

STATE OF NEW HAMPSHIRE
Department of Natural and Cultural Resources
Communications Program – Internal Control Over
Rental of Space for Antenna Facilities

Audit Report Date: June 2013
AUDIT FINDING Corrective Action Plan

Completion Status:

Open •
Partially Resolved ••
Substantially Resolved •••
Fully Resolved ••••

Status as of June 20, 2019

Obs #	Observation Title	Recommendation	Actions to Date	Completion Status	Due Date	Comments
1	Administrative Rules Should be Adopted	The Department should adopt administrative rules to support its program for the rental of space on Department property for antenna facilities. Critical aspects of the Program including determination of rates, should be subject to administrative rule procedure.	Preliminary initial draft administrative rules were written in late 2013 and 2014 for internal review. DNCR is currently updating these preliminary draft rules to reflect current program practices. DNCR is currently using its policy manual as guidance.	••	Ongoing	
2	Controls Ensuring All Agreements Are Current, Documented, and Approved Should be Established	<p>The Department should establish controls to ensure that all agreements, including any amendments, allowing entities to maintain and operate antennae facilities on Department property are documented by contracts or other legal documents.</p> <p>The Department creates and maintains current documentation of all lease agreements, special use permits, and memorandums of agreements. Negotiations to renew lease agreements should be held in a timely manner to prevent lapses in lease periods. The Department should maintain current documentation supporting all agreements, including current insurance certificates, when required.</p>	<p>The department currently requires that an application be submitted to occupy department communication sites. If approved, the application is followed up with either a fully executed lease or other legal document. Amendments are reviewed and appropriately approved and included as part of legal documentation.</p> <p>In 2012 the department purchased software (“ComSite Manager”), to assist with this but that software has since become obsolete. Instead, the department has developed its own Microsoft Access database to track site and tenant information, renewal dates, etc. Scanned copies of all licenses, agreements, and associated documents are stored electronically in organized files. Organized hard copy files are also kept in file cabinets in a locked office.</p>	<p>••••</p> <p>••••</p>	<p>Completed</p> <p>Completed</p>	

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		<p>The Department subjects lease renewals to the same contracting controls as initial agreements whereby comprehensive agreement documents are drafted and subject to management review and approval controls prior to execution.</p>	<p>Lease renewals are now drafted using up-to-date document templates that were developed in consultation with the Dept. of Justice (DOJ). Drafts are reviewed by management and DOJ, prior to execution as appropriate.</p>	<p>....</p>	<p>Completed</p>	
		<p>Agreements provide sufficient detail to accurately describe the scope of use allowed. If the intended scope of use changes during the term of the original agreements or the renewal agreements, the terms of those agreements should be appropriately modified.</p>	<p>Leases and agreements are drafted using up-to-date document templates developed in consultation with DOJ, which contain details regarding the scope of allowed use. Agreements also include an inventory worksheet that describes all housed and tower-mounted equipment. Agreements are written to require further review prior to any modification and documents are amended with management review and execution, and G&C approval where necessary.</p>	<p>....</p>	<p>Completed</p>	
		<p>All original and renewal agreements meeting criteria in RSA 227-H:9 are submitted for Governor and Council approval prior to enactment.</p>	<p>As required by RSA 227-H:9, all contracts extending for a period of more than 3 years or for more than an annual consideration of more than \$2,500 are submitted to G&C for approval.</p>	<p>....</p>	<p>Completed</p>	
		<p>Leases meeting criteria in RSA 227-H:10 are recorded in the respective registry of deeds. The Department should periodically monitor to ensure that leases are recorded in accordance with statute.</p>	<p>At the request of the registries, and at the direction of the DOJ, in lieu of the requirements of RSA 227-H:10, the Department requires that (pursuant to RSA 477:7-a) a "Notice of Lease" drafted by the department, be recorded in the appropriate registry by the Lessee. A copy of the recorded notice is kept on file with the department.</p>	<p>....</p>	<p>Completed</p>	

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		Tenants remit rents in accordance with contracted due dates and delinquent rents are pursued timely.	All tenant contracts are entered into the state's billing system (NH FIRST). Verification of payments received is performed on a monthly basis between the Business Office and the Communications Program staff. Tenants that are delinquent with their rent are contacted by the department until accounts are paid.	••••	Completed	
3	Policies And Procedures Controlling Free Use Of Department Property Should Be Established	<p>The Department should establish controls, including written policies and procedures, for determining what entities should be charged for operating antenna facilities on Department property and what entities, if any, should be allowed free use of Department property.</p> <p>The policies and procedures should incorporate a review and approval control for all program activities, including ensuring determinations to provide free or unpaid use of Department property is in accordance with statute, rule, and Department policy.</p> <p>The Department should review with legal counsel whether it has the authority to enter into quid-pro-quo agreements for the receipt of services in lieu of revenue for the use of space for antenna facilities.</p>	<p>The Department has developed tenant categories and the basis for determining annual rent for each category that have been incorporated into in its Communications Manual and Communications Policy. Current policy allows NH State government entities (except for Mt. Washington) to use of Department managed sites at no charge. All others pay based on their category.</p> <p>The Department continues to utilize a "Communications Team," initially established in 2011 that meets monthly to review and direct program activities. The team is made up of program leadership and agency directors, including the Commissioner. In addition, the Program Policy has been updated, and new program rules are being drafted.</p> <p>Based on consultation with DOJ, the department's current lease template contains a provision for "beneficial services," if applicable. This section identifies the specific beneficial service that is being provided (if any) and establishes a value that is then incorporated into the agreement as a "beneficial service credit".</p>	<p>••••</p> <p>••••</p> <p>••••</p>	<p>Completed</p> <p>Completed</p> <p>Completed</p>	

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4	Policies And Procedures For Setting Rental Rates Should Be Established	<p>The Department should continue in its efforts to establish controls, including comprehensive policies and procedures, for setting and monitoring rates for the rental of space for antenna facilities on Department property.</p> <p>The Department should consider contracting with a consultant with appropriate knowledge and experience to assist in determining and structuring fair market rates that best support the Department's objectives for this activity.</p> <p>All rates and rate adjustment formulas, including contract escalators, should be fully documented in agreements that are formally reviewed and approved by Department management. The application of the rate escalators should be monitored to ensure they are accurately applied.</p>	<p>The Department's 2014 Policy update added criteria to be used in determining the rent. In addition, pricing matrixes have been developed to provide standardized leasing prices based on equipment and a pricing worksheet is now completed by staff and included in the file to document how rent price was derived. Continued periodic review of the matrixes and associated pricing will occur over time.</p> <p>In December 2015 the Department contracted to have a price structuring assessment completed for communication leases at Mt. Washington. The pricing matrix developed as part of the assessment has been used for Mt. Washington leases since that time, with appropriate CPI escalations. The Department may also implement a similar evaluation of the pricing matrixes for other mountains as well.</p> <p>All current lease and agreement templates now contain rental rates and rate adjustment formulas/contract escalators, which are reviewed and approved by management prior to signing. Staff tracks rate escalator amounts/dates in a detailed spreadsheet and appropriately updates billing information in NH FIRST prior to escalation effective dates.</p>	<p>••••</p> <p>••••</p> <p>••••</p>	<p>Completed</p> <p>Completed</p> <p>Completed</p>	

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5	Policies And Procedures For Maintaining Complete And Current Inventory Of Antenna Facilities Should Be Established	<p>The Department should fully implement controls to ensure that it maintains a complete and perpetually current record of all antennas, communications equipment, towers, and buildings in place on its properties. While the use of the newly acquired communications site management software can support this goal, it will require significant effort to determine, accumulate, verify, and enter the relevant data. While certain information may currently exist in the Department's files, certain additional information, including full descriptions, owners, and relevant agreements for all of the equipment on the Department's sites will need to be established prior to recording that information in the database.</p> <p>Pending the Department's opportunity to physically inventory each site, the Department should consider requesting that each tenant provide a detailed listing and description of antenna facilities maintained at Department sites.</p> <p>The Department should establish policies and procedures for periodic reviews of the inventory to ensure the inventory remains current and comprehensive.</p>	<p>Shortly after this report was finalized, all communication sites were inventoried to document equipment existing at that time. The "ComSite Manager" software referenced in the recommendations has since become obsolete and inventory is now tracked via spreadsheets maintained by the Department's Communication Technician.</p> <p>The Department now requires a submission of an "Inventory Worksheet" documenting housed and/or tower mounted equipment prior to execution of a new tenant contract, renewal contract, or amendment. Proposed equipment changes also now require submission of an equipment change request form.</p> <p>In September 2013 an existing position was reclassified into a new Communications Technician II position to provide the expertise needed to among other things, accurately document inventory at the Department's sites. Inventory documentation is to be an ongoing task of this position. Site inventory work is typically carried out in conjunction with site visits needed for facility/site maintenance.</p>	<p>•••</p> <p>•••</p> <p>•••</p>	<p>Completed</p> <p>Completed</p> <p>Completed</p>	

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6	Controls Over The Recording of Revenue Should be Improved	The Department should establish an effective review and approval control over the identification and recording of revenues to reasonably ensure that revenues are recorded and reported in the correct accounts.	All tenant contracts are entered into the state's billing system – NH FIRST, where the appropriate income account is identified. Verification of payments received is performed on a monthly basis between the Business Office and the Communications Program staff. Staff corrects any errors identified in NH FIRST.	••••	Completed	
7	Department Should Exercise Its Authority Over a Tenant-Operated Department Site	The Department should not allow the use of Department property without properly approved rental agreements. The Department should review with legal counsel its options for exercising ownership authority for the site.	In 2013, following a discussion with the AG's Office confirming the Department's legal authority, the Department entered into a one-year Special Use Permit (SUP) with the tenant in question. It subsequently entered into a long-term agreement, which is set to expire on June 30, 2020. The Department continues to explore potential options for eventually owning infrastructure. In the meantime, it will continue to execute properly approved rental agreements or a lease using DOJ approved document templates and G&C approval, if necessary.	••••	Completed	
8	Agreement Covering The Current And Future Use Of The Cannon Mountain Communications Facility Should Be Negotiated	The Department's senior management should negotiate the agreement covering the current and future use of the Cannon Mountain facility. The Department should ensure the agreement is submitted for Governor and Council approval.	In 2013, the Department negotiated a new lease with the tenant in question, approved retroactively by the G&C on August 5, 2014. The Department is now negotiating a new five-year lease, also to be approved by G&C once complete.	••••	Completed	