

THE COUNCIL OF THE CITY OF NEW YORK

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L.U. No. 423-A

RESOLUTION NO. 1043

CITYWIDE

20035207 GFY

Underlined matter is to be added;  
[Bracketed] matter is to be deleted.

.Title

Authorizing Resolution for the granting of franchises for the installation of public pay telephones and associated equipment on, over, and under the inalienable property of the City (L.U. No. 423-A; 20035207 GFY).

..Body

By Council Members Katz and Avella

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications (the "Department") as the responsible agency for the granting of telecommunications franchises; and

WHEREAS, pursuant to Section 363 of the Charter (the "Charter") of the City of New York (the "City"), the Commissioner of the Department of Information Technology and Telecommunications (the "Commissioner") has made the initial determination of the need for franchises for public pay telephone service in the City of New York; and

WHEREAS, pursuant to Section 1072 of the Charter, the Department has proposed an authorizing resolution for franchises for public pay phones in the City of New York;

WHEREAS, there is the need to promote and sustain competition in the public pay telephone industry in the City; and

WHEREAS, the Council has determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and will stimulate commerce by assuring the widespread availability of reliable public pay telephone service:

The Council hereby resolves that:

The Council authorizes the Department, or any successor thereto, to grant non-exclusive franchises for the installation of public pay telephones and associated equipment on, over and under the inalienable property of the City.

“Public pay telephone” shall be defined by Section 23-401(f) of the Administrative Code of the City of New York (the “Code”).

For purposes of this resolution, “inalienable property of the City” shall mean property designated as inalienable in Section 383 of the Charter.

“Street” shall be defined by subdivision 13 of Section 1-112 of the Code.

The public service to be provided pursuant to this resolution shall be public pay telephone service.

[All franchises granted pursuant to this resolution shall require the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.]

The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the “Expiration Date”). No franchises shall be granted pursuant to this resolution by the Department, nor approved by the Franchises and Concession Review Committee, or the Mayor after the Expiration Date.

Prior to the grant of such a franchise, a Request For Proposals (“RFP”) or other solicitation shall be issued by the Department or any successor thereto. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with the New York State Environmental Quality Review Act (“SEQRA”), the regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq., the City Environmental Quality Review (“CEQR”) Rules of Procedure of 1991, Executive Order No. 91 of 1977, as amended, and Section 197c of the Charter.

The RFP or other solicitation shall contain siting and clearance criteria (the “criteria”) which shall be utilized by the Department in approving the placement of public pay telephones and associated equipment on, over and under the inalienable property of the City. Said criteria shall address, but shall not be limited to, the following factors to the extent permitted by law:

- (1) proximity to water, sewer, electrical or other pipes, conduits or other structure(s);
- (2) visual impacts, if any, on vehicular traffic;

(3) proximity to other existing structures including but not limited to traffic lights, traffic and other signs, newsstands, fire hydrants, underground vaults, bus stop shelters, public pay toilets, enclosed and unenclosed sidewalk cafes, building entrances and exits, and curb cuts; additionally, a pedestal, or other structure which holds a public pay telephone(s) shall be located at least fifty (50) feet from any other such pedestal, or structure(s) on any one block [blockfront.] For purposes of this section, a “block” shall mean the same as that term is defined in 67 RCNY §6-41(f); [“blockfront” shall be defined as that portion of a sidewalk on one side of a street which is between the lot line and an imaginary line measured six feet from and running parallel to the lot line and which is between two points each of which is ten (10) feet from the corner of said street and its intersecting street;]

(4) adequate sidewalk clearance to assure reasonable pedestrian flow;

(5) whether the proposed location is adjacent to a curb or adjacent to a building or other structure; and

(6) impacts, if any, on landmarks or historic districts so designated by the Landmarks Preservation Commission (“LPC”) or any successor thereto.

The criteria to be used by the Department to evaluate responses to such RFPs or other solicitation shall, to the extent permitted by law, include, but not be limited to, the following:

(1) the financial, legal, technical and managerial experience and capabilities of the applicant(s);

(2) the adequacy and nature of the proposed compensation to be paid to the City;

(3) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise;

(4) the efficiency of the public service to be provided; and

(5) the willingness of an applicant to provide public pay telephone service to: (a) residential areas of the City underserved in terms of household telephone penetration or public pay telephone service; and (b) locations with significant emergency demands such as along arterial highways and at entrances to bridges and tunnels.

The Department shall apply the City’s McBride Principles when granting a franchise pursuant to this resolution.

All franchisees holding valid franchises granted by the Department on the date of the adoption of this authorizing resolution shall be eligible to respond to any RFP or other solicitation issued hereunder and to receive a franchise containing the same terms and conditions as all other qualifying respondents.

The Department shall not grant a franchise for less than twenty-five (25) public pay telephones and associated equipment on, over, and under the inalienable property of the City.

Any franchise granted pursuant to this resolution shall be by written agreement and shall include, but not be limited to, the following terms and conditions to the extent permitted by law:

- (1) the term of the franchise [, including option(s) to renew, if any,] shall not exceed fifteen (15) years;
- (2) the compensation paid to the City shall be adequate and shall include the payment of fees and the provision of services, which shall include the provision of public pay telephone service in (a) residential areas of the City underserved in terms of household telephone penetration or public pay telephone service and (b) locations with significant emergency demands such as along arterial highways and at entrances to bridges and tunnels. Such compensation shall not be considered in any manner to be in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatsoever kind and description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City, law of the State of New York, or law of the federal government;
- (3) the franchise may be terminated or canceled by the Department in the event of a franchisee's failure to comply with the terms and conditions of this agreement;
- (4) a security fund shall be established to ensure the performance of the franchisee's obligations under the agreement; the Department is hereby expressly authorized to permit said security fund to be established by a trade association that represents two or more franchisees and is duly organized under the Not-For-Profit Corporation law of the State of New York;
- (5) the City shall have the right to inspect the facilities of the franchisee that are located on the City's inalienable property and which house the franchisee's operating systems and associated equipment and to order the relocation or removal of such facilities at the direction of the Department;
- (6) there shall be requirements for adequate insurance and indemnification to protect the interests of the public and the City;

- (7) all franchisees shall be required to maintain complete and accurate records and books of account that shall be made available in physical or electronic format upon demand to the City for inspection at a location to be determined by the City in its sole discretion;
- (8) there shall be provisions to allow franchisees to sell or lease advertising space on its public pay telephones which are located in commercial and/or manufacturing zoning districts and zoning districts where commercial and/or manufacturing uses are permitted. To the maximum extent feasible, the Department shall ensure that such provisions for the sale or lease of advertising space on public pay telephones be consistent with the provisions of the franchise agreement entered into by and between the City of New York and New York Telephone on July 1, 1993. Such provisions shall also provide that the compensation paid to the City shall include a percentage of gross revenues derived by the franchisee from the display of advertising. In the event that a franchisee seeks to sell or lease advertising space on its public pay telephones pursuant to this paragraph (8) and prior to the installation of any such advertising, the franchisee shall submit to the Commissioner a list of each such location where advertising is sought to be sold or leased, shall indicate the zoning designation for each such location, and shall certify, in writing, that each location complies with the requirements of this paragraph (8);
- (9) in the event that a franchisee does sell or lease advertising space on its public pay telephones, advertising for tobacco products shall be prohibited. There shall be a requirement for the provision of free advertising space for public service announcements. Said space shall represent at least two percent (2%) of total advertising space. The Department shall be responsible for informing all agencies of City government of such free advertising space for public service announcements. In order to ensure wide and fair distribution of such free advertising space, the Department shall develop a plan for coordinating requests by said agencies for use of such space;
- (10) there shall be provisions requiring that all work involved in the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment and facilities of the franchisee shall be performed in a safe, thorough and reliable manner using materials of good and durable quality and that such work will be done in accordance with any rules promulgated under Section 23-403 of the Code in relation thereto; additionally, the installation of public pay telephones on distinctive sidewalks shall be prohibited;
- (11) all franchisees shall comply with all applicable sections of the buildings and electrical codes of the City of New York and, where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of such public pay telephones and associated equipment on, over and under the inalienable property of the City

requires that such work be done by an electrician, the franchisees shall employ and utilize only licensed electricians;

(12) there shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters;

(13) there shall be provisions requiring all franchisees to comply with all applicable City, state and federal laws, regulations and policies;

(14) there shall be provisions to ensure the adequate oversight and regulation of all franchisees by the City;

(15) there shall be provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City. Such consent shall not be withheld unreasonably;

(16) there shall be provisions to require the franchisees to comply with the applicable provisions of the Americans with Disabilities Act and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities, and at least twenty-five (25) percent of each franchisee's telephones shall be equipped with volume control equipment to enable hearing impaired persons to access and utilize telecommunications services. The franchisee shall make a good faith effort to distribute the volume control telephones evenly;

(17) there shall be remedies to protect the City's interests in the event of a franchisee's failure to comply with the terms and conditions of the agreement;

(18) there shall be provisions to protect the City's interest in the event of the subsequent invalidity of any portion of the agreement and in the event of any change in applicable law;

(19) all franchisees shall submit to the City's Vendor Information Exchange System ("VENDEX");(19)

(20) all franchisees shall obtain all necessary licenses and permits from and comply with all Rules and Regulations of the New York State Public Service Commission, the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee;

(21) all franchisees shall obtain the permit(s) required by Section 23-402 and defined by Section 23-401(d) of the Code. The fees paid to obtain said permits shall not be considered in any manner to be compensation or in the nature of a tax;

(22) all franchisees shall establish and maintain adequate security systems to protect the franchisee's revenues;

(23) all franchisees shall establish and maintain prompt and efficient complaint handling procedures;

(24) there shall be provisions for inspecting and cleaning the public pay telephones and associated equipment and for the prompt removal of graffiti. Such inspection, cleaning and graffiti removal shall be a minimum of twice per month;

(25) all franchisees shall establish and maintain a program, accessible by the City, to monitor the operability of its equipment at all times at all locations;

(26) in the event of an outage, the source of which is under the direct control of the franchisee(s), the franchisee(s) shall be required to restore service within twenty-four (24) hours at all locations so affected. If the source of the outage is not under the direct control of the franchisee(s), the franchisee(s) shall notify the responsible party and the Commissioner within twenty-four (24) hours;

(27) all franchisees shall ensure that not more than ten percent (10%) of its public pay telephones are out of service at any given time;

(28) there shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to the franchise;

(29) there shall be provisions requiring the franchisee(s) to protect the property of the City and the delivery of other public services from damage or interruption of operation resulting from the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment or facilities related to the franchise;

(30) there shall be provisions designed to minimize the extent to which the public use of the streets of the City is disrupted in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment and facilities related to the franchise;

(31) there shall be provisions requiring that emergency calling to the 911 emergency number, to the certified operator service provider and to any other appropriately authorized emergency access number be in accordance with the rules and regulations promulgated by the Public Service Commissions; and

(32) there shall be a provision, consistent with such regulations as may be promulgated by the New York State Public Service Commission, requiring that each public pay telephone clearly and legibly (i) identify the owner and/or operator of such public pay telephone, (ii) indicate that the owner and/or

operator has been franchised by the City of New York and (iii) provide such telephone numbers as may required by the Department where complaints regarding the telephone may be directed.

The Department shall develop a process for consultation with Council Members and Community Boards with respect to the siting of public pay telephones and complaints regarding same including requests for removal and relocation. This process shall include, but not be limited to:

- (1) allowing Council Members and Community Boards to submit to the Department a prioritized list of areas requiring additional service, reduced service, or a change in service;
- (2) requiring the Department to make the applications received under Section 23-403 of the Code available for public review; and
- (3) requiring the Commissioner to respond in writing to complaints and requests received from Council Members and Community Boards regarding installation, change of service, removal or relocation of public pay telephones pursuant to the Commissioner's authority under the Code.

The Department shall file the following documents with the Council:

- (1) within fifteen (15) days of filing or receipt, a copy of all documents, including but not limited to forms, applications, reports and correspondence regarding SEQRA, CEQR and ULURP;
- (2) within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;
- (3) within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution and any subsequent modification thereof; and
- (4) on or before July 1 of each year, for the preceding calendar year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution.

Adopted.

Office of the City Clerk, }  
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a  
Resolution passed by The Council of The City of New York on September 17,  
2003,  
on file in this office.

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City Clerk, Clerk of The Council