

Thomas P. DiNapoli
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 14, 2012

Mr. Howard P. Milstein
Chairman
New York State Thruway Authority
200 Southern Boulevard
Albany, NY 12201

Re: Report 2012-F-2

Dear Mr. Milstein:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article II, Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials of the New York State Thruway Authority (NYSTA), to implement the recommendations contained in our audit report, *Uncollected E-ZPass Tolls and Fees* (Report 2006-S-101).

Background, Scope and Objective

NYSTA first began using E-ZPass in 1993 and completed installation in February 1997. E-ZPass is an electronic toll collection system that is used in more than a dozen states. A motorist may use E-ZPass if a special transponder (tag) is affixed to the front of the vehicle. The tag sends out a signal that identifies the vehicle electronically. The signal is read by special equipment at the toll collection booth, and the toll is automatically charged against the motorist's account. Most NYSTA E-ZPass customers have pre-paid accounts, which are automatically replenished with the customers' credit cards when the accounts go below a set balance. NYSTA also offers post-paid accounts to certain commercial customers.

NYSTA, together with the Metropolitan Transportation Authority Bridges and Tunnels and the Port Authority of New York and New Jersey, operate the E-ZPass New York Customer Service Center. Each of the three Authorities has a separate but similar contract with ACS State and Local Solutions, Inc. (ACS), to operate the New York Customer Service Center.

An E-ZPass toll violation occurs when toll lanes are used by vehicles lacking tags or the tag is not detected at the toll booth. The license plates of the vehicles are photographed by cameras installed at the toll booths so that violators can be identified. ACS then sends a violation notice to the violators for the unpaid tolls and a \$25 administrative fee for each violation. If the violator is an E-ZPass account-holder, ACS charges the violation toll and administrative fee for the violation to a special violation account that is created for the customer. The customer's normal E-ZPass account is not affected. If the violator does not have an E-ZPass account, ACS

uses the photograph of the license plate to identify the vehicles owner through the Department of Motor Vehicles in the state indicated by the license plate. E-ZPass accounts may be suspended or revoked if their owners fail to keep the accounts in good standing.

During the 2011 calendar year, NYSTA collected over \$634 million in toll revenue. However, NYSTA is owed millions of dollars in unpaid tolls and administrative fees. For the two year period ended March 31, 2012, NYSTA has submitted approximately \$18 million in outstanding debt to its collection agency.

The initial audit report, issued on January 27, 2008, examined the actions taken by NYSTA in collecting unpaid E-ZPass tolls and related fees. NYSTA used a standard collection process that was effective in many instances, but could be enhanced by special collection efforts. NYSTA did not have any special collection practices for violators who failed to respond to the standard billing notices, even though these violators owed thousands of dollars in unpaid tolls. NYSTA also did not use a collection agency to pursue unpaid E-ZPass tolls and fees until July 2008. The objective of our follow-up was to assess the extent of implementation as of June 4, 2012 of the 12 recommendations in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that NYSTA officials have made progress in correcting some of the problems we identified. However, additional improvements are needed. Of the 12 prior audit recommendations, three were implemented, four were partially implemented, and five were not implemented.

Follow-up Observations

Recommendation 1

Develop a billing mechanism for adding unpaid violation charges of post-paid commercial customers to monthly payment bills.

Status - Partially Implemented

Agency Action - Current computer program limitations do not allow NYSTA to automatically add violations to the monthly invoices for post-paid commercial customer accounts. However, as staffing resources allow, NYSTA manually reviews post-paid commercial accounts for amounts uncollected. NYSTA sends letters, telephones customers, and manually adds violations to these accounts when appropriate. These accounts, if they remain uncollected, are referred to a collection agency. NYSTA officials stated that they have also initiated a change order to the ACS contract that would automatically post violations to these accounts for NYSTA customers.

Recommendation 2

Develop a special collection strategy for unpaid tolls owed by rental companies.

Status - Implemented

Agency Action - NYSTA developed a strategy for collecting unpaid tolls owed from rental companies. ACS sends a report to third party agencies representing different rental car companies. These agencies determine whether the rental car company or the renter of the vehicle is responsible for the charges. If the rental car company is responsible for the tolls, the third-party agency pays NYSTA. If the renter is responsible, the agencies provide NYSTA with the renter's information so that NYSTA can collect.

Recommendation 3

Perform a formal analysis of the impact of suspending the pre-paid accounts of customers with unpaid violation charges when the unpaid charges are above a certain amount and have not been resolved through the standard collection process. Work with MTA and Port Authority officials to address this collection practice.

Status - Partially Implemented

Agency Action - NYSTA has not performed a formal analysis of this collection practice and does not suspend pre-paid accounts for unpaid tolls and fees. However, NYSTA has a policy for revoking an E-ZPass tag for unpaid tolls and violation fees. In addition, NYSTA has initiated a change to the ACS contract that would allow violations to be posted to a pre-paid customer E-ZPass account. Therefore, if a customer does not bring their account into good standing then the procedures for revocation would begin. The software to support this change was implemented, but not activated. Authority officials said staff has to be trained on its use and customers have to be notified before it is activated. Officials expect this to be done by July 2012.

Recommendation 4

Determine, on a case-by-case basis, whether referral should be made to the Office of the Attorney General for recovery against E-ZPass customers who owe more than \$6,000 in unpaid tolls and fees.

Status - Implemented

Agency Action - NYSTA management indicated they refer all past due accounts to the collection agency under contract. NYSTA uses a collection agency because, unlike the Attorney General, the collection agency can collect the violation fees in addition to the outstanding tolls associated with customer accounts. In order for the Attorney General to collect such fees, the fees would have to be allowed under State statute. NYSTA management told us they attempted to have legislation introduced to statutorily implement the fees, but these efforts have not been successful.

Recommendation 5

Develop special, targeted collection practices for high volume violators. Analyze violation accounts to identify such violators' travel patterns, and coordinate with the Division of State Police for enforcement action.

Status - Partially Implemented

Agency Action - High volume violators go through the same process as all other violators. NYSTA officials stated the Division of State Police is not willing to collaborate with them on this enforcement initiative because toll violations are not a criminal offense. NYSTA has tried to get legislation introduced that makes toll violations a criminal offense by adding toll avoidance to the theft of service statute. However, this has not been successful.

Recommendation 6

Make greater use of the information in the violation database. In particular, use data analysis techniques to develop new collection strategies.

Status - Partially Implemented

Agency Action - NYSTA developed new data analysis techniques related to past due E-ZPass accounts. For example, NYSTA has developed queries to look at trends such as the type of most frequent violations, top violations by Plaza, and by toll lane. Also, NYSTA runs queries to identify the top unpaid accounts for both commercial and regular customers, to do a more complete analysis of customer accounts, and to aid in developing the maintenance plan for E-ZPass equipment and facilities. These queries help NYSTA staff determine how much a customer owes more quickly and accurately. However, Authority officials indicate they cannot identify additional alternative strategies unless there are changes made to current legislation.

Recommendation 7

Make use of the Notice of Liability process for persistent E-ZPass violators, where circumstances warrant.

Status - Not Implemented

Agency Action - NYSTA's 90-day response states that this is not a cost effective strategy to use against persistent E-ZPass violators because NYSTA must invest significant staffing resources to execute this process and not recover the lost tolls in return. NYSTA's position has not changed. They will continue to seek changes in legislation to increase the effectiveness of the Notice of Liability process, but until this is passed they will not use the NOL process.

Recommendation 8

Identify other options for collection agency services if the pending contract cannot be awarded in an expeditious manner.

Status - Implemented

Agency Action - NYSTA awarded the collection agency contract in July 2008. The contract provided for a three-year extension which NYSTA exercised in May 2011, extending the contract until June 2014.

Recommendation 9

Determine whether any E-ZPass violators are vendors of NYSTA and withhold payments to these vendors until the unpaid tolls and related fees are resolved.

Status - Not Implemented

Agency Action - NYSTA management stated they do not have a standard practice or a system to identify if a vendor providing goods and services to NYSTA has unpaid tolls or fees. Occasionally Toll Collection staff check if a specific vendor has unpaid tolls or fees. Currently, NYSTA cannot easily identify if vendors are E-ZPass violators because the data collected for E-ZPass commercial customers is limited and may differ from vendor data. Until systems to perform electronic matches are in place, NYSTA management told us such matches are time consuming, use up limited staffing resources and did not produce any results. We believe NYSTA would achieve results if upfront it obtains additional information from the commercial account customers that will facilitate matching toll violators that owe money to companies with contracts.

Recommendation 10

Work with the Office of the State Comptroller's Vendor Responsibility Unit to develop a process for reporting information about E-ZPass violators.

Status - Not Implemented

Agency Action - In response to our current review, NYSTA contacted the Office of the State Comptroller's Vendor Responsibility Unit (VendRep) in March 2012 regarding a process for reporting information about E-ZPass violators. During our follow-up review, NYSTA officials stated reporting such information to VendRep does not help them collect unpaid tolls and fees. As such, they have not made implementing this recommendation a priority.

Recommendation 11

Develop and implement mechanisms where legal and appropriate, for sharing information about unpaid E-ZPass tolls with other State agencies and public authorities.

Status - Not Implemented

Agency Action - NYSTA's 90-day response stated they polled some State agencies and were not aware of how the agencies could help them collect outstanding violations. NYSTA's position has not changed. We contacted the Office of the State Comptroller's Vendor Management Unit and found that it is possible for NYSTA to collect unpaid tolls and fees through OSC if they follow a specific procedure in cooperation with the Lien Unit. Additionally, NYSTA might be able to collect unpaid tolls and fees through the Department of Taxation and Finance.

Recommendation 12

Perform a formal analysis of the merits of establishing an administrative adjudication process for E-ZPass violations.

Status - Not Implemented

Agency Action - NYSTA officials maintain the position in the 90-day response that such a process would require legislation and significant resources. In addition, they believe that the use of the collection agency service should be evaluated to determine if there is still sufficient unmet need to justify formally evaluating the merits of establishing an administrative adjudication process.

Major contributors to this report were Steve Goss, Mark Ren, Brandon Ogden, and Bruce Brimmer.

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 also thank New York State Thruway Authority's management and staff for the courtesies and cooperation extended to our auditors during this follow-up review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: H. Lennon, Director of Internal Audit
T. Lukacs, Division of the Budget