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THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 985

Resolution authorizing franchises for the installation of fiber optic cable and associated equipment on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services

By Council Members Crispino and McCaffrey (by request of the Mayor)

WHEREAS, by Executive Order 8, dated April 12, 1990, the Mayor has designated the Department of Telecommunications as the responsible agency for the granting of telecommunications franchises; and

WHEREAS, pursuant to Local Law 71 of 1990, the Department of Telecommunications became the Department of Telecommunications and Energy; 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 Telecommunications and Energy has made the initial determination of the need for franchises for mobile telecommunications service; 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 made certain modifications to the Mayor's proposed authorizing resolution, which are contained herein; and

WHEREAS, the Council has considered the relevant environmental issues relating to this resolution; 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 reliable mobile telecommunications services;

The Council hereby resolves that:

The Council authorizes the Department of Telecommunications and Energy to grant non-exclusive franchises for the installation of fiber optic cable and associated equipment on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services in the City.

For purposes of this resolution, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter; and "mobile telecommunications services" shall mean one-way paging services, conventional mobile radio telephone service, cellular telecommunications service, and personal communications network service, also known as personal telephone service, capable of transmitting voice and/or data signals.

The Council finds that this authorizing resolution will have no significant effect on the environment and issues a negative declaration with respect to this resolution.

Only persons licensed by the Federal Communications Commission pursuant to Part 22 (47 C.F.R. 22.0 et seq.) or Part 90 (47 C.F.R. 90.1 et seq.) of the Federal Communications Commission's Rules and Regulations may be granted franchises pursuant to this resolution.

The public service provided pursuant to this resolution shall be mobile telecommunications service.

The authorization to grant franchises pursuant to this resolution shall expire on the third 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 Telecommunications and Energy, the Franchise and Concession Review Committee, or the Mayor pursuant to this resolution after the Expiration Date.

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.

Prior to the grant of any such franchise, a request for proposals ("RFP") or other solicitation shall be issued by the Department of Telecommunications and Energy. The criteria to be used by the Department of Telecommunications and Energy to evaluate responses to such RFP's or other solicitation shall include, but not be limited to, the following:

- (1) the adequacy of the proposed 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 Telecommunications and Energy will apply the City's Anti-Apartheid policies in the selection of franchisees.

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 shall not exceed fifteen (15) years;

(2) the compensation to be paid to the City shall be adequate and may include the payment of fees or the provision of facilities or services, 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 Telecommunications and Energy;

(6) there shall be adequate insurance and indemnification requirements;

(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 insure 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;

(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 and the Integrated Comprehensive Contract Information System ("ICCIS");

(15) all franchisees shall obtain all necessary licenses and permits from and comply with all 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; 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 Telecommunications and Energy 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

(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, } 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 May 23, 1991, on file in this office.

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City Clerk, Clerk of Council