



Metropolitan Transportation Authority

State of New York

RECEIVED
EXECUTIVE CORRESPONDENCE

OCT 18 2018

OFFICE OF THE STATE COMPTROLLER
THOMAS P. DINAPOLI
COMPTROLLER

October 5, 2018

Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Honorable Thomas P. DiNapoli
Office of the State Comptroller
59 Maiden Lane, 31st Floor
New York, NY 10038

RE: Response to Report #2017-S-70 – MTA Bridges & Tunnels: Efforts to Collect Tolls and Fees Using License Plate Images and Law Firms

Gentlemen:

On July 11, 2018, the Office of the State Comptroller issued the above referenced audit report. As required by Section 170 of the Executive Law, I am providing you with the attached response which addresses the recommendations contained in the report.

A copy of the final audit report is attached for your convenience.

Sincerely,

Joseph J. Lhota

c: Helene Fromm, MTA Chief of Staff
Michael J. Fucilli, Auditor General, MTA Audit Services

Attachment

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



October 4, 2018

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

Re: New York Office of the State Comptroller
90-Day Response to 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 audit report, *"Efforts to Collect Tolls and Fees Using License Plate Images and Law Firms"* (#2017-S-70). Following are TBTA's comments to the 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.

TBTA is also identifying the steps being taken to address selected OSC audit report recommendations within 90 days, as required by Section 170 of the Executive Law.

Specific Responses Regarding Leakage

TBTA continues to take exception to several statements in the audit report. 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 and 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 DMV reciprocity agreements, exclusion orders for out-of-state vehicles, collection efforts and civil actions. 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.

TBTA still maintains that the statement regarding 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 incorrect. 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.

TBTA also maintains that it is erroneous to assume that all rejected images warrant the creation of a work order. Image issues related to transient and anomalous hardware and software occurrences do not necessitate the creation of work order because there is no correction action required.

To enhance our collection efforts, 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.

TBTA is also working with the NYCSC vendor to gain access to temporary license plate databases in various states. We have recently gained access to these databases in Virginia and Delaware and will continue to seek access from other state DMV and third-party providers:

In addition, TBTA, NYS DMV, and Massachusetts DOT have been working towards an executed reciprocity agreement for the placement of registration holds on toll scofflaws. This effort will further enhance our toll collections with a neighboring state. As more states introduce Cashless Tolling, we anticipate the signing of more reciprocity agreements.

Specific Responses Regarding Outside Collection Counsel

With regard to 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.

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 \$7,285 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 joined the Law Department on June 21, 2018. He is also responsible for supervising the Legal Specialist (who began work on August 3, 2017) and he will be responsible for supervising two Assistant General Counsels

for Tolls¹ in all aspects of their toll work,² including civil litigation.

The Law Department reiterates that it already performed 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.

Finally, as set forth below, TBTA has already implemented, or is in the process of implementing, measures to decrease leakage and to increase civil toll enforcement.

RECOMMENDATIONS AND RESPONSES

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

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 our lane integrator, which is currently in development and scheduled for deployment in the Fourth Quarter of 2018. If the highest quality and viewable images are selected for transmission, all images will not need to be transmitted to the NYCSC. TBTA will assess the performance of this OCR solution after implementation.

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 are continuing to monitor the results of the monthly Performance Standard review results 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.*

¹ The Law Department has begun the process of replacing the Assistant General Counsels for Tolls who both began work on September 28, 2017 and, thereafter, one retired on May 30, 2018 and the other 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.

Response: TBTA agrees with this recommendation. We are working 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 a Fleet Program. Use these results to identify and contact the trailer owner and to request information about the owner of the tractor.*

Response: TBTA agrees with this recommendation. In conjunction with our partner agencies, we have submitted a change order to the NYCSC contractor to review trailer license plates when tractor/power unit license plates are not viewable or not available. If a trailer license plate exists on a NYCSC or other E-ZPass agency customer account, we will post the toll to the customer's account. If the trailer license plate is not found, we will request the name and address of the registered owner of the trailer from the applicable state DMV and bill the owner for the toll through the Tolls by Mail program. This change is scheduled to be deployed in the Fourth Quarter of 2018.

In addition to our efforts, BestPass, a fleet management company, has launched a Pay-by-Plate toll solution for the owners of leased and rented trailers. Trailer plate accounts will be opened with the Massachusetts DOT E-ZPass service center and will be maintained by BestPass. This initiative will increase the number of trailer plate tolls that TBTA can submit for posting and will reduce the number of Toll Bills and violation notices generated by TBTA.

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. TBTA has directed 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. Since the audit was conducted, TBTA has obtained access to the Virginia and Delaware temporary license plate databases.

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 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 lane integrator system provide more timely indication of lane maintenance issues which need to be addressed. TBTA, however, continues to 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 audits of the outside counsels' invoices as outlined in the retainer agreements.*

Response: TBTA agrees with this recommendation except for the preparation of a cost-benefit analysis, which has already been addressed above, and the performance of periodic audits of outside counsel's contingency fees and invoiced expenses, such as those for service of process and asset searches, which has been, and continues to be, performed by the Law Department. The Law Department does not expect to have the Assistant General Counsels for Tolls positions filled and on staff until the Second Quarter of 2019. As a result, we expect to bring civil toll enforcement in-house, from outside counsel, in the Third Quarter of 2019. The business practice changes that result from this transition will be documented.

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

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

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
Pat Parisi, TBTA