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March 23, 2005

Mr. Glenn S. Goord
Commissioner
NYS Department of Correctional Services
State Campus, Building 2
Albany, NY 12226

Re: Report 2004-F-35

Dear Mr. Goord:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Correctional Services (Department) to implement the recommendations contained in our audit report, *Department of Correctional Services' Administration of Contract X160575 with MCI Worldcom for the Inmate Call Home Program* (*Report 2002-R-1*).

<u>Background, Scope and Objective</u>

The Department operates 70 correctional facilities statewide. Each facility has a number of specially installed telephones, which can be used by inmates in the Department's Inmate Call Home Program (Program) to make calls to family and friends. The only type of call that can be made on these phones is a collect call. A call cannot be placed unless the inmate enters both a telephone number that is on an approved list for that inmate, and a personal identification number identifying the inmate that has been authorized by the Department to make calls. The charges for all the calls are billed to the parties who accept the calls.

The purpose of the Program is to enable inmates to maintain essential ties with their communities. The telephone system used in the Program is operated by a contractor, which is responsible for billing for the calls and collecting call revenue. The Department receives a portion of the call revenue from the contractor, and is authorized by the State Legislature to use this revenue in various programs that benefit the inmate population.

The Program, which was initiated in 1985, has been operated by various contractors. In 1996, the MCI Telecommunication Corporation, now known as MCI WorldCom Communications Inc. (MCI), was awarded contract X160575 to operate the Program. The initial contract was awarded for the period April 1, 1996 through March 31, 1999. Two additional one-year extensions were subsequently approved, bringing the end date of contract X160575 to March 31, 2001. According to the terms of the contract, MCI was expected to:

- provide service to the Department 24-hours a day, seven days a week,
- provide the Department with billing data relating to the telephone numbers called through the Program,
- be capable of blocking phone calls placed by inmates when requested by the Department and/or the general public, and
- bill and collect revenue for all completed calls.

MCI was required by the contract to pay the Department a commission of 60 percent of the revenue from each completed call. For the five-year contract period, the State's commissions and certain penalties assessed on MCI under the terms of the contract (e.g., for late payment) averaged $21,827,796 per contract year.

Following this contract, the Department awarded a second contract (X160812) to MCI for the period April 1, 2001 - March 31, 2006 with provisions for two one-year renewals with the same procedures and controls as the first contract. However, the second contract had a revenue commission of 57.5 percent. The contract was awarded with tiered rates for calls, with charges based on type of call, mileage and time of day. The rate structure was amended, at the Department's request, and effective August 1, 2003, most calls are made at a blended rate of 16 cents per minute with a $3.00 per call surcharge. For the period April 2001 - September 2004, the Department received the following in commissions:

Contract Year	Commission	Number of Calls	Inmate Population
April 2001-March 2002	$23,298,456	6,748,396	69,299
April 2002-March 2003	$18,463,968*	6,658,839	67,758
April 2003-March 2004	$19,069,457	5,642,303	66,347
April 2004-September 2004	$ 8,916,946	3,382,362**	65,557

* In fiscal year 2002-03, the contractor filed for bankruptcy protection, and some commission payments were withheld. The contractor exited bankruptcy in April 2004, and a check totaling $2,469,631 was received in June 2004 as a bankruptcy settlement. This would raise the 2002-03 commissions to $20,933,599.

** Represents the number of calls through November 2004.

Our initial audit report, which was issued on July 10, 2003, examined selected aspects of the initial contract between the Department and MCI. The objectives of our financial related contract-compliance audit were to determine whether (1) the controls established by the Department and MCI provided adequate assurance Program revenues were accurately accounted for and properly remitted to the Department, and (2) Program revenue was deposited into the appropriate Department account and expended for authorized purposes only.

Our report identified that improvements were needed in the practices used to verify the accuracy and completeness of Program revenue. In particular, due to the fact that DOCS has not performed an independent verification of the revenue generated by MCI equipment it has limited assurance it is receiving all revenue. The objective of our follow-up, which was conducted in accordance with Generally Accepted Government Auditing Standards, was to assess the extent of implementation as of December 23, 2004 of the one recommendation included in our initial report.

Summary Conclusions and Status of Audit Recommendation

We found that Department officials have not implemented the one recommendation contained in our initial report. Since the original audit, the Department continues to reconcile revenue received based on the total minutes and the new blended rate. However, Department officials maintain their position that they will provide for the recommended independent review in the contract when it is renewed or rebid.

Follow-up Observations

Recommendation

Take steps to provide for independent controls that can be relied on for verifying the accuracy and completeness of billing data provided by MCI for the Program.

Status - Not Implemented

Agency Action - Department officials indicate that it remains their intent to include a request that the contractor obtain an independent audit during the negotiations for the contract renewals or rebid which should occur prior to the expiration of the current agreement in April 2006. They added that such an audit will increase administrative costs (or reduce Program revenue) by up to $150,000 per year. The Department has not provided pricing estimates from the contractor.

We noted in our initial report that contracting for an independent audit is not the only strategy that would address our recommendation. We continue to believe that analytical procedures and/or internal reviews or audits of the contract services can address the recommendation, and likely at a lower cost than cited by the agency. Since it is likely that the cost of any independent controls instituted by the Department will come at the expense of program revenue, which is used to fund critical inmate programs, the agency should seek to take steps to verify the accuracy and completeness of the billing data, at the lowest possible cost.

At the closing conference, Department staff responsible for the Program added that they prefer to employ outside consultants to develop a testing methodology that will be considered statistically valid. We believe such assistance could be obtained from educational institutions, such as the State University of New York, the City University of New York, or the USDA Graduate School, potentially at a lower cost than from a professional consulting or auditing firm. Further, undertaking an independent review of the contractor's controls would not require the Department to wait until 2006, when the current contract is due to be renewed or rebid.

Major contributors to this report were Robert Mehrhoff and Marianne Boyer.

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 the management and staff of the Department for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: G. Ronald Courington, DOCS Director MIS
Deborah Coons, DOCS Director of Internal Control
Robert Barnes, Division of the Budget