

Metropolitan Nashville Airport Authority

MEMORANDUM

TO: Raul Regalado, President and CEO

CC: Monty Burgess, Senior Vice President and COO
Stan Van Ostran, Vice President and CFO
John Howard, Assistant Vice President of Properties and Business Development
Tom Bibb, Director of Properties
Rebecca Ramsey, Manager of Properties

FROM: Basil A. Dosunmu, Internal Auditor

DATE: December 24, 2008

SUBJ: Concourse Communications Nashville, LLC Concession Agreement Audit Report

Background

On July 15, 2004, Concourse Communications Nashville, LLC (“Concourse”), an Illinois Limited Liability Company entered into a Concession Agreement (No. A-04-115) with the Metropolitan Nashville Airport Authority (“Authority”). The Agreement granted Concourse the exclusive right and privilege to operate the Wireless Communication Access System (“WCAS”) concession at the Nashville International Airport. The term of the Agreement was for a period of five years, with one five year renewal option. Concourse is required to maintain a Disadvantage Business Enterprise (“DBE”) participation of no less than seven and two-tenths percent (7.2%) and to submit on an annual basis a completed DBE Participation Report. Concourse engaged the service of Specialized Communication, Co. Inc. for DBE purposes.

It should be noted that on an ongoing basis, Concourse engages the service of an Authority approved DBE firm to provide maintenance and support services to Concourse’s infrastructures at the Airport. On an annual basis, Concourse submits to the Authority’s Properties Department (“Properties”) a schedule of payment to the DBE with the supporting documentation.

The Concession Agreement required Concourse to pay to the Authority a percentage of gross revenue. The applicable percentages of gross revenue is twenty-five percent (25%) of gross revenue

for the unlicensed wireless services component of the WCAS for the first five years, the percentage payment will increase to thirty-five percent (35%) of gross revenue on the renewal.

That Agreement also stated that Concourse shall furnish a written statement to the Authority, prepared in accordance with generally accepted accounting principles and certified by a responsible officer of Concourse, that the percentage payment paid by the Concessionaire to the Authority during the preceding calendar year were made in accordance with the terms of the Agreement. The statement will contain gross revenues as shown on the books and records of Concourse that were used to compute the percentage payment made to the Authority.

On the ninetieth (90th) day following the end of each calendar year of the term of the Agreement, Concourse agreed to pay to the Authority the balance of the rent, if any, due to the Authority for the preceding calendar year on account of the percentage payment provisions. The gross revenue, though payable quarterly, would be computed on a calendar basis. If any refund was due to Concourse, such refund would be applied to future rental payments due to the Authority.

The following are the gross revenues and percentage payment provisions for Concourse per the Statement of Quarterly Gross Revenues and Concession Payments for the Year Ended September 30, 2007, provided by a responsible officer of Concourse.

<u>Gross Revenue Type</u>	<u>Gross Revenue</u>
Monthly Connection/"Ad Hoc" Sessions Revenue	\$294,520
Roaming Sessions Revenue	54,500
Kiosk Revenue	12,000
Other Wi-Fi Revenue - Club Room	7,200
Sponsorship Revenue	3,690
	<hr/>
	\$371,910
Contractual Percentage Rate	<hr/> X 25%
Calculated Percentage Payment	<hr/> \$92,978
	<hr/>
Amount Paid by Concourse to the Authority	<hr/> <hr/> \$92,978

On June 2, 2006, Boingo Wireless, Inc. ("Boingo") sent a letter to Properties stating that on May 11, 2006, Boingo and the members of Concourse Holding Co., LLC ("CH") signed a Securities Purchase Agreement whereby these members agreed to sell their membership interests in CH to Boingo (the "Acquisition"). Pursuant to the Acquisition, CH will continue to be a distinct legal entity, but will be the wholly-owned subsidiary of Boingo.

Concourse is a separate legal entity, and is the wholly-owned subsidiary of Concourse Communications Group, LLC ("CCG"). CCG is, in turn, the wholly-owned subsidiary of CH. The

Acquisition will not directly alter the legal structure of Concourse, and Concourse will continue to operate as a separate legal entity and a wholly-owned subsidiary of CCG.

On August 21, 2008, Properties informed Concourse through a Letter of Notification that the Authority will now require Concourse to employ an independent Certified Public Accountant to furnish a written statement to the Authority.

Objectives

The objectives of this audit were as follows:

1. Determine the validity of gross revenue amounts reported and rent paid to the Authority;
2. Determine compliance with contract terms and operational requirements; and
3. Document and evaluate existing internal controls.

Testing

1. Obtained from Authority Accounts Receivable the quarterly fixed rent invoices and verified that the rent amount agreed to the schedule of rental fees and charges in the Concession Agreement.
 - a. Verified that the invoiced amount agreed to the schedule of quarterly rates.
 - b. Reviewed report for timeliness of payment.
2. Selected 3 months for detail testing (October 2006, April and May 2007). For each month selected, performed the following:
 - a. Reviewed report for mathematical accuracy.
 - b. Obtained detailed online access usage report and performed the following:
 - i. Reviewed data for mathematical accuracy.
 - ii. Tied usage per report to usage reported to the Authority.
 - iii. Determined there were adequate records showing all customer online access.
 - iv. Determined all customer online access were properly billed but not properly included in the gross revenue reported to the Authority.
 - v. Reviewed listing of excluded amounts to ensure they were properly approved by the Authority.
 - vi. Calculated the expected gross revenue from the online access usage report using the approved pricing plan.
 - vii. Reconciled calculated gross revenue to the gross revenue originally reported to the Authority.
 - c. Obtained a copy of the company's general ledger. Verified that the gross revenue amounts per the general ledger were consistent with the gross revenue amounts reported to the Authority.

3. Determined through observations that the computer closets were maintained in a clean, neat, and sanitary condition.
4. Determined that Concourse maintains adequate insurance coverage.
 - a. Obtained a copy of the current certificate of insurance on file.
 - b. Verified that the comprehensive general liability and property damage insurance coverage met the amounts specified in the contract but does not include the required deductible limit.
 - c. Verified that the comprehensive automobile liability insurance coverage met the amounts specified in the contract.
 - d. Property insurance coverage met the amount specified in the contract.
 - e. Worker's compensation insurance coverage met the amount specified in the contract.
 - f. Verified that the certificate of insurance is current and adheres to all other contract terms.
5. Determined that Concourse's operation at the airport is convenient for the passengers.
 - a. Determined that the kiosk locations are conveniently located for customer access.
6. Determined that Concourse provides to the Authority an annual marketing plan.
7. Determined that Concourse is in compliance with the DBE participation level requirement of the contract.
8. Determined that Concourse maintains roaming agreements, however such agreements were not properly approved by the Authority.
9. Determined through discussions with Properties that Concourse is compliant with contract terms.
10. Determined through discussion with the Authority's Information Technology Department personnel that no major operational issues exist with Concourse.
11. Interviewed Concourse's personnel regarding the current internal controls in place.
12. Through inquiry and observation, reviewed the existing internal controls in place.

Conclusion

Based upon the audit, the following were determined with respect to the stated objectives:

1. Concourse is not reporting to the Authority the actual amount of gross revenue generated from the internet kiosk locations as noted in finding #1.
2. The Certificate of Liability Insurance provided by Concourse does not include the required deductible amount limit language for general liability and property insurance coverage as noted in finding #2.
3. The Certificate of Liability Insurance provided by Concourse does not include the Concession Agreement required cancellation notification as noted in finding #3.
4. The DBE participation level requirement is not clearly defined in the Concession Agreement as noted in finding #4.

5. Concourse did not provide the Authority with copies of the Roaming Agreement it has with WISPs operating at the Airport for Authority written approval as noted in finding #5.

Finding #1

Observation

Concourse is not reporting to the Authority the actual amount of gross revenue generated from the internet kiosk locations.

Background

Article VIII, Privileges, Fees, Charges and Accountability, Section 8.1 of the Concession Agreement states that Concessionaire agrees to pay Authority a concession fee as quarterly rent in consideration of being granted the right and obligation to operate the WCAS Concession at the Airport in the amount of twenty five percent (25%) of Gross Revenue for the Unlicensed Wireless Services component of the WCAS Concession.

Furthermore, Article I, Definition, Section 1.10 of the Concession Agreement states Gross Revenue is defined as all revenue from the WCAS Concession, and shall include all charges or other fees charged by Concessionaire to the user of the WCAS, including all billable revenues of every kind and character derived from, arising out of, or payable on account of the WCAS Concession under this Agreement, wherever and however collected, and without any deduction for credit card discounts, whether the same shall be paid or unpaid.

From the inception of the Concession Agreement in July 2004, Concourse installed two internet kiosk locations in Concourse B and C of the Airport. These kiosks provide the travelling public the ability to access the internet during their waiting period at the Airport.

In accordance with the terms of the Concession Agreement, Concourse agreed to pay the Authority twenty-five percent (25%) of gross revenue generated from the kiosk locations. However, Concourse has been reporting to the Authority a fixed monthly amount of Four Hundred and 00/100 Dollars (\$400.00) for each kiosk location instead of the actual amount generated from the kiosk location.

Furthermore, through audit inquiries it was determined that Concourse entered into an Internet Kiosk Alliance Agreement with InGate Technologies, LLC, a Delaware Limited Liability Company (“InGate”) to provide retail internet services to the public through stand-alone kiosks at the Airport.

Additionally, the Internet Kiosk Alliance Agreement stated that InGate would pay Concourse the greater of Four Hundred and 00/100 Dollars (\$400.00) a month per kiosk or 15% of gross revenue generated from the kiosk.

Upon request Concourse provided Internal Audit with a non-executed copy of the Internet Kiosk Alliance Agreement dated August 2004 between Concourse and InGate. It should be noted that the Authority was not provided a copy of the Agreement for review and approval.

The following is a recalculation of the gross revenue that should have been reported to the Authority and rent due the Authority had the kiosk revenue been properly reported by Concourse.

Period	Originally Reported Gross Revenues	Originally Reported Kiosk Revenue	Actual Kiosk Revenue	Adjusted Gross Revenues	Calculated Percentage (25%) Payment by Concourse	Amount Paid (Under)/Over Payment
FY2004	\$0	\$0	\$0	\$0	\$0	\$0
FY2005	\$160,502	(\$3,200)	\$1,011	\$158,313	\$39,578	\$40,125
FY2006	\$336,099	(\$9,600)	\$39,226	\$365,725	\$91,431	\$84,025
FY2007	\$371,911	(\$7,200)	\$17,361	\$382,072	\$95,518	\$92,978
	\$868,512	(\$20,000)	\$57,598	\$906,110	\$226,528	\$217,128
						(\$9,400)

Concourse's percentage payments from the gross revenues from FY2004 through FY2007 were \$226,528. The total rent paid by Concourse to the Authority from FY2004 through FY2007, were \$217,128; therefore there is an underpayment of \$9,400 due to the Authority.

Recommendation

Properties should request the Authority's Finance Department to issue Concourse an invoice for the underpaid rent.

In addition, starting with FY2008, Properties should require Concourse to revise the gross revenue reported to the Authority to include gross revenue generated from the internet kiosk locations in the Airport.

Management Response

Properties will request MNAA Finance issue an invoice to Concourse Communications in the amount of \$9,400.00 for underpayment of rent in accordance with this finding. Additionally, Properties will request Concourse include gross revenue generated from the internet kiosk locations in the Airport in the gross revenue reported to the Authority on a quarterly basis.

Finding #2

Observation

The Certificate of Liability Insurance provided by Concourse does not include the required deductible amount limit language for general liability and property insurance coverage.

Background

Article XIII, Insurance and Letter of Credit, Section 13.1 (a) of the Concession Agreement states that Comprehensive General Liability and Property Damage Insurance in an amount of not less than One Million Dollars (\$1,000,000) combined single limit with a deductible of no more than \$5,000. The Certificate of Liability Insurance provided to the Authority by Concourse does not include the deductible limit on the Comprehensive General Liability and Property Damage Insurance.

In addition, Article XIII, Insurance and Letter of Credit, Section 13.1 (c) of the Concession Agreement requires Property Insurance for physical damage to the property of Concessionaire, including permanent improvements and contents of its Assigned Area, covered for the property's full replacement value.

After careful review and inquires of Properties, it was determined that Concourse has not provided to the Authority a Certificate of Property Insurance since the inception of the Concession Agreement.

Recommendation

Properties should require Concourse to submit a current Certificate of Property Insurance and ensure its content is in compliance with the Concession Agreement.

In addition, on a regular basis, Properties should review the content of the submitted Certificate of Liability Insurance to ensure it specifically addresses the requirement of the Concession Agreement.

Management Response

Properties will notify Concourse Communications along with their respective insurance carrier of this oversight to seek remedy.

Properties Lease Management System has been updated to alert proper oversight of documents submitted for compliance.

Finding #3

Observation

The Certificate of Liability Insurance provided by Concourse does not include the Concession Agreement required cancellation notification.

Background

Article XIII, Insurance and Letter of Credit, Section 13.4 of the Concession Agreement states that Concessionaire agrees that all insurance policies shall provide that they will not be altered or cancelled without thirty (30) days advance written notice to Authority.

However, the current Concourse Certificate of Liability Insurance on file with Properties noted that “10 Day Notice of Cancellation Applies for Nonpayment of Premium” This statement is a deviation from the thirty (30) days advance written notice required in the Concession Agreement.

Recommendation

Properties should require Concourse to provide the Authority a revised Certificate of Insurance that is consistent with the Concession Agreement.

In the future, Properties should monitor the Concession Agreement as well as all others according to the Agreement requirement. If a deviation from the Agreement is noted, it should be addressed and corrected promptly.

Management Response

Properties will notify Concourse Communications along with their respective insurance carrier of this oversight to seek remedy.

Properties Lease Management System has been updated to alert proper oversight of documents submitted for compliance.

Finding #4

Observation

The DBE participation level requirement is not clearly defined in the Concession Agreement.

Background

Exhibit B, Performance Standards of the Concession Agreement states that Concessionaire will maintain a DBE participation of no less than seven and two-tenths percent (7.2%) and submit on an annual basis a completed DBE Participation Report.

At the inception of the Concession Agreement, Concourse met this participation requirement by engaging the services of Authority approved DBE firm to provide the initial wireless local area network (“LAN”) installation for operation at the Airport, see detail below.

<u>Start Period</u>	<u>End Period</u>	<u>Authority Approved DBE Firm</u>	<u>Description of Work</u>	<u>Contract Amount</u>	<u>Payment to DBE Firm</u>	<u>Actual DBE Participation</u>
07/15/04	07/15/05	Specialized Communications Co. Inc.	Install wireless LAN	\$150,000.00	\$68,750.54	46%
				<u>\$150,000.00</u>	<u>\$68,750.54</u>	

However, the basis of measuring ongoing participation level was not clearly defined in the Concession Agreement. Concourse continued to engage the services of Authority approved DBE firms to provide on-going operational maintenance support at the Airport. The table below details the amount that have been paid by Concourse to Authority approved DBE firms.

<u>Start Period</u>	<u>End Period</u>	<u>Authority Approved DBE Firm</u>	<u>Description of Work</u>	<u>Contract Amount</u>	<u>Payment to DBE Firm</u>	<u>Actual DBE Participation</u>
07/15/05	07/15/06	Specialized Communications Co. Inc.	Maintenance of wireless LAN	\$1,000/month	\$1,000.00	Not obtainable
					<u>\$1,000.00</u>	
07/15/06	07/15/07	Cirrus Technologies	Maintenance of wireless LAN	\$500/month	\$1,725.00	Not obtainable
07/15/06	07/15/07	EJO Ventures	Maintenance of wireless LAN	\$520/month	\$2,190.00	Not obtainable
					<u>\$3,915.00</u>	

The DBE participation level could not be determined from the fees paid for the on-going operational maintenance support services because the fees paid are minimal and a measurement basis was not determined for on-going DBE participation level measurement in the Concession Agreement.

Recommendation

Properties in conjunction with the Office of Business Diversity Development (“BDD”) should re-assess the DBE participation level requirement to determine if the established participation level is consistent with the Authority’s renewed direction for the overall DBE program.

In addition, the DBE participation level with appropriate measurement basis for annual review should be incorporated in the re-assessment.

Management Response

Properties has had several discussions with BDD with respect to this issue. It is our mutual conclusion that the currently established DBE participation goal should ideally have largely been for initial system installation purposes only and rather include an encouragement for ongoing participation as needs arise as this concession does not lend itself to activity that would generate an impetus for DBE participation for the long term. It is our intent to address this issue in the subsequent extension should the Authority elect to do so in our best interest or in a future competitive process for this concession.

Finding #5

Observation

Concourse did not provide the Authority with copies of the Roaming Agreement it has with WISPs operating at the Airport for Authority written approval.

Background

Article IV, Privileges and Obligations of Concessionaire, Section 4.3 of the Concession Agreement states that Concessionaire shall operate the WCAS so as to accommodate all interested Carrier Users on a non-discriminatory basis up to the design capacity of the WCAS. The WCAS will be built initially for Unlicensed Wireless Services to be utilized by Concessionaire and by Carrier Users having signed a Roaming Agreement with Concessionaire. Concessionaire shall establish Roaming Agreements and associated fees, under fair and consistent terms, with qualified WISPs to enable their customers to roam onto the network. Concessionaire, as the operator of the WCAS, shall enforce compliance with all industry standards and for interoperability requirements. Furthermore, any WISP permitted to operate on the WCAS shall be approved in writing by both the Concessionaire and the Authority to ensure that quality of WCAS performance is maintained.

The following is a listing of some of WISP permitted to operate on the WCAS at the Airport.

- Boingo Wireless
- Cingular/AT&T
- iPass
- SBC
- Sprint Wi-Fi, and
- T-Mobile

Concourse has not provided the Authority for written approval copies of the existing Agreements with these WISPs operating at the Airport.

Recommendation

Properties should request from Concourse copies of all the Agreements with WISP operating at the Airport. In addition, these Agreements should be reviewed and approved in writing by the Authority.

Management Response

Properties will notify Concourse Communications in writing of the requirement to provide copies of all Agreements with WISPs operating at the airport and request that they submit expeditiously.