

THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 957

..Title

Proposed authorizing resolution submitted by the Mayor pursuant to Section 363 of the Charter for the granting of franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services.

..Body

By Council Members Eisland and McCaffrey (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 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 mobile telecommunications services in the City of New York; and

WHEREAS, pursuant to Section 1072 of the Charter, the Department of Information Technology and Telecommunications has proposed an authorizing resolution for the granting of franchises for mobile telecommunications services; and

WHEREAS, the City 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 reliable mobile telecommunications services;

The Council hereby resolves that:

The Council authorizes the Department of Information Technology and Telecommunications, or any successor thereto, to grant non-exclusive franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City, in connection with the provision of mobile telecommunications services in the City of New York.

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, "mobile telecommunications services" shall mean Amobile services@ as defined in the Telecommunications Policy Act of 1996 (codified at 47 U.S.C.'153) and other voice and/or data telecommunications services employing electromagnetic waves propogated through the atmosphere to serve portable sending and/or receiving equipment.

Only persons licensed by the Federal Communications Commission to provide mobile telecommunications services may be granted franchises pursuant to this resolution to the extent such licenses are required by Federal law.

The public service to be provided under such franchises shall be mobile telecommunications 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 AExpiration Date@). No franchise shall be granted pursuant to this resolution by the Department of Information Technology and Telecommunications, nor approved by the Franchise and Concession Review Committee, or the Mayor 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 RFP's or other solicitation shall include, but not be limited to, the following:

- (1) the adequacy of the compensation to be paid to 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 value and efficiency of the public service to be provided; and

(5) the value of any telecommunications facilities and services offered by the applicant(s) to the City.

The Department of Information Technology and Telecommunications shall apply the City's McBride Principles and Local Law 33 of 1997 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:

- (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 shall include the payment of fees or the provision of facilities and services, or both. Such compensation shall not be considered in any manner to be in the nature of a tax, but such payment shall be made in addition to any and all taxes of whatsoever kind or 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 of Information Technology and Telecommunications 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 to the extent applicable to franchise compliance, which shall be made available on 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 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") and the Integrated Comprehensive Contract Information System ("ICCS");
- (15) all franchisees shall obtain all necessary licenses and permits from and comply with all Regulations and Rules of the New York State Public Service Commission, 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;
- (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; and
- (19) there shall be provisions to protect the interest of the City in the event of
 - (A) a subsequent finding by a regulatory body or court of competent jurisdiction that the agreement, or any portion thereof, is invalid and/or unenforceable, and
 - (B) any change in applicable law.

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

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

Adopted.

Office of the City Clerk, }
The City of New York, }

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on August 11, 1999, on file in this office.

.....

City Clerk, Clerk of Council