



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the New York City
Department of Finance's Oversight over
the Collection of 911 Surcharges

FN20-107A

November 17, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

November 17, 2021

To the Residents of the City of New York:

My office has audited the New York City Department of Finance (DOF) oversight over the collection of 911 surcharges to determine whether DOF has adequate controls to ensure that all service providers subject to the 911 surcharge are being identified and are paying the correct amount of surcharges timely; and submitting the annual reports and monthly lists of customers who do not pay the 911 surcharge. We audit DOF as a means of ensuring that they operate efficiently and are accountable for resources and revenues in their charge.

This audit found that DOF lacks adequate oversight over its collection of 911 surcharges. Specifically, we found that DOF: (1) did not establish procedures to identify all service providers that are required to collect the 911 surcharge from their customers; (2) did not adequately oversee the service provider accounts to ensure 911 surcharges were paid to the City timely and that the amounts reported in the E-911 returns were accurate; and (3) did not ensure that the service providers submitted the required annual reports and monthly lists of non-paying customers and amounts owed to DOF as required by the New York City Administrative Code. As a result, DOF has no assurance that all service providers collected and remitted the 911 surcharge to the City. The audit determined that as of August 24, 2020, service providers did not remit at least \$862,310 in overdue 911 surcharges owed to the City.

The audit made the following recommendations that DOF should: (1) establish procedures that enable and require DOF to identify service providers that provide service within the City and are required to collect 911 surcharges; (2) implement procedures to collect overdue 911 surcharges from service providers; (3) develop written policies and procedures and allocate sufficient resources to monitor and audit filed returns and identify non-filing by service providers; (4) enforce the requirement that service providers to submit an annual accounting of 911 surcharge amounts billed and collected; (5) enforce the requirement that service providers to submit a monthly list of the names and addresses of customers who refused or failed to pay the surcharges imposed, including the amounts of the unpaid surcharges; (6) develop written policies and procedures for notifying all service providers of the 911 surcharge filing requirements.

The results of the audit have been discussed with DOF officials and their comments have been considered in the preparation of this report. DOF's complete written response is attached to this report. If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the New York City Department of Finance's Oversight over the Collection of 911 Surcharges

FN20-107A

EXECUTIVE SUMMARY

The New York City Administrative Code (NYC Administrative Code), Title 11, Chapter 23-A, requires telecommunication companies (Service Providers) to add to their charges for each telephone line within the City of New York (the City) a monthly surcharge of one dollar, known as the 911 surcharge, which the Service Providers must remit to the City's Department of Finance (DOF), after deducting 2 percent as their administrative fee. The 911 surcharge is used to pay for the costs associated with obtaining, operating, and maintaining the telecommunication equipment and telephone services needed to provide an enhanced 911 emergency telephone system serving the City.¹

The NYC Administrative Code requires Service Providers to remit the net 911 surcharge to the City, through DOF, within 30 days of the last business day of the preceding month. DOF requires the Service Providers to submit Form NYC-E-911—Return of E-911 Surcharge by Telecommunication Providers (E-911 return)—on or before the 25th day of each month to report the amounts collected from their customers. DOF maintains all E-911 returns submitted by the Service Providers in its electronic Business Tax System (BTS), in individual accounts associated with the respective Service Providers (Service Provider accounts).

The objective of this audit was to determine whether DOF has controls in place to ensure that: (1) DOF can readily identify all Service Providers subject to the law's requirement to collect the 911 surcharge; (2) Service Providers are paying the correct amount of surcharges due and paying in a timely manner; and (3) Service Providers are submitting the annual reports and monthly lists of customers who do not pay the 911 surcharge.

¹ Telephone lines include landlines and Voice over Internet Protocol (VoIP) phone service. Section 11-2324 of the NYC Administrative Code states that "[n]o such surcharge shall be imposed upon: more than seventy-five exchange access lines per customer per location; any lifeline customers of a local telephone service supplier; a public safety agency; or any municipality, as defined in subdivision (e) of section 11-2322. The surcharge is identified as a separate charge in the bills sent to customers."

Audit Findings and Conclusion

Our audit found that DOF lacks adequate oversight over its collection of 911 surcharges. Specifically, we found that DOF: (1) did not establish procedures to identify all Service Providers that are required to collect the 911 surcharge from their customers; (2) did not adequately oversee the Service Provider accounts to ensure 911 surcharges were paid to the City timely and that the amounts reported in the E-911 returns were accurate; and (3) did not ensure that the Service Providers submitted the required annual reports and monthly lists of non-paying customers and amounts owed to DOF as required by Title 11, Chapter 23-A of the NYC Administrative Code. As a result, DOF has no assurance that all Service Providers collected and remitted the 911 surcharge to the City as required. Our review determined that as of August 24, 2020, Service Providers with 74 BTS accounts did not remit at least \$862,310 in overdue 911 surcharges owed to the City.

Audit Recommendations

To address these issues, we make the following six recommendations that DOF should:

- Establish procedures that enable and require DOF to identify Service Providers that provide service within the City and are required to collect 911 surcharges.
- Implement procedures to collect overdue 911 surcharges from Service Providers and consider taking legal action against Service Providers that owe 911 surcharges for over one year.
- To obtain reasonable assurance that Service Providers comply with relevant legal requirements for assessing, collecting, and reporting on 911 surcharges, DOF should develop written policies and procedures and allocate sufficient resources to: (a) monitor and audit filed returns and identify non-filing by Service Providers that are covered by NYC Administrative Code, Title 11, Chapter 23-A; and (b) enforce the law's requirements.
- Enforce the requirement that Service Providers to submit annually to DOF an accounting of 911 surcharge amounts billed and collected.
- Enforce the requirement that Service Providers to submit monthly to DOF a list of the names and addresses of customers who refused or failed to pay the surcharges imposed, including the amounts of the unpaid surcharges.
- Develop written policies and procedures for notifying all Service Providers of the 911 surcharge filing requirements and that their submissions may be subject to audit.

Agency Response

DOF agreed to implement all six audit recommendations.

AUDIT REPORT

Background

NYC Administrative Code, Title 11, Chapter 23-A, requires Service Providers to add to their charges for each telephone line within the City a monthly surcharge of one dollar, known as the 911 surcharge, which the Service Providers must remit to DOF, after deducting 2 percent as their administrative fee. The 911 surcharge is used to pay for the costs associated with obtaining, operating, and maintaining the telecommunication equipment and telephone services needed to provide an enhanced 911 emergency telephone system serving the City.

The NYC Administrative Code requires Service Providers to remit the net 911 surcharge to the City, through DOF, within 30 days of the last business day of the preceding month. DOF requires the Service Providers to submit E-911 returns—on or before the 25th day of each month to report the amounts collected from their customers.² DOF maintains all E-911 returns submitted by the Service Providers in its BTS, in individual Service Provider accounts.³

In addition, the NYC Administrative Code also requires each Service Provider to provide DOF an annual accounting of the 911 surcharge amounts billed and collected, and a monthly list of customers who refused or failed to pay the 911 surcharge.

DOF generates monthly reports for the surcharge revenue it receives from Service Providers and submits the monthly reports to the New York City Office of Management and Budget. For Calendar Year 2019, DOF collected approximately \$33.9 million in 911 surcharges from Service Providers.

Objectives

The objectives of this audit were to determine whether DOF has controls in place to ensure that:

- DOF can readily identify all Service Providers subject to the law's requirement to collect the 911 surcharge;
- Service Providers are paying the correct amount of surcharges due and paying in a timely manner; and
- Service Providers are submitting the annual reports and monthly lists of customers who do not pay the 911 surcharge.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our

² Service Providers have two options to submit the 911 surcharge filings and payments. One is to file Form NYC-E-911 and remit payments electronically; the other is to send hardcopy forms and payments to a lockbox operated for DOF by a third-party entity.

³ For Service Providers that file hardcopy forms, a third-party entity contracted by DOF transposes the information to BTS.

findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

This audit covered Calendar Year 2019. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOF officials during and at the conclusion of this audit. A preliminary draft report was sent to DOF and discussed with DOF officials at an exit conference held on October 5, 2021. On October 19, 2021, we submitted a draft report to DOF with a request for written comments. We received a written response from DOF on November 10, 2021.

In its response, DOF provided procedures for how it will implement the recommendations in this report.

The full text of DOF's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Our audit found that DOF lacks adequate oversight over its collection of 911 surcharges. Specifically, we found that DOF: (1) did not establish procedures to identify all Service Providers that are required to collect the 911 surcharge from their customers; (2) did not adequately oversee the Service Provider accounts to ensure 911 surcharges were paid to the City timely and that the amounts reported in the E-911 returns were accurate; and (3) did not ensure that the Service Providers submitted the required annual reports and monthly lists of non-paying customers and amounts owed to DOF as required by Title 11, Chapter 23-A of the NYC Administrative Code. As a result, DOF has no assurance that all Service Providers collected and remitted the 911 surcharge to the City as required. Our review determined that as of August 24, 2020, Service Providers with 74 BTS accounts did not remit at least \$862,310 in overdue 911 surcharges owed to the City.

The 74 Service Provider accounts with overdue balances constitute 13.1 percent of the 564 Service Provider accounts listed in DOF's BTS. Thus, the sum of their overdue balances of 911 surcharges owed to the City does not include 911 surcharges that other, unidentified, Service Providers that are not listed in BTS, if any, may also owe. As explained below, DOF does not have procedures in place to determine whether all Service Providers subject to the 911 surcharge requirements have voluntarily identified themselves to DOF and thus are listed in BTS.

DOF Has No Control Procedures to Identify Service Providers That Are Required to Collect the 911 Surcharge

DOF relies on each telecommunication company to identify itself voluntarily as a Service Provider in BTS and has no policies and procedures in place to identify Service Providers that are not registered in BTS. Without any controls in place to identify Service Providers that are required to collect 911 surcharges, DOF could be losing potential funding that could be used for the City's enhanced 911 emergency telephone system. DOF needs to initiate a pro-active approach to identifying Service Providers that provide landline and VoIP services to customers who are located within the City.

DOF Did Not Monitor Service Providers' 911 Surcharge Submissions

Our audit found that DOF did not adequately monitor Service Provider accounts to ensure that all surcharges collected from customers were remitted to the City; did not have controls in place to ensure the reported 911 surcharges on the E-911 returns were accurate; and did not follow up with active Service Providers that failed to file E-911 returns. DOF informed us that it has no written or operational procedures in place to monitor the Service Providers' submission of the E-911 returns and remittance of the 911 surcharges collected. As a result, as of August 24, 2020, the City did not collect at least \$862,310 in 911 surcharges from Service Providers over a period of years.

74 Accounts for Service Providers Reflected \$862,310 in Overdue 911 Surcharges That DOF Had Not Collected before the Audit

According to Chapter 23-A, Section 11-2325(a), of the NYC Administrative Code, Service Providers are required to “remit the funds collected as the surcharge to the commissioner of finance each month. Such funds shall be remitted no later than thirty days after the last business day of such period.” However, we found that DOF did not implement any referral procedures for the collection of unpaid 911 surcharges from Service Providers until after we had identified 74 accounts with overdue 911 surcharges—some of these balances had been carried over since Calendar Year 2003—and inquired whether the agency had taken any action to collect them. As a result of DOF’s past inaction, as of August 24, 2020, DOF had not collected a total of \$862,310 in overdue 911 surcharges.

Table I below lists the amounts of the 911 surcharges owed to the City from the five Service Provider accounts our audit identified as having the highest overdue balances as of August 24, 2020.

Table I

911 Surcharges Owed to the City by 5 Service Provider Accounts with the Highest Overdue Balances as of August 24, 2020

Service Provider	Overdue Amount
Company A	\$504,342
Company B	120,369
Company C	80,849
Company D	47,157
Company E	31,756
Total Amount Owed from 5 Service Provider Accounts with Highest Overdue Balances[†]	\$784,473

† For the remaining 69 Service Provider accounts, \$77,837 was owed as of August 24, 2020.

On October 30, 2020, in response to our inquiries about the overdue surcharges, DOF officials stated that, upon our notification, they “realized that no one was pursuing debt” and started referring the cases to DOF’s Legal Division for follow-up action. Six months later, on April 26, 2021, we requested an update on the actions DOF had taken in relation to the Service Providers with overdue 911 surcharge balances. On May 5, 2021, DOF responded that it had drafted an installment payment plan with one Service Provider and referred another Service Provider to an outside collection agency.⁴

On August 18, 2021, DOF informed us that it had contacted the 10 Service Providers with the highest balances for 911 surcharges; one company was sent a demand letter, and the remaining providers were called. DOF recently collected \$120,994 in overdue 911 surcharges from these 10

⁴ The Service Provider that set up an installment plan with DOF also owes utility tax.

Service Providers, including \$80,318 from the Service Provider that had agreed to an installment payment plan with DOF.

The 911 surcharges provide supplemental funding for the City’s enhanced 911 telephone system. The City should obtain the payments to which it is entitled to help fund the tremendous costs associated with managing the system.⁵

DOF Lacks Monitoring Procedures to Verify Accuracy of the Information Submitted on E-911 Returns

DOF has not established any policies and procedures to monitor the accuracy of information provided on Service Providers’ E-911 returns. For example, according to DOF officials, DOF does not follow up to determine the accuracy of E-911 returns in which Service Providers report that they did not collect *any* 911 surcharges from their customers during the reporting month (zero-amount returns). In addition, our audit found that DOF has not conducted any audits to determine whether the 911 surcharges that Service Providers report and remit are accurate. As a result, DOF has no assurance that Service Providers file E-911 returns with accurate information.

Based on our review of the information maintained in BTS for 451 active Service Provider accounts, we found that 89 of them (19.7 percent) filed at least one month of zero-amount returns during Calendar Year 2019. Some of these Service Providers reported that they had not collected 911 surcharges from their customers for many years. DOF has neither audited those Service Providers nor even asked the Service Providers why they had not collected the 911 surcharge from any customers.

Table II below shows in descending order the lengths of the periods in which the five Service Provider accounts with the longest periods of filing zero-amount returns reported that they had collected no 911 surcharges.

Table II

Five Service Provider Accounts Reporting the Longest Durations of No 911 Surcharges Collected

Service Provider	Period Filed with No 911 Surcharges Collected	Length of Period (up to Dec. 2019)
Company F	Dec. 2013 through Dec. 2019	6 years
Company G	Oct. 2014 through Dec. 2019	5 years
Company H	Nov. 2017 through Dec. 2019	2 years
Company I	Dec. 2017 through Dec. 2019	2 years
Company J	Jun. 2018 through Dec. 2019	1.5 years

In addition, our review identified inconsistent and anomalous patterns in the returns and payment records for some of the 89 Service Provider accounts that contained zero-amount returns. For example, Company K reported that it did not collect any 911 surcharges for the month of

⁵ According to the Preliminary Mayor’s Management Report, issued on March 4, 2020, the New York City Police Department spent over \$142.7 million during Fiscal Year 2019 on the Communications Division, which operates the 911 emergency call center, police radio dispatching, emergency command post vehicles, radio communication controls, and various electronic and telephone equipment.

November 2019 yet reported it had collected approximately \$12,000 to \$13,000 in the other months in 2019. In another example, Company L reported that it had not collected any 911 surcharges from 2002 through June 2019 yet reported that it had collected approximately \$38,000 in 911 surcharges from each month from July 2019 through April 2020.

In the absence of continuous monitoring, or any monitoring whatsoever by DOF, anomalies that affect the agency’s revenue collections—such as multi-year periods of zero-amount E-911 returns, abrupt spikes in collected surcharges after multi-year periods of no surcharges, and intra-year fluctuations between zero-amount returns and returns reporting thousands of dollars collected—have gone unexplained and seemingly unnoticed.

By forgoing any monitoring or auditing procedures, DOF is neglecting its oversight responsibilities and may not be collecting all of the 911 surcharges to which the City is entitled.

DOF Lacks Monitoring Procedures for Service Providers That Do Not Submit E-911 Returns

Our review of the Service Provider accounts listed in active status in DOF’s BTS system revealed that certain companies have not filed E-911 returns for many years.⁶ Specifically, Service Providers with 104 active accounts did not file any E-911 returns during Calendar Year 2019; some of those companies had not filed returns in more than 15 years. DOF has not monitored its Service Provider accounts to determine whether the companies listed are still in business and whether they are providing service that is subject to the 911 surcharge.

Table III below highlights the five longest durations in which Service Provider accounts that DOF listed as active as of August 2020 had not filed any E-911 returns.

Table III

Five Longest Durations of Non-Filing of E-911 Returns in Service Provider Accounts

Service Provider	Commence Date	Last Filing Period	Length of Non-Filing Period as of December 31, 2019	
			Years	Months
Company M	November 2002	November 2002	17	1
Company N	February 2003	February 2003	16	10
Company B	January 2003	November 2003	16	1
Company O	September 2003	March 2005	14	9
Company D	October 2002	February 2010	9	10

DOF informed us that it does not take any action against Service Providers that do not file E-911 returns. Additionally, as of July 26, 2021, DOF had no written procedures in place for monitoring the status of Service Provider accounts.

Without monitoring Service Provider accounts, DOF cannot determine whether Service Providers that do not file are no longer active and should therefore be removed from active status in BTS,

⁶ Active status represents that the company is in operation.

or whether the non-filing Service Providers are active but non-compliant. In addition, DOF is likely losing 911 surcharge funding to which the City is entitled.

DOF Failed to Ensure Service Providers Submitted Required Reports

According to Section 11-2325(d) of the NYC Administrative Code, “The service supplier shall annually provide to the commissioner of finance an accounting of the surcharge amounts billed and collected.” In addition, Section 11-2326(b) states that “whenever the service supplier remits the funds collected as the surcharge to the city, it shall also provide the city with the name and address of any customer refusing or failing to pay the surcharge imposed . . . and shall state the amount of such surcharge remaining unpaid.”

However, DOF failed to enforce the law’s requirements that each Service Provider submit an annual accounting of the 911 surcharges billed and collected, and a monthly list of customers who refused or failed to pay the surcharge imposed by the Service Provider.⁷ When we requested these reports from DOF, it appeared that DOF officials were unaware of the relevant NYC Administrative Code requirements, and they were unable to provide reports. As a result of failing to ensure that Service Providers file the required annual accountings and monthly reports of customers who did not pay the 911 surcharges, DOF cannot determine whether Service Providers are accurately reporting and remitting the 911 surcharges they collect to the City.

⁷ The list should include the customers’ names and addresses and the unpaid surcharge amounts.

Recommendations

DOF should take the following actions to address the issues this audit identified:

1. Establish procedures that enable and require DOF to identify Service Providers that provide service within the City and are required to collect 911 surcharges.

DOF Response: “To identify Service Providers, DOF will:

- a. Compare all New York City telecommunications providers currently filing NYC-E911 returns to the list of all active telecommunication companies in New York State maintained by the NYS Public Service Commission. We will then send a letter to those active NYS telecommunication providers that are not currently filing NYC–E911 returns.
- b. Review all companies that filed the surcharge in the previous year to check that they are up to date with their filings and send letters to those with a possible compliance issue. Follow up with phone calls and emails, if such contact information is available, if we do not receive responses to the letters.
- c. Send letters to all E-911 surcharge filers who have remitted \$0 with their returns asking them to explain why they have not remitted funds and reminding them of their obligations under the law. Follow up with phone calls and emails, if such contact information is available, if we do not receive responses to the letters.”

2. Implement procedures to collect overdue 911 surcharges from Service Providers and consider taking legal action against Service Providers that owe 911 surcharges for over one year.

DOF Response: “DOF will implement the following procedures to collect overdue E-911 surcharges:

- a. Work with our BTS technical team to develop a monthly query of E-911 surcharge accounts with open balances.
 - 1) Ensure that each E-911 surcharge account with an open balance receives a bill.
 - 2) For telephone service providers with liabilities exceeding \$5,000 that submitted a return without payment and still fail to remit the payment after the notice of tax due, refer the bill to DOF’s Legal Affairs Division for a legal letter or email to remind the providers to pay. DOF will also offer them payment plans, not to exceed 24 months in length.
 - 3) For those providers with three or more open balance periods, work with DOF’s Legal Affairs Division to conduct more formal collection procedures. This will include, but not be limited to, referring the matter to the NYC Law Department to pursue affirmative litigation.
- b. Seek New York State legislation to amend Administrative Code Section 11-2322 to add enforcement authority. This authority includes charging interest for late payments, establishing penalties for late filing and/or late payment, issuing and docketing a warrant for unpaid E-911 liabilities, and enforcing the warrant as a judgment.

- c. File a complaint to the New York Public Service Commission if a company does not respond to DOF collection efforts.”
3. To obtain reasonable assurance that Service Providers comply with relevant legal requirements for assessing, collecting, and reporting on 911 surcharges, DOF should develop written policies and procedures and allocate sufficient resources to: (a) monitor and audit filed returns and identify non-filing by Service Providers that are covered by NYC Administrative Code, Title 11, Chapter 23-A; and (b) enforce the law’s requirements.

DOF Response: “To meet this recommendation, DOF will do the following:

- a. Develop written policies and procedures.
 - b. Work on securing resources for additional staff and to set up the following functions in BTS: non-filer billing, estimated bills for \$0 returns, ability to initiate non-field audits, if cost-efficient, where we compare filed data to publicly available records (e.g., shareholder reports, PSC reports), and create collection cases for unpaid liabilities if docketing authority is obtained through New York State legislation.
 - c. Include E-911 issues as part of applicable DOF utility tax field audits, contingent upon enactment of required enforcement authority.”
4. Enforce the requirement that Service Providers to submit annually to DOF an accounting of 911 surcharge amounts billed and collected.

DOF Response: “On an annual basis, DOF will reach out by mail and email (to those E-911 surcharge payers with e-Services accounts) notifying the provider of Section 11-2325(d) of the NYC Administrative Code, which requires the provider to submit to the commissioner of the Department of Finance an accounting of the surcharge amounts billed and collected. If a report is not received within 60 calendar days, DOF will send a subsequent follow-up notifying the provider that failure to provide the required report will put them in violation of Section 11-2325(d) of the NYC Administrative Code.”

- a. Develop written policies and procedures and allocate sufficient resources to: (a) monitor and audit filed returns and identify non-filing by Service Providers that are covered by NYC Administrative Code, Title 11, Chapter 23-A; and (b) enforce the law’s requirements.
5. Enforce the requirement that Service Providers to submit monthly to DOF a list of the names and addresses of customers who refused or failed to pay the surcharges imposed, including the amounts of the unpaid surcharges.

DOF Response: “DOF will inform E-911 filers in our correspondence of the NYC administrative code requirement to submit a monthly list of customers who refused or failed to pay the surcharge imposed by the Service Provider.”

- a. Develop written policies and procedures and allocate sufficient resources to: (a) monitor and audit filed returns and identify non-filing by Service Providers that are covered by NYC Administrative Code, Title 11, Chapter 23-A; and (b) enforce the law’s requirements.
6. Develop written policies and procedures for notifying all Service Providers of the 911 surcharge filing requirements and that their submissions may be subject to audit.

DOF Response: “DOF will establish written policy and procedures and notify providers.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government audit standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was Calendar Year 2019. To gain an understanding of DOF responsibilities and to accomplish our objective, we reviewed Title 11, Chapter 23-A of the NYC Administrative Code, Local Law No. 16 of the City of New York for the year 2002, and Local Law No. 30 of the City of New York for the year 2010.⁸

To determine whether DOF has controls in place to monitor Service Providers' compliance with the NYC Administrative Code, we asked DOF to provide us with its pertinent written policy and procedures, annual reports submitted by the Service Providers, and the lists of the customers who did not pay the 911 surcharges for our review. We also interviewed DOF officials to gain an understanding of the DOF's operation and monitoring procedures for the collection process for the 911 surcharge.

To determine the number of Service Providers that are registered with DOF and required to file E-911 returns, we conducted a walkthrough of DOF's BTS and requested a list of Service Providers. We compared DOF's responsive list of 564 Service Provider accounts with the companies listed in the relevant fields in BTS. We also reviewed DOF's 911 surcharge monthly reports and traced to the amounts maintained in the BTS.

To determine how DOF maintained the E-911 returns submitted by the Service Providers, we conducted walkthroughs of DOF's BTS. We then randomly selected 50 of the 564 Service Provider accounts in BTS and determined whether DOF properly reported the 911 surcharge remitted by these 50 Service Providers during Calendar Year 2019 to the monthly reports submitted to Office of Management and Budget.

To determine whether DOF takes appropriate actions to follow up on issues involving the Service Providers, we took the following steps:

- For Service Providers that did not submit NYC-E-911 forms to DOF on a consistent basis, we analyzed the filing patterns of the 257 Service Provider accounts that had submitted 911 surcharge payments during Calendar Year 2019. We also obtained from DOF a list of Service Providers that did not file their E-911 returns during Calendar Year 2019 and quantified the durations of continuous non-filing E-911 returns by the five Service Providers with the longest records of continuous non-filing.
- For Service Provider accounts that contained zero-amount returns, which indicated no 911 surcharges were collected, we obtained from DOF a list of Service Providers that submitted zero amount returns in their E-911 returns during Calendar Year 2019; and we

⁸ These local laws amended the relevant sections of the NYC Administrative Code.

quantified the top five Service Providers reporting the longest duration of filing zero-amount returns.

- For Service Providers that collected 911 surcharges from their customers but did not remit the collected surcharges to DOF when the Service Providers filed the E-911 returns, we obtained from DOF a list of Service Provider accounts that had outstanding balances as of August 24, 2020.

We then inquired if DOF had taken follow-up actions on the sampled Service Provider accounts to determine whether the follow-up actions were sufficient and timely.

The results of the above tests, while not projectable to the populations, provided a reasonable basis for us to assess and to support our findings and conclusions about DOF's oversight over the collection of the 911 surcharges.



Department of Finance

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Sherif Soliman
Commissioner

VIA EMAIL, mlanda@comptroller.nyc.gov

November 10, 2021

Marjorie Landa
Deputy Comptroller for Audit
Office of the New York City Comptroller
1 Centre Street, Room 1100
New York, NY 10007

Re: Audit Report on the New York City Department of Finance's Oversight over the Collection of 911 Surcharges

Dear Deputy Comptroller Landa,

The Department of Finance (DOF) has reviewed the draft report referenced above. Our response is enclosed.

If you have questions or require additional information, please contact Sam Mayer, Senior Director of Internal Audit, at (212) 291-2536 or mayers@finance.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sherif Soliman".

Sherif Soliman, Commissioner

cc: Michael Hyman, First Deputy Commissioner
Jeffrey Shear, Deputy Commissioner for Treasury and Payment Services
Diana Beinart, Deputy Commissioner for Legal Affairs
Sam Mayer, Senior Director of Internal Audit
Leslie Zimmerman, Assistant Commissioner for Payment Operations

DOF 911 Surcharge Draft Audit Report

Recommendations

1. Establish procedures that enable and require DOF to identify Service Providers that provide service within the City and are required to collect 911 surcharges.

DOF Response. To identify Service Providers, DOF will:

- a. Compare all New York City telecommunication providers currently filing NYC-E911 returns to the list of all active telecommunication companies in New York State maintained by the NYS Public Service Commission. We will then send a letter to those active NYS telecommunication providers that are not currently filing NYC-E911 returns. A preliminary draft of the letter follows:

Why we are contacting you:

NYC Department of Finance records indicate that you are an active telecommunications company in New York State. If you are doing business as a telecommunications company in New York City you may be subject to the NYC E-911 surcharge and must file form NYC-E911 (Return of E-911 Surcharge by Telecommunication Providers).

What you must do:

Review your E-911 surcharge compliance status. If required to file NYC-E911 forms, file and pay for the current period.

In addition, file for all delinquent periods and pay all delinquent periods on the appropriate tax form. If you promptly file your delinquent tax periods at this time for the past three years and voluntarily disclose these delinquencies, DOF will offer you a payment plan for this liability that does not charge interest.

e-Services:

The Department of Finance encourages all taxpayers to use our Business Tax System (BTS) e-Services web page to electronically transact business. E-911 surcharge returns can be electronically filed and paid online. If you have not already done so, visit the e-Services page (www.nyc.gov/eservices) and click the "Sign Up Now" link at the bottom of the Login section. By entering the Letter ID above, you can create a username and confidential password which will allow you to access our expanded option of services and manage your account from any internet connected device.

- b. Review all companies that filed the surcharge in the previous year to check that they are up to date with their filings and send letters to those with a possible compliance issue. Follow up with phone calls and emails, if such contact information is available, if we do not receive responses to the letters.
 - c. Send letters to all E-911 surcharge filers who have remitted \$0 with their returns asking them to explain why they have not remitted funds and reminding them of their obligations under the law. Follow up with phone calls and emails, if such contact information is available, if we do not receive responses to the letters.
2. Implement procedures to collect overdue 911 surcharges from Service Providers and consider taking legal action against Service Providers that owe 911 surcharges for over one year.

DOF Response. DOF will implement the following procedures to collect overdue E-911 surcharges:

- a. Work with our BTS technical team to develop a monthly query of E-911 surcharge accounts with open balances.
 - 1) Ensure that each E-911 surcharge account with an open balance receives a bill.
 - 2) For telephone service providers with liabilities exceeding \$5,000 that submitted a return without payment and still fail to remit the payment after the notice of tax due, refer the bill to DOF's Legal Affairs Division for a legal letter or email to remind the providers to pay. DOF will also offer them payment plans, not to exceed 24 months in length.
 - 3) For those providers with three or more open balance periods, work with DOF's Legal Affairs Division to conduct more formal collection procedures. This will include, but not be limited to, referring the matter to the NYC Law Department to pursue affirmative litigation.
 - b. Seek New York State legislation to amend Administrative Code Section 11-2322 to add enforcement authority. This authority includes charging interest for late payments, establishing penalties for late filing and/or late payment, issuing and docketing a warrant for unpaid E-911 liabilities, and enforcing the warrant as a judgment.
 - c. File a complaint to the New York Public Service Commission if a company does not respond to DOF collection efforts.
3. To obtain reasonable assurance that Service Providers comply with relevant legal requirements for assessing, collecting, and reporting on 911 surcharges, DOF should develop written policies and procedures and allocate sufficient resources to (a) monitor and audit filed returns and identify non-filing by Service Providers that

are covered by NYC Administrative Code, Title 11, Chapter 23-A, and (b) enforce the law's requirements.

DOF Response. To meet this recommendation, DOF will do the following:

- a. Develop written policies and procedures.
- b. Work on securing resources for additional staff and to set up the following functions in BTS: non-filer billing, estimated bills for \$0 returns, ability to initiate non-field audits, if cost-efficient, where we compare filed data to publicly available records (e.g., shareholder reports, PSC reports), and create collection cases for unpaid liabilities if docketing authority is obtained through New York State legislation.
- c. Include E-911 issues as part of applicable DOF utility tax field audits, contingent upon enactment of required enforcement authority.

4. Enforce the requirement that Service Providers to submit annually to DOF an accounting of 911 surcharge amounts billed and collected.

DOF Response. On an annual basis, DOF will reach out by mail and email (to those E-911 surcharge payers with e-Services accounts) notifying the provider of Section 11-2325(d) of the NYC Administrative Code, which requires the provider to submit to the commissioner of the Department of Finance an accounting of the surcharge amounts billed and collected. If a report is not received within 60 calendar days, DOF will send a subsequent follow-up notifying the provider that failure to provide the required report will put them in violation of Section 11-2325(d) of the NYC Administrative Code.

5. Enforce the requirement that Service Providers to submit monthly to DOF a list of the names and addresses of customers who refused or failed to pay the surcharges imposed, including the amounts of the unpaid surcharges.

DOF Response. DOF will inform E-911 filers in our correspondence of the NYC administrative code requirement to submit a monthly list of customers who refused or failed to pay the surcharge imposed by the Service Provider.

6. Develop written policies and procedures for notifying all Service Providers of the 911 surcharge filing requirements and that their submissions may be subject to audit.

DOF Response. DOF will establish written policy and procedures and notify providers.