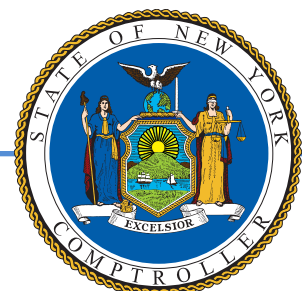


New York City Department of Information Technology and Telecommunications

LinkNYC Program Revenues and Monitoring

Report 2019-N-5 | July 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller
Division of State Government Accountability



Audit Highlights

Objectives

To determine whether New York City received all the revenues specified in the contract terms and whether the Department of Information Technology and Telecommunications (DoITT) monitored the contract to ensure that Links (technologically advanced telecommunication structures) were installed and maintained to ensure user privacy and Link availability according to contract terms. The audit covered from February 1, 2015 to May 5, 2020.

About the Program

DoITT is the technology core of New York City government, working with City agencies and entities, delivering technology, evaluating emerging technologies, procuring citywide IT services, and other IT-related functions. Pursuant to the New York City Charter, DoITT administers telecommunication franchise contracts providing fiber, cable television, Wi-Fi hotspots, and mobile telecom equipment installed on NYC streets. DoITT's Division of Franchise Administration is responsible for granting franchises for public communications structures (PCSs), enforcing performance requirements of franchise agreements to ensure the delivery of universal broadband for all New Yorkers, and ensuring adequate compensation to the City.

In December 2014, the City, through DoITT, entered into a Franchise Agreement (Agreement) with a consortium of technology, media, and connectivity providers (Consortium) to replace an aging network of public pay telephones (PPTs or payphones) with technologically advanced telecommunication structures, otherwise known as Links, that offer free, high-speed Internet access as well as free phone service; a touchscreen tablet interface to access City services, including 911 emergency and NYC311; free cell phone charging; and digital advertising and public service announcements.

The LinkNYC franchise is regulated by the Agreement between the City and the Consortium, its attachments, appendices, exhibits, and amendments, as well as Chapter 6 of the Rules of the City of New York. Pursuant to the Agreement, each PCS that provides telephone service is deemed a PPT and is generally subject to the PPT rules with the same force and effect as a PPT.

Links were to be built at no cost to the City and were projected to generate over \$500 million in revenue over the program's first 12 years. The Agreement detailed the required annual fee schedule as well as the Link installation schedule over the contract period, and established performance requirements for the Consortium to ensure the Links are clean and in good working order.

Key Findings

DoITT did not sufficiently monitor, oversee, and enforce the Consortium's compliance with the Agreement terms, including the collection of almost \$70 million due to the City from the Consortium; that the required number of Links were installed according to the specified distribution schedules and equitably distributed in the five boroughs; that Links were activated by the stipulated time frames; that a Gigabit Center was established in each of the five boroughs; and that liquidated damages were assessed and collected for late activation. Our audit identified significant shortfalls, in terms of both revenue to the City and services, that occurred as a result. Among the issues identified were the following:

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- Effective September 17, 2018, DoITT entered into a one-year forbearance agreement with the Consortium to suspend its required annual payment. However, when the forbearance period ended, the Consortium did not resume payments. DoITT sent a letter to the Consortium stating the amounts due and requesting payment. However, DoITT has not taken the actions specified in the Agreement to collect the outstanding revenue of approximately \$60.3 million, plus \$8.63 million in interest, that has accrued through March 2020.
 - By July 20, 2020, 3,153 structures were required to be installed and operational. However, as of May 2020, the Consortium has installed only 1,869 Links, and only 1,816 of these are activated. Links were also installed significantly past the required time frame and were not always operational.
 - Links have been installed in only 86 (46 percent) of the total 185 NYC ZIP codes; 99 ZIP codes are currently devoid of Links, and their residents thus unserved.
 - For 2015, the first year of the contract, the Minimum Annual Guarantee of \$20 million should have been paid; however, the Consortium remitted \$18,315,269 based on revenue, resulting in an underpayment of \$1,684,731.
 - Of 227 Links we sampled, 172 (76 percent) had cleanliness and/or operation issues, including: dirty/grimy tablet screens; physical damage; and defective screens/screen icons, telephones, and USB charging ports.

Key Recommendations

- Exercise any and all rights necessary to hold the Consortium accountable for non-compliance, as appropriate, including the collection of revenue and interest for payments owed and the assessment and collection of liquidated damages for late activation and repairs.
- Establish policies and procedures for the review of the Consortium monthly revenue reports and related payments, including but not limited to documenting results of reviews and recording advertisements during Link site inspections.
- Increase monitoring of the daily “health” of all Links, not just those noted as having issues or the subject of public complaints.
- Execute the installation and activation terms of the Agreement, as warranted, and ensure that future installations are done on an equitable basis.



**Office of the New York State Comptroller
Division of State Government Accountability**

July 30, 2021

Jessica Tisch
Commissioner
Department of Information Technology and Telecommunications
2 Metro Tech
Brooklyn, NY 11201

Dear Commissioner Tisch:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *LinkNYC Program Revenues and Monitoring*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33 of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Agreement	Franchise Agreement and amendments between the City and the Consortium to replace public pay telephones with Links	<i>Key Term</i>
Consortium	The group of technology, media, and connectivity providers that entered into an agreement with the City to replace public pay telephones with Links	<i>Key Term</i>
DoITT	New York City's Department of Information Technology and Telecommunications	<i>Auditee</i>
Forbearance	Agreement allowing the Consortium to suspend payments of the MAG for a specified period	<i>Key Term</i>
Greenfield site	A new Link site (not previously a public pay telephone location)	<i>Key Term</i>
LinkNYC	Program to replace public pay telephones with Links	<i>Program</i>
Links	Telecommunication structures replacing public pay telephones or payphones	<i>Key Term</i>
MAG	Minimum Annual Guarantee	<i>Key Term</i>
MMS	Maintenance and monitoring system	<i>Key Term</i>
OATH	Office of Administrative Trials and Hearings	<i>Agency</i>
PCS	Public communications structure	<i>Key Term</i>
PPT	Public pay telephone	<i>Key Term</i>
PPTIS	Public Pay Telephone Information System	<i>System</i>
Procedures	Procedures for Compliance Inspection of Public Communications Structures	<i>Key Term</i>
Scout	Consortium's database of Link inspections	<i>System</i>
Zendesk	Consortium's Link trouble ticketing and tracking system	<i>System</i>

Background

New York City's (NYC) Department of Information Technology and Telecommunications (DoITT) is the technology core of NYC government, working with City agencies and entities, delivering technology, evaluating emerging technologies, and procuring citywide IT services, among other IT-related functions. Pursuant to Section 1072(c) of the New York City Charter, DoITT administers telecommunication franchise contracts providing fiber, cable television, Wi-Fi hotspots, and mobile telecommunications equipment installed on NYC streets. DoITT's Division of Franchise Administration, within the Office of the General Counsel, is responsible for granting franchises for public communications structures (PCSs), as well as enforcing implementation and performance requirements of franchise agreements to ensure the delivery of universal broadband for all New Yorkers and, at the same time, ensuring adequate compensation to the City.

In December 2014, NYC, through DoITT, entered into a Franchise Agreement (Agreement) with a consortium of technology, media, and connectivity providers (Consortium) to develop and operate a first-of-its-kind communications network, LinkNYC, to bring the world's fastest municipal Wi-Fi to millions of New Yorkers, small businesses, and visitors. The LinkNYC program was intended to replace an aging network of public pay telephones (PPTs or payphones) with state-of-the-art connection points, called "Links," that would offer free, high-speed Internet access as well as free phone service; a touchscreen tablet interface to access City services, including 911 emergency and NYC311 helpline services; free cell phone charging; and digital advertising and public service announcements.

The LinkNYC franchise is regulated by the Agreement between the City and the Consortium, its attachments, appendices, exhibits, and amendments, as well as Chapter 6 of the Rules of the City of New York. Pursuant to the Agreement, each PCS that provides telephone service is deemed a PPT and is generally subject to the PPT rules with the same force and effect as a PPT.

The Agreement called for the Consortium to build, at no cost to the City, Links structures, of which 7,500 were to be installed and activated throughout the five boroughs over an eight-year period, in accordance with the terms in the Agreement specifying the number to be installed in each borough. Amendment 2 of the Agreement (approved on May 9, 2018) revised the installation requirement to 7,500 structures over a 10-year period, in accordance with an updated borough distribution table.

The Agreement also stipulated specific service requirements for the Consortium:

- The time between installation and activation is not to exceed 45 days.
- Maintain the Link system in good working order, and in clean and attractive condition; free of grime and rust; clean to the touch; and free of debris, rubbish and graffiti. Toward this end, the Consortium is required to:

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- Perform preventive maintenance and inspect each PCS on at least two non-consecutive days each week; and
 - Replace or repair any parts or components that are broken, deteriorated, or damaged within 24 hours to ensure public safety of the structures.

In addition, for compliance monitoring purposes, the Consortium was required to install and maintain a maintenance and monitoring system (MMS) with wide-ranging capability for data collection and reporting, including an NYC311 interface to record and process complaints received, inspection and testing results and repair status, incidents and incident reports, and revenue reports by location and structure type.

Per the agreement, the Consortium was to build Links at no cost to the City and also to pay an annual franchise fee. The amount due to the City was based on the revenue the Consortium receives for both new Links installed and activated and existing digital payphones with advertising capabilities. The franchise fee is due to the City in monthly installments and was projected to generate over \$500 million in revenue for the City over the program's first 12 years.

With each payment, the Consortium is to submit a report to DoITT showing gross revenues accrued that month. The Consortium has to provide a report showing total gross revenues generated during the first six months of the current contract year and for the full 12 months of the recently completed contract year. Based on the information reflected in the report, the Consortium is to submit a payment for any amount owed.

If the Consortium fails to meet its obligations, DoITT can enforce compliance through monetary assessments. For example, pursuant to the Agreement, in the case of late revenue payments, the Consortium is required to pay interest on the amount due commencing on the payment due date until payment is received. DoITT can also assess liquidated damages against the Consortium for delays in performance. Examples include failure to install structures under the Agreement (including within the specified time frames) and failure to timely remit payment due. Under the Rules of the City of New York, DoITT can also assess penalty fees for operating and maintenance violations (e.g., inoperable payphones, uncleanliness).

Audit Findings and Recommendations

While the goal of the LinkNYC program was commendable, our audit determined that the program objectives were, to a great extent, not met. The LinkNYC program, from its outset, was touted by the City as a means of providing services, including free telephone and Wi-Fi services, to its residents and tourists and as essential to eliminate the “digital divide” (the gap between those who have ready access to computers and the Internet and those who do not). As stated by the Mayor’s Office in a November 17, 2014 press release discussing the LinkNYC franchise award to the Consortium, with its proposal for the fastest and largest municipal Wi-Fi network in the world, accessible to and free for all New Yorkers and visitors alike, the City claimed it was taking a critical step toward a more equal, open, and connected city, for “every New Yorker, in every borough.” At the same time, the Links – installed at no cost to the City – were to provide a significant amount of advertising revenue to the City. However, we found that:

- The Consortium has not remitted revenue payments totaling \$60.3 million since August 2018, as well as \$8.63 million in interest as of March 2020, and DoITT has not taken actions to collect, other than sending letters to the Consortium demanding payment after conclusion of the forbearance period (agreement allowing the Consortium to suspend payments of the Minimum Annual Guarantee [MAG] for a specified period).
- For 2015 (contract year 1), the Consortium underpaid DoITT by \$1,684,731, basing its payment on revenue instead of the MAG amount of \$20 million stipulated in the Agreement. DoITT did not provide documentation to support the reason for the difference and why it was acceptable.
- The Consortium installed only 1,869 of the 3,153 Links required (59 percent), and activated 1,816 of those installed.
- DoITT has largely neglected its monitoring responsibilities and, as such, has little assurance that the Consortium is meeting critical performance requirements and that Links are operating in compliance with Agreement terms. For example, DoITT does not proactively monitor the Consortium’s compliance with preventive maintenance and repair requirements and takes action only when made aware of issues secondarily (e.g., via NYC311 complaints). For a sample of 227 Links, we found cleanliness and/or operation issues at 172 (76 percent), including: dirty/grimy tablet screens; physical damage; and defective screens/screen icons, telephones, and USB charging ports.

In responding to our preliminary findings, DoITT officials stated that, overall, they agree that the Consortium has failed to meet its contractual obligations. They also noted that the Consortium has asserted it is financially unsustainable and thus unable to meet its contractual obligations.

DoITT officials added that the City is in discussions with stakeholders about the viability of refocusing the program versus taking various enforcement actions that are available to the City. DoITT further stated that it will take many of our preliminary recommendations under advisement.

Oversight of Revenue Requirements

Failure to Make Revenue Payments

DoITT entered into a one-year forbearance agreement with the Consortium, effective September 2018, allowing the Consortium to suspend its required annual payment. At the end of the forbearance period on September 17, 2019, DoITT granted extensions to December 16, 2019. The Consortium did not resume its annual payments, and as of March 2020, the Consortium accrued approximately \$60.3 million in unpaid MAG payments. Additionally, DoITT did not charge interest on the unpaid balance. We determined that the accrued interest on the unpaid balance totals \$8.63 million.

Revenue Underpayments

Our review of the Consortium's revenue payments and its revenue reports for 2015 and 2016 identified discrepancies. For example, during 2015 (contract year 1), the Consortium remitted \$18,315,269 based on its revenue instead of the MAG of \$20 million as the Agreement required – an underpayment of \$1,684,731. DoITT officials disagreed with our preliminary findings, stating that the correct revenue had been paid in accordance with the Agreement. To support their stance, DoITT officials pointed to sections of the Agreement that allow for the MAG to be reduced in certain circumstances. We reviewed the sections cited, but without additional documentation, they did not support the reduced MAG.

According to the Agreement, the MAG can be reduced to a prorated amount if three conditions are met:

- The Consortium's total number of advertising installations (i.e., payphones or Link kiosks that display advertising) falls below 4,000 at any time during a given contract year;
- DoITT determines the loss of advertising installations resulted from City delay or litigation; and
- The percentage of gross revenues due to the City is less than the MAG payment for that contract year.

According to the revenue reports for May 2015 through the first five days of December 2016, the number of advertising installations in place ranged from 3,163 to 3,436. Based on these numbers, the Consortium prorated and reduced the MAG amount due. However, DoITT officials informed us they never approved a reduction in the required MAG payment. At a later date, DoITT indicated the lower amount was allowed under the Agreement, but did not provide documentation.

According to DoITT officials, they use the Consortium's revenue reports as the basis for verifying the accuracy of its remittances, and check for discrepancies by comparing the Consortium's revenue reports on a month-to-month basis. However,

they do not have a formal process for doing so. Moreover, they do not document their month-to-month reviews and do not perform desk audits. Without documenting the results of its reviews, DoITT has no evidence that the Consortium is accurately reporting its revenue.

We also note that the MMS, which the Agreement required within 60 days of program commencement, has not been installed. As outlined in the Agreement, the MMS would be able to provide DoITT with gross revenue data by Links or payphone location, structure type, and the system as a whole, and would be useful for confirming that correct revenue and Consortium fee amounts are being reported and remitted.

The Links themselves are another tool that DoITT could use for revenue verification. As discussed later in this report, DoITT staff conduct inspections of Links, but their inspections do not include recording the advertisements being displayed. Doing so could serve as confirmation that the space was used and provide information that DoITT could use to check locations for which the Consortium reported advertising revenues. According to DoITT officials, since the commencement of the franchise in March 2015, DoITT has performed 36,747 inspections, which, in our opinion, would have provided sufficient information to confirm advertisements.

As another example of underpayment, in May 2017, DoITT's Division of Franchise Audit and Revenue conducted a limited review of certain advertising records to assess whether the Consortium was in compliance with the gross revenue provisions of the Agreement. Its report, issued on May 16, 2017, found that gross revenue was underreported by \$557,037. In a letter dated May 22, 2017, the Consortium disagreed with DoITT's conclusions, recalculated the amount due as \$3,500, and agreed to remit this payment. DoITT accepted the Consortium's assertions, and the Consortium made the payment on May 24, 2017.

Upon our request, DoITT could not provide documents to support that it reviewed the Consortium's recalculation of the underreported gross revenues. According to DoITT officials, this was a one-time assessment, and as no further discrepancies were found, no additional reports were issued. In the absence of documentation of month-to-month reviews, we could not confirm their statements.

Recommendations

1. Exercise any and all rights necessary to hold the Consortium accountable for non-compliance, as appropriate, including the collection of revenue (\$60.3 million) and interest (\$8.63 million) owed by the Consortium since DoITT forbearance began on September 17, 2018.
2. Collect the 2015 revenue underpayment of \$1.68 million.
3. Establish policies and procedures for reviewing the Consortium's monthly revenue reports, including but not limited to documenting results of month-to-month reviews of revenue and recording advertisements during Link site inspections.

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4. Require the Consortium to install the MMS per contract terms, including functionality to report revenue by location and structure type, as a means of ensuring accurate revenue remittance.

Oversight of Maintenance and Repairs

Monitoring of Preventive Maintenance and Repairs

Based on our review as well as our own observations at Link sites, we determined that DoITT did not exercise adequate oversight of the Consortium's Link maintenance operations to ensure its compliance with Agreement terms.

Pursuant to both the Agreement and the Rules of the City of New York, the Consortium is required to maintain Links in good working order and in clean and attractive condition: free of grime and rust; clean to the touch; and free of debris, rubbish, and graffiti.

DoITT's Procedures for Compliance Inspection of Public Communications Structures (Procedures) note several unacceptable cleanliness standards and phone and component inoperability, such as: the presence of grime on any part of the structure; physical damage to the structure and components; inaudible sound transmitted through the Link microphone; neither the keypad nor the tablet allowing successful dialing; only one of the two components, the keypad or tablet, working; a blocked, damaged, or non-working USB charger; and a black ad panel. According to the Procedures, inoperability justifies issuance of a summons or consideration for liquidated damages.

Toward this end, the Consortium is required to perform both routine and diagnostic preventive maintenance on all Wi-Fi equipment; to inspect every Link, at a minimum, on two non-consecutive days each week; and to replace or repair any parts or components that are broken, deteriorated, or damaged within 24 hours to ensure public safety of the structure. The Consortium records inspection activity in its Scout system and uses the Zendesk ticketing and tracking system to record and respond to issues.

As discussed in more detail later in this report, compliance inspections are done in the following priority: to follow up on a prior inspection with deficiencies, in response to public complaints, and routine inspections based on the length of time since the last inspection of that structure. Otherwise, DoITT does not take steps to proactively monitor the Consortium's compliance with preventive maintenance and repair requirements, and has largely discounted the various tools and methods available to it for monitoring purposes.

For instance, the Agreement's Services Attachment calls for DoITT to perform periodic surveys of a representative sample of Links to assess operability and cleanliness. When questioned about this, DoITT officials stated they opted not to take this measure. Nor do they utilize the Consortium's Scout inspections database, which could provide valuable information for monitoring purposes, and which officials

admitted had been useful in the past. DoITT disagreed with relying entirely on Scout to verify compliance with this metric because the system is subject to human error, such as visits not being recorded.

DoITT officials further acknowledged that they are more concerned that the Links are working properly than whether the Consortium is meeting the monitoring standards. They added that they did not address the Link kiosks because DoITT inspections showed they were generally in good condition.

As mentioned previously, the Agreement's Services Attachment required the Consortium to install an MMS as a repository for services documentation, which would have given DoITT a means to verify the Consortium's compliance with the preventive maintenance and repair requirements. However, the Consortium never installed the MMS.

Short of a more efficient or effective means to monitor the Consortium's preventive maintenance, the use of either periodic surveys or Scout data would help DoITT gauge the extent to which the Consortium's preventive maintenance schedule is keeping pace with the need for upkeep.

To assess operability and cleanliness of the Links, we visited a judgmental sample of 227 (12 percent) of the 1,869 total installed Links as of August 23, 2019. Of the 227 Links, we found cleanliness and/or operation issues at 172 (76 percent), including: dirty/grimy tablet screens; physical damage, such as paint chipping, cracks, peeling, and scratches; defective screens/screen icons, telephones, and USB charging ports; and no Wi-Fi service. Sixty-five Links had icons that were not working, including some for vital community services, such as Community Boards and Aunt Bertha, a social care network that connects people with community services.

Inspections

Routine Inspections

According to DoITT officials, they monitor the Consortium's Link maintenance through inspections conducted in response to public complaints (filed through NYC311), routine inspections scheduled based on the date of last inspection, and follow-up inspections of trouble ticket items in Zendesk. When DoITT inspectors identify a problem, they create a trouble ticket in the Zendesk system. If the Consortium confirms the PCS is not working as required and cannot be restored remotely, within 24 hours, the Consortium shall either take corrective action or inform DoITT that corrective action is not practicable. According to DoITT officials, their practice calls for inspectors to conduct a follow-up inspection within five business days of the initial inspection to confirm that the Consortium appropriately resolved the issue.

However, we question the usefulness of DoITT's procedures for monitoring Link issues and ensuring the Consortium has taken corrective action in a timely manner. For a sample of 37 Links visited during audit survey, we identified 25 with problems,

such as defective ad displays, dirty screens, physical damage, and ports not working. We used these 25 Links as the basis for assessing DoITT's responsiveness to problems. After the problems were reported, we monitored them for inspection activity via Zendesk trouble tickets and DoITT's Public Pay Telephone Information System (PPTIS), a legacy in-house database used to track and record inspections and Link-related activity. Our results indicated insufficient monitoring. For instance:

- 22 of the 25 Links did not receive a timely routine inspection (within 15 days of our visit), which allowed the conditions we identified to persist or deteriorate.
- Of the three Links that were inspected timely, DoITT failed to identify the problem we observed for one, and only followed up with the Consortium to ensure corrective action was taken for one of the two Links for which DoITT identified the problem we observed.

In response, DoITT officials stated that, while the Zendesk system allows for both DoITT and the Consortium to create tickets for inoperable or malfunctioning Links, DoITT's access is limited to its own trouble tickets. DoITT cannot see tickets created by the Consortium – a lack of capability that prevents DoITT from conducting follow-up inspections on Consortium-initiated ticketed issues. DoITT's lack of access to all trouble tickets in Zendesk presents a significant barrier to thorough oversight of Links' maintenance and operability. DoITT officials stated that they will consider obtaining increased access to Zendesk information.

Required Inspections

DoITT's Division of Deployment and Field Operations inspectors conduct a series of required Link inspections, depending on whether the site is new (not previously a payphone location – referred to as a "Greenfield") or existing (replacing a payphone, for which DoITT usually already has siting information on file):

- Pre-installation, post-installation, and post-activation inspections for new Link sites to take measurements, meet siting criteria, and take photographs; and
- Post-installation and post-activation inspections for Link functionality and cleanliness at existing sites.

Post-installation and post-activation inspections are scheduled when the Consortium notifies DoITT a Link is installed or activated. Inspections are assigned as priorities on an as-needed basis and are targeted to be completed within 10 business days.

We reviewed the PPTIS inspection reports for a sample of 50 of the Links (12 Greenfield sites and 38 non-Greenfield sites requiring a total of 112 inspections [12 pre-installation inspections, 50 post-installation inspections, and 50 post-activation inspections]). Our results indicated that the required inspections were not always completed timely. For example:

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- For 7 (14 percent) of the 50 required post-installation inspections, there was no inspection form documenting the inspection results or that the inspection had been done.
 - Eight post-installation inspections (16 percent) were completed after 10 business days from the reported installation date.
 - Eighteen post-activation inspections (36 percent) were completed after 10 business days from the reported activation date, including three that were done 221, 256, and 535 days after.

In the absence of timely installation and activation inspections, DoITT has no assurance that the Links were installed or activated in accordance with the Agreement.

In addition, we found that DoITT's in-house inspections data is not always accurate or up to date, which limits its ability to ensure that all Links are being inspected as required. We reviewed a sample DoITT Outstanding Inspection Report, dated August 27, 2019, generated from PPTIS. The report indicated 658 inspections had been requested but were not completed, including two that dated back to 2015. DoITT officials explained that the majority of the outstanding inspection requests are duplicates or canceled inspections, and other inspection requests are considered active but suspended due to changes in franchise priorities, work assignments, or personnel changes. They admitted that, due to limited functionality, PPTIS continues to track days even after the requested inspections are canceled.

PPTIS, the approximately 20-year-old legacy computer system originally established for payphones, has limited functionality as well as navigation difficulties, making it challenging to locate inspection forms. DoITT officials advised that they are in the process of acquiring a database to replace PPTIS.

Recommendations

5. Perform periodic surveys of a representative sample of Links (at least 500) to determine Link operability, and, per the Agreement, require the Consortium to adopt new or modify existing procedures or take other corrective action to ensure compliance.
6. Use reports generated from key information systems to increase monitoring of the daily health of all Links; refer "unhealthy" Links to the Consortium and follow up to ensure they are restored in a timely manner.
7. For improved monitoring capabilities, request that the Consortium upgrade Zendesk access to allow DoITT staff to see all Consortium-initiated trouble tickets.
8. Ensure that Link inspections occur within 10 business days of installation and activation.

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9. Actively pursue the plan to replace the outdated PPTIS system with a more efficient system, thereby creating better monitoring tools, such as those that track inspection requests.
 10. Ensure the Consortium institutes a preventive maintenance plan, including complying with the required inspection of all PCSs.

Other Compliance Matters of Significance

Link Privacy and Data Security

The Agreement's Services Attachment limits the Consortium to collecting personally identifiable information only to the extent necessary for technical management of the service. It also requires the Consortium to maintain the best prevailing practices to safeguard any such information that must be collected and to protect such information against unauthorized access, loss, or disclosure.

DoITT indicated that, in 2018, it became aware of a violation of the privacy policy, which the Consortium corrected upon DoITT's request. However, DoITT has not engaged an audit of Link privacy and data security to assess for other areas of weakness. Neither DoITT nor Link users have assurance that the Link system protects user data privacy.

Link Deployment

DoITT did not appropriately monitor and oversee Link deployment to ensure Links were installed in compliance with Agreement requirements, including distribution in the five boroughs. While we noted email correspondence as well as agendas of meetings of DoITT and Consortium officials during which Link deployment was discussed, these efforts did not ensure timely and balanced neighborhood-wide installation.

Installation/Activation

The Consortium was required to install and activate 3,153 Links by July 20, 2020, and each Link was to be activated promptly after installation. However, by May 28, 2020, the Consortium had installed only 1,869 of the 3,153 Links required. Furthermore, the Consortium essentially discontinued the installation of new structures in August 2018, with one additional Link installed on February 14, 2019 and another on April 6, 2019.

According to DoITT officials, the Consortium is claiming an unavoidable delay in meeting the deployment requirements of the Agreement due to business disputes with a third-party utility company. DoITT officials further noted they have rejected similar claims in the past and are in the process of evaluating the validity of these claims.

Distribution

Our analysis of installed Links shows that a significant number of ZIP codes in all five boroughs do not have Links. DoITT officials noted that the Link Buildout Plan for the Consortium was a multi-year program premised on installing Links where payphones were located as well as at Greenfield sites. In addition, while there were payphones throughout the five boroughs, they were predominately located in Manhattan and other business areas. DoITT officials added that it was never anticipated that Links would be available in every ZIP code. Nevertheless, numerous City neighborhoods remain devoid of Links, and their residents thus unserved. In addition, as the Links were largely intended to replace the payphones, the ZIP code of the original payphones should coincide with those of the Links intended to replace them. Among our findings:

- Before the LinkNYC program, 171 of the total 185 (92 percent) ZIP codes had payphones. After the Links were installed, 86 of the 171 (50 percent) ZIP codes that originally had payphones did not have Links.
- Most of the 1,869 Links are located in Manhattan (1,176, or 63 percent), but were installed in just 36 of its 49 populated ZIP codes (73 percent), with the remaining 13 ZIP codes (27 percent) devoid of Links.
- 265 of the 1,869 Links (14 percent) are located in Queens; however, they were installed in only 18 (30 percent) of its total 61 populated ZIP codes.

Tables 1 and 2 present detailed results of our ZIP code analyses.

Table 1 – PPT ZIP Code Analysis by Borough

Borough	Total Number of ZIP Codes*	ZIP Codes With PPTs		ZIP Codes Without PPTs	
		Number	Percentage	Number	Percentage
The Bronx	25	25	100%	0	0%
Brooklyn	38	36	94.74%	2	5.26%
Manhattan	49	41	83.67%	8	16.33%
Queens	61	58	95.08%	3	4.92%
Staten Island	12	11	91.67%	1	8.33%
Totals	185	171	92.43%	14	7.57%

*With populations > 0.

Table 2 – Link ZIP Code Analysis by Borough

Borough	Total Number of ZIP Codes*	ZIP Codes With Links		ZIP Codes Without Links	
		Number	Percentage	Number	Percentage
The Bronx	25	10	40%	15	60%
Brooklyn	38	19	50%	19	50%
Manhattan	49	36	73.47%	13	26.53%
Queens	61	18	29.51%	43	70.49%
Staten Island	12	3	25%	9	75%
Totals	185	86	46.49%	99	53.51%

*With populations > 0.

In addition, as shown in Exhibit A, in each borough, there are sections that are underserved or not served at all.

The Agreement required the Consortium to install and activate a certain number of Links per borough for each Build Year. The initial Build Year began on July 21, 2015. A comparison of the actual number of Links installed and activated per borough with the number of Links the Agreement required by the end of Build Year 5 (July 21, 2015–July 20, 2020) shows the Consortium fell short by 1,337 Links or 42 percent. For instance, in Manhattan, 36 percent of the required Links were not installed, while in Staten Island, 71 percent of the required Links were not installed (see Exhibit B).

Additionally, as mentioned previously, an objective of the LinkNYC program was to replace payphones throughout the City with more technologically advanced devices. However, not all payphones were replaced, and there were disparities in the replacement rate for each borough. Table 3 compares the total PPTs prior to installation of Links with the total PCSs (Links plus PPTs) by borough.

Table 3 – Net Decrease in PCSs From 2014–2020

Borough	PPT Count Before Links (A)	Link Count (B)	PPT Count (C)	Total PCSs (D) (B + C)	Net Change (E) (D - A)	Percent Change (E ÷ A)
The Bronx	622	137	246	383	-239	-38.4%
Brooklyn	1,152	257	554	811	-341	-29.6%
Manhattan	5,031	1,172	2,258	3,430	-1,601	-31.8%
Queens	1,204	265	615	880	-324	-26.9%
Staten Island	57	34	13	47	-10	-17.5%

Table 4 shows the highest negative or positive change in PCSs by ZIP code in each borough. For example, ZIP code 10016 in Manhattan experienced the largest decrease in PCSs (-133), and ZIP code 10306 in Staten Island had the largest increase (+11) (see also Exhibit A).

Table 4 – Average Net Change in Borough, and ZIP Codes With Largest Negative or Positive Change in PCS Count

Borough	Net Change (E)	ZIP Code Count (F)	Average Net Change of PCSs* (E ÷ F)	Largest Negative Net Change		Largest Positive Net Change	
				ZIP Code	Net Change	ZIP Code	Net Change
The Bronx	-239	25	-10	10462	-22	10451	7
Brooklyn	-341	38	-9	11225	-22	11238	10
Manhattan	-1,601	49	-33	10016	-133	10065	2
Queens	-324	61	-5	11368	-23	11101	10
Staten Island	-10	12	-1	10305	-5	10306	11

*Rounded to nearest whole number.

Gigabit Centers

The Agreement calls for the Consortium to build five Gigabit Centers, facilities offering Wi-Fi services with one in each of the five boroughs, no later than October 31, 2017. The centers would further the goal of providing all New Yorkers with full access to the benefits of high-speed Internet connections as well as the opportunity to incubate businesses, connect with communities, enhance educational experiences, and develop innovative uses for the LinkNYC program. As of July 2020, no centers have been established, as required.

According to DoITT officials, after the Agreement was amended in September 2015, the Mayor's Office initiated a process to identify candidate locations based on the criteria established in the Agreement. This included consultation with internal stakeholders, a review of existing public computer center locations, and a consideration of alignment with existing programs. DoITT sent proposed sites to the Consortium and received a response that none were close enough to existing fiber routes. DoITT and the Mayor's Office also reviewed library branches as potential locations, but those on existing fiber routes were already well supported with Wi-Fi, and DoITT preferred the Consortium to locate the centers in underserved areas. In October 2019, DoITT officials advised that the Consortium was surveying another facility presented by DoITT and had initiated discussions with that facility. While DoITT provided documentation of email communication regarding efforts to establish the centers, its last email was dated July 15, 2019. As of July 8, 2020, when we inquired, no further efforts had been made to establish centers.

Recommendations

11. Regularly audit the Consortium's compliance with the data security provisions of the Agreement.
12. Execute the installation and activation terms of the Agreement and require the Consortium to follow the respective Build Year installation schedules.
13. Ensure that future Links are installed in the five boroughs.
14. Require the Consortium to continue its pursuit of acceptable Gigabit Center sites.

Liquidated Damages

The Agreement's Services Attachment stipulates that the City will assess liquidated damages if the Consortium fails to satisfy the service level requirements for structure installation, removal, and repair, as set forth in Exhibit 3 of the Agreement. Liquidated damages do not constitute a penalty and are the exclusive remedy available to the City for the delay in performance. The total liquidated damages that the Consortium may be assessed each contract year is limited to \$500,000 for contract year 1; \$600,000 for contract year 2; \$1,000,000 for contract year 3; and \$1,000,000 each contract year thereafter.

Pursuant to Amendment 2, the Consortium will be assessed liquidated damages of \$25 for each day that the PCS activation time exceeds 45 days. If the activation time exceeds 75 days, it allows additional liquidated damages of \$25 for each day that the activation time exceeds 75 days. Exhibit 3 of the Agreement sets forth the requirements as well as the liquidated damages amounts to be assessed for delays in Link repair.

As of May 5, 2020, 53 of the 1,869 installed Links were inactive and had been awaiting activation more than 75 days beyond their installation date, with delays ranging from 781 to 1,426 days, including one Link that was installed in June 2017. Of the 1,816 activated Links, 1,028 (57 percent) were activated more than 45 days after their installation date, ranging from one to 1,329 days, including 625 Links (34 percent) that were activated more than 75 days after.

As such, the Consortium installed Links that have remained idle and/or inoperable, and unavailable for public use, for extended periods of time. We estimated the liquidated damages at \$2,636,100.

DoITT did not assess liquidated damages for late activation and instead chose to assess liquidated damages for repairs on a limited basis. In a June 27, 2018 letter to the Consortium, DoITT officials informed the Consortium that as Amendment 2 was soon to be registered, it would begin assessing damages regarding failure to perform obligations under the terms of the Agreement as they accrue. DoITT planned then to begin assessing and billing the Consortium for liquidated damages each month subsequent to the amendment registration.

DoITT sent the Consortium two Notices of Assessment of Liquidated Damages on October 26, 2018 for the period September 1, 2018 through October 1, 2018 and on December 4, 2018 for the period October 1, 2018 through October 31, 2018. These assessments – for the repair and replacement of parts – totaled \$52,500. The Consortium responded on December 12, 2018 that charges assessed were incorrect. DoITT did not respond to the Consortium’s claims. As of February 28, 2020, the Consortium has not remitted any payment of these charges.

DoITT officials informed us this was the only assessment, and it was a management decision to assess these damages. They added that they will consider our recommendation for assessing liquidated damages.

By choosing to not avail itself of the available Agreement tools and/or recourse to encourage compliance (e.g., the assessment and collection of liquidated damages for late activations), DoITT has overlooked an important tool that could serve to ensure Agreement compliance.

Penalty Fees

The New York City Administrative Code establishes the City’s requirements for payphones, including the rules for violations and their enforcement. Examples of violations are repeated failure to provide phone service for any sustained period of time and failure to provide coinless 24-hour 911 service. The violation fees, which apply to both Links and payphones, are determined by the NYC Office of Administrative Trials and Hearings (OATH) fee schedule published in the Rules of the City of New York.

According to DoITT officials, a paper Notice of Violation form is completed by DoITT based on inspection results. Copies of the Notice of Violation are mailed to the Consortium and hand-delivered to OATH. Once the violation goes to OATH, it is responsible for enforcing the penalty fees.

For the period March 24, 2015 through February 12, 2020, the Consortium was charged penalty fees totaling \$125,300 for 186 Administrative Code violations at 178 Links. The Consortium paid \$49,300 (39 percent) of the total fees imposed. Examples of the 186 violations included inoperable payphones (132, or 71 percent) and various forms of uncleanness, such as dirt, graffiti, rust, and stickers (35, or 19 percent). We believe DoITT should have followed up with OATH regarding the collection of the remaining \$76,000. In addition, such violations penalties could encourage better performance.

Recommendations

15. Monitor all installation and activation time frames and assess and collect liquidated damages for late activation for past and future installations, as appropriate.

-
16. Assess liquidated damages for repairs in accordance with the Agreement from the period after the second Notice of Assessment, October 31, 2018 to date. Send the Consortium monthly Notices of Assessments as indicated in DoITT's June 27, 2018 letter.
 17. Ensure the Consortium remits payments for past-due and current liquidated damages.
 18. Work with OATH to ensure the Consortium remits the balance due for unpaid violation penalties.

Audit Scope, Objectives, and Methodology

The objectives of this audit were to determine whether New York City received all the revenues specified in the contract terms and whether DoITT monitored the contract to ensure that Links (technologically advanced telecommunication structures) were installed and maintained to ensure user privacy and Link availability according to contract terms. The audit covered from February 1, 2015 to May 5, 2020.

To accomplish our objectives and assess internal controls related to advertising revenues and DoITT monitoring, we interviewed DoITT officials to gain an understanding of DoITT's oversight of Link deployment as well as Link operability and availability. We reviewed the Agreement, including its amendments, attachments, exhibits, and appendices; and related rules and regulations and relevant documents, such as DoITT procedures and guidelines, inspection reports, summons reports, and Consortium revenue reports. We conducted extensive walkthroughs of DoITT's various computer systems and reviews of related computer-generated documents. Using Open Data Link information, we selected a judgmental sample of 227 Links of the 1,869 total installed Links throughout the five boroughs to visit – 37 during the audit survey and 190 during fieldwork – to assess operability and availability as per Agreement terms. The 190 Links were selected based on boroughs/ZIP codes, spanning the five boroughs, from DoITT's Open Data database of Links installed as of August 23, 2019. The judgmental sample of Links for our survey was selected from a ZIP code in downtown Brooklyn near our job site for the audit; and in downtown Manhattan, Links near our main office, as it was expeditious to visit these Links during the survey stage. We asked DoITT officials if they followed up on the issues we noted. We visited the Links in September 2019, December 2019, and January 2020. We randomly selected 50 of the 190 Links visited during fieldwork to determine whether all of the required DoITT inspections were completed on a timely basis. Our samples were not intended to be projected to the population.

We were unable to complete certain fraud detection tests because (as described in the body of our report) DoITT does not obtain all the records from the Consortium necessary to properly monitor the Consortium's work. As a result, although the limited tests we were able to perform did not identify any fraud, we cannot state with certainty that no fraud has occurred in LinkNYC.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's Authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33, of the General Municipal Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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.

As is our practice, we notified DoITT officials at the outset of the audit that we would be requesting a representation letter in which DoITT management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In this letter, officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. DoITT officials further affirm either that the entities have complied with all laws, rules, and regulations applicable to their operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from DoITT officials that all relevant information was provided to us during the audit.

Reporting Requirements

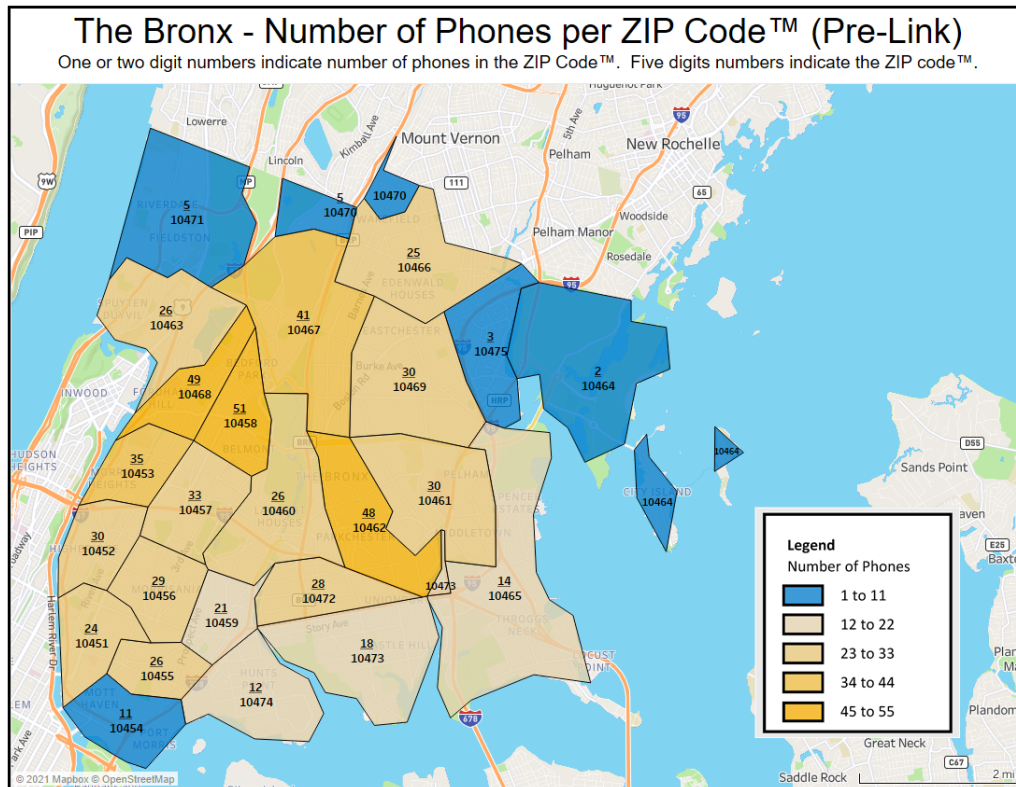
We provided a draft copy of this report to DoITT officials for their review and formal comment. We considered their comments in preparing this final report and they are attached at the end of it.

DoITT's response to the draft report illustrates that it has not successfully closed the issue that the franchisee did not remit revenues to the City since September 2018. It added that it is working toward a restructuring of the program that it is confident will result in a beneficial outcome for the people of the City of New York. However, there is no end date or indication of how the restructured program will address the loss to the City because the revenues were not paid when owed and, as such, were not available to the City. Moreover, DoITT provided new information about a key matter that should have been provided to the auditors during fieldwork. DoITT agreed to take actions to implement recommendations for formal policies and procedures for reviewing monthly revenue reports, to increase the monitoring of the daily health of all LinkNYC kiosks, to sample at least 500 unique kiosks for operability, and to contract with a vendor to perform a technical audit to ensure compliance with the

privacy policy. We are pleased DoITT is taking actions to improve its oversight of the franchisee's performance, but we question the lengthy process for collecting revenues owed to the City.

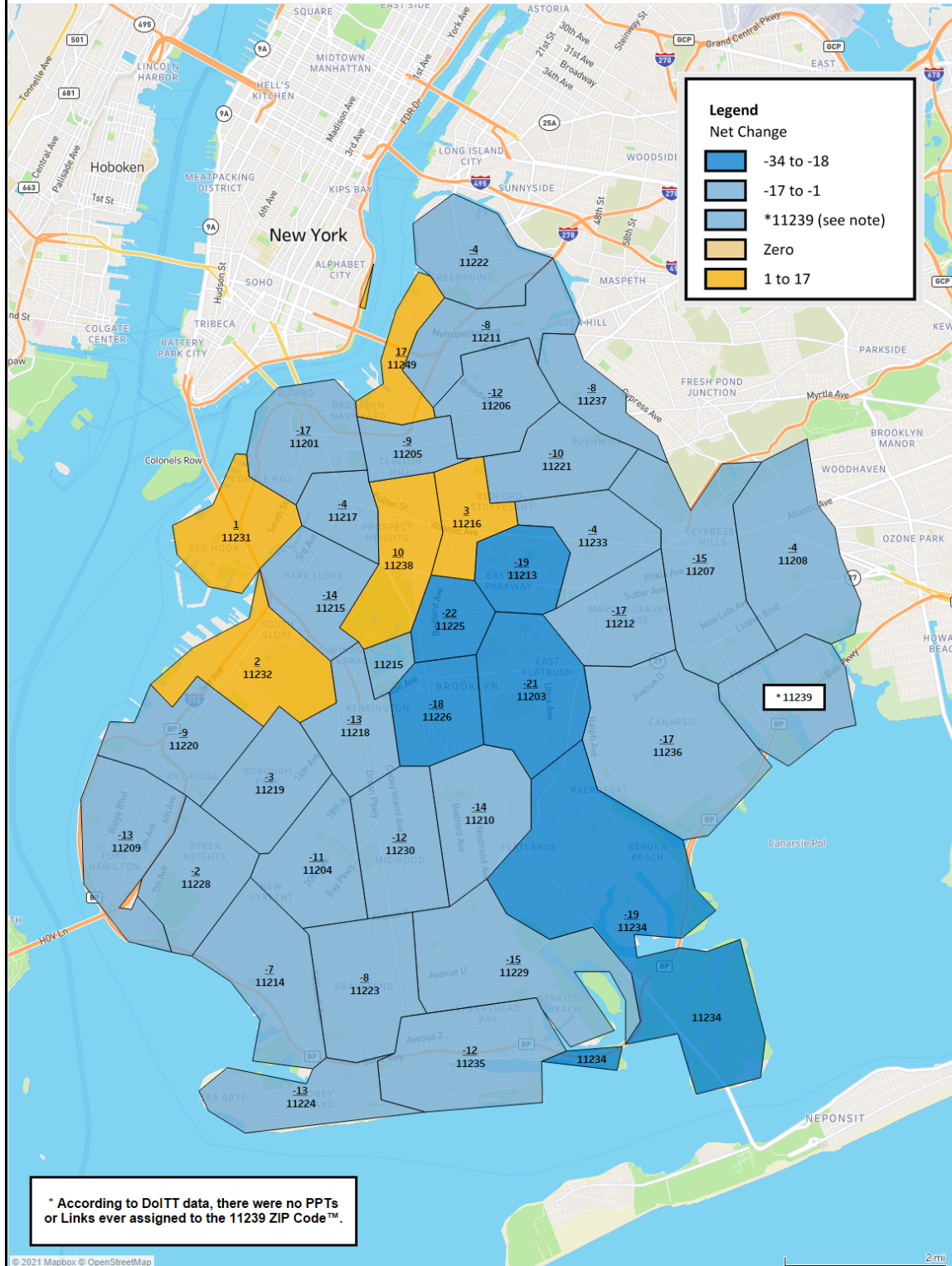
Within 180 days after final release of this report, we request the Commissioner of the Department of Information Technology and Telecommunications report to the State Comptroller, advising what steps were taken to implement the recommendations contained in this report, and where recommendations were not implemented, the reasons why.





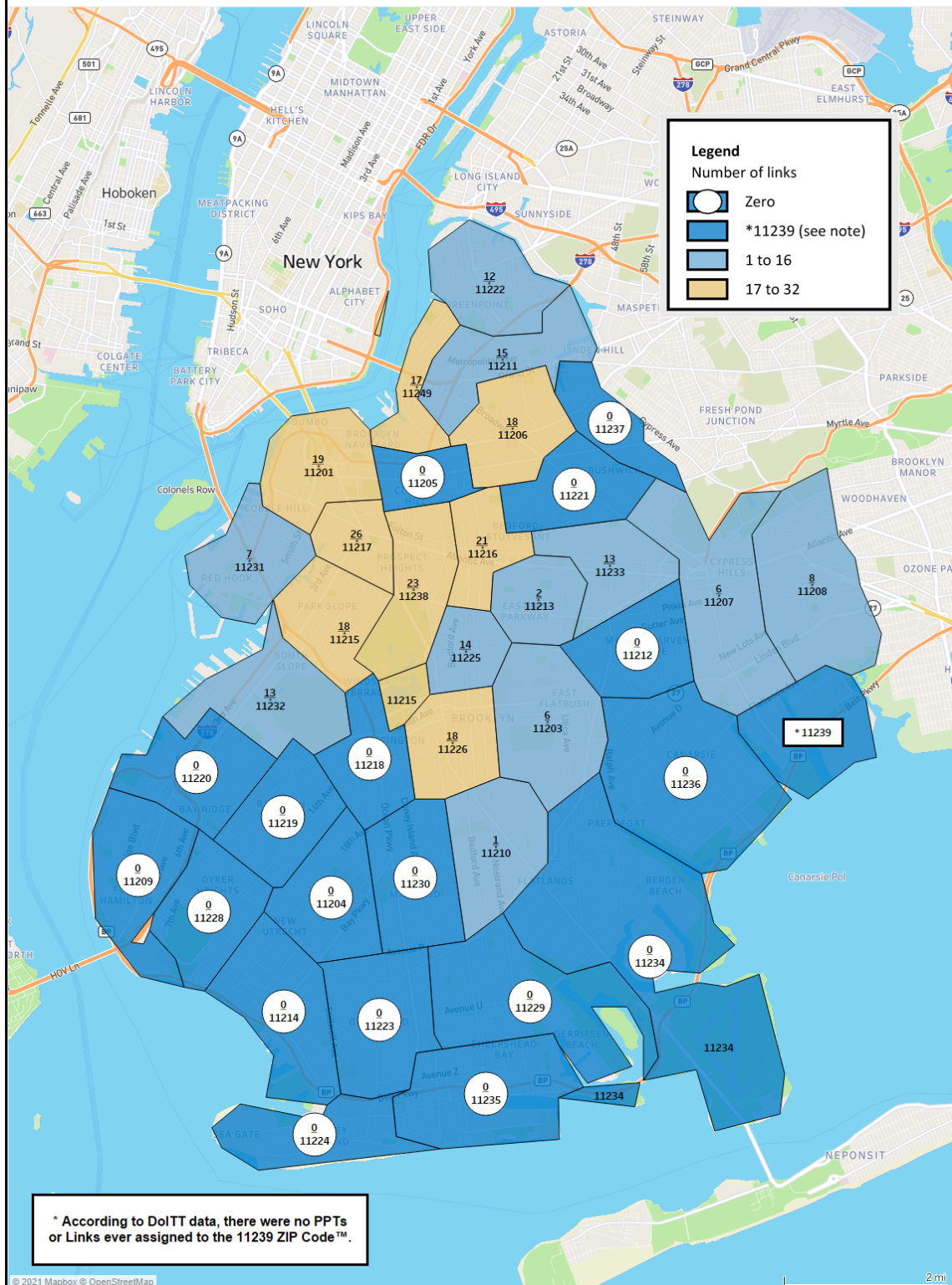
Brooklyn - Change in Number of Links and PPTs per ZIP Code™

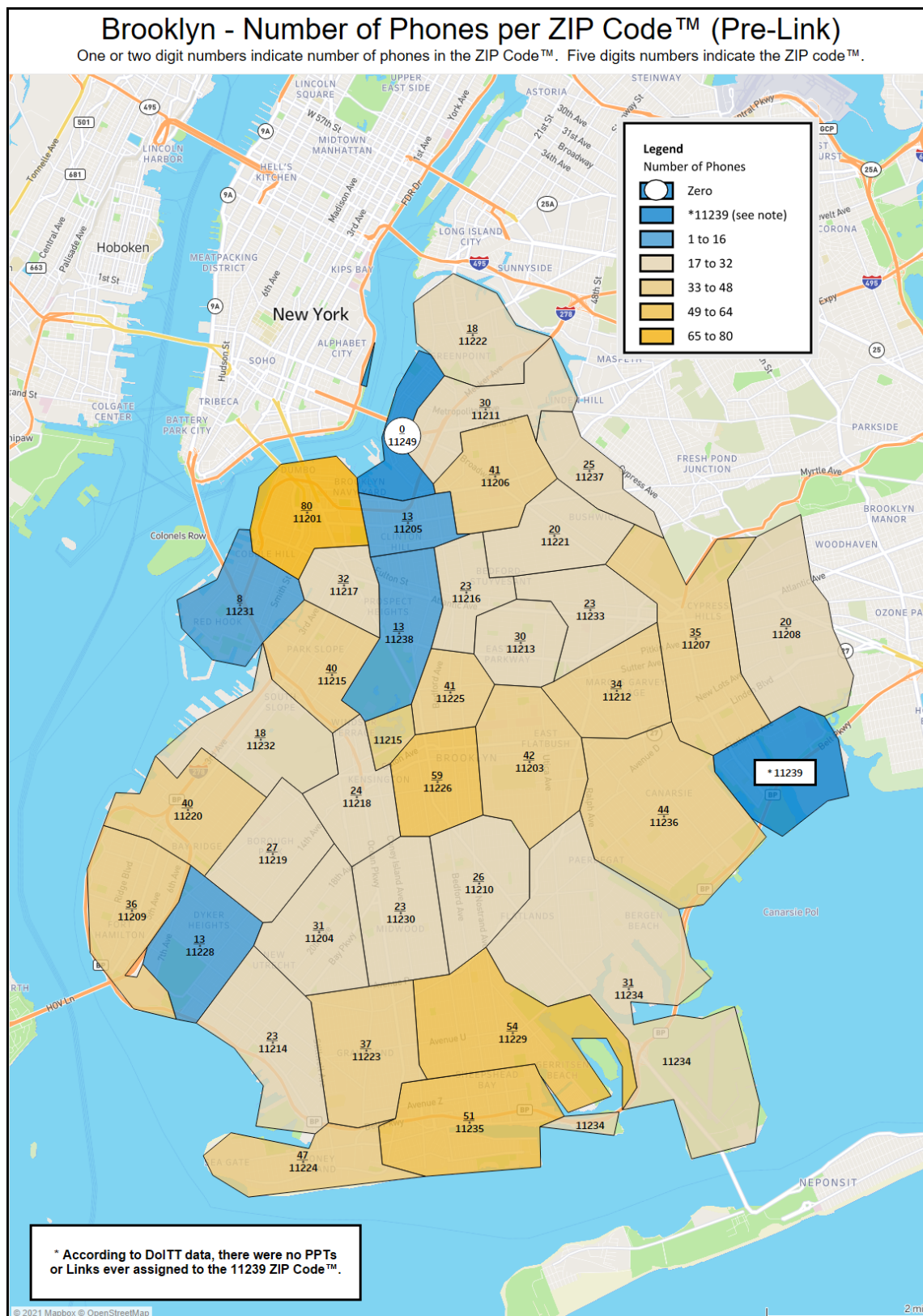
Total net change in the number of public communication structures (links & existing PPTs) compared to the number of PPTs prior to the Link program.



Brooklyn - Link Location & Count by ZIP Code™

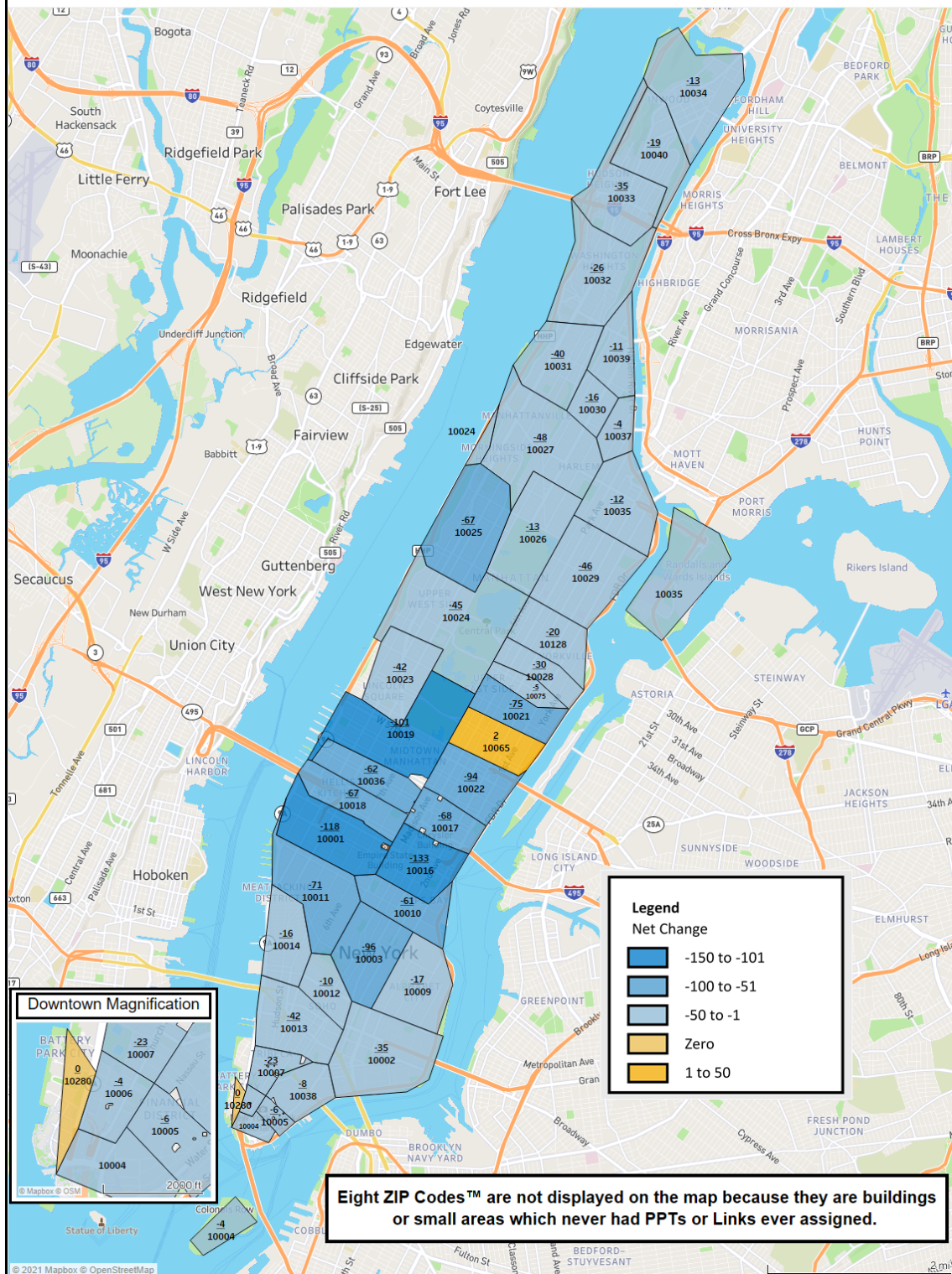
One or two digit numbers indicate number of links in the ZIP Code™. Five digits numbers indicate the ZIP code™.





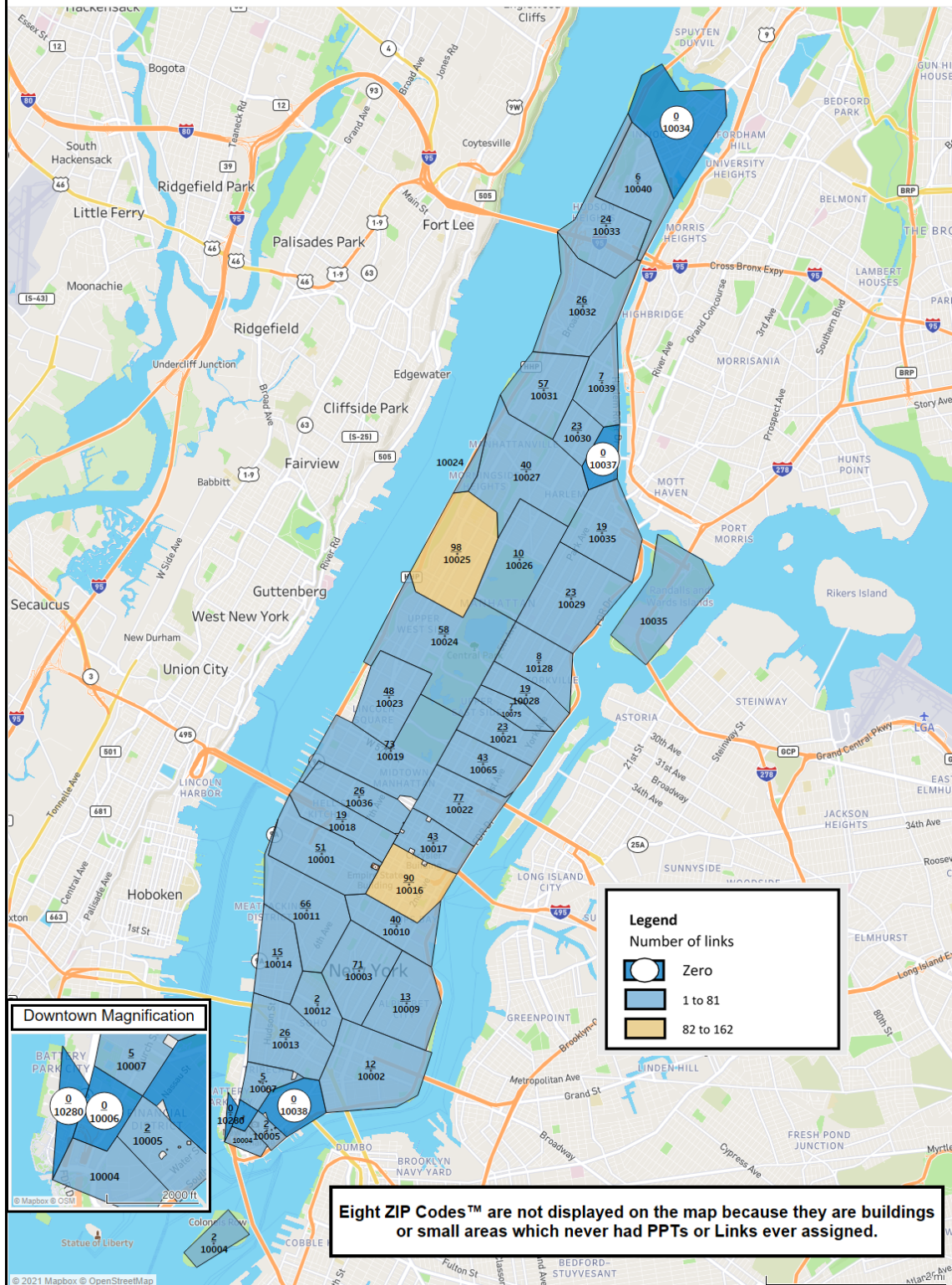
Manhattan - Change in Number of Links and PPTs per ZIP Code™

Total net change in the number of public communication structures (links & existing PPTs)
compared to the number of PPTs prior to the Link program.



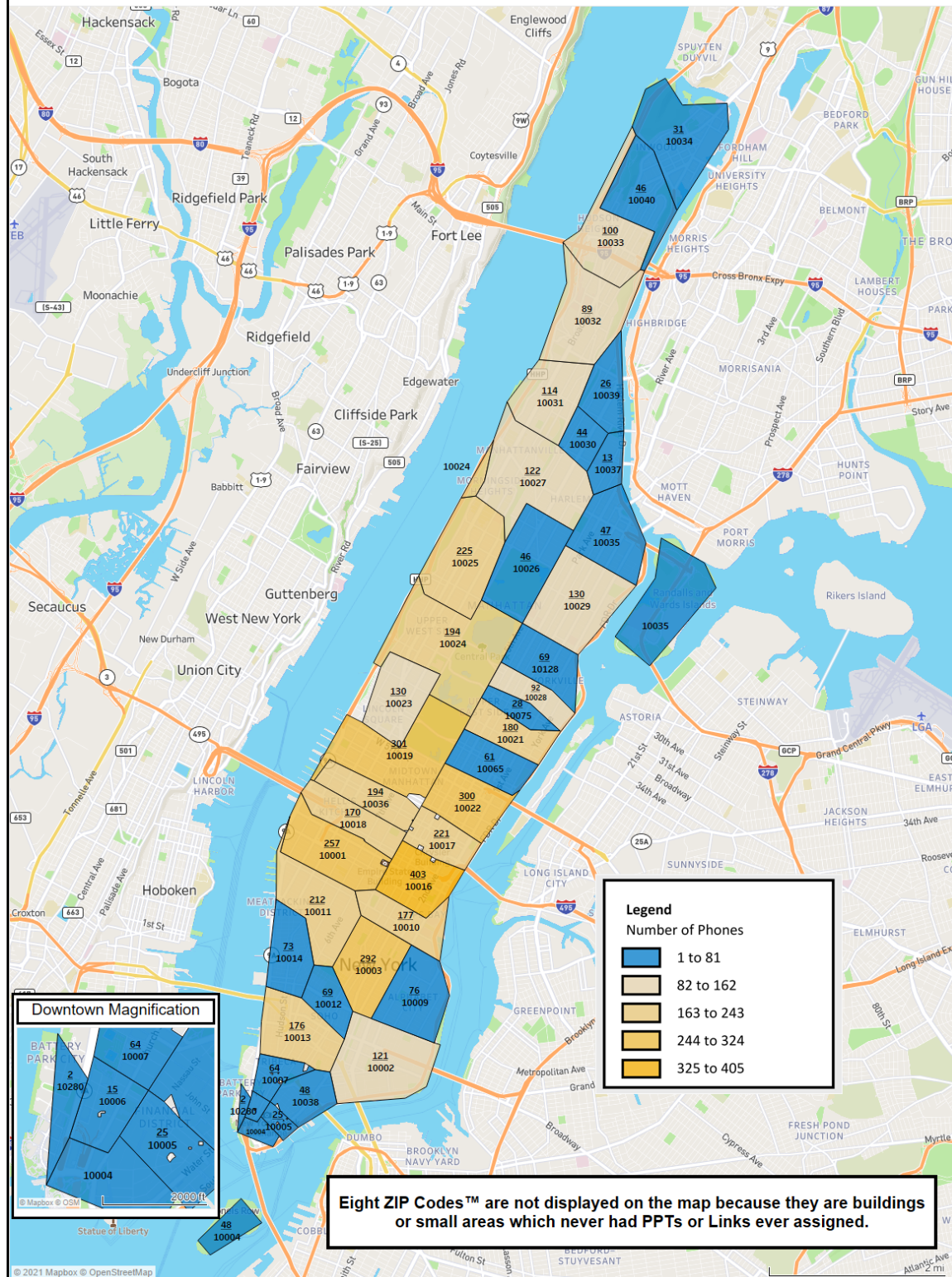
Manhattan - Link Location & Count by ZIP Code™

One or two digit numbers indicate number of links in the ZIP Code™. Five digits numbers indicate the ZIP code™.



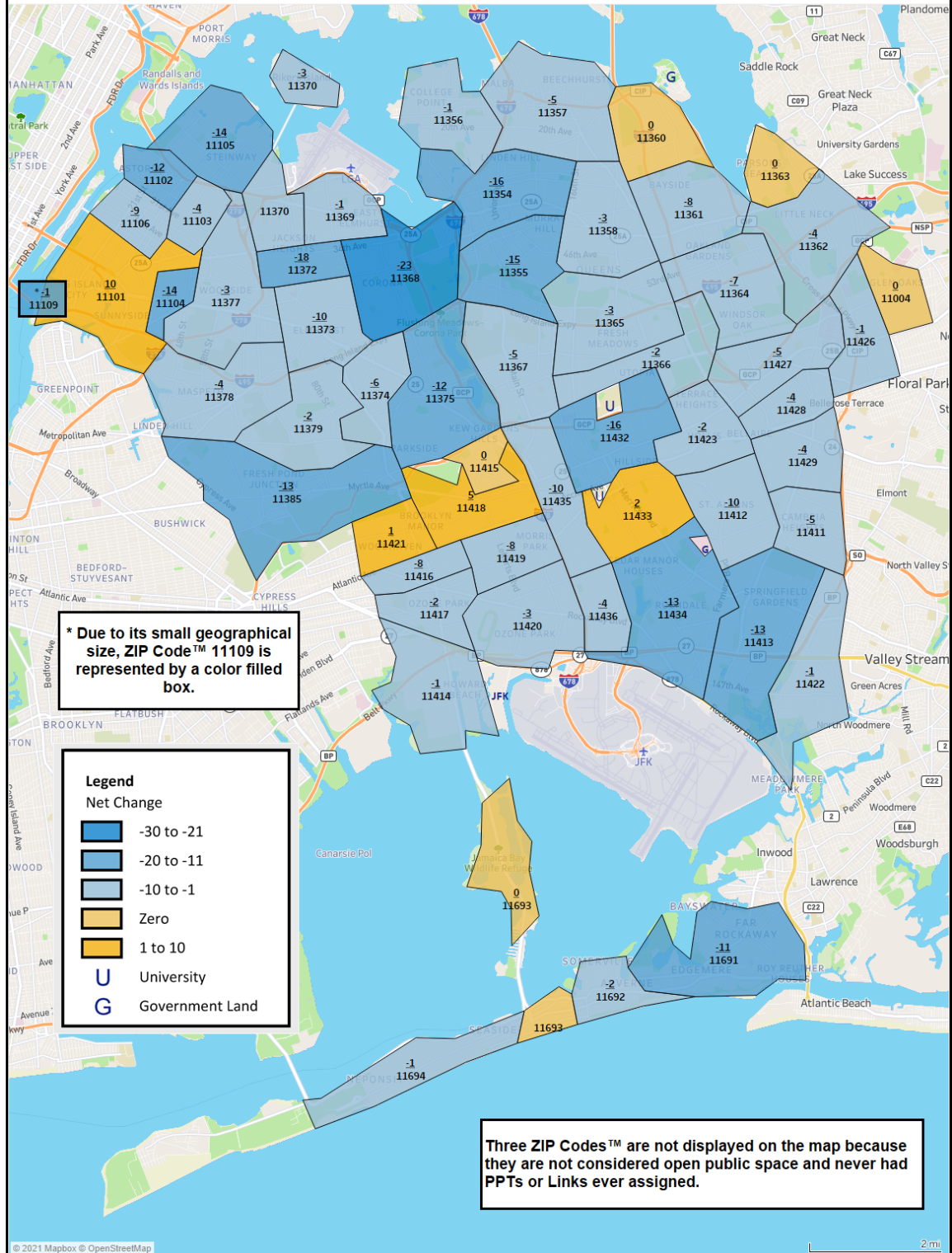
Manhattan - Number of Phones per ZIP Code™ (Pre-Link)

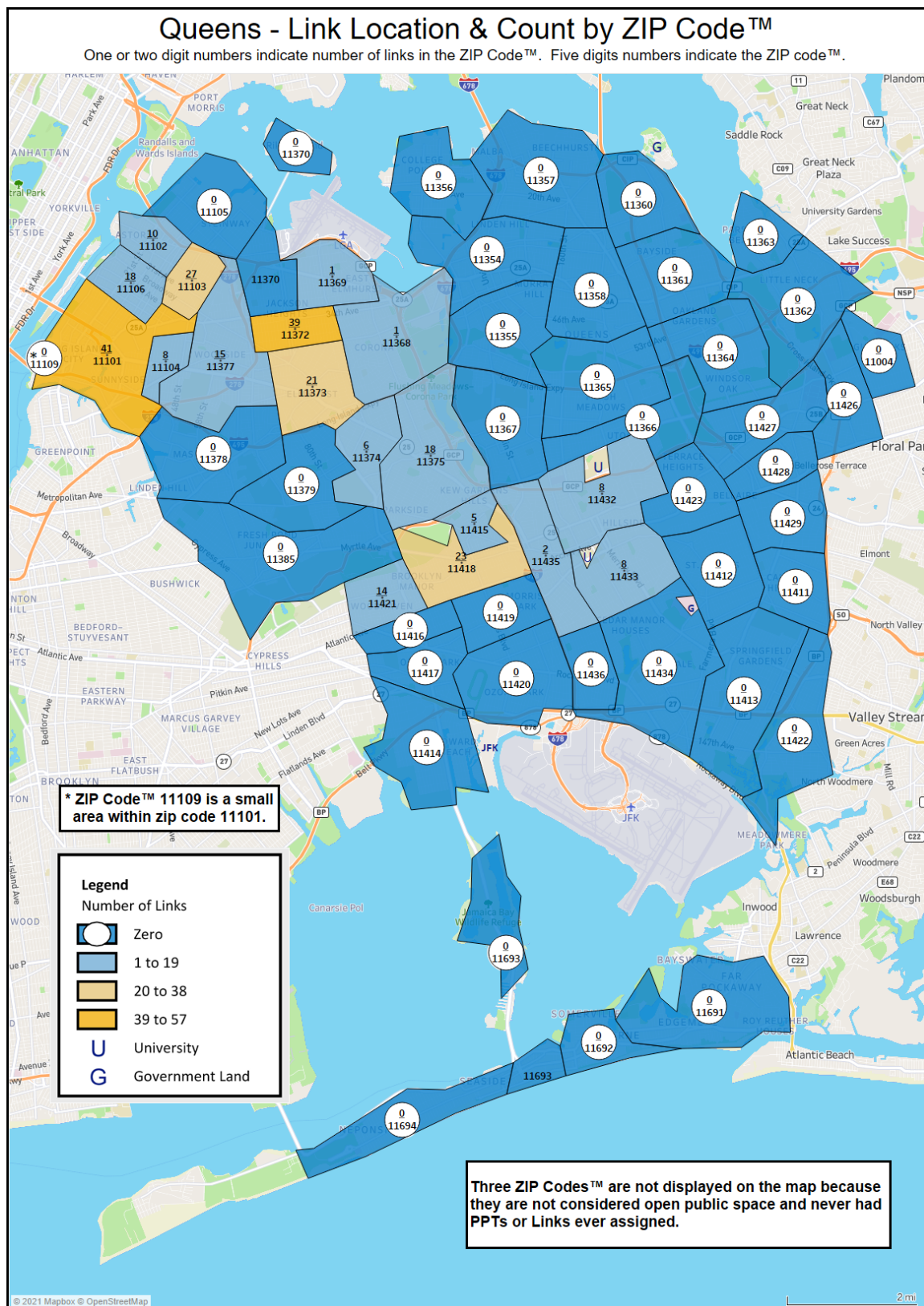
One or two digit numbers indicate number of phones in the ZIP Code™. Five digits numbers indicate the ZIP code™.



Queens - Change in Number of Links and PPTs per ZIP Code™

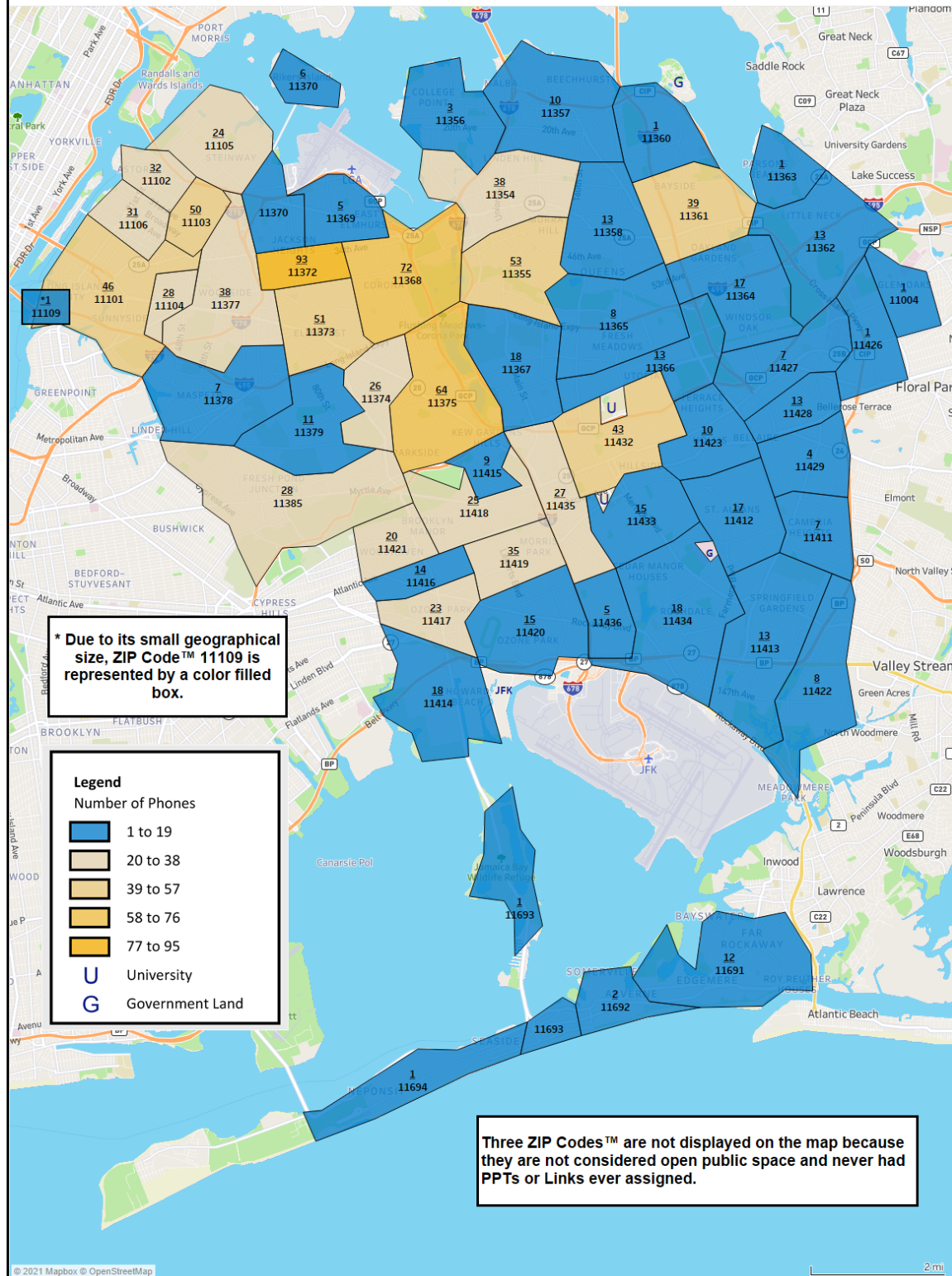
Total net change in the number of public communication structures (links & existing PPTs) compared to the number of PPTs prior to the Link program.

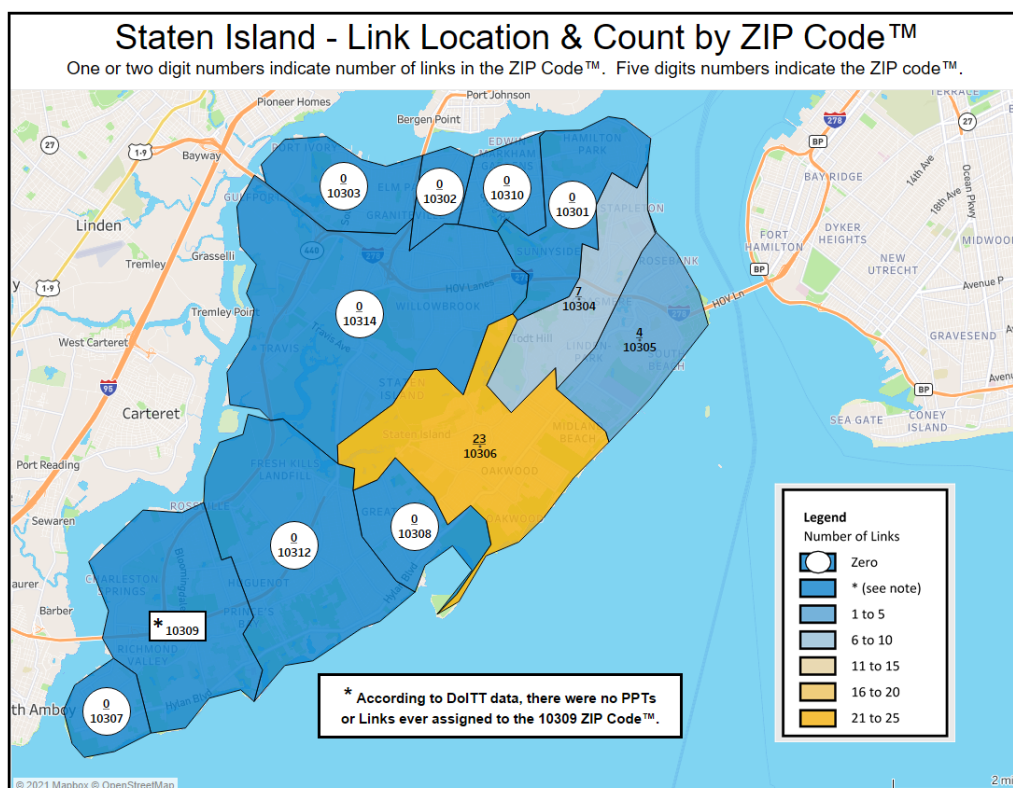
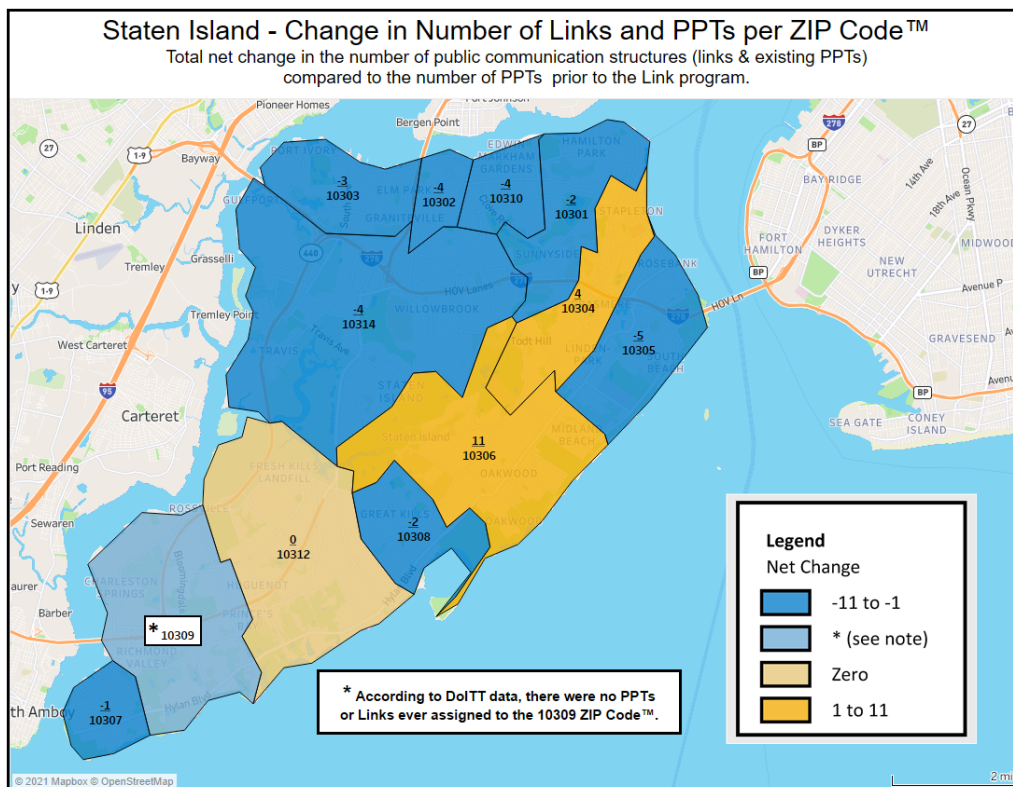




Queens - Number of Phones per ZIP Code™ (Pre-Link)

One or two digit numbers indicate number of phones in the ZIP Code™. Five digits numbers indicate the ZIP code™.





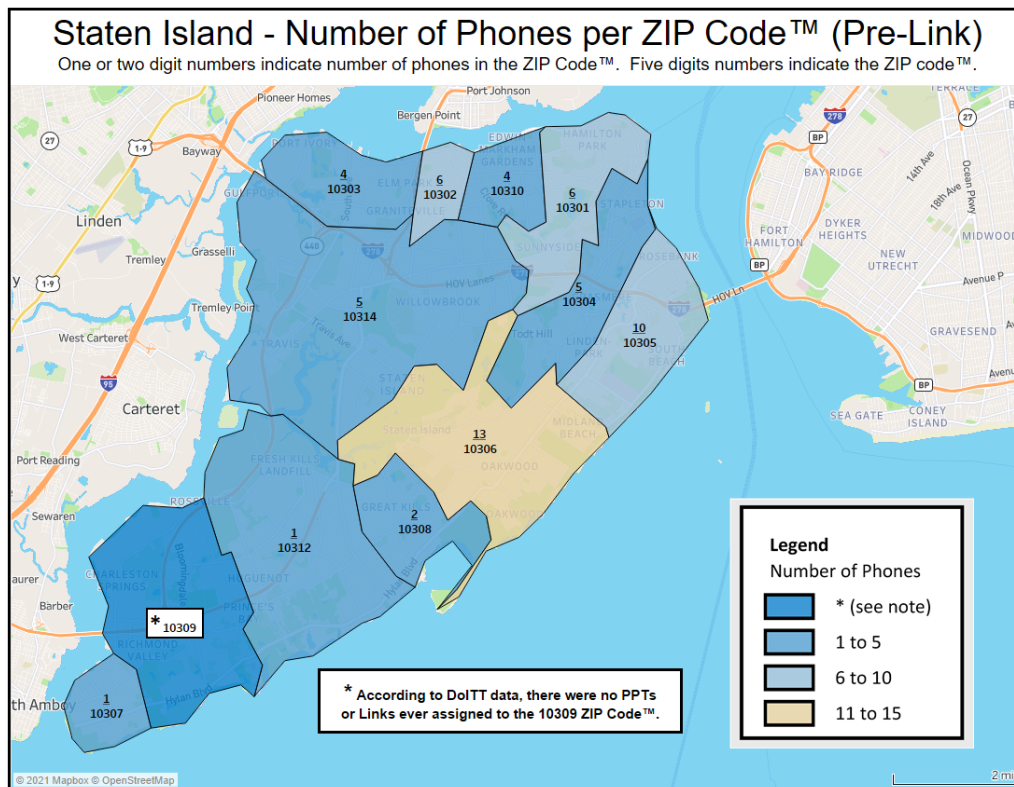
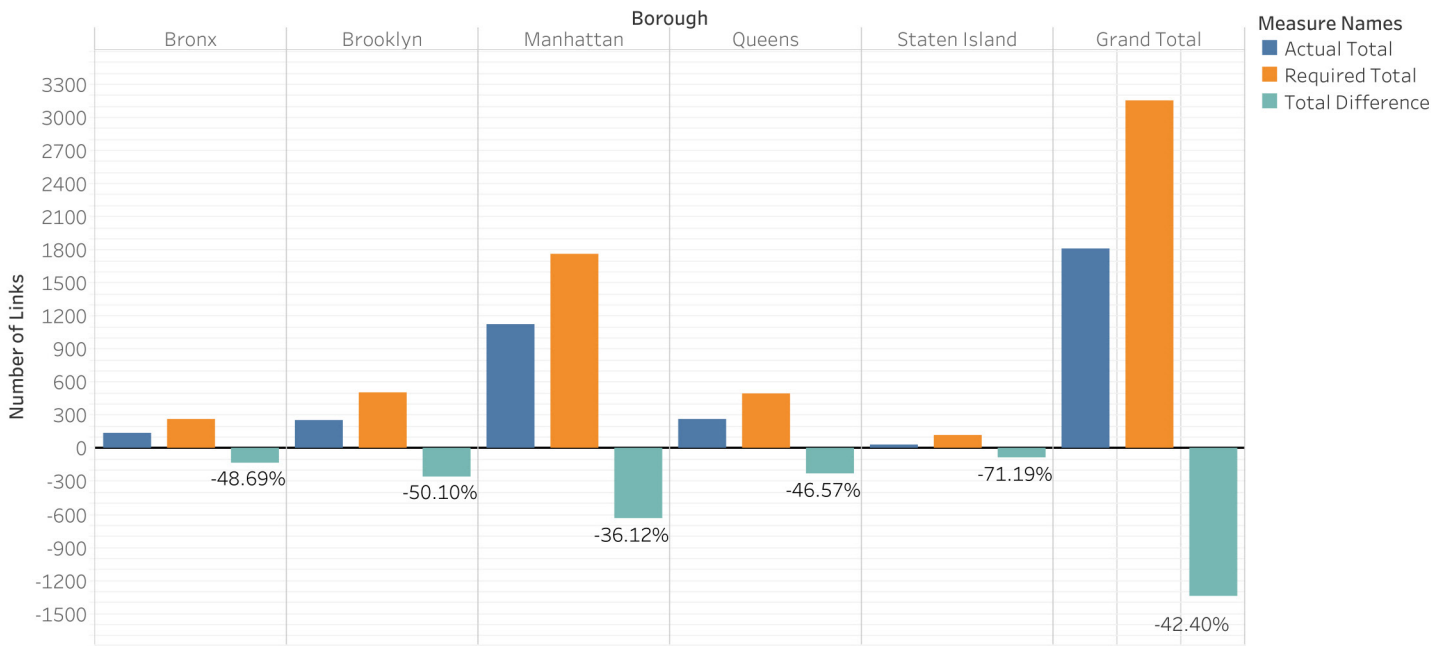


Exhibit B

Comparison of Total Actual Links Installed and Activated to Total Required Links Installed and Activated by Borough After Build Year Five (2015-2020)



Actual Total, Required Total and Total Difference for each Borough. Color shows details about Actual Total, Required Total and Total Difference. The marks are labeled by sum of Total % Difference. The view is filtered on Borough, which excludes Grand Total.

Agency Comments



May 13, 2021

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane -21 Floor
New York, NY 10038

Dear Ms. Maldonado:

DoITT thanks the New York State Office of the State Comptroller for the opportunity to respond to the NYS OSC Draft Audit Report dated April 13, 2021 on DoITT's oversight of the LinkNYC franchise. Following is DoITT's response.

Recommendation 1: Exercise any and all rights necessary to hold the Consortium accountable for non-compliance, as appropriate, including the collection of revenue (\$60.3 million) and interest (\$8.63 million) owed by the Consortium since DoITT forbearance began on September 17, 2018.

DoITT Response: In the exercise of the City's rights under the Franchise Agreement, DoITT is working towards a restructuring of the program. DoITT is confident in a result that will provide a beneficial outcome for the people of the City of New York.

[Comment 1](#)

Recommendation 2: Collect the 2015 revenue underpayment of \$1.68 million.

DoITT Response: DoITT disagrees there was a MAG underpayment in 2015. As the result of a Public Pay Telephone owner's refusal to transfer structures to CityBridge, the \$18,315,269 MAG payment rendered was the appropriate prorated amount pursuant to § 6.3.3 of the franchise agreement, which allowed for a reduction in MAG commensurate with the number of advertising installations short of the 4,000 number.

[Comment 2](#)

Recommendation 3: Establish policies and procedures for reviewing the Consortium's monthly revenue reports, including but not limited to documenting results of month-to-month reviews of revenue and recording advertisements during Link site inspections.

DoITT Response: The Franchise Revenue Report Review Policy and Procedure is being put in place to establish the requirements for monthly documentation of the results of revenue report review, identification of errors, procedures for resolving issues, and ensuring Franchisee compliance with franchise agreements with respect to revenue. DoITT will review revenue by comparing Franchisee sales reports to advertising revenue receipts. Based on the available data, this methodology is DoITT's best means for reviewing advertising revenue.

Recommendation 4: Require the Consortium to install the MMS per contract terms, including functionality to report revenue by location and structure type, as a means of ensuring accurate revenue remittance.

DoITT Response: CityBridge has implemented Zendesk (an issue ticketing system), SiteTracker (an asset management and deployment database), Scout (a database of CityBridge's field

[Comment 3](#)

inspections), Fleet Manager (a kiosk database and kiosk health manager), and Box (a file sharing and document storage program) for the monitoring of the LinkNYC structures. This was determined to be an adequate substitute for the MMS, thereby obviating the need to enforce that contract term. Moreover, in October 2020, DoITT deployed a new monitoring/inspection system, BasicGov, to replace the obsolete PPTIS database. Through Application Programming Interfaces (APIs), BasicGov will improve DoITT's monitoring, better manage inspections, and interface electronically with CityBridge's systems for data sharing.

Recommendation 5: Perform periodic surveys of a representative sample of Links (at least 500) to determine Link operability, and, per the Agreement, require the Consortium to adopt new or modify existing procedures or take other corrective action to ensure compliance.

DoITT Response: A team of DoITT inspectors regularly visit LinkNYC kiosks. During periods when no kiosks are being deployed, DoITT will sample at least 500 unique kiosks annually. DoITT's new BasicGov monitoring and inspection software will be used to ensure the proper number of kiosks are visited, support analysis of the data collected, and ensure that issues are promptly directed to CityBridge for resolution. The same BasicGov system will be used to manage follow-up inspections to ensure that issues are adequately resolved.

Recommendation 6: Use reports generated from key information systems to increase monitoring of the daily health of all Links; refer "unhealthy" Links to the Consortium and follow up to ensure they are restored in a timely manner.

DoITT Response: DoITT accepts this recommendation. DoITT will use information gathered from key information systems to increase monitoring of the daily health of all LinkNYC kiosks and refer issues to CityBridge, as well as follow up to ensure they are resolved in a timely manner.

Recommendation 7: For improved monitoring capabilities, request that the Consortium upgrade Zendesk access to allow DoITT staff to see all Consortium-initiated trouble tickets.

DoITT Response: DoITT accepts this recommendation. DoITT will request that CityBridge upgrade Zendesk to allow DoITT staff to see all CityBridge-initiated trouble tickets.

Recommendation 8: Ensure that Links inspections occur within 10 business days of installation and activation.

DoITT Response: DoITT prioritizes inspections of newly installed LinkNYC kiosks, but there is no requirement in the Franchise Agreement that newly installed Link kiosks be inspected within a particular period of time. The Franchise Agreement is silent on this requirement.

[Comment 4](#)

Recommendation 9: Actively pursue the plan to replace the outdated PPTIS system with a more efficient system, thereby creating better monitoring tools, such as tracking of inspection requests.

DoITT Response: In October 2020, DoITT deployed a new monitoring/inspection system, BasicGov, to replace the obsolete PPTIS database. Through Application Programming Interfaces

(APIs), BasicGov will improve DoITT's monitoring, support better inspection management, and interface electronically with CityBridge's systems for data sharing.

Recommendation 10: Ensure the Consortium institutes a preventive maintenance plan, including complying with the required inspection of all PCS.

DoITT Response: In the exercise of the City's rights under the Franchise Agreement, DoITT is working towards a restructuring of the program. DoITT is confident in a result that will provide a beneficial outcome for the people of the City of New York.

[Comment 1](#)

Recommendation 11: Regularly audit the Consortium's compliance with the data security provisions of the Agreement.

DoITT Response: In late 2019, the City commenced the process of soliciting for a vendor to perform a technical audit of the CityBridge systems to ensure compliance with the Privacy Policy. As a consequence of the COVID-19 pandemic, the project was placed on hold. The solicitation was released in December 2020, and a vendor chosen with expected completion of the privacy audit by the end of CY2021.

Recommendation 12: Execute the installation and activation terms of the Agreement and require the Consortium to follow the respective Build Year installation schedules.

DoITT Response: In the exercise of the City's rights under the Franchise Agreement, DoITT is working towards a restructuring of the program. DoITT is confident in a result that will provide a beneficial outcome for the people of the City of New York.

[Comment 1](#)

Recommendation 13: Ensure that future Links are installed in the five boroughs.

DoITT Response: Links have been, and will continue to be, deployed in the five boroughs, in accordance with the Franchise agreement.

Recommendation 14: Require the Consortium to continue its pursuit of acceptable Gigabit Center sites.

DoITT Response: DoITT will continue to encourage CityBridge to pursue the building of Gigabit Centers. Identifying partners and locations to work with CityBridge to site and host Gigabit Centers has proved difficult.

Recommendation 15: Monitor all installation and activation time frames and assess and collect liquidated damages for late activation for past and future installations, as appropriate.

DoITT Response: In the exercise of the City's rights under the Franchise Agreement, DoITT is working towards a restructuring of the program. DoITT is confident in a result that will provide a beneficial outcome for the people of the City of New York.

[Comment 1](#)

Recommendation 16: Assess liquidated damages for repairs in accordance with the Agreement from the period after the second Notice of Assessment, October 31, 2018 to date. Send the Consortium monthly Notices of Assessments as indicated in DoITT's June 27, 2018 letter.



DoITT Response: In the exercise of the City’s rights under the Franchise Agreement, DoITT is working towards a restructuring of the program. DoITT is confident in a result that will provide a beneficial outcome for the people of the City of New York. Liquidated damages will be calculated and assessed according to this restructuring once it is in place.

[Comment 1](#)

Recommendation 17: Ensure the Consortium remits payments for past-due and current liquidated damages.

DoITT Response: In the exercise of the City’s rights under the Franchise Agreement, DoITT is working towards a restructuring of the program. DoITT is confident in a result that will provide a beneficial outcome for the people of the City of New York. Liquidated damages will be calculated and assessed according to this restructuring once it is in place.

[Comment 1](#)

Recommendation 18: Work with OATH to ensure the Consortium remits the balance due for unpaid violation penalties.

DoITT Response: Fees charged to CityBridge after hearings at OATH are not collected by DoITT. Only the Departments of Law and Finance are empowered to collect OATH judgements. DoITT will monitor, follow up, and make the appropriate demands of CityBridge for outstanding payments.

[Comment 5](#)

Again, DoITT thanks the New York State Office of the State Comptroller for the opportunity to provide our responses.

Sincerely,

Janine Gilbert
First Deputy Commissioner

State Comptroller's Comments

1. The franchisee has been out of compliance with the terms of the contract since September 2018, and DoITT has not taken action in a timely manner to resolve the issues. It is also unlikely that the resolution of these issues will compensate the City for the impact of not having these funds for its use starting in 2018.
2. DoITT's response to the draft report included information that was not provided during the audit fieldwork. In response to our request for supporting documents, DoITT provided a legal document about the public pay telephone owner's refusal to transfer structures to the franchisee, along with other information. However, the newly disclosed information – which allegedly supports the \$1.68 million adjustment – was not produced during our extensive fieldwork, but rather after the audit fieldwork ended. We question why.
3. DoITT officials replied that actions taken by the franchisee resulted in an adequate substitute for the MMS, thereby obviating the need to enforce the contract term. DoITT did not provide this information during the audit fieldwork. In response to our request for documentation of the actions taken, DoITT provided descriptions of systems used, screenshots of inspections, and other related documents. However, DoITT did not support that the MMS required by contract terms was replaced by the alternative actions.
4. We did not reference the Agreement for the 10-business-day requirement. This information was provided by DoITT officials as their goal for inspection of Link kiosks.
5. We are pleased that DoITT plans to follow up on the outstanding payments for violation penalties.

Contributors to Report

Executive Team

Andrea C. Miller - *Executive Deputy Comptroller*

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Carmen Maldonado - *Audit Director*

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Daniel Raczynski - *Audit Supervisor*

Marsha Paretzky - *Examiner-in-Charge*

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