

## EXECUTIVE SUMMARY

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The purpose of this audit was to determine if the Florida Department of Transportation (department) received appropriate revenues from American Tower Corporation (ATC) in accordance with the department's *Lease and Operating Agreement for Commercial Wireless Telecommunications* (Agreement). We assessed whether ATC provided accurate financial information and complied with the terms of the Agreement. Our assessment evaluated applicable documentation and records for the fiscal year ended June 30, 2011. Also, we assessed whether the department provided adequate monitoring to ensure compliance with agreement requirements.

We determined the department received appropriate revenues as required by the agreement. However, the four payments submitted within the scope of our review were delinquent. During our review, ATC management made process changes to allow for timely payments to the department. Our office determined ATC payments for the 3<sup>rd</sup> and 4<sup>th</sup> quarter of Fiscal Year ended June 30, 2013, were received timely.

Additionally, ATC was not fully compliant with all terms of the agreement and there is no evidence of monitoring by the department to determine if the following terms were met:

- submitting timely quarterly reports detailing marketing initiatives by ATC; and
- providing copies of all agreements ATC entered into with sublessees/licensees.

Although, Intelligence Transportation System (ITS) staff has indicated ATC was contacted by telephone when quarterly payments or marketing reports were late, documentation was not maintained in the file. Our review disclosed the department and ATC agreed to a revised quarterly marketing report format contained in Amendment 4, effective May 20, 2013.

As a result of these findings, we recommend the State Traffic Operations Engineer ensure ATC complies with all Agreement terms by:

- ensuring quarterly payments are received within the timeframes outlined;
- ensuring marketing reports are received timely on a quarterly basis;
- obtaining copies of all ATC sublease agreements and amendments in order to verify the information contained in the quarterly revenue reports; and

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- conducting periodic site inspections of the ATC tower sites in order to verify the subleases/tenants reported.

Additionally, the State Traffic Operations Engineer should consider amending the current agreement to require: late fees and/or interest for late payments, a certification by ATC with each quarterly report attesting information and payments provided were accurate and a periodic audit of ATC's reported revenues by an independent third party.

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## **BACKGROUND AND INTRODUCTION**

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In March of 1999, the department entered into the *Lease and Operating Agreement for Commercial Wireless Telecommunications* with Lodestar Towers, Inc. (Lodestar) to make right of way property available for wireless communication companies such as Verizon, AT&T and T-Mobile. SpectraSite Corporation acquired Lodestar in 2000. ATC merged with SpectraSite in 2005 and the original agreement terms remain binding to ATC. The agreement is effective until 2029 (30 years). For the first 15 years, ATC has exclusive rights to lease specified property. However, the department negotiated and executed Amendment 4, which among other changes to the Agreement, terminated certain ATC exclusive rights effective May 20, 2013. Amendment 4 also extended the Agreement an additional 10 years to 40 years.

The Agreement is managed by Traffic Engineering and Operations Office, ITS section staff. ITS staff overseeing the Agreement perform technical analysis, coordinate with ATC's project manager to help ensure tower safety and are responsible for receiving and reviewing the marketing and revenue reports. Additionally, they periodically work with the department's General Accounting Office (GAO) to obtain payment updates and help determine securities amounts specified in the Agreement.

Pursuant to the Agreement, ATC is required to submit marketing and revenue reports on a quarterly basis. Revenue reports list the sites and tenants, as well as corresponding rental revenue and amounts due to the department. The department's share of the revenue is determined by a rate structure outlined in the Agreement. (See Attachment 1) Amendment 4, which was effective May 20, 2013, also modified the rate structure.

As of September 20, 2012, a total of 118 tower locations were available for lease by ATC. During the period tested, fiscal year ended June 30, 2011, there were 40 tower locations with a total of 91 leasing tenants. Attachment 2 shows a list of sites with the corresponding number of tenants.

For fiscal year ended June 30, 2011, the department received compensation of \$1,131,518 as a result of the Agreement.

A previous OIG audit of the Agreement (Audit No. 09F-0003) revealed the following findings:

- unreported revenues and a total of \$171,544 due to the department, which was subsequently paid;
- marketing reports not received on a regular basis; and
- ATC did not submit fiscal year financial statements to the department as required under the Agreement.

## RESULTS OF REVIEW

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The revenues reported by ATC for the fiscal year ended June 30, 2011, are accurate. A sample of 51 subleases, which represents approximately 57 percent of the revenues during the test period July 1, 2010 through June 30, 2011, were recalculated using the information drawn from the sublease agreements and subsequent amendments. We determined there are no material differences between the calculated amounts and the revenue reports.

Additionally, we reviewed the following areas with regard to the Agreement and did not note any exceptions regarding the:

- reported number of subleases or tenants on ATC owned towers. We tested 18 of the 30 ATC owned tower sites (see Attachment 3) to verify the tenants on the towers were consistent with department records;
- securities for rental payments, removal/relocation performance and construction required by the Agreement;
- insurance coverage required by the Agreement; and
- ATC tower facilities capacity design for compliance with the Agreement. The Agreement requires designed facilities to accommodate at least three subleases.

However, we noted two findings related to department monitoring of payments by ATC: documentation required by the agreement and reported tower site information.

### Finding 1

Pursuant to the Agreement, ATC is required to submit payments to the department within 30 days after the end of each calendar quarter. **All payments made by ATC during the scope of this review, from July 1, 2010 to June 30, 2011, were wired to the department late. There is no evidence to verify the Department monitored the timeliness of payments and attempted to obtain the payments in a timely manner.** However, ITS staff has indicated ATC was contacted by telephone when quarterly payments were late. Below is a summary of the payments received for the fiscal year ended June 30, 2011:

Payments	Payment Due	1 <sup>st</sup> Payment Date	Days Late	2 <sup>nd</sup> Payment Date	Days Late
1 <sup>st</sup> quarter	10/30/2010	11/8/2010	9		
2 <sup>nd</sup> quarter	1/30/2011	2/7/2011	8	2/9/2011	10
3 <sup>rd</sup> quarter	4/30/2011	5/9/2011	9		
4 <sup>th</sup> quarter	7/30/2011	8/8/2011	9	9/12/2011	43

ATC management indicated the process they undertake to approve payments caused quarterly payments to be wired late. ATC management further stated they are changing the process to allow for timely payments to the department. As a follow-up, our office **reviewed the wire transfers from ATC for the 3<sup>rd</sup> and 4<sup>th</sup> quarter of Fiscal Year ended June 30, 2013, which showed the quarterly payments were received on time.** Also, ITS staff indicated they will document actions taken in the future to obtain late payments and maintain the information in the file.

**We recommend** the State Traffic Operations Engineer ensure the ITS project manager monitors ATC's compliance with receipt of quarterly payments within the timeframe outlined. Additionally, we recommend the State Traffic Operations Engineer consider amending the current Agreement to include a provision requiring late fees and/or interest for late payments.<sup>1</sup>

## **Finding 2**

**During the scope of this review, ATC was not fully compliant with the following terms of the agreement and there is no evidence of monitoring by the department to ensure ATC provided the following:**

- **quarterly reports detailing marketing initiatives carried out, number of contacts and inquiries, number of subleases/licenses entered into, type of facility leased or licensed and the fair market value analysis for each site in a timely manner; and**
- **copies of all agreements ATC entered into with sublessees/licensees.**

ITS staff did not have ATC quarterly marketing reports on file for the period of July 1, 2010 to June 30, 2011. ITS staff indicated ATC was contacted by telephone when marketing reports were not filed but did not maintain documentation to verify ATC contact. During the course of the review, ITS staff requested and received the marketing reports for this period from ATC. If future marketing reports are not filed or are delayed, ITS staff indicated they would document actions taken within the file.

During the course of the engagement it was noted that the tower site specific documents including the ATC sublease agreements and any subsequent amendments were not maintained by the department. However, these documents were subsequently requested and provided by ATC as provided in Section VI (D) of the agreement.

**Without ATC sublease agreements, ITS staff could not monitor and verify the accuracy of the quarterly revenue reports.** Also, the ITS Office cannot ensure ATC

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<sup>1</sup> The Chief Financial Officer is required to set the rate of interest payable on judgments and decrees on December 1, March 1, June 1 and September 1 of each year for the following applicable quarter as required by Subsection 55.03(1), Florida Statutes (F.S.). Subsections 215.422(3)(b) and 337.141(3) and Section 687.01, F.S., require the use of this rate for the payments of interest for late payments to vendors; for late payments on construction or maintenance contracts administered by the department; and for cases where a rate of interest is not specified in a contract. The rate effective on October 1, 2013, is 4.75 percent Rate Per Annum or a Daily Rate of .0130137 percent.

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is complying with the Agreement by actively marketing department tower space in order to maximize state revenues.

**We recommend** the State Traffic Operations Engineer ensure effective monitoring of the Agreement to ensure ATC complies with all terms by:

- ensuring the department receives marketing reports timely on a quarterly basis;
- obtaining copies of all tower site specific sublease agreements and amendments to sublease agreements from ATC in order to verify the information contained in the quarterly revenue reports; and
- conducting periodic ATC tower site inspections in order to verify the subleases/tenants reported.

Additionally, we recommend the State Traffic Operations Engineer consider amending the current Agreement to require ATC provide a certification with each quarterly report attesting the information and payments provided were accurate; and require a periodic audit of ATC's reported revenues by an independent third party.

**Corrective Action Initiated:**

The department and ATC have revised and agreed to a new quarterly marketing report format which is contained in Amendment 4, which was effective May 20, 2013.

## APPENDIX A – Purpose, Scope and Methodology

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The **purpose** of this engagement was to determine if the department received accurate financial information and appropriate revenues and assess ATC's compliance with the terms of the Agreement.

The **scope** of the audit was the revenue reports, marketing reports and payment records for fiscal year ended June 30, 2011, as well as the most current documentation for sublease agreements and amendments, structural analysis reports, securities and insurance.

The **methodology** included:

- reviewing and evaluating the Agreement;
- obtaining and comparing current lists of subleases from the department and ATC;
- inspecting ATC owned tower sites in order to verify subleases/tenants with department records;
- obtaining and evaluating the quarterly reports for the fiscal year ended to determine total revenue earned;
- comparing revenue data in reports to calculations used to determine expected revenue;
- obtaining and analyzing subleases and associated reported revenues;
- reviewing payments made to the department;
- reviewing ATC compliance with Agreement requirements;
- interviewing appropriate department and contract staff; and
- evaluating risks and internal controls.

**APPENDIX B – American Tower Corporation Response**

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On June 23, 2014, American Tower Corporation provided the following response for our report.

**Finding #1**

American Tower understands and acknowledges the requirement under the Agreement to provide FDOT payments within 30 days after the end of each calendar quarter. American Tower modified its internal processes during 2013 to ensure compliance with this requirement. As a result, American Tower’s last several payments were made in a timely manner in compliance with the timeframe set forth in the Agreement. We believe that the revised procedures within American Tower will allow future payments due FDOT under the Agreement to be made consistently within the established timeframe.

**Finding #2**

American Tower understands and acknowledges the requirement under the Agreement to provide quarterly marketing reports to FDOT. Both American Tower and FDOT worked together in 2013 to revise the reporting format and incorporated that into the Fourth Amendment to the Agreement. We believe this new format will effectively provide the marketing information required by FDOT and allow American Tower to consistently provide the report in a timely manner. With regard to those certain customer sublease or license agreements referenced in Finding 2, American Tower provided all prior documents requested and will endeavor to provide future sublease or license agreements as they are entered into with our customers or on a quarterly basis so information can be verified. Finally, American Tower is willing to assist FDOT as it deems necessary to visit tower sites to further verify customer sublease or license activity.

**Conclusion**

American Tower is willing to work with FDOT to review these findings in further detail and discuss the recommendations made by the Office of Inspector General. We look forward to continuing our partnership for commercial wireless telecommunication with the Florida Department of Transportation.

**APPENDIX C – Management Response**

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On June 17, 2014, the department's Traffic Engineering and Operations Office provided the following response to our findings and corrective action plan.

**Finding 1**

We concur with the findings and recommendations.

The State Traffic Operations Engineer will ensure the ITS project manager monitors ATC's compliance with all Agreement terms including receipt of quarterly payments within the timeframe outlined. Additionally, the State Traffic Operations Engineer will consider amending the current Agreement to include a provision requiring late fees and/or interest for late payments. However, the Agreement must be agreed to by both parties.

**Finding 2**

We concur with the findings.

The State Traffic Operations Engineer will ensure the ITS project manager monitors ATC's compliance with all Agreement terms including receipt of quarterly Marketing Reports within the timeframe outlined. The Agreement has no provision for applying fees or punitive damage to enforce compliance with the Agreement's reporting requirements. However, action was taken by the Department to execute Amendment 4, which provides a mutually agreed to format for the quarterly Marketing Report. Subsequently, ATC has systemized the update of the quarterly Marketing Report.

The State Traffic Operations Engineer will ensure the ITS project manager monitors ATC's compliance with all Agreement terms including receipt of sublease agreement documents. However, ATC refuses to deliver specific sublease documents due to conflicting proprietary non-disclosure agreements. The Agreement has no provision for applying fees or punitive damage to enforce compliance with the Agreement's reporting requirements. The Department will take action to negotiate amendment of the Agreement to specifically allow visual inspection of all relevant sublease documentation held on file at ATC, in lieu of requiring delivery of the documents to the Department.

The State Traffic Operations Engineer will ensure the ITS project manager monitors ATC's compliance with all Agreement terms including accounting of all subleases/tenant tower installations. As reported during the examination, the Department is responsible for operations and maintenance of the entire FDOT statewide microwave tower system. The Department's engineers and maintenance technicians routinely conduct tower site inspections at all sites throughout the State. Each tower site is normally

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visited several times each month. As a result of those inspections, the Department's Engineers and technicians report ATC tenant activity at any site during the daily Network Operations Teleconference. Any tenant activity is followed-up with ATC for verification of lease and work authorization. The Department has taken action to schedule participation in annual tower site inspections at all ATC owned towers that are subject to the Agreement.

The State Traffic Operations Engineer will seek a procedure change or amendment to the Agreement to include a provision requiring certification of the accuracy of the quarterly reports. The State Traffic Operations Engineer will also consider seeking an amendment to require periodic audit of ATC's reported revenues by an independent third party.

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**DISTRIBUTION, PROJECT TEAM AND STATEMENT OF ACCORDANCE**

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***Statement of Accordance***

*The mission of the department is  
to provide a safe transportation system that ensures the mobility of people and goods,  
enhances economic prosperity, and preserves the quality of our environment and  
communities.*

*The mission of the Office of Inspector General is  
to promote integrity, accountability and process improvement in the Department of  
Transportation by providing objective fact-based assessments to the DOT team.*

This work product was prepared pursuant to Section 20.055, Florida Statutes, in accordance with the applicable Principles and Standards for Offices of Inspectors General as published by the Association of Inspectors General and the International Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal Auditors, Inc.

This report is intended for the use of the agency to which it was disseminated and may contain information that is exempt from disclosure under applicable law. Do not release without prior coordination with the Office of Inspector General.

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**ATTACHMENT 1 – Rate Structure**

RATE STRUCTURE					
The following rates are expressed as a percentage of gross revenue to be credited to the department for each year of the ATC agreement.					
Year	Percentage		Year	Percentage	
	Types 1-3	Type 4		Types 1-3	Type 4
1	60	15	16	41	15
2	55	15	17	41	15
3	43	15	18	41	15
4	40	15	19	41	15
5	41	15	20	41	15
6	41	15	21	41	15
7	41	15	22	41	15
8	41	15	23	41	15
9	41	15	24	41	15
10	41	15	25	41	15
11	41	15	26	41	15
12	41	15	27	41	15
13	41	15	28	41	15
14	41	15	29	41	15
15	41	15	30	41	15

Source: Agreement, Exhibit H

Types:

- (1) Subleases or licenses of spaces on pre-existing structures.
- (2) Subleases or licenses of spaces on structures constructed by the proposer.
- (3) Subleases or licenses of structure sites to third parties for tower construction.
- (4) Subleases or licenses of spaces at department office buildings, construction yards and maintenance facilities.

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**ATTACHMENT 2 - List of Sites and Number of Tenants**

Site Name	Number of Active Tenants
Andytown	6
Creek Road	1
I-10 & Exit 2	1
I-75 & SR 29	1
I-75 Exit 87	1
I-75 MM 35	4
I-75 MM 51.2	5
I-75 MM 63.3	7
I-75 US 90	2
I-95 S CI Exit 80 P	3
Immokalee Rd FL	3
Indrio Road	2
INT Esplanola	1
INT Estero	2
INT Holt	1
INT Port Charlotte	1
INT Port Orange	2
INT Saint Augustine	1
INT Temple Terrace	1
INT Wildwood	1
Jupiter	1
Kernan Blvd and 202	5
Midway	2
Okeechobee	1
Pat Thomas Parkway	1
Pennsuco	1
Pete Side	6
Pompano Beach	6
Riverview	2
South Brevard	1
SR 202 and Hodges Rd	8
Star Hwy	1
Tallahassee	1
Tea Table	1
TPK Delray Beach	1
TPK Fort Lauderdale	2
TPK Fort Pierce	1
TPK Orlando South	1
TPK Snapper Creek	1
TPK West Palm Beach	2
<b>Total Tenants</b>	<b>91</b>

Source: ATC Revenue Data

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**ATTACHMENT 3 - ATC Tower Site Map**

Towers sites highlighted in Yellow were inspected during the engagement.

