

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC
DEVELOPMENT
COMMUNICATIONS PROGRAM**

**INTERNAL CONTROL OVER REVENUE
RENTAL OF SPACE FOR ANTENNA FACILITIES**

JUNE 2013

To The Fiscal Committee Of The General Court:

This report presents the results of our assessment of the internal controls in place over the invoicing, receipt, deposit, and recording of proceeds from the rental of space for antennas and associated communications equipment and structures (antenna facilities) on Department of Resources and Economic Development (Department) property during the eight months ended February 28, 2013.

The work performed did not constitute an audit of financial statements in accordance with *Government Auditing Standards* and was not designed for the purpose of expressing an opinion on the effectiveness of the Department's internal controls. Accordingly, we do not express an opinion on the effectiveness of the Department's internal controls.

The Department's response is included with each finding in this report. We did not audit the Department's responses.

Office of Legislative Budget Assistant
Office Of Legislative Budget Assistant

June 2013

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT
RENTAL OF SPACE FOR ANTENNA FACILITIES**

TABLE OF CONTENTS

	<u>PAGE</u>
EXECUTIVE SUMMARY	1
BACKGROUND	2
OBJECTIVES, SCOPE, AND METHODOLOGY	3
PRIOR AUDIT	4
FINDINGS AND RECOMMENDATIONS*	
1. Administrative Rules Should Be Adopted.....	5
2. Controls Ensuring All Agreements Are Current, Documented, And Approved Should Be Established	5
3. Policies And Procedures Controlling Free Use Of Department Property Should Be Established	8
4. Policies And Procedures For Setting Rental Rates Should Be Established.....	9
5. Policies And Procedures For Maintaining Complete And Current Inventory Of Antenna Facilities Should Be Established.....	11
6. Controls Over The Recording Of Revenue Should Be Improved	13
7. Department Should Exercise Its Authority Over A Tenant-Operated Department Site.....	13
8. Agreement Covering The Current And Future Use Of The Cannon Mountain Communications Facility Should Be Negotiated.....	14

This report can be accessed in its entirety on-line at:
<http://www.gencourt.state.nh.us/LBA/AuditReports/financialreports.aspx>

* No comment suggests legislative action may be required.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT
RENTAL OF SPACE FOR ANTENNA FACILITIES**

EXECUTIVE SUMMARY

The objective of this audit was to evaluate whether the Department of Resources and Economic Development (Department or DRED) has established and implemented adequate accountability and other internal controls over its invoicing, receipt, deposit, and recording of proceeds from the rental of space for antennas and associated communications equipment and structures (antenna facilities) on Department property. The purpose of this audit was not to render an opinion on the Department's financial statements, internal control, or compliance.

Agency management is responsible for establishing and maintaining effective internal controls, including controls over financial reporting, and controls over compliance with the laws, administrative rules, regulations, contracts, and grant agreements applicable to the agency's activities. The Department of Administrative Services (DAS) has developed an *Internal Control Guide* to help State agency personnel understand the concepts of internal control. It explains the purpose of internal control and also explains its five components: control environment, risk assessment, control activities, information and communication, and monitoring. In addition, the DAS also maintains a *Manual of Procedures* (Manual), approved by the Governor and Council, for use by all State agencies. The Manual contains guidance in a number of areas, including the use of the State's central accounting system, known as NHFirst.

We conducted our work in accordance with auditing standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States (GAGAS). 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 the evidence obtained provides a reasonable basis for our findings.

SUMMARY OF RESULTS

We found the Department's internal controls over the receipt, deposit, and recording of proceeds from the rental of space for antenna facilities on Department property were suitably designed to provide reasonable assurance that the specified internal control objectives would be achieved. However, the Department had not designed or implemented controls over its process for determining fees, maintaining current tenant information, or for maintaining compliance with statutes affecting the space rental process during the eight months ended February 28, 2013. Deficiencies in the invoicing process included, but were not limited to, failing to maintain awareness and documentation of all antenna facilities on Department sites, lack of required administrative rules, inconsistent charging of fees, inconsistent submission of contracts for Governor and Council approval, and a general lack of review and approval controls supporting the activity.

During the audit period, we noted the Department was in the process of writing policies and procedures for its antenna space rental program and continued to make improvements in its

internal controls for the program. The Department hired an additional employee with communications experience to assist in strengthening its controls, established contract templates, and made other improvements as noted in the Department's responses to the observations that follow.

BACKGROUND

The Department, citing authority granted by RSA 227-H:9, rents and leases space for antenna facilities on 20 Department properties, primarily mountain-top sites. The responsibility for the rental of space for antenna facilities is assigned to the Communications Program within the Department's Division of Forests and Lands, Bureau of Land Management.

The mission statement of the Communications Program is:

To responsibly establish and manage, for federal, state, local agency and commercial use, the Department's mountain-top and ridge-line communications sites for the purpose of enhancing state-wide safety, security, telecommunications, and broadband service for its citizens and guests. To work directly with Department land management specialists to mitigate environmental and visual impacts, to mitigate impacts to the Department's Forest Fire Lookout Program, and to mitigate impacts to public use and enjoyment of the mountain-top sites in the interests of the public good.

The Department reported the following revenues in the State's accounting system during the eight months ended February 28, 2013 resulting from the rental and lease of space for antenna facilities on Department property.

**Revenue From Rental Of Space For Antenna Facilities (Unaudited)
Eight Months Ended February 28, 2013**

	<u>Revenues</u>
Mount Washington	\$ 186,071
All Other Sites	<u>197,726</u>
	<u>\$ 383,797</u>

Source: LBA analysis of State accounting system transactions.

At February 28, 2013, one full-time and one part-time Department employee were responsible for the day-to-day operation of the Department's program for the rental of space for antenna facilities.

The Department is located at 172 Pembroke Road, Concord, New Hampshire.

OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

1. Assess the control environment, including management's policies and procedures for establishment and maintenance of an effective control system over the invoicing, receipt, deposit, and recording of proceeds from the rental of space for antenna facilities on Department property.
2. Assess the adequacy of the design of internal controls over the invoicing, receipt, deposit, and recording of proceeds from the rental of space for antenna facilities on Department property:
 - Adequacy of written policies and procedures, and
 - Adequacy of controls over compliance with laws, rules, policies, contracts, and other relevant criteria.
3. Assess the operation of the controls, including:
 - Functional compliance with written policies and procedures related to the rental of space for antenna facilities.
 - Functional compliance with stated (but not necessarily documented) policies and procedures related to the invoicing, receipt, deposit, and recording of proceeds from the rental of space with consideration given to:
 1. The identification of all antenna facilities, including antennas and associated equipment and structures,
 2. The identification of all owners of antenna facilities,
 3. Determination of paying customers,
 4. Determination of amounts to be invoiced,
 - Requires specifics such as antenna types, shapes, areas required/utilized, and
 - Appropriate rental rates,
 5. Invoicing customers,
 6. Collecting and depositing amounts invoiced, and
 7. Recording amounts invoiced and collected in the proper accounts.

Audit Scope

The scope of our audit included the adequacy of internal controls relating to the Department's generation and processing of invoices and receipts resulting from the rental of space for antenna facilities and the recording of those transactions in the Department's information systems, including the State's accounting system, NHFirst.

The audit period was July 1, 2012 through February 28, 2013.

Audit Methodology

1. Review statutes and administrative rules.
2. Review State policies and procedures.
3. Review agency policies and procedures for adequacy.
4. Interview agency personnel.
5. Review relevant Department documentation including:
 - Policies and procedures,
 - Contracts and other agreement documents, and
 - Other documentation supporting the invoicing, receipt, deposit, and recording of proceeds from the rental of space for antenna facilities on Department property.
6. Observe Department operations.
7. Review design and operation of internal controls through tests of transactions.

PRIOR AUDIT

There are no prior audits that address internal controls specific to the Department's rental of space for antenna facilities on Department property.

FINDINGS AND RECOMMENDATIONS

Observation No. 1: Administrative Rules Should Be Adopted

Observation:

The Department has not established administrative rules to support its program for the rental of space on Department property for antenna facilities.

Pursuant to RSA 12-A:2-c, I, “The commissioner shall adopt rules under RSA 541-A governing use by the public of state forests, parks, or any other land or buildings operated by the department of resources and economic development. This shall include, but not be limited to, the commissioner's responsibilities under RSA 216 and 227-H.” According to the Department, RSA 227-H:9, *Privileges and Concessions*, provides the Department with authority to enter into agreements to rent space on Department property for antennas and other communications equipment.

A primary purpose of rules is to inform the public as to how an agency administers a statute and how it should interact with the agency and to provide the public with a level of confidence that everyone interacting with the agency is treated equitably. Rules provide consistency in expectations and behavior in the administration of a program. In the absence of administrative rules, policies can appear to be arbitrary.

Recommendation:

The Department should adopt administrative rules relative to the rental of space on Department property for antenna facilities in accordance with RSA 12-A:2-c, I.

Critical aspects of the program, including determination of rates, should be subject to administrative rule procedures.

Auditee Response:

We concur. DRED will draft administrative rules for submittal to the Joint Legislative Committee on Administrative Rules by December 31, 2013.

Observation No. 2: Controls Ensuring All Agreements Are Current, Documented, And Approved Should Be Established

Observation:

The Department has not established controls to ensure that all agreements allowing entities to maintain and operate communications equipment and structures on Department property are documented by contracts or other written devices.

The Department cites RSA 227-H:9, *Privileges and Concessions*, as the statutory authority for its renting of space for antenna facilities on Department property. That statute states,

The commissioner may make contracts for the leasing of privileges and concessions on state reservations, for periods not exceeding 5 years, except such 5-year limitation shall not apply to contracts between the state and the 4-H Foundation of New Hampshire, Incorporated, relative to facilities at Bear Brook state park. All such contracts extending for a period of more than 3 years or for an annual consideration of more than \$2,500 shall be approved by the governor and council prior to being effective.

In addition, RSA 227-H:10, *Recording*, requires, “All contracts made under the provisions of RSA 227-H:9, extending for a period of more than 3 years or for an annual consideration of more than \$2,500, shall be recorded in the registry of deeds in the county, or counties, where the lands to which such contracts relate are situated.”

As part of our audit, we reviewed documentation supporting 13 of the 33 rental agreements that charged more than \$1,000 per year for maintaining and operating communications equipment and structures on one or more of the Department’s properties and noted the following.

1. Lease agreements, special use permits, and associated documentation have not been kept current. Of the 13 agreement documents tested, six (one original agreement and five lease extensions) were expired for periods ranging from six months to nearly 10 years.
2. While the Department generally submits initial lease agreements to Governor and Council for approvals required by RSA 227-H:9, it generally does not submit contract extension agreements (referred to as renewal agreements) for approval, even if the period and amount of the contract extension exceeds RSA 227-H:9 criteria. One initial contract agreement tested, all four renewal agreements tested, and one expired contract which did not have a renewal agreement in place, had not been submitted for Governor and Council approval.
3. Initial agreements, and especially contract extension agreements, are not sufficiently detailed to identify the scope of use covered by the agreements. For example, the number and types of antennas, if identified in the agreements, may not be the antennas actually placed at the sites.
4. Historically, the Department has not consistently submitted initial lease agreements to Governor and Council for approval prior to the effective date of the agreements. RSA 227-H:9 requires prior Governor and Council approval for lease contracts on state reservations exceeding three years or for annual consideration of more than \$2,500.
5. The Department does not have effective controls to ensure that contracts are recorded with the registry of deeds when required by the statute. Nine of the 13 contracts tested met the statutory criteria for recording with the registry of deeds pursuant to RSA 227-H:10. The Department neither recorded the contracts itself nor confirmed the contracts had been recorded by the tenants.
6. The Department does not have controls to require tenants to make rent payments in accordance with contract conditions. Six of 11 tenant remittances tested were received after the contract due dates. Delinquent remittances noted in the test were received from one to 206 days after contract due dates. We noted no timely action taken by the Department in response to late remittances or late fees or penalties applied to those late payments.

As discussed in Observation No. 3, during the audit period, the Department also allowed a number of entities to use Department space for antenna facilities under undocumented quid-pro-quo agreements.

Recommendation:

The Department should establish controls to ensure that all agreements, including any amendments, allowing entities to maintain and operate antenna facilities on Department property are documented by contracts or other legal documents. Controls should be in place to ensure:

1. 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.
2. 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.
3. 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.
4. All original and renewal agreements meeting criteria in RSA 227-H:9 are submitted for Governor and Council approval prior to enactment.
5. 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.
6. Tenants remit rents in accordance with contracted due dates and delinquent rents are pursued timely.

Auditee Response:

We concur. As the result of concerns raised by DRED's internal auditor, in January of 2011, then Commissioner Bald established an internal "Communications Team" to evaluate and resolve possible inadequate procedures of the Department's "Mountain Top Communications Program." As highlighted in this Observation, the Program is plagued by past inadequate contracting procedures. Since January 2011, DRED and the Communications Team have been working steadily to ensure proper contracting. In concert with the Department of Justice, the Program is refining its contracting documents and assuring state process is followed, has written a Communications Program Manual where contracting protocols have been established, and is renegotiating past contracts that have expired or are non-existent. Recording requirements pursuant to RSA 227-H:10 are now a condition of every Lease contract.

In addition, we concur that noted conditions 1-6 above are not acceptable. Protocols are now established in the Contracting Chapter of the Manual that address all six (6) recommendations.

Observation No. 3: Policies And Procedures Controlling Free Use Of Department Property Should Be Established

Observation:

The Department has not established controls, in the form of written policies and procedures or otherwise, for determining which entities should not be charged for the right to maintain and operate antenna facilities on Department property.

At February 28, 2013, 23 entities were utilizing antenna space on Department property at no charge. Some of the entities utilized antenna space at multiple Department locations. The Department reported these entities were not charged as the communications enabled by the antennas provided for public safety or the entities provided another service to the Department in lieu of paying rent for the space.

The Department reported that most of the entities that were not charged, both governmental and commercial, were provided free use of space pursuant to undocumented quid-pro-quo arrangements. In addition to not documenting these arrangements, the Department was unable to describe the agreed-to conditions for all of the arrangements. While the Department reported the services it receives from entities in lieu of rental income for the use of space included assistance with the tracking and maintenance of radio equipment, snow plowing and roadwork at various State parks and access roads, internet service for the use of the fire watch program, and advertisement of certain State parks, the Department could not describe, beyond general terms, the services that it expected to receive during the audit period from these agreements.

The Department reported it did not have any analysis that compared the costs of services received to the revenue forgone in these quid-pro-quo agreements nor could it demonstrate that it had statutory authority to enter into quid-pro-quo agreements with entities inside or outside of State government.

Prior to the establishment of the Department's Communications Team in January 2011, one Department employee was primarily responsible for making the determination of when to charge entities, allow for quid-pro-quo arrangements, or allow for free use of space on Department property. This employee was also given the responsibility for negotiating lease terms and rental rates for antenna facility space and tracking tenant remittances for timeliness and accuracy. During the audit period, there were limited formal review and approval controls over that employee's activities.

Recommendation:

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.

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.

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.

Auditee Response:

We concur. The Program has recently established a “Tenant Categories” section in the Program Policy and in the Program Manual, along with a multi-step procedure for setting “fair market rent” for each tenant category. The “Contracting” chapter of the Program Manual defines tenant categories, addresses setting market rent, and established an order of types of contracting agreements to be used.

The Program agrees that the matter of allowing the use of Program vertical real estate under quid-pro-quo arrangements is a challenge and requires better documentation. The decision to not charge other state agencies was a decision agreed to by the Communications Team since January 2011. It should also be noted that the \$1,000 annual charge to municipal public safety agencies effective with invoices issued in January 2012 was also a decision of the Team. The Team consists of two division directors, the business administrator, and the Commissioner in addition to others. The Program direction is to document each arrangement (equipment v. services provided) in each NH state tenant contract to assure fair and adequate compensation. DRED will review this matter with the Department of Justice.

Observation No. 4: Policies And Procedures For Setting Rental Rates Should Be Established

Observation:

As of the July 1, 2012 onset of the audit period, the Department had not established controls, including comprehensive policies and procedures, for setting rental rates charged to entities that are allowed to maintain antenna facilities on Department property.

During the eight months ended February 28, 2013, monetary rental rates charged by the Department under its rental arrangements for antennas and other communications equipment and structures on its property ranged from \$1,000 to approximately \$37,000 per year. The Department did not use rate schedules, formulas, or other documented criteria for setting rates for the rent of this space. According to the Department, rents were generally set by the one Department employee familiar with the industry, based on that employee’s knowledge and experience. The rent charged was not documented as having been formally reviewed and approved by Department management prior to the execution of the contracts.

As discussed in Observation No. 5, the Department does not have a complete inventory of the antenna facilities on its properties. For example, the most recent contract for one tenant on Mount Sunapee allows the placement of a cell array and four large microwave antennas. The Department does not know how many microwave antennas the tenant has placed on the tower. Without knowing the tenant's use of the tower, it is impossible to determine a fair rent.

The Department has not monitored contracted rental rate escalators. During the audit period, the Department received \$15,000 from one tenant to correct for the tenant having underpaid rent for approximately a 10-year period. The error in the tenant's application of the escalator and underpayment of rent went unnoticed by the Department but was identified by the tenant's auditor in the Fall of 2012.

During fiscal year 2013, the Department prepared a pricing matrix which listed rents based on antenna type and size. The Department reported the pricing matrix could only be used as a *guideline* for base-level rates and could not be used for setting rental rates, as it could not take into account tower location and other market-value considerations.

The lack of formal pricing controls, including policies and procedures, over this critical aspect of the Department's rental of communications space puts the Department at significant risk that the program will not operate as intended or in accordance with statutes or general State and Department policies and procedures.

Recommendation:

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.

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.

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.

Auditee Response:

We concur. The Program has recently drafted a multi-step procedure for setting "fair market rent" for each tenant category. The "Contracting" chapter of the Program Manual establishes an order of contracting agreements to be used, and provides procedures for setting annual market rents, including a "pricing matrix." As with property real estate, the market value of "vertical real estate" managed by the Program is in constant flux due to site variations, technological advances, and ever-changing economic factors. Program procedures must maintain flexibility at contracting a fair market rent with new and renewal tenants. The Program agrees that assistance from an outside consultant to improve the pricing matrix would be beneficial.

The Contracting Chapter includes a new “Contract Approval” section which establishes a protocol whereby contracting is completed up the chain of command to assure that no one person can contract with a tenant. Past contracts are being reviewed and re-negotiated where necessary, with rent rates and rent escalators being set, that then can be handled by NHFirst - the State’s new billing system. We have become more aware of the difficulty of assuring that escalators are being entered into the billing system in a timely and accurate manner. Program billing procedures now include an alarm to address escalators to annual market rents. This alarm feature notifies staff when an escalator is scheduled to be applied to the rent.

In a spirit of public safety, in January 2012, DRED leadership authorized the Program to set an “administrative fee” of \$1,000 for all local tenants, including fire, police and ambulance departments, regional school bus services, and county sheriff offices. The Program recognizes that the true “market rent” based on equipment installed would be considerably higher in nearly every case.

Over the past 18 months, the Program has made progress at completing and maintaining an inventory of equipment installed at its communication sites. It purchased a new database and filled a previously vacant “Communications Program Specialist II” position to maintain the database. While on-site inspections remain incomplete, the Program is building the database, daily.

The Program agrees that the matter of allowing other New Hampshire state agencies and others the use of Program vertical real estate under a quid-pro-quo arrangement is a challenge and requires better documentation. The Program direction is to document each arrangement (equipment v. services provided) in each tenant contract to assure fair and adequate compensation. Program staff will seek a legal opinion from the Department of Justice.

Observation No. 5: Policies And Procedures For Maintaining Complete And Current Inventory Of Antenna Facilities Should Be Established

Observation:

The Department has not fully implemented controls to ensure that it maintains a complete and current record of all antennas, communications equipment, towers, and buildings in place on Department property subject to its program for the rental of space. Without an accurate inventory of all antenna facilities on its property, the Department cannot fully ensure the properties are used in accordance with the Department’s intentions or that all revenues are fairly charged and collected. The Department reports the last full inspection-based inventory of its properties to identify antenna facilities and their owners occurred approximately 20 years ago. At the time of the audit, the Department could not provide auditors with a complete listing of all antenna facilities on Department property.

The Department purchased communications site software for tracking communications equipment inventory and equipment characteristics, tenant (owner) information, and basic rental agreement information in May of 2012. According to the Department, the software is intended to

be the central repository for information on ownership of the towers and equipment at each of the Department's communications sites. At the time of the audit, the Department reported the information in the software database was neither current nor comprehensive due to lack of available time and incomplete records of equipment, owners, and agreements. In addition to the database, the Department stated its tenant files contained significant information on the program, including information on antenna owners and agreements. However, as noted during the audit, the files proved neither current nor comprehensive.

At the time of the audit, the Department had begun to perform an inventory inspection of the Department's communication sites. As of February 2013, the Department reported it had inventoried three of its 20 sites.

Recommendation:

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.

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.

The Department should establish policies and procedures for periodic reviews of the inventory to ensure the inventory remains current and comprehensive.

Auditee Response:

We concur. DRED has made strides to ensure that it maintains a complete and current record of all antennas and equipment in place on DRED properties. In the last budget, a new position was created to handle the very issues to which this Observation speaks. This position was filled in January, 2013 and has made significant improvements. While the Program recognizes it may have retroactive inventory to complete, today protocols are in place to assure that all equipment is accounted for in each contract and entered into the new database. To that end, all new contracts require a listing of all "housed equipment" and "tower mounted equipment," which is depicted on the sample "Special Use Permit" in the "Sample Documents" chapter of the Manual. The Manual has been updated with protocol that requires all sample contracts include this information, and the protocols established in the Contract Chapter will be updated and made clearer to assure that all equipment is accounted for and inventoried. On-site inspections of 20 communication sites, most of which are remote mountain tops with many tenants, will always be a challenge for the Program and will need continual review. Our plan is to visit all 20 sites by October 31, 2013.

Observation No. 6: Controls Over The Recording Of Revenue Should Be Improved

Observation:

During the audit period, the Department did not have controls to ensure that revenue collected from its rental of space for antenna facilities was consistently recorded in the correct account.

A \$30,000 payment from one of a sample of 13 customers tested was recorded by the Department in an incorrect revenue source account, apparently the result of an error in the Department's identification and set up of accounts subject to recurring invoicing in the State's accounting system, NHFirst.

Three additional instances of revenues being recorded in the incorrect account, totaling \$30,000, were also noted during an audit planning review of documents.

The Department's procedures did not include an effective review and approval control over the identification and classification of revenues in these instances.

Recommendation:

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.

Auditee Response:

We concur. Protocols were recently implemented for the entering of billable accounts into NHFirst. Prior to implementation of the new invoicing procedures, a few existing State of NH Departments on Mount Washington were previously set up with an incorrect item number resulting in payments being put into the wrong revenue source. The Program staff will continue to work with DRED's Business Office to help eliminate mistakes.

Observation No. 7: Department Should Exercise Its Authority Over A Tenant-Operated Department Site

Observation:

The Department reports a commercial company operates antennas and support buildings and power lines on Department-owned property without a use agreement or other contract. The Department's records indicate the site was first developed in the early 1960's by a prior operator. The Department reports it is unable to document whether it ever granted any company authority for the use of the site.

According to the Department, the prior operator built and operated facilities on the site under an agreement with the Public Utilities Commission (PUC), last updated in 1987. Pursuant to that

agreement, the Department has regularly received \$550 per year in rent. In 1997, the Department questioned PUC authority over the site and in 2002 the PUC agreed that it lacked jurisdiction. Since 2002, the Department has not executed an agreement with the company. The Department reports it is in the process of negotiating a use agreement. Since 2011, the Department has refused to accept the \$550 annual payment from the company.

The Department reports that it does not have access to the site (it is reportedly locked and gated). While the Department understands the company has reduced its operations at the site, there are a number of users still operating at the site under agreements with the company, including at least two Vermont municipal public safety agencies. The Department does not know the extent of use at the site, including the number of antennas and other communications equipment, to determine the amount of rent that could have been derived from use of the site.

Recommendation:

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.

Auditee Response:

We concur. This site, located in Wantastiquet Mountain Natural Area, has changed management several times and has required interpretation of legal authority over the site. DRED has negotiated a one-year agreement for \$2,500 in the form of a Special Use Permit while it continues to negotiate for a long-term contract agreement at the site.

Observation No. 8: Agreement Covering The Current And Future Use Of The Cannon Mountain Communications Facility Should Be Negotiated

Observation:

The Department has allowed the commercial use of antenna facilities on the summit of Cannon Mountain without bringing renewal agreements for that use to Governor and Council for approval.

In 1992, the Department entered into an agreement with a company for the reconstruction and use of antenna facilities on the summit of Cannon Mountain. The original lease agreement was for a five-year term commencing November 18, 1992 with one five-year renewal. The company's proposal included adding a new viewing level to the existing viewing platform and radio facility, converting the existing viewing platform level into a screened antenna area, consolidating existing radio buildings, and removing a fire tower and other structures to achieve an unobstructed view. Rent was set at \$15,000 annually, subject to annual adjustments for inflation. The 1992 lease agreement was approved by Governor and Council.

In 1994, an amendment to the 1992 lease agreement was approved by Governor and Council that increased the construction estimates for the project from the initial \$75,000 to \$200,000 and provided the company two additional five-year renewal options extending the lease period to November 2012. The company was also allowed, in lieu of rent payments, to amortize construction costs at \$15,000 per year for the first five years, subject to inflationary increases negotiated at each renewal and Governor and Council approval. There was no further documentation in the file at the Department to indicate subsequent renewals were submitted for Governor and Council approval.

A 1998 agreement between the Department and the company established a \$425,000 cost basis for the communication facility improvements and a rent schedule that amortized that cost over 20 years, without requiring the company to make cash rent payments during that period of use. The 1998 agreement stated cash rent payments would begin November 18, 2012, the end of the twenty-year amortization period.

While the 1998 agreement executed between the Department and the company provided that the agreement would be submitted for Governor and Council approval, the Department reports it never submitted the 1998 agreement for that approval.

As of May 2013, the Department had not established an agreement for the company's continued use of the facilities or invoiced the company for the rent payments due to start in November 2012. The Department's and State's interests may best be served by a short-term extension of the expired agreement to allow for the establishment of rules and related policies and procedures, prior to negotiating such a significant contract.

Recommendation:

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.

Auditee Response:

We concur. The outstanding issues with this tenant are being resolved. The Program is moving forward with a new contract with the tenant at issue, and will assure that it goes before Governor and Council for approval. DRED has established protocols in its Communications Program Manual to assure sound contracting.

THIS PAGE INTENTIONALLY LEFT BLANK