage

Image Issues

All images reviewed by the New York Customer Service Center (NYCSC) image review staff go through a double-blind review process. Every image is reviewed by an initial reviewer and then by a second reviewer who is “blind” to the results of the first review. If the results match, then the transaction follows the path to transaction posting or rejection. If there is a discrepancy between the two results, a supervisory determination is performed. Image reviewers are also instructed not to “guess” the state or plate number. If there is a lack of certainty with respect to the license plate image, image reviewers must reject the image.

TBTA continues to respectfully disagree with the audit finding that 4 of 61 sampled images were incorrectly rejected. Our re-review showed that 2 of these 4 images were correctly rejected – one was rejected due to a plastic shield obscuring the plate and one trailer plate was correctly rejected. TBTA also disagrees with the audit finding that 4 of 25 sampled images were incorrectly rejected images for “malicious obstruction.” Our re-review showed that 2 of these 4 images showed intentional alteration of the characters of the plate (confirmed through NY DMV) and 1 of the 4 images was rejected correctly, but the rejection reason should have been due to a temporary Florida license plate.

With regard to tractor-trailer license plates, due to the number of leased trailers, the license plate of the power unit (tractor) has been used for determining the vehicle registrant, not the trailer plate. To improve our collection rate for commercial vehicles, TBTA will begin working with our partner agencies in the NYCSC to explore adding company-owned trailers to the large fleet accounts. In the NYCSC, many of the trucking fleet accounts are New York State Thruway Authority accounts due to the Thruway’s commercial postpaid discount program. Trailer plates would be keyed only in the event the power unit plate is not available. However, there are also large truck fleets that are administered by other E-ZPass agencies outside of the NYCSC, which we do not control.

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As discussed with the auditors, the communication lines between TBTA and Conduent (NYCSC) had to be upgraded to a larger capacity to handle the transmission of additional

images (2 per transaction) to the NYCSC after the implementation of Cashless Tolling at all TBTA facilities. The primary circuit between Randall's Island and Conduent was upgraded on November 16, 2017, while the secondary, back-up circuit between the Verrazano-Narrows Bridge and Conduent is in the process of being upgraded. TBTA will begin using Transcore's OCR software to identify the two best images for a given transaction to send to the NYCSC for image review. If the use of OCR for this determination proves successful, there will not be a need to send the six images captured per transaction to the NYCSC for review.

TBTA has implemented a "hotlist" of selected, recurring license plates which are rejected due to "no hits" from various state DMVs. When these plates are identified at TBTA toll facilities through license plate readers and intercepted by law enforcement, the vehicle owner/driver may be summonsed and/or the license plates may be removed from the vehicle and the vehicle may be towed.

Temporary Plates

The acquisition of registrant information for temporary license plates varies by state. During the course of the audit, TBTA advised the OSC auditors that the only states where temporary plate registrant information was currently being obtained was from New Jersey and Maryland. For New Jersey, the registrant information is obtained directly from New Jersey MVC and can be used for both Toll Billing and E-ZPass violations. For Maryland, the registrant information is obtained through NLETS and can be used only for E-ZPass violations, not Toll Billing. For Connecticut and Florida, registrant information is not, and has never been, available for temporary plates.

The auditor's finding that 6 of 25 sampled images rejected as "temporary plate" were legible images is irrelevant if the state does not provide access to their temporary plate database. Of the 6 plates cited, registrant information would only have been available for one temporary plate from Virginia. TBTA has asked the NYCSC contractor to contact Virginia, Pennsylvania, and other states where access to temporary plate databases may be permitted in order to obtain registrant information.

Maintenance Related Issues

TBTA continues to maintain that it is erroneous to assume that all rejected images warrant the creation of a work order. As we previously noted, image issues related to transient and anomalous hardware and software occurrences (e.g. isolated late firing of an in-lane sensor) do not necessitate the creation of a work order because, in such cases, there is no corrective action required. However, we do acknowledge the importance of accurate work order tracking when system failures do in fact occur. The existing ORT system contains a work order tracking system for such occurrences. An integral part of the tolling group's daily audit process includes the review of work orders completed by the tolling

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contractor. TBTA's tolling group is currently working with its new ORT contractor, who is presently standing up the ORT maintenance operation, to improve this aspect of their performance.

Specific Responses to Draft Report regarding Outside Collection Counsel

While TBTA acknowledges OSC's draft findings regarding the collection of unpaid tolls and violation fees by outside counsel, it is important to recognize that counsel's efforts are constrained by applicable law, including bankruptcy laws that prevent TBTA from recovering the remaining \$385,033 owed by the scofflaw which paid \$53,192 to settle a lawsuit brought by Firm A.

Outside counsel negotiates settlement agreements consistent with the Law Department's policy requiring payment of all unpaid tolls and a portion of the violation fees, usually from 10% to 20%, and allowing payment plans. As to the cited scofflaw who owed TBTA \$77,000, the settlement agreement required payment over time of all \$7,152 in unpaid tolls and \$12,848 in unpaid violation fees, representing about 18% of the unpaid fees. To date, the scofflaw has paid TBTA \$6,280 under the payment plan.

TBTA continues to work toward bringing civil litigation in-house under the direction of the new Executive Assistant General Counsel who will be joining the Law Department on June 21, 2018. He will also be responsible for supervising the Legal Specialist (who began work on August 3, 2017) and the two Assistant General Counsels for Tolls¹ (who began work on September 28, 2017) in all aspects of their toll work,² including civil litigation.

Firm C has also begun enforcing judgments by identifying defendants' employers and preparing income executions for execution by the Marshal.

The Law Department did perform a qualitative assessment of the costs of retaining Firm C to perform the aforementioned work and concluded that it would be more cost effective to perform such work in house.

RECOMMENDATIONS AND RESPONSES

1. Improve NYCSC access to the complete image files to decrease leakage.

¹ The Law Department has begun the process of replacing the Assistant General Counsels for Tolls who retired May 30, 2018 and resigned effective June 15, 2018.

² The attorneys also handle toll policy issues including toll increases, rebates and discounts, open road Cashless Tolling, one-way tolling and compliance with the State Administrative Procedure Act (SAPA), State Environmental Quality Review Act (SEQRA) and privacy issues, as well as toll-related procurement matters including contract drafting, solicitation, award, administration and claims.

*
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Response: TBTA disagrees with this recommendation. TBTA will assess the quality of images selected for transmission to the NYCSC after the implementation of OCR software by Transcore. If the highest quality and viewable images are selected for transmission, all images will not need to be transmitted to the NYCSC.

2. *Periodically review and monitor the rejected image review process to ensure staff is accurately categorizing the rejected images.*

Response: TBTA agrees with this recommendation. We will continue to monitor the results of the monthly Performance Standard review for images correctly rejected to ensure that Conduent consistently meets the performance requirement of 98% correctly rejected out of 500 sampled and that Conduent reinforces with their staff the use of the correct image reject codes.

3. *Require entities in TBTA's Fleet Program to register their trailers so that they can be charged if the registration information from the power unit cannot be identified.*

Response: TBTA agrees with this recommendation. We will work with our partner agencies to encourage fleet owners to register company-owned trailer plates on their NYCSC E-ZPass accounts.

4. *Collect and analyze the information for any usage patterns of unbillable tractor trailers that are not part of Fleet Program. Use these results to identify and contact the trailer owner and to request information on the owner of the tractor.*

Response: TBTA agrees with this recommendation. We will work with the NYCSC contractor and our partner agencies to develop an automated solution for the billing and transfer of responsibility from the lessor to the lessee for trailer plates.

5. *Require that the vendor take action (and document such actions) to obtain temporary license plate registration information from out-of-state DMVs.*

Response: TBTA agrees with this recommendation. We will direct the NYCSC vendor to obtain temporary license plate registration information from every state DMV which permits access to their temporary plate database, either through direct DMV interfaces or through third-party vendors.

6. *Document the review of reports sent by NYCSC to show what, if anything, was done to correct identified maintenance issues.*

Response: TBTA disagrees with this recommendation. TBTA continues to believe that use of the NYCSC Rejected Image Report is not the ideal way to identify

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maintenance related issues in our toll lanes due to the inherent lag in the image review and reporting process. Real time access to video and images from the Transcore system provide more timely indication of lane maintenance issues which need to be addressed. TBTA, however, will periodically include the review of such reports in our sweep and audit processes.

7. *Document the business practice changes as a result of transitioning from outside to in-house counsel, prepare cost-benefit analysis, and establish a completion date for the transition. Perform periodic audit of the outside counsels' invoices as outlined in the retainer agreements.*

Response: TBTA agrees with this recommendation. The Law Department will document changes in our business practices as a result of bringing civil collection litigation in-house and has already performed a qualitative cost-benefit analysis of the transition and will also make its best efforts to effect this transition in the first quarter of 2019, provided it receives the support it needs from the MTA's IT Department among others.

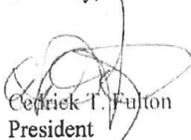
The Law Department is currently auditing contingency fees and invoiced expenses such as those for service of process and asset searches.

8. *Follow up on additional efforts to ensure enforcement of judgment to enable the agency's plan of actions to collect judgments to be completed.*

Response: TBTA agrees with this recommendation and will continue efforts to coordinate with the New York State Department of Taxation and Finance so that TBTA can participate in the State-Wide Offset Program.

Thank you for the opportunity to respond to this audit. Please do not hesitate to contact us if you have any questions.

Sincerely,



Cedrick T. Fulton
President

cc: Michael J. Fucilli, MTA Audit
M. Margaret Terry, TBTA
Mildred Chua, TBTA
Patrick Parisi, TBTA

State Comptroller's Comments

1. The dictionary defines exponentially as “increasing more and more rapidly.” In 2015, there were approximately 38,000 unbilled tolls; in 2016, there were approximately 47,000; and in 2017, there were approximately 200,000. Thus, we believe our characterization is accurate. Moreover, the audit does not imply that all tolls can be collected; rather, it states that there are opportunities for TBTA to decrease leakage and points out that leakage results in millions of dollars of losses each year. To the agency’s credit, it has adopted most of our recommendations.
2. While we agree that the loss of revenue may be inherent in the process for any Cashless Tolling environment, as we identified in the report, there are opportunities to decrease leakage.
3. We are pleased TBTA is starting to work with its partner agencies in the NYCSC to explore adding company-owned trailers to large fleet accounts. However, we recommend that TBTA also reach out to the other members of the E-ZPass Consortium.
4. The email dated October 31, 2017 stated that temporary and dealer plates are not available in the database for queries “at this time.” However, during the audit, TBTA had one of its vendors contact Connecticut. We believe that TBTA should continue efforts to obtain needed information from neighboring states, such as Connecticut.
5. Our point in identifying that 6 of 25 temporary plates were legible was that TBTA may be able to collect such tolls if they made an effort. During the audit scope period, they were not making such an effort. We are therefore pleased that TBTA states in its response that it now intends to contact other states in order to see if it can obtain data regarding such plates.
6. TBTA’s response misstates our report. We do not say or imply that all rejected images warrant the creation of a work order. Our report states that there was no documentation to support that any review was done.
7. Although TBTA states it performed a “qualitative assessment” that led to the conclusion to bring the work in house, despite our repeated requests, it did not provide documentation for any analysis/assessment. Moreover, based on the low collection rate to date, TBTA should establish a time frame to evaluate the effectiveness of the in-house program.