



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 26, 2023

Matthew C. Fraser
Chief Technology Officer
New York City Office of Technology and Innovation
15 Metro Tech Center
Brooklyn, NY 11201

Re: LinkNYC Program Revenues and
Monitoring
Report 2022-F-25

Dear Mr. Fraser:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33, of the General Municipal Law we have followed up on the actions taken by officials of the New York City Office of Technology and Innovation to implement the recommendations contained in our audit report, *LinkNYC Program Revenues and Monitoring* (Report [2019-N-5](#)).

Background, Scope, and Objective

The New York City Office of Technology and Innovation (OTI), formerly the Department of Information Technology and Telecommunications (DoITT), is the technology core of New York City government, working with City agencies and entities, delivering technology, evaluating emerging technologies, and procuring citywide IT services, among other IT-related functions. Pursuant to Section 1072(c) of the New York City Charter, OTI administers telecommunication franchise contracts providing fiber, cable television, Wi-Fi hotspots, and mobile telecommunications equipment installed on City streets.

In December 2014, the City entered into a Franchise Agreement (Agreement) with a consortium of technology, media, and connectivity providers (Consortium) to develop and operate a first-of-its-kind communications network, LinkNYC, to bring municipal Wi-Fi to millions of New Yorkers, small businesses, and visitors. The LinkNYC program was intended to replace an aging network of public pay telephones (PPTs or payphones) with state-of-the-art connection points, called "Links," that would offer free, high-speed Internet access as well as free phone service; a touchscreen tablet interface to access City services, including 911 emergency and NYC311 helpline services; free cell phone charging; and digital advertising and public service announcements.

The LinkNYC franchise is regulated by the Agreement between the City and the Consortium, its attachments, appendices, exhibits, and amendments, as well as Chapter 6 of the Rules of the City of New York. Pursuant to the Agreement, each public communications structure (PCS) that provides telephone service is deemed a PPT and is generally subject to the PPT rules with the same force and effect as a PPT.

The Agreement called for the Consortium to build, at no cost to the City, Links structures, of which 7,500 were to be installed and activated throughout the five boroughs over an 8-year period, in accordance with the terms in the Agreement specifying the number to be installed in each borough. Amendment 2 of the Agreement (approved on May 9, 2018) revised the installation requirement to 7,500 structures over a 10-year period, in accordance with an updated borough distribution table. Amendment 3 of the Agreement (approved on June 9, 2021) revised the installation requirement down to 4,000 over a 10-year period and at least 90% of the new structures must be installed in Manhattan above 96th Street and in the Bronx, Brooklyn, Queens, and Staten Island. The Agreement also stipulated specific service requirements for the Consortium:

- The time between installation and activation is not to exceed 45 days.
- Maintain the Link system in good working order, and in clean and attractive condition; free of grime and rust; clean to the touch; and free of debris, rubbish, and graffiti. Toward this end, the Consortium is required to:
 - Perform preventive maintenance and inspect each PCS on at least 2 non-consecutive days each week; and
 - Replace or repair any parts or components that are broken, deteriorated, or damaged within 24 hours to ensure public safety of the structures.

In addition, for compliance monitoring purposes, the Consortium was required to install and maintain a maintenance and monitoring system (MMS) with wide-ranging capability for data collection and reporting, including a NYC311 interface to record and process complaints received, recording of inspection and testing results and repair status, incident recording and reports, and revenue reports by location and structure type.

Per the Agreement, the Consortium was to build Links and also to pay an annual franchise fee. The amount due to the City was based on the revenue the Consortium receives for both new Links installed and activated and existing digital payphones with advertising capabilities. The franchise fee is due to the City in monthly installments and was projected to generate over \$500 million in revenue for the City over the program's first 12 years.

If the Consortium fails to meet its obligations, OTI can enforce compliance through monetary assessments. For example, liquidated damages can be assessed against the Consortium for delays in performance such as failure to install structures within specified time frames under the Agreement. Under the Rules of the City of New York, OTI can also assess penalty fees for operating and maintenance violations (e.g., uncleanliness).

We issued our initial report on July 30, 2021. The audit objectives were to determine whether New York City received all the revenues specified in the contract terms and whether DoITT monitored the contract to ensure that Links (technologically advanced telecommunication structures) were installed and maintained to ensure user privacy and Link availability according to contract terms. The audit covered the period from February 1, 2015 to May 5, 2020.

We found that: OTI did not sufficiently monitor, oversee, and enforce the Consortium's compliance with the Agreement terms, including the collection of almost \$70 million due to the City from the Consortium; the required number of Links were not installed according to the specified distribution schedules and equitably distributed in the five boroughs; Links were not activated by the stipulated time frames; a Gigabit Center was not established in each of the five

boroughs; and liquidated damages were not always assessed and collected for late activation. Our audit identified significant shortfalls, in terms of both revenues to the City and services, that occurred as a result.

The objective of our follow-up was to assess the extent of implementation, as of June 8, 2023, of the 18 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

OTI officials made progress in addressing the issues we identified in the initial report. Of the initial 18 recommendations, seven were implemented, six were partially implemented, and five were not implemented.

Follow-Up Observations

Recommendation 1

Exercise any and all rights necessary to hold the Consortium accountable for non-compliance, as appropriate, including the collection of revenue (\$60.3 million) and interest (\$8.63 million) owed by the Consortium since DoITT forbearance began on September 17, 2018.

Status – Partially Implemented

Agency Action – The City amended the Agreement, stating that it was in the best interest of the City. The amendment removed or lowered significant performance requirements. For example, the collection of interest is no longer required and, as a result, the \$8.63 million of interest owed by the Consortium will not be collected. Additionally, the \$60 million in revenue due will be collected over the rest of the term of the contract.

Recommendation 2

Collect the 2015 revenue underpayment of \$1.68 million.

Status – Not Implemented

Agency Action – OTI maintained its original position that there was no underpayment because one of the conditions that would enable a reduction in revenue payment occurred: specifically, one of the payphone owners did not turn over 1,300 payphones to the Consortium. However, we concluded that OTI did not take sufficient action to ensure compliance with the court order.

Recommendation 3

Establish policies and procedures for reviewing the Consortium's monthly revenue reports, including but not limited to documenting results of month-to-month reviews of revenue and recording advertisements during Link site inspections.

Status – Partially Implemented

Agency Action – OTI established policy and procedures. In addition, we were provided emails from OTI officials to CityBridge on their review of the monthly revenues and on their walk-through of the process. However, based on our review of these documents, we found that, due to the method they are using to recognize revenue, their procedures do not ensure that the amount of revenue is collected correctly.

Recommendation 4

Require the Consortium to install the MMS per contract terms, including functionality to report revenue by location and structure type, as a means of ensuring accurate revenue remittance.

Status – Implemented

Agency Action – MMS was installed, and the audit team observed how issues are tracked through Zendesk and determined the status of Links through SiteTracker. OTI officials advised us there is no system to report revenue by location and structure type because revenues are not based on location or structure but rather on “impressions” – a metric that quantifies, among other things, the number of times a user sees an ad.

Recommendation 5

Perform periodic surveys of a representative sample of Links (at least 500) to determine Link operability, and, per the Agreement, require the Consortium to adopt new or modify existing procedures or take other corrective action to ensure compliance.

Status – Implemented

Agency Action – OTI has been performing periodic surveys of a representative sample of Links to determine Link operability. The audit team received the list of 500 Links reviewed in FY 2022 and observed the list for FY 2023. We sampled 50 of the 500 Links reviewed in FY 2022. All 50 Links inspections were documented as well as their status and the corrective action taken.

Recommendation 6

Use reports generated from key information systems to increase monitoring of the daily health of all Links; refer “unhealthy” Links to the Consortium and follow up to ensure they are restored in a timely manner.

Status – Partially Implemented

Agency Action – The audit team was furnished with system-generated reports that CityBridge provided to OTI to increase visibility into the health of the Link systems. We compared these reports with the results of our review of 30 sampled Links. We found 18 Links were dirty/grimy and nine Links had issues such as keypad installed incorrectly, physical damage, and USB not working. According to OTI, no issues were reported for these Links as of February 22, 2023.

Recommendation 7

For improved monitoring capabilities, request that the Consortium upgrade Zendesk access to allow DoITT staff to see all Consortium-initiated trouble tickets.

Status – Implemented

Agency Action – We were provided with CityBridge’s email response to adding OTI staff to Zendesk, CityBridge’s trouble ticket management system. OTI officials also demonstrated that they as well as other staff had access to Zendesk.

Recommendation 8

Ensure that Link inspections occur within 10 business days of installation and activation.

Status – Not Implemented

Agency Action – OTI officials stated that there is no requirement in the Agreement that newly installed Link kiosks must be inspected within 10 business days and, therefore, they did not implement this recommendation.

Recommendation 9

Actively pursue the plan to replace the outdated PPTIS system [Public Pay Telephone Information System] with a more efficient system, thereby creating better monitoring tools, such as those that track inspection requests.

Status – Implemented

Agency Action – The audit team observed OTI's new monitoring/inspection system, BasicGov, which monitors and tracks site inspections and proposed sites.

Recommendation 10

Ensure the Consortium institutes a preventive maintenance plan, including complying with the required inspection of all PCSs.

Status – Not Implemented

Agency Action – OTI did not provide evidence that the Consortium instituted a preventive maintenance plan. Rather, OTI provided two meeting agendas from December 2021 and January 2022, an email of recurring weekly LinkNYC Status Call meetings starting August 25, 2022, and meeting minutes. However, within this material, there was no evidence that OTI ensured the Consortium had a preventive maintenance plan.

Recommendation 11

Regularly audit the Consortium's compliance with the data security provisions of the Agreement.

Status – Partially Implemented

Agency Action – An audit of CityBridge compliance with the data security provisions was performed. However, no determination has been made regarding future engagements.

Recommendation 12

Execute the installation and activation terms of the Agreement and require the Consortium to follow the respective Build Year installation schedules.

Status – Not Implemented

Agency Action – The Agreement, amended in 2021, lowered the required number of kiosks to 4,000 and revised the building schedule. At the closing conference, OTI officials stated that they received other items in exchange for the substantially lower number of kiosks.

Recommendation 13

Ensure that future Links are installed in the five boroughs.

Status – Implemented

Agency Action – From May 2020 to October 2022, there were 116 Links newly installed and 35 Links planned. We calculated that 92% of the Links installed from May 2020 to October 2022 were above 96th Street in Manhattan and in the outer boroughs. However, there are many areas in the City that still do not have any Links.

Recommendation 14

Require the Consortium to continue its pursuit of acceptable Gigabit Center sites.

Status – Partially Implemented

Agency Action – OTI officials advised us that the five Gigabit Centers are open. We visited two of the Centers; however, we received no documentation that demonstrated the services required to be offered to underserved communities were being provided.

Recommendation 15

Monitor all installation and activation time frames and assess and collect liquidated damages for late activation for past and future installations, as appropriate.

Status – Implemented

Agency Action – We were provided a July 2022 invoice, a revised July 2022 invoice, as well as supporting documents that showed liquidated damage for non-compliance of installation and activation time frames was assessed and evidence of payment by CityBridge.

Recommendation 16

Assess liquidated damages for repairs in accordance with the Agreement from the period after the second Notice of Assessment, October 31, 2018 to date. Send the Consortium monthly Notices of Assessments as indicated in DoITT's June 27, 2018 letter.

Status – Partially Implemented

Agency Action – OTI has assessed liquidated damages for the period September 2018 to July 2022 but provided no indication that a monthly Notice of Assessments was sent. At the closing conference, OTI officials stated they assessed the maximum liquidated damages allowed under the Agreement. However, documents received from OTI show that the maximum was not reached as of October 2022.

Recommendation 17

Ensure the Consortium remits payments for past-due and current liquidated damages.

Status – Implemented

Agency Action – OTI has assessed and collected liquidated damages from September 2018 to July 2022.

Recommendation 18

Work with OATH [Office of Administrative Trials and Hearings] to ensure the Consortium remits the balance due for unpaid violation penalties.

Status – Not Implemented

Agency Action – OTI maintains its position that the collection of any unpaid violation penalties lies with OATH.

Major contributors to this report were Abe Fish and Sean Liao.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the New York City Office of Technology and Innovation for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: S. Sentino, New York City Office of Technology and Innovation
D. Giuliano, Mayor's Office of Operations