

5/10/02

Resolution No. 592

L.U. No. 225-A

CITYWIDE

20035025 GFY

..Title

Resolution authorizing franchises for local, high-capacity telecommunications services

..Body

By Council Members Katz and Avella (at the request of the Mayor).

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications 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 has made the initial determination of the need for franchises for local, high-capacity telecommunications services; and

WHEREAS, the Mayor has submitted to the Council a proposed authorizing resolution for such franchises pursuant to Section 363 of the Charter; 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 stimulate commerce by assuring the widespread availability of local, high-capacity telecommunications services;

The Council hereby resolves that:

The Council authorizes the Department of Information Technology and Telecommunications to grant non-exclusive franchises for the installation of cable, wire or optical fiber and associated equipment on, over and under the inalienable property of the City (including through pipes, conduits, sewers and similar improvements thereto) to be used in providing local, high-capacity telecommunications services in the City.

The public services to be provided under such franchises shall be any high-capacity voice, data, information service and/or video telecommunications service (including provision of pipes, conduits, sewers and similar improvements facilitating such service).

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

For purposes of this resolution, "local, high-capacity telecommunications services" shall mean the transmission of voice, data, information service and/or video signals but shall not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended (47 U.S.C. 521 et seq.) and shall not include "mobile telecommunications services" as defined in the authorizing resolution adopted by the Council on August 11, 1999 (Resolution 957) and shall not include transmission of services by a "public pay telephone" as defined by Section 23-401(f) of the Administrative Code of the City of New York.

[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 approved pursuant to this resolution by the Department of Information Technology and Telecommunications, the Franchise and Concession Review Committee, or the Mayor pursuant to this resolution after the Expiration Date.

Prior to the grant of any such franchise, a Request For Proposals ("RFP") or other solicitation shall be issued by the Department of Information Technology and Telecommunications. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with City Environmental Quality Review ("CEQR") and Section 197c of the Charter.

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

- (1) the adequacy of the proposed compensation to be paid to the City, including the wiring and provision of telecommunications services pursuant to the franchise to public schools and other buildings owned by the City;
- (2) the financial, legal, technical and managerial experience and capabilities of the applicant(s);
- (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 extent to which the applicant(s) commit to provide services pursuant to the franchise to areas of the City outside Manhattan and under served areas of Manhattan.

The Department of Information Technology and Telecommunications will apply the City's McBride Principles when granting a franchise pursuant to this resolution.

Any franchise granted pursuant to this authorizing resolution shall be by written agreement which 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 options to renew if any, shall not exceed fifteen (15) years;
- (2) the compensation to be paid to the City shall be adequate and may include the provision of facilities or services to the City or both;
- (3) the franchise may be terminated or cancelled in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;
- (4) a security fund shall be established to ensure the performance of the franchisee's obligations under the agreement;
- (5) the City shall have the right to inspect the facilities of the franchisee and to order the relocation of such facilities at the direction of the Department of Information Technology and Telecommunications;
- (6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;
- (7) all franchisees shall be required to maintain complete and accurate books of account and records which shall be made available on demand to the City for inspection;
- (8) there shall be provisions to ensure quality workmanship and construction methods;

- (9) 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;
- (10) there shall be provisions requiring the franchisee to comply with City laws, regulations and policies related to, but not limited to, employment, purchasing and investigations;
- (11) there shall be provisions to ensure adequate oversight and regulation of the franchisee by the City;
- (12) 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;
- (13) there shall be remedies to protect the City's interest in the event of the franchisee's failure to comply with the terms and conditions of the agreement;
- (14) all franchisees shall submit to the City's Vendor Information Exchange System ("VENDEX");
- (15) all franchisees shall obtain all necessary licenses and permits from and comply with the Rules of the New York State Public Service Commission and the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee;
- (16) 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;
- (17) there shall be provisions requiring the franchisee to protect the property of the City and the delivery of public services from damage or interruption of operation resulting from the construction, operation, maintenance, repair or removal of improvements related to the franchise; and
- (18) there shall be provisions designed to minimize the extent to which the public use of the streets of the city are disrupted in connection with the construction of improvements relating to the franchise.

The Department of Information Technology and Telecommunications shall file with the Council the following documents:

- (1) within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;

(2) within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution; and

(3) on or before July 1 of each year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution during the preceding calendar year.

If any clause, sentence, paragraph, section or part of this resolution shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this resolution or the application thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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 November 20, 2002, on file in this office.

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City Clerk, Clerk of the Council