

**TESTIMONY OF ROBERT M. BRILL, ESQ., SUBMITTED TO THE COUNCIL
SUBCOMMITTEE ON ZONING AND FRANCHISES AND THE COMMITTEE ON
TECHNOLOGY WITH RESPECT TO THEIR JUNE 18, 2014 JOINT OVERSIGHT
HEARING ON DOITT'S REQUEST FOR PROPOSALS FOR A FRANCHISE TO
INSTALL, OPERATE AND MAINTAIN PUBLIC COMMUNICATIONS STRUCTURES
ON THE SIDEWALKS OF THE CITY OF NEW YORK**

I want to thank Chair Weprin and Chair Vacca, and your respective Committees, for holding this hearing. I also want to thank Chair Weprin for extending to me an invitation to testify today.

I am an attorney at law concentrating, in part, in the regulation of telecommunications and Citywide franchises. In this regard, I have represented payphone franchisees, both in regulatory matters and in litigation, including in the Federal Courts, and the providers of broadband services. I have also represented Outdoor Systems, when it was the City's bus shelter franchisee. Since 1994, I have testified before your two committees, as well as others, in the areas of my concentrations. While I will touch upon various legal matters, my desire is to share with the Committees my observations concerning public policy with respect to the subject matter at hand. I speak today, on my own behalf, and not on behalf of any clients of mine, and the observations are my own, though I would hope that they would be shared by others.

The Council's oversight on the regulation of telecommunications matters by the New York City Department of Information Technology and Telecommunications ("DOITT") and the New York City Law Department (the "Law Dept.") is very much in order, both in general, and especially, with respect to the Request For Proposals of DOITT for a Franchise to Install, Operate and Maintain Public Communications Structures in the Boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island (the "RFP"). As the Council is aware, the RFP concerns, in part, the provisioning of payphone and wi-fi services on the inalienable property of the City; notably, the City's sidewalks.

THE RFP IS ULTRA VIRES AND USURPS THE COUNCIL'S CLEAR AUTHORITY

I contend that the RFP is ultra vires under the Charter of the City (the "Charter"). There should have been an express authorizing resolution ("AR") under Chapter 14 of the Charter requesting the Council set the parameters for the RFP. What the Administration has done, likely picking up on an internal policy proposal of middle level officials of the Bloomberg Administration at DOITT and the Law Department (who are likely still there), is to by-pass, intentionally, the Council from its important role in framing and deliberating on a particular telecommunications franchise and what it should broadly contain. This role includes holding such framing and deliberations to public hearing and scrutiny, including affected industries and communities, debating same, and, ultimately, in public view, voting on such a franchise AR. Most notably, in such a process, the Administration would have to explain publicly to the Council, the People's representatives, exactly what it is intending to do, and answer questions about why, as well as critiques about alternatives.

In this regard, the RFP, and the various addenda issued since, copies of which I will provide to the Committees' Staff, explain that the RFP is promulgated based on two older RFPs, which deal, separately, with mobile telecommunications (AR 191) and public pay telephones (AR 2309), and Local Law 68 of 1995 ("LL68"), which deals with the power of the Commissioner of DoITT to issue permits for the placement of public pay telephones, and which amends the Administrative Code of the City by adding Chapter 4 to Title 23. One need only compare these various documents to the RFP to understand that the RFP is going well beyond what the Council previously authorized. And, most notably, the RFP completely ignores the express provisions of AR 191 and AR 2309, and LL 68, which mandate a competitive market for the provisioning of mobile telecommunications and

payphone service on the City's sidewalks, as well as compliance with the federal Telecommunications Act of 1996 ("TCA").

By not requesting a specific AR with regard to the RFP, the Administration is clearly thumbing it's nose at the Council and its express role in the framing of telecommunications' franchises. The evidence is unmistakable that this is what the Administration intends. Other than the traditional desire of the Executive Branch to avoid the Legislative Branch, and public scrutiny, why would the Administration embark on such a path?

I think the answer is that the Administration, in contravention of federal law, and the telecommunications policy expressed by this Council in ARs 191 and 2309, and LL68, desires to create by fiat a telecommunications' monopoly for payphone and wi-fi service on the City sidewalks. In this respect, the Executive Branch is the sole, subjective arbiter of what entity, or entities, can enter the market or stay in the market. While this policy is, I think, unlawful, it is more than that; it's just plain stupid (not to mention bad policy). Notably, the realm of policy is as much your realm, as that of the Executive Branch. (In this regard, the underlying policy is also the realm of the non-mayoral members of the Franchise and Concession Review Committee ("FCRC") and the Public Advocate.)

**WHY IS THE ADMINISTRATION AVOIDING THE COUNCIL AND PUBLIC
SCRUTINY? IT WANTS TO CREATE A COERCIVE GOVERNMENT MONOPOLY
AND RAISE BARRIERS TO ENTRY FOR PAYPHONE SERVICE AND WI-FI
SERVICE**

The Administration has made plain — in the RFP, at the RFP pre-bid conference on May 12, 2014 (which, curiously, DoITT and the Law Department chose not to record or transcribe), in the Addenda to the RFP, and in testimony by Assistant Commissioner Stanley Shor in response to

questions from Chair Weprin before the Council at joint hearings on May 22, 2014, regarding DOITT's budget - - - that it intends to award the Franchise contemplated by the RFP to only one provider. The Administration has offered no explanation as to why.

When Counsel Maya Wiley was publicly asked on May 21, 2014, at InternetWeek New York to reconcile and defend as a policy matter the monopoly developed in the RFP with Mayor de Blasio's May 19 public speech extolling, in part, competition in broadband telecommunications in the City as a means to spur deployment to the people,¹ she declined to do so, hiding behind the existence of the RFP as the reason why she could not comment on the policy behind the monopoly aspect of it. (This is similar to how the Acting Commissioner of DOITT declined to continue to answer the same line of questioning from Chair Weprin at the Council's May 22 budget hearings.)

But, when the members of this same panel were discussing municipalities' creating their own broadband monopolies, Ms. Wiley lamented that unlike certain cities that had telecommunications

¹ See, the official transcript of the Mayor's May 19, 2014 speech at InternetWeek New York:
<http://www1.nyc.gov/office-of-the-mayor/news/229-14/transcript-mayor-de-blasio-delivers-keynote-address-internet-week-new-york-2014>. Mayor de Blasio's opening theme was that government needs to shake things up through disruption of the status quo. Then, towards the end of the speech, he speaks of competition in the context of broadband. In the same breath, he discusses the payphone/WiFi initiative, but fails to mention that it is intended for one provider. Here is the quote from the official transcript, 11 paragraphs from the end: "So we're going to be doing a lot of the things that need to be done to shake up the status quo when it comes to broadband. We're going to introduce more competition into the process, which is desperately needed. We're going to reexamine our franchise agreements – including with Verizon Fios and Time Warner Cable – to hold them accountable for providing the kind of service they're obligated to. . . . A very exciting new project we're undertaking relates to payphones. We're going to use – take a network of up to 10,000 payphones and turn them into internet hotspots across the city, replacing payphones with new cutting-edge technology hubs." Thereafter, the Mayor laments the RFP process. The internet video of the speech can be found at:
<http://www.youtube.com/watch?v=IINzkkfes68> . . .

utilities (which are, of course, so-called “regulated monopolies”), New York City only had historically its water monopoly to draw upon, but that perhaps it should be revisiting such a governmental monopoly model with respect to telecommunications.² “Remember, these are cities that already had municipal utilities that they could leverage,’ she said. ‘The only municipal utility, essentially, that the City of New York has is water. So one of the things we need to look at is how we change our fundamental [government] infrastructure, in order to produce some of these [changes].’³

The Mayor in his May 19 speech was correct that the key to innovation in telecommunications and in broadening such innovation’s deployment is competition in the market. To the extent that Mayor de Blasio, when referring to governmental disruption in the

² See, InternetWeek New York, Action on Access - - - New York City’s Diverse Approaches to Bridge the Digital Divide, Presented by NYC Digital; see video at <https://internetweekny.com/page/EVOLVEMEDIAWed>, in general. At 15:29-/30:55 in the video, I asked the panel to comment on competition in telecommunications versus monopoly, as well as in the context of the RFP’s seeming advocacy of monopoly and the Mayor’s comments on competition in broadband telecommunications. Ms. Wiley’s response was at 17:39-17:46/30:55, which was to duck the question. See also, Ms. Wiley’s emphasis on monopolies of the 19th century as being facilitated by government. 8:11 - 10:57/30:55, and her comments on municipal utilities, such as the City’s water utility, and leveraging such utilities’ models by the City to rethink its telecommunications’ infrastructure policies. 14:07-14:28/30:55. Finally, Ms. Wiley speaks of “policy fights” concerning broadband policies and infrastructure. 29:33-30:04/30:55.

³ See, Crain’s New York Business, “Mayor’s deputy: Internet is water of the 21st century,” May 21, 2014, updated on May 22, 2014. (“But Ms. Wiley—who later asked for support from the tech community in pushing for an improved broadband infrastructure—pointed out that New York was different from those other cities. ‘Remember, these are cities that already had municipal utilities that they could leverage,’ she said. ‘The only municipal utility, essentially, that the City of New York has is water. So one of the things we need to look at is how we change our fundamental [government] infrastructure, in order to produce some of these [changes].’”)

telecommunications market meant government's breaking up monopolies, oligopolies, and cartels, and eliminating wherever present barriers to entry to competitors to such markets, he was also correct.

But, if the general comments of Ms. Wiley, Assistant Commissioner Shor's testimony in response to Chair Weprin's questions on May 22, 2014, and the RFP itself are any guide, the de Blasio Administration believes with regard to wi-fi service from payphone platforms that monopoly is the only way to achieve such innovation and broad-based deployment. This flies in the face of the evidence throughout the United States, including in New York City, experienced by us all as consumers of telecommunications, including access to the internet, since Judge Greene's landmark decision breaking up the AT&T monopoly ("Ma Bell") in 1983, *United States v. American Tel. And Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1983), through to Congress' landmark enactment of TCA, which expressly prohibited and preempted the erection of barriers to entry to public rights of way for the provisioning of telecommunications services. Since 1983 to the present, eliminating monopoly and barriers to market entry, including on the public right of way, has lead to all of the innovation and deployment that we all have as consumers of such service. So the notion that monopoly, which was the rule from approximately 1914 to 1983, could yield such rapid deployment of innovative technologies, is nonsense.

Ironically, this Council in 1995, with respect to payphone service on the City's sidewalk, established competition, ended monopoly, and eliminated competitive barriers to entry. It did so because it desired to increase the dissemination of payphone service throughout the City's public right of way, and to make such service better. The thought behind it was that Verizon (then New York Telephone) was not responsive to the public communications needs of the City in terms of

maintaining reliable service, and in increasing the deployment of such service, everywhere in the City on the inalienable property. Competition from independent payphone service providers was thought to be the antidote, and, in fact, such competition worked exceedingly well. It's not for nothing that during the dire day of Sept. 11, 2001, when cell service went down in the City, the New York City payphones on the sidewalks in all of the Boroughs worked. Similarly, when the Great Blackout of 2003 occurred, and cell service went down, the People could still make calls from payphones on the City's sidewalks. It was competition that lead to broad deployment and good functionality.

Now, it is true and axiomatic, that time and technology march on. Broadband services, internet access, interactive cameras, were and are desired from public payphone platforms. But, the New York City Franchisees cannot be blamed for not providing such service. It is DOITT, and, certainly, the Bloomberg Administration, that are to blame. Various franchisees requested the authorization to do such deployment. (Ironically, some as early as the last years of the Giuliani Administration, and then, throughout the Bloomberg Administration.) And, this Council, and your committees, then under the leadership of Borough Presidents Melinda Katz and Gail Brewer, passed authorizing resolutions and amended authorizing resolutions, to encourage such provisioning of services. It was DOITT, aided and abetted by the Law Department, that dropped the ball.

In part, this occurred, in my opinion, because DoITT and the Law Department as a policy matter wanted to stifle the broad competitive model encouraged by this Council and by the TCA, and preferred to favor a monopoly model as existed in the bad old days of the dominant carrier, New York Telephone, now Verizon. But, don't just believe me. Believe U.S. District Judge Eric Vitaliano in the Eastern District of New York, where he found that the City had violated TCA and

discriminated in favor of Verizon and against two other Payphone Franchisees, Telebeam Telecommunications and Coastal Communications. *See, Coastal, et al., v. City*, 658 F. Supp.2d 425 (E.D.N.Y. 2009). Believe U.S. District Judge Frederic Block, also of the Eastern District, when he found that Qwest had stated a viable claim under TCA against the Bloomberg Administration with respect to the City's broadband franchise by, among other things, disparate treatment in favor of Verizon. *See, Qwest Communications Corporation v. City of New York*, 387 F. Supp.2d 191, 193 (E.D.N.Y. 2005).⁴

Nonetheless, it is ironic that the RFP, various of its Addenda, Assistant Commissioner Shor at the RFP Pre-Bid Conference on May 12, and in Mr. Shor's May 22 testimony, all point to the success of DOITT's "Pilot" for the deployment of wi-fi from various payphones of three major New York City Payphone Franchisees, as the driving force for the RFP. In other words, a pilot wi-fi project from a competitive franchise model was deemed successful, and therefore, the only way that the de Blasio Administration can achieve its vision of a Citywide wi-fi/payphone network is from a monopoly? It would seem to me that the opposite conclusion holds true; it is from a competitive model and the government's elimination of a barrier to the provisioning of a service that leads to success and will achieve the Mayor's goal.

Assistant Commissioner Shor and Assistant Corporation Counsel Bruce Regal at the May 12 Pre-Bid Conference, in response to questions with regard to the awarding of a franchise to one provider only, insisted that the RFP was still a "non-exclusive franchise," because DOITT could

⁴ It is a particular, delicious irony that the present Corporation Counsel, Zachary Carter, was the attorney representing Qwest at the commencement of its lawsuit against the City, and, signed the complaint alleging the City's violation of TCA and favoritism to Verizon. One can find the signed complaint at the electronic docket of the US District Court for the Eastern District of New York through web or PACER.

choose at its option at some point in the 15 years of the franchise to “allow” there to be another franchisee selected. Perhaps such double speak is convincing in the world of Alice in Wonderland concerning the definition of competition, but not to those that can read and understand the English language, and certainly not to those that can read and understand this Council’s Authorizing Resolutions and TCA. The explanation of Messrs. Shor and Regal is clear evidence that the de Blasio Administration desires to impose a coercive government monopoly for the provisioning of payphone service and wi-fi service beginning in Oct. 2014, even though the City has had a competitive model for the provisioning of public communications on its sidewalks since 1996, and even though this competitive model is the proof pointed to by the Administration that Citywide wi-fi can be quickly accomplished. One is compelled to observe, as a policy matter, with respect to the appropriate model for the deployment of public communications structures throughout the City, “If it ain’t broke, don’t fix it.”

If one only wanted to make public communications throughout the City better, the remedy would be even more competition and the aggressive removal of barriers to entry to the provisioning of such service by whomever wants to offer such service. All of which can be done without sacrificing Vendex, siting criteria, commissions, insurance, and bonds and security, so long as they are applied on a competitively neutral basis and on a per permit basis. Even advertising commission minimums can be done based on a per permit basis, adjusted for the variance that advertising revenue will be different from sites in the Manhattan core as compared to sites in Staten Island. Thus, a competition model with no barriers to entry can achieve everything that Mayor de Blasio wants, but not run afoul of federal and City law and good policy. It is almost perverse that the present Administration - - - encouraging monopoly, or else duopoly or a government imposed cartel,

and erecting barriers to entry - - - is conducting itself with respect to public communications and telecommunications policy on the sidewalks of the City just like the Bloomberg Administration.

This Council must stop such bad policy directly in its tracks.

**PROPOSED LEGISLATION TO STOP THE BAD MONOPOLY POLICY OF THE RFP;
AND TO CAUSE THE TELECOMMUNICATIONS POLICY OF THE CITY WITH
RESPECT TO PUBLIC COMMUNICATIONS SERVICES TO BE A COMPETITION
MODEL ELIMINATING BARRIERS TO ENTRY**

This Council should do what it does best; use legislation to stop bad policies and to encourage the Executive Branch to promulgate good, lawful policies. Notwithstanding the ultra vires nature of the RFP, this Council can pass legislation that will render it, as a market matter, useless. Towards that end, I have drafted three distinct, though related, pieces of proposed legislation, well within the Council's powers under the Charter.

The first proposed legislation, annexed as Exhibit ("Exh.") A, is an "Intro." for a local law that amends those provisions of the Administrative Code, first enacted by LL 68, that restricts the DOITT Commissioner's power to grant permits, to assign permits, and to transfer permits for public pay telephones (whose definition includes wi-fi service) to a franchisee that is a monopoly, or pursuant to a franchise that prevents easily qualified entrants to be awarded a franchise (in effect, pursuant to a franchise process that erects barriers to entry). This restriction also applies to such permits as are required to open streets and sidewalks for purposes of provisioning of payphone and wi-fi services on the inalienable property of the City. All of the Vendex, etc., values are maintained and preserved.

The second proposed legislation, annexed as Exh. B, is an amendment to AR 2309, which the RFP is relying upon as the basis for its issuance. This amendment, as with Exh. A, makes plain

that an RFP issued pursuant to it, an award made under it, and an agreement for such a franchise, must not be to a monopoly, or pursuant to a franchise that prevents easily qualified entrants to be awarded a franchise (in effect, pursuant to a franchise process that erects barriers to entry).

The third proposed legislation, annexed as Exh. C, is a local law entitled, "The City Anti-Monopoly Telecommunications Act." It mandates that no franchise agreement for public communications services (payphone and wi-fi) may be entered into by the City for a franchise to only a sole provider, or pursuant to a franchise that prevents easily qualified entrants to be awarded a franchise (in effect, pursuant to a franchise process that erects barriers to entry). This legislation would bar DOITT from proposing to the FCRC, or for the FCRC from approving, a franchise contract to a monopoly and/or pursuant to a restrictive franchise that prevents easily qualified entrants to be awarded a franchise (in effect, pursuant to a franchise process that erects barriers to entry).

All three of these proposed pieces of legislation, if enacted, will prevent the Administration from proceeding with the RFP, or will provide such uncertainty to the Executive Branch and the sole awarded applicant that not a single unit could be deployed lawfully, such that the entire process will collapse on its own weight. However, hopefully, the mere introduction of such legislation will cause the Executive Branch to come to its senses, withdraw the RFP, and request an appropriate, new authorizing resolution, be enacted. The Council can then ensure that an appropriate authorizing resolution is framed and publicly aired. I am confident that the Council will authorize a franchise that provides for all of the types of services that Mayor de Blasio wants throughout the City, but will do so in the most effective way to provide innovative, widely deployed public communications - - - through a pro-competition franchise that eliminates barriers to entry, permits all of the existing

providers to continue in business, if they should so chose, and to allow as many new entrants as want to come into the market to do so.

I thank the Committee for this opportunity to be heard and will be glad to answer any questions, as well as provide at a later time such supplemental materials as the Committees require.

Dated: New York, New York
June 18, 2014

Respectfully submitted,

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EXHIBIT A

[**Bold** indicate new language added]

N.Y. ADC. LAW § 23-401 : NY Code - Section 23-401: Definitions

Whenever used in this chapter: a. "Commissioner" shall mean the commissioner of the department of information technology and telecommunications, or of any successor agency. b. "Department" shall mean the department of information technology and telecommunications, or any successor agency. c. "Owner" shall mean a natural person or business entity which owns, leases, or is otherwise responsible for the installation, operation and maintenance of a public pay telephone. d. "Permit" shall mean an authorization by the department to install, operate and maintain one or more public pay telephones at a location on, over or under a street or other inalienable property of the city. e. "Public nuisance" shall mean the use of a public pay telephone on a regular basis which the commissioner has reasonable cause to believe is in furtherance of unlawful activity. f. "Public pay telephone" shall mean a telephone and associated equipment, from which calls can be paid for at the time they are made by a coin, credit card, prepaid debit card or in any other manner, which is available for use by the public and provides access to the switched telephone network for the purpose of voice or data communications. The term "public pay telephone" shall include any pedestal or telephone bank supporting one or more such telephones, associated enclosures, **telephone equipment, any equipment attached to or part of the associated enclosures, including equipment related to and facilitating the provisioning of telecommunications services, information services, Wi-Fi services, broadband services, and internet access, kiosk, supporting structures, signage and other associated equipment.** g. "Street" shall have the meaning ascribed thereto in subdivision thirteen of section 1-112 of this code.

* * * * *

N.Y. ADC. LAW § 23-403 : NY Code - Section 23-403: Powers of commissioner.

a. The commissioner may issue and renew permits under this chapter based upon a determination, at his or her discretion, that issuance or renewal of a permit would be in the best interests of the city, provided that: 1. no permit shall be issued or renewed *i) unless the applicant holds a franchise granted by the city to install, operate and maintain public pay telephones on, over and under the streets and other inalienable property of the city, ii) that such franchise shall be awarded to each and every entity applying for such franchise that satisfies the lawful criteria stated in this Council's authorizing resolution concerning public pay telephones, and iii) that such franchise does not prevent or preclude any entity that provides telecommunications and/or information services from public pay telephones from offering such services on, over and under the streets and other inalienable property of the city;* 2. (i) in the event that the installation of a public pay telephone requires the opening, drilling or other physical alteration of a building facade or other private property, no permit shall be issued or renewed without the written consent of the building owner. (ii) in the event that the installation of a public pay telephone requires affixing the phone to a building facade or other private

property, no permit shall be issued or renewed without the written consent of the building owner. (iii) in the event the installation of a public pay telephone is to be accomplished in a manner other than as set forth in subsection (i) and (ii) of this section, but requires access through an existing conduit or other opening on a building facade or other private property, or such installation is to be made within six feet of a building line, no permit shall be issued or renewed without the written consent of the building owner or the commercial lessee who shall certify (aa) that the building owner has authorized the lessee to grant such consents; and (bb) that the lessee has provided the building owner or its authorized agent with written notification by certified mail, of the granting of such consent, the name and address of the owner of the public pay telephone and the location of such public pay telephone in relation to the building. Proof of mailing of such notification to the building owner or its authorized agent shall be included in the permit application. It shall be a violation of this chapter where a permittee, without providing justification therefor, fails within a time period specified by the Commissioner to remove a public pay telephone following receipt of a notice from the building owner or its authorized agent by certified mail that he or she objects to the installation, where such notice and copy to the Commissioner are sent within thirty days of receipt of the commercial lessee's consent. Nothing herein shall be construed to limit a building owner or its authorized agent from pursuing such remedies as he or she may have under law with respect to the unauthorized installation of a public pay telephone; and 3. no permit shall be issued or renewed for the installation, operation and maintenance of a public pay telephone at any location where it will unreasonably interfere with the use of a street by the public, or where it will unreasonably interfere with the use of the abutting property. b. The commissioner shall promulgate rules to implement the provisions of this chapter. Such rules shall include, without limitation: (i) a procedure and timetable for review by the department, and other appropriate agencies, including the department of transportation, of applications for the issuance and renewal of permits to install, operate and maintain public pay telephones at specified locations; (ii) standards governing the location of public pay telephones designed so as to ensure that such telephones will not unreasonably interfere with the use of the street by the public and with use of the abutting property; and (iii) standards and procedures governing the installation, removal, operation, cleaning and maintenance of public pay telephones, including procedures for the expedited removal of any public pay telephone determined to constitute a public nuisance. c. Permits may contain such other terms and conditions not specifically provided for in this chapter as the commissioner deems necessary to protect the public safety and to safeguard the interests of the city. **d. Nothing herein shall in any way require the granting of a franchise to an entity that fails a review under the City's VENDEX system.**

N.Y. ADC. LAW § 23-405 : NY Code - Section 23-405: Advertising

A permit issued under this chapter shall not constitute an authorization to place advertising upon a public pay telephone. No advertising may be displayed on a public pay telephone on the inalienable property pursuant to a franchise unless **i) such franchise shall be awarded to each and every entity applying for such franchise that satisfies the lawful criteria stated in this Council's authorizing resolution concerning public pay telephones, and ii) such franchise does not prevent or preclude any entity that provides telecommunications and/or information services from public pay telephones from offering such services on, over and**

under the streets and other inalienable property of the city;

The Administrative Code is hereby amended to include the following new section:

§ 23-409: Permits Related to Street Opening and Sidewalk Opening.

No permit to open the streets or sidewalks of the City for purposes of the installation or maintenance of a public pay telephone under a franchise supervised and regulated by the Commissioner may be granted, unless i) such franchise shall be awarded to each and every entity applying for such franchise that satisfies the lawful criteria stated in this Council's authorizing resolution concerning public pay telephones, and ii) such franchise does not prevent or preclude any entity that provides telecommunications and/or information services from public pay telephones from offering such services on, over and under the streets and other inalienable property of the city.

EXHIBIT B

Whereas, on December 21, 2009 the Council adopted a Resolution authorizing the Department of Information Technology and Telecommunications to grant nonexclusive franchises for the installation of public pay telephones and associated equipment on, over and under the inalienable property of the City; and

Whereas, said Resolution stated, inter alia,

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

Whereas, said Resolution stated:

"I. ...In no event however, shall the Department include any criteria in any such RFP or other solicitation which the City would be preempted, pursuant to federal law, from thus including; and in no event shall the Department apply any criteria to be included in any such RFP or other solicitation in a manner which the City would be preempted, pursuant to federal law, from thus applying." and

Whereas, said Resolution stated:

"J. Any franchise granted pursuant to this resolution shall be by written agreement and shall include, but not be limited to, terms and conditions consistent with the following to the extent permitted by law (provided however, that no term or condition, whether or not listed hereinafter, shall be included in a written franchise agreement if the City is preempted, by federal law, from including such a term or condition in such agreement, and provided that no term or condition, whether or not listed hereinafter, shall be included in a written agreement in a form or manner which the City is preempted by federal law from using with respect to such agreement):

Whereas, said Resolution stated:

"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 shall not exceed fifteen (15) years;" and

Whereas, the council seeks to clarify its intent with regard to the public service to be provided, the meaning of nonexclusive and the promotion of competition, and the term of the franchise to be granted.

Resolved, that the Council hereby amends Resolution 2309 (L.U. 1282) to read as follows: (~~Bracketed matter is deleted~~] Underlined matter is new).

The public service to be provided pursuant to this resolution shall be public communication services, including but not limited to, public pay telephone service, web

telephones, public internet terminals, WIFI access points and other telecommunications services to the extent permitted by law.

I. ...In no event however, shall the Department include any criteria in any such RFP or other solicitation which the City would be preempted, pursuant to federal law, from thus including; and in no event shall the Department apply any criteria to be included in any such RFP or other solicitation in a manner which the City would be preempted, pursuant to federal law, from thus applying. No RFP issued pursuant to this resolution shall be intended to grant a franchise to a single response to the exclusion of other responses. Any RFP issued pursuant to this resolution shall provide that franchises shall be awarded to each and every entity responding to the RFP that satisfies the lawful criteria stated in this resolution.

J. Any franchise granted pursuant to this resolution shall be by written agreement and shall include, but not be limited to, terms and conditions consistent with the following to the extent permitted by law (provided however, that no term or condition, whether or not listed hereinafter, shall be included in a written franchise agreement if the City is preempted, by federal law, from including such a term or condition in such agreement, and provided that no term or condition, whether or not listed hereinafter, shall be included in a written agreement in a form or manner which the City is preempted by federal law from using with respect to such agreement)(and further provided, such written agreement is issued pursuant to an RFP that provided that franchises and the associated written agreements shall be nonexclusive and shall be awarded to each and every entity responding to the RFP that satisfies the lawful criteria stated in this resolution):

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 shall be [not exceed] fifteen (15) years;"

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 July 21, 2004, on file in this office.

.....
City Clerk, Clerk of The Council

EXHIBIT C

WHEREAS, the Council finds that the best interests of the City are served by telecommunications franchises, including those related to the provisioning of telecommunications and information services from public pay telephones, that are not monopolies, and that do not prohibit or do not have the effect of prohibiting the provisioning of telecommunications and information services on the inalienable property of the City, and therefor, enacts the following Local Law, entitled, the "City Anti-Telecommunications Monopoly Act":

Section 1. No franchise agreement may be entered by the City for a franchise to install, operate and maintain public pay telephones on, over and under the streets and other inalienable property of the city, unless i) such franchise shall be awarded to each and every entity applying for such franchise that satisfies the lawful criteria stated in this Council's authorizing resolution concerning public pay telephones, and ii) such franchise does not prevent or preclude any entity that provides telecommunications and/or information services from public pay telephones from offering such services on, over and under the streets and other inalienable property of the city.

Section 2. No franchise agreement may be entered by the City for a franchise to install, operate and maintain public pay telephones on, over and under the streets and other inalienable property of the city, if such franchise creates, and/or maintains a monopoly.

Section 3. No franchise agreement may be entered by the City for a franchise to install, operate and maintain public pay telephones on, over and under the streets and other inalienable property of the city, if such franchise prohibits or has the effect of prohibiting the ability of any entity that provides telecommunications and/or information services from public pay telephones to provide, install, operate and maintain public pay telephones on, over and under the streets and other inalienable property of the City.

Section 4. For purposes of Section 1 hereof, "Public pay telephone" shall mean a telephone and associated equipment, from which calls can be paid for at the time they are made by a coin, credit card, prepaid debit card or in any other manner, which is available for use by the public and provides access to the switched telephone network for the purpose of voice or data communications. The term "public pay telephone" shall include any pedestal or telephone bank supporting one or more such telephones, associated enclosures, telephone equipment, any equipment attached to or part of the associated enclosures, including equipment related to and facilitating the provisioning of telecommunications services, information services, Wi-Fi services, broadband services, and internet access, kiosk, supporting structures, signage and other associated equipment. "Street" shall have the meaning ascribed thereto in subdivision thirteen of section 1-112 of the Administrative Code of the City.

**Statement of Raymond Mastroianni, CEO of Telebeam Telecommunications Corporation
Before Joint Meeting of NY City Council Subcommittee on Zoning and Franchises &
Committee on Technology
June 18, 2014**

Subcommittee on Zoning and Franchises

Chair: Mark S. Weprin, Chair

Members: Daniel R. Garodnick, Jumaane D. Williams, Donovan J. Richards, Antonio Reynoso, Ritchie J. Torres, Vincent M. Ignizio, Vincent J. Gentile, and Ruben Wills

Technology Committee

Chair: James Vacca

Members: Annabel Palma, Mark S. Weprin, David G. Greenfield and Steven Matteo

Good afternoon, Chairman Weprin, Chairman Vacca, and distinguished members of the City Council Subcommittee on Zoning and Franchises and the Technology Committee.

My name is Ray Mastroianni and I am Chief Executive Officer of Telebeam Telecommunications Corporation. We are a proud Queens company and hold a franchise for 900 public payphone kiosks across the city.

Thank you for inviting us to address an issue I believe has important long-term ramifications for the City of New York and its people. That is, the attempt by the City's Department of Information Technology & Telecommunications (DOITT) to force through a deeply flawed RFP for franchise rights to payphones and free public WiFi hotspots across the City. I am referring to The Request for Proposals for a Franchise to Install, Operate and Maintain Public Communications Structures in the Boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island (the "RFP").

In its current form, that RFP favors large companies and will drive existing small-business franchisees out of business. The RFP ensures there will be only one provider, who will then have a monopoly on public technology resources and access to those resources.

It is a simple fact that competition breeds innovation. Monopolies, on the other hand, are the enemy of innovation because monopolies are about making the most money and not necessarily delivering the best services and offerings, especially to underserved communities.

Prior to August 1995, curbside public pay phone service in New York City was controlled by a monopoly. The City Council stepped in to create competition when it passed Local Law 68 of 1995 and Authorizing Resolution 2248 (AR 2248) in March 1997. Also, during

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this period, Congress passed sweeping telecommunications reform that promoted competition and prevented local governments from creating monopolies of telecommunications services.

With AR 2248, the City Council authorized DOITT to grant *non-exclusive franchises* for the installation of public pay telephones and related equipment on City property. DOITT recommended more than 100 companies for approval by the Franchise and Concession Review Committee for franchise contracts to provide public payphone services. Due to competitive market forces and technologies, 10 franchisees – including my company, Telebeam – currently hold franchises. Those franchises end in October of this year, while the current payphone authorizing resolution expires in December.

DOITT is now moving in the polar opposite direction of the Council's and Congress' original intent. Instead of the non-exclusive franchises the City Council mandated with AR 2248, *the new RFP provides for the selection of a single provider*. The winner will gain a monopoly over 4,000 current payphone locations and propose up to 6,000 additional locations outside of Manhattan.

It gets worse. According to the terms of the RFP, all existing franchisees will be required to transfer their assets to the new monopoly. Imagine the City telling Verizon it must transfer its cable television and broadband infrastructure to Time Warner. It would never be allowed to happen in that instance and it should not be allowed to happen in this instance.

Putting aside for a moment that this RFP runs afoul of the Telecommunication Act, it sends a chilling message to smaller technology companies. Why would they even consider investing in New York City if their assets are subject to taking even when they have operated in good faith, followed the rules and regulations, and are not in default?

The RFP is very clear that all current franchisees would be forced to sell only to the winner of the incoming contract. There are no other options. Franchisees would only receive pennies on the dollar for their businesses, franchises, and above-ground and below-ground technology and equipment.

Some may be asking why this is important. After all, we're only talking about payphones. Most people have a cell phone and public phones are increasingly irrelevant.

Nothing could be further from the truth.

Where some see a simple payphone kiosk, we see interactive multimedia portals that provide affordable worldwide calls, and access portals to the internet and emergency services, and a charging depot for both mobile devices and electric vehicles. We can equip our kiosks with street-facing video cameras to assist with public safety efforts. We can install electronic thermometers capable of detecting an increase in the surrounding air temperature that may indicate a nearby explosion or building fire and send an alarm to the local fire house.

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I know that the members of the Council are eager to see WiFi made available in every corner of the five boroughs. Telebeam already offers free WiFi through 20 of our locations. Yes, FREE WiFi to local communities.

The pay phones of yesterday are evolving into the Smart Communications Centers of tomorrow. It is critical for the future of New York City that we get this right. Yet DOITT seems eager to push through this RFP – which was originally developed by the Bloomberg administration – without consideration of what the best result would be and with little or no input from the City Council.

RFP respondents are required to submit world-class designs, engineering drawings, specifications, scale models and substantial financial models in less than 12 weeks.

What's the rush? The focus should rightly be on delivering robust technology and innovation throughout this great city.

Over the next few minutes, I'll explore several of these issues in more depth.

Let me begin by telling you a little more about Telebeam. Telebeam started business 30 years ago in Astoria, Queens, as a result of the break-up of AT&T's monopoly in 1984. We began selling telephone networks to friends and family; and later, began operating outdoor payphones under agreements with merchants.

Between 1985-1995, Telebeam grew its payphone network to 1600 payphones, and we provided telephone networks, voice mail systems and technology solutions to hundreds of clients.

As mentioned earlier, in 1995, the City Council passed Local Law 68 and ended the monopoly of curbside payphones by the local telephone company. The City Council also passed a non-exclusive authorizing resolution for payphone services. DoITT issued a truly non-exclusive RFP that resulted in over 100 franchises being awarded, including to Telebeam.

Pursuant to DoITT's rules, Telebeam submitted the most applications of any franchisee. Eventually, we installed over 900 new site locations. Each location is connected by conduit to the underground telecommunications facilities. Over 700 of those sites, more than all other franchisees combined, are connected by conduit to the underground electrical facilities. We have an estimated 17 miles of valuable conduit infrastructure.

To be able to do this, we needed to raise capital. We demonstrated to lenders that we were organized, with layers of management. We created a business plan, and we had our financial statements audited by a large international public accounting firm. In 1998, we received a commitment for \$25 million from ING Capital. It took 12 years, but every dollar was paid

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back, with interest, without missing a payment. We borrowed and invested that \$25 million in the streets of New York City. This RFP threatens to take all of that away.

The RFP creates a monopoly regardless of DoITT's characterization of this franchise as "non-exclusive." At the budget hearing on May 22, 2014, before the Committee on Finance (the "Budget Hearing"), Stanley Shor, Assistant Commissioner, Franchise Administration for DoITT, explained DoITT's interpretation of "non-exclusive." Mr. Shor said that it is DoITT's intention to select a single vendor pursuant to the RFP. But, he explained that the franchise contract will contain a clause that declares the contract is "non-exclusive," and gives DoITT the right to issue additional franchises in the future, pursuant to other rfps, if DoITT decides. This game of words ignores the very simple fact: On the day the proposed franchise contract is awarded, there will be 1 provider of these services – that is a monopoly; and a contract clause does not change that. We agree with Chairman Weprin's suggestion he made at the Budget Hearing that franchises for telecommunications services should be given to as many companies as are qualified to provide the services and who can do it in a proper manner.

To create this monopoly, the RFP says DoITT is going to take the infrastructure that cost Telebeam \$25 million to build, and give it to the monopolist. In this "tale of two cities," the large outdoor advertising company, the new monopolist, will be allowed to create it's kingdom on the backs of the original franchisees. As I said before, what would Verizon say to the City? What technology company won't think twice before doing business with the City if its property is subject to being taken? Since all the experienced franchisees will be out of business and their assets taken, when DoITT issues that theoretical future request for proposals, who will be there to respond?

DoITT's intended taking of payphone franchisees' assets is discriminatory. The intended taking is based on a clause in all of the City's telecommunications, cable and broadband franchises, including the franchises of Verizon, Time Warner and Cablevision. Despite well-publicized failures of various franchisees to perform the requirements of their franchises, this draconian clause has not been threatened against them. It is impossible to imagine DoITT would attempt to enforce this provision against those very powerful mega-companies. But, where two cities are allowed to exist, DoITT feels empowered to enforce that provision against Telebeam and others. It is discriminatory and unconscionable, and not what you would expect from this Administration.

The RFP sets requirements that can only be met by a large, outdoor media company, thereby excluding the small businesses that started in this industry. The RFP puts the responsibility on a single entity to build out between 4000-10000 sites with new structures, while removing numerous existing sites. The capital required to achieve the objectives of the RFP on a citywide basis has been estimated at between \$120 to \$150 million dollars. The RFP requires guaranteeing minimum revenue to the City of \$17.5 million (increased by an inflation index) and posting a performance bond of \$20 million.

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It is not necessary to create an illegal monopoly when the objectives of the RFP can be met by multiple franchisees. Under existing franchises, payphone providers engaged outdoor advertising companies to sell the ads. The advertising revenues were used by the payphone franchisee to build its infrastructure. We see no reason why that model cannot continue.

The capital requirements, guaranteed minimums and a reasonable performance bond can be allocated over several franchisees. If Telebeam is obligated for the franchise requirements with respect to its assets, Telebeam is more than capable of meeting its proportionate share of those requirements.

From the City's perspective, given the sizable investment, allocating risk over multiple franchisees would be in the best interest of the City. If one or more franchisees fail in their obligations, there would be other franchisees immediately capable of replacing a defaulting franchisee.

Multiple franchises do not increase administrative burdens. With respect to potential new locations, DoITT has an existing framework for the process of applying to install new sites, subject to siting criteria, by multiple franchisees. That framework was designed to consider multiple, competing franchisees, and could be applied to the potential new 6000 locations in the Bronx, Brooklyn, Queens and Staten Island. DoITT now has 90 fewer franchisees to deal with, and there would likely be further consolidation.

The RFP states that it encourages creating partnerships to respond to the RFP. In fact, the RFP discourages partnerships in a way that disadvantages pure telecom companies. The RFP requires a proposer demonstrate its ability to meet the requirements of the RFP, which includes a sales and marketing plan for generating the ad revenue to support the franchise. If an outdoor advertising company intends to submit its own response, it would not agree to provide media representative services to the telecom entity because it helps to create a viable response that would compete with the advertising company's submission.

We do not understand why a government would create a monopoly in 2014; in the telecommunications industry, it takes you back 40 years. Why should anyone care?

This is an industry that changes constantly. If payphone services had not been constrained by a narrow franchise, they would have evolved more like cell phones. Cell phones evolved from the initial large block to its present iteration, best represented by the iPhone. It wasn't until 1999-2000 that texting became common. In the mid-2000s, cell phones became "smart" and incorporated operating systems that allowed you to make calls, access the internet, send text messages, and incorporate many different programs or apps. Because of these new technologies, peoples' patterns of communications have changed. Ten years ago, call volumes drastically exceeded text messaging. Now, call volumes are dwarfed by text messaging; and, now you are able to e-mail from your smart phone. Telebeam always has seen the cell phone as its competition. When unconstrained by a narrow franchise, the payphone will similarly evolve.

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What you know as a payphone today will be replaced with a Smart Payphone. Users will be able to interact using the Smart Payphone similar to their cell phones. The Smart Payphone will be part of a Smart Communications Centers.

This RFP could be the launching pad for Smart Communications Centers. But, DoITT has chosen to make it narrow. The RFP is limited to public pay phones and WiFi hotspots; it cautiously allows proposers to suggest additional technologies. Were DoITT to allow competition and to open the doors to innovation, the City would have the most advanced Smart Communications Centers in the world. By looking back at what Telebeam has proposed, we hope you might be able to see the future and demand DoITT reverse course.

Competitors will attempt to distinguish themselves. Before 1995, curbside payphones with advertising were a monopoly. There was a basic enclosure design that had existed for several years. It was a $\frac{3}{4}$ booth mounted on a center-back pedestal. It was painted anodized aluminum. To remove graffiti, you had to use paint remover that removed the paint with the graffiti, but would damage the enclosure's surface. The original enclosures were not intended to hold advertising boxes, so they were retrofitted. Over time, the weight would begin to pull the enclosures forward, and they would begin to lean. Frequently, you would see the boxed propped up with pipes. As a monopolist, there was no incentive to invest large sums of money to address the problem.

In 1997, when Telebeam was able to compete at curbside locations, Telebeam wanted to distinguish itself from competitors, and to design a structure properly. Telebeam worked with an architect; we used practical materials, such as stainless steel. While it was more expensive than aluminum, it made graffiti easy to remove. The enclosure was designed with individual supports to carry the weight of the displays and control center. We anticipated the payphone would evolve and designed interior space to house new technologies. A few years later, Verizon started to deploy new enclosures. That is innovation and competition working for the benefit of the public.

Telebeam proposed internet terminals as replacements for the traditional payphone. In our company brochure, created in 2000, we depicted our vision for the future. In 2001, we demonstrated a custom internet terminal in the Blue Room. New York City residents and visitors would have been able to connect to the internet, process a phone call, reach 311 or 911 at the touch of a button, and send photos snapped at the terminal to family and friends.

In 2002, we demonstrated camera technology to DoITT Commissioner Gino Menchini and General Counsel Agostino Cangemi. The camera could fit in the canopy of Telebeam's enclosure. First responders could access the camera remotely in emergency situations, allowing dispatch personnel to view the area of a reported incident in advance and provide information to those who were responding.

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You may believe the idea of putting WiFi hotspots in payphones is a new and novel idea. Again, we proposed to DoITT allowing us to deploy WiFi hotspots from our payphone kiosks in 2003.

Telebeam's innovations were stymied by the agency. We were told we could not proceed as it was not allowed by the relevant authorizing resolution and our franchise contract. We tried to change that.

In 2003, the City Council passed a new payphone authorizing resolution. Although made aware of many possible technologies by Telebeam, DoITT did not seek to expand the payphone authorizing resolution. Telebeam explained to the Council the available technologies and the limitations of the existing authorizing resolution. The Council embraced the technologies and amended the authorizing resolution in 2004 to specifically provide that the services that could be offered included WiFi, internet terminals and related services. Mayor Bloomberg vetoed that amendment, and the City Council overrode his veto. Curiously, in 2009, DoITT removed that language from the payphone authorizing resolution, which is one of the current resolutions on which the RFP is based.

Eventually in 2012, DoITT allowed Van Wagner to install WiFi hotspots at some of its payphones. After that, DoITT agreed to let Telebeam deploy WiFi hotspots. The data we are able to gather demonstrates the desire for this service. As you pass a WiFi hotspot, there is a communication between the access point we deploy and the WiFi enabled devices passing by it. Based on the strength of signal, we can determine if a device could have access the WiFi service; finally, we can identify how many people logged in to the service and used it. Once a user logs on, we understand who users are, what their capacity needs are and how they are using the service. We believe that as we learn more about the data captured, there are opportunities for meeting clients and customers further needs.

Bridging the digital divide is a term that has been used by the current and past two administrations. Had DoITT acted in 2004 consistent with the strong direction it was given by the City Council, it's very likely many bridges would have been built by now. Again, innovation spurred by competition benefitting the public.

Finally, one of the most fascinating possibilities we brought to DoITT was the ability to make payphone installations become electric vehicle charging stations. That was 2008. We believed that since the structures are at curbside, they have electricity coming to them to power the lights and other technologies, that it was a natural solution to the City's strong green initiative. We realize that this was a more complex project, but we are hopeful that somehow we will have the opportunity to investigate the possibilities further – innovation spurred by competition benefitting the public.

I referenced Smart Communications Centers. Telebeam envisions these centers would have all of these features. Also, there will be digital advertising that may quickly be programmed

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to change into an Amber Alerts. When minutes count in locating children or seniors who are not able to care for themselves, lives can be saved by getting the message out. We envision all of these technologies being deployed from an attractive, adaptable package, which will take New York City from a payphone to a network of Smart Telecommunications Centers.

Telebeam has demonstrated that you will get innovation if you have competition. We are pleased that DoITT has finally put forth a RFP that opens the door to implement ideas we have put forward over the past 14 years. But, this RFP creates a monopoly and eliminates competition, which, in turn, will bring an end to innovation. It could also bring an end to Telebeam. Telebeam has 19 employees. To us, being a good corporate citizen means treating employees fairly. Our employees reflect the diversity of New York City – male, female, black, white, Hispanic, Asian, gay and straight. Hourly wages average over \$18 per hour. We have given paid sick leave since 1992, paid vacation, personal days and holidays; we pay 50-100% of our employees' health insurance and make available a 401K plan. This RFP puts at risk several jobs, but the effect is much larger when you consider their families who would have to endure the hardship unemployment would cause.

Telebeam has been a franchisee for over 14 years. We have built our infrastructure. We have met each and every obligation under the franchise contract. We have attempted to evolve products and services for the benefit of the public, as the City should expect. We want to stay in business. It is not fair or legal to take our assets, give them to a competitor and to put us out of business as this RFP would.

Again, I appreciate your invitation to speak here. Telebeam is passionate about technology and obviously very eager to continue to be of service to the City of New York, its residents and visitors. If you have any questions, I would be happy to answer them.

**STATEMENT OF DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS
ASSISTANT COMMISSIONER STANLEY SHOR FOR THE COMMITTEE ON TECHNOLOGY AND
SUBCOMMITTEE ON ZONING & FRANCHISES OVERSIGHT ON DOITT'S REQUEST FOR
PROPOSALS FOR NYC WIFI AND COMMUNICATION HUBS
JUNE 18, 2014**

In 1999, the New York City Department of Information Technology and Telecommunications (DoITT) entered into more than one hundred franchise contracts for the installation, maintenance, and operation of public pay telephones on City sidewalks. The remaining ten of these franchises will expire on October 15, 2014.

The role of pay telephone service in public communications has changed dramatically since 1999. According to recent figures, 90% of American adults have a cell phone and nearly 60% own a smartphone.¹ Even so, there is still significant usage of sidewalk payphones to place 911 calls, and during Hurricane Sandy, payphone use reportedly tripled in areas lacking power. As such, communication services in public spaces remain relevant today. Additionally, as in the past, it is anticipated that there is the potential to offer new communication services on City sidewalks supported by advertising income. On April, 30 2014, DoITT issued a Request for Proposals (RFP) to transform the City's public telephones into a citywide network of Wi-Fi hotspots and state-of-the-art communication hubs with the goal of making information and communications services in public spaces more accessible and reliable. Responses to the RFP are due by July 21, 2014 at 5PM.

This RFP is based on substantial input from the public and interested parties, including a widely publicized Request for Information on the future of the payphone issued in July 2012 and the subsequent 'Reinvent Payphones' public design challenge held in 2013. The RFP is structured to allow a range of proposals – from relatively simple designs to more elaborate, high-tech communication devices with a variety of service offerings and capabilities. In addition to 24/7 free Wi-Fi, the communication structures will continue to offer phone services, including free 911 and 311 calls. New services may also include cell phone charging stations and touch screens that provide information or facilitate business transactions. Additionally, these installations could provide the City with an added means of disseminating emergency notifications and information during citywide events. Proposers are also encouraged to include the use of independent power sources, such as solar energy.

The City is looking to facilitate a seamless network of Wi-Fi hotspots to offer New Yorkers sidewalk internet access in all five boroughs. According to studies by Nielsen and Pew, nearly 60% of US adults own a smartphone and adoption is increasing at a rapid pace. Smartphone ownership is higher than average amongst African-American and Hispanic groups as well as individuals ages 18-29. For young adults with a household income of \$30,000 or less, smartphone ownership rates are equal to the average.² More than a quarter of smartphone users rely on their devices and personal cellular data as their primary means of getting online. Groups more likely to say that they mostly go online using their

¹ Pew Research Internet Project. "Mobile Technology Fact Sheet," January 2014, <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/>

² Nielsen. "Multiplying Mobile," March 2014, <http://www.nielsen.com/us/en/newswire/2014/multiplying-mobile-how-multicultural-consumers-are-leading-smartphone-adoption.html> and Pew Research Internet Project.

"Smartphone Adoption and Usage," July 2011, <http://www.pewinternet.org/2011/07/11/smartphone-adoption-and-usage/>

smartphones include individuals under the age of 30, non-white users, and smartphone owners with relatively low income and education levels.³ Providing free wireless web access in public spaces to individuals who might lack access to affordable alternatives is an important step in enhancing digital inclusion across our city.

There are currently 10 franchisees operating approximately 9,000 public pay telephones on New York City's sidewalks using equipment of varying age, function, design, and reliability. To provide the most innovative, effective, and efficient new public services, the City is currently expecting to award one franchisee contract under the RFP. Awarding a franchise to single entity (which may be a joint venture or partnership among different companies) among competing proposers is intended to maximize the resulting public benefits including:

- Continuous Wi-Fi access so that individuals are able to stay connected to an integrated system as they travel through the five boroughs;
- Consistent design, interface, landing page and log-in elements that will provide a user-friendly experience;
- Avoidance of unnecessary sidewalk clutter resulting from multiple providers seeking access to the same prime advertising panel locations;
- Network scale sufficient to incentivize proposals for initial capital and ongoing investment that will maximize the benefits to the public.

In addition to proposals from individual operators, the City encourages companies to form joint ventures or other types of partnership for the purpose of submitting a proposal and the subsequent operation of a franchise.

Designs will be evaluated on the basis of functional efficiency, aesthetics, security, durability, adaptability for various environments around the city—including historic districts and individual landmarks—and accommodation of people with disabilities. Preference will be given to proposals that demonstrate the greatest public benefit from the services and the local economic opportunities presented by this initiative. In addition to the creation of new jobs for the development, servicing and maintenance of the communication structures, the City expects that the services themselves will help support job seekers, freelancers, residents in need of affordable broadband services, small businesses, the local tech industry, and visitors.

The winning proposal will provide for the installation, operation, and maintenance of up to 10,000 public communication points distributed across the five boroughs. These structures will replace and supplement the roughly 7,000 current public payphone installations across New York City. The franchise will produce at least \$17.5 million in guaranteed annual revenue for the City of New York.

For more information and to download the RFP, please visit nyc.gov/DoITT. Again, responses to the RFP are due by July 21, 2014, at 5 PM. The City anticipates the signing of a contract for this initiative by the end of 2014.

Thank you for the opportunity to submit this testimony.

³ U.S. Census Bureau, "Computer and Internet Use in the United States." May 2013.

<http://www.census.gov/prod/2013pubs/p20-569.pdf> and Pew Research Internet Project. "Home Broadband 2013." August 2013. <http://www.pewinternet.org/2013/08/26/home-broadband-2013/#fn-40-4>



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**NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY
& TELECOMMUNICATIONS (DOITT) HEARING
WEDNESDAY, JUNE 18, 1:00 P.M.**

14TH FLOOR COMMITTEE ROOM

TESTIMONY FOR JEREMY SCHNEIDER

Good afternoon. I'm Jeremy Schneider, the Chief Technology Officer for the Alliance for Downtown New York. Thank you very much for allowing me to speak here today.

We are the business improvement district for Lower Manhattan, south of Chambers Street. Our mission is to provide service, advocacy, research and information to advance Lower Manhattan as a global model of a 21st century Central Business District for businesses, residents and visitors.

We have long believed in the importance and wide-ranging benefits of free public access to wireless connectivity.

In 2003, we launched a free, public Wi-Fi initiative that was the city's most extensive at the time. From the beginning of the program through 2010, we had more than 270,000 connections to our network. But that level of use was just the beginning. Over the last two years alone, we have seen almost 500,000 connections.

One reason for this growth is our recent partnership with the EDC to expand our WiFi network in Lower Manhattan along Water Street between Whitehall and Fulton Streets, on nearby side streets, and along the East River waterfront and piers. We were very fortunate to be able to take

advantage of this opportunity, and I believe it is a great example of how a public-private partnership can benefit everyone. In the last 24 hours, more than 2,700 people connected to our Water Street Wireless Corridor.

The demand to stay connected to high-speed, efficient networks is growing fast and is a pillar of our social and economic lives. Whether you are a worker moving from the curb to your cube, a visitor needing to stay in touch back home, or a resident on your way to the market checking on which store has the best deal — connectivity is an essential tool.

Altogether, our network provides 1.2 million square feet — or more than 27 acres — of free coverage. This now includes 18 parks and open spaces where free WiFi is available, and more locations are on the way.

Last month, we began working on another Free Wireless Corridor in Lower Manhattan. This one will extend along Broadway between City Hall Park and Bowling Green.

As the demand for this utility grows, we are delighted to hear about the administration's commitment to expand access to free public WiFi, whether it means using existing telecommunications infrastructure, including pay phones, or other city property.

As we look at possibilities that are both promising and extensive, there are a few important points to consider:

First, with any WiFi network, the work doesn't end with the network's completion. There are repairs and maintenance and recurring annual expenses. It's important for any free Wi-Fi service to remain dependable and reliable long after the installation and launch.

Second, and perhaps most important, as the city considers making this commitment, I believe it is important to consult everyone who already provides free public WiFi, whether public or private. The city should look at what's already in place and come up with a rational plan that may involve existing networks, in order to achieve optimum coverage and operational efficiency.

As the city works through this process, the Downtown Alliance will continue to provide and expand free public WiFi in Lower Manhattan. As we grow our connectivity, it would be enormously advantageous to us to be able to use city property — such as light poles, signal poles and utility poles — to provide free WiFi. Traditionally, we have paid for the WiFi equipment, installation, maintenance and Internet service, while obtaining permission from various property owners. Though I fully appreciate the rationale behind the city's telecommunication franchise fees, I believe that anyone offering a free public amenity without making a profit should be exempted from those fees. This would significantly reduce operating costs and enhance and accelerate our ability to provide free WiFi. It would, of course, also greatly benefit the residents, workers and visitors in Lower Manhattan.

This is a very exciting time. Right now, we have a phenomenal opportunity. I hope we can work together to help all New Yorkers get connected and make citywide free WiFi a reality.

Thank you very much.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: June 16, 2014

(PLEASE PRINT)

Name: Jeremy Schneider

Address: _____

I represent: Alliance for Downtown NY

Address: 120 Broadway Suite 3340

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/18/14

(PLEASE PRINT)

Name: Lester Shatrah

Address: 191-28 PALO ALTO AVE

I represent: Independent Dryphone Assoc of NY

Address: 191-28 PALO ALTO AVE HOLLS NY 11423

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/18/2014

(PLEASE PRINT)

Name: Robert M. [unclear]

Address: 88 [unclear]

I represent: MOSE

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/18/14

(PLEASE PRINT)

Name: Raymond Mastroianni
Address: 36-40 37 Street, Long Island City, NY
I represent: Telebeam Telecommunications Corp.
Address: 36-40 37 Street, LIC, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Michelle Nelson
Address: 532 Park Ave N.Y.
I represent: House of Walker Pubs
Address: SAME

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition DOITT LFP

Date: 6/18/14

(PLEASE PRINT)

Name: Robert Scott
Address: 1919 Pennsylvania Ave NW, Suite 800
I represent: Washington DC 20008
Address: _____

Please complete this card and return to the Sergeant-at-Arms