Legislation Details (With Text)

File #:	Res 1204-2008	**Version:**	*	**Name:**	Authorizing franchises for telecommunications services.
Type:	Resolution			**Status:**	Adopted
				In control:	Committee on Land Use
On agenda:	1/9/2008				
Enactment date:				**Enactment #:**	
Title:	Resolution authorizing franchises for telecommunications services.				
Sponsors:					
Indexes:					
Attachments:	1. Hearing Transcript - Zoning 2/6/08, 2. Hearing Testimony - Zoning 2/6/08, 3. Hearing Transcript - Zoning 2/25/08, 4. Hearing Testimony - Zoning 2/25/08, 5. Hearing Transcript - Land Use 2/26/08, 6. Hearing Transcript - Land Use 2/27/08, 7. Press Release, 8. Hearing Transcript - Stated Meeting 2/27/08				

Date	Ver.	Action By	Action	Result
1/9/2008	*	City Council	Introduced by Council	
1/9/2008	*	City Council	Referred to Comm by Council	
2/6/2008	*	Subcommittee on Zoning and Franchises	Hearing Held by Committee	
2/6/2008	*	Subcommittee on Zoning and Franchises	Laid Over by Subcommittee	
2/25/2008	*	Subcommittee on Zoning and Franchises	Hearing Held by Committee	
2/25/2008	*	Subcommittee on Zoning and Franchises	Approved by Subcommittee	Pass
2/26/2008	*	Committee on Land Use	Hearing Held by Committee	
2/26/2008	*	Committee on Land Use	Recessed	
2/27/2008	*	Committee on Land Use	Approved by Committee	Pass
2/27/2008	*	Committee on Land Use	Hearing Held by Committee	
2/27/2008	*	City Council	Approved, by Council	Pass

Res. No. 1204

Resolution authorizing franchises for telecommunications services.

By Council Members Katz and Comrie (by request of the Mayor)

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

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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 telecommunications services; and

WHEREAS, the Mayor has submitted to the Council a proposed authorizing resolution for such franchises pursuant to Section 363 of the Charter; and

WHEREAS, the Council has determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and stimulate commerce by assuring the widespread availability of telecommunications services;

The Council hereby resolves that:

A. The Council authorizes the Department of Information Technology and Telecommunications to grant non-exclusive franchises for the installation of cable, wire or optical fiber and associated equipment on, over and under the inalienable property of the City (including through pipes, conduits, sewers and similar improvements thereto) to be used in providing one or more telecommunications services (as that term is defined in Section D. of this resolution) in the City.

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

C. The public services to be provided under such franchises shall be one or more “telecommunications services”, defined for purposes of this resolution as the transmission of voice, data, information service and/or video signals, or any other form of wire communications or radio communications (as such terms are defined in subsections (51) and (33) of Section 3 of the federal Communications Act of 1934, as amended, or successor provisions thereto) but for purposes of this resolution “telecommunications services” shall not include any of the following : (i) "cable television services", as defined in the authorizing resolution adopted by the Council on September 27, 2006 (Resolution No. 538) or any successor resolution thereto, (ii) "mobile telecommunications services" as defined in the authorizing resolution adopted by the Council on March 23, 2005 (Resolution No. 519) or any successor resolution thereto, and (iii) “public pay telephones” as defined in the authorizing resolution adopted by the Council on September 17, 2003 (Resolution No. 1043), and amended on July 21, 2004 (Resolution No. 502) or any successor resolution thereto.

D. 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.

E. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the "Expiration Date"). No franchises shall be approved pursuant to this resolution by the Department of Information Technology and Telecommunications, the Franchise and Concession Review Committee, or the Mayor pursuant to this resolution after the Expiration Date.

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F. 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 197-c of the Charter. The criteria to be used by the Department of Information Technology and Telecommunications to evaluate responses to such RFPs or other solicitation shall include, but not be limited to, the following to the extent permitted by law:

(1) the adequacy of the proposed compensation to be paid to the City, and

(2) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise and in a manner consistent with the City's management of the public rights-of-way.

In no event however, shall the Department of Information Technology and Telecommunications 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 of Information Technology and Telecommunications 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.

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

(1) the term of the franchise, including options to renew if any, shall not exceed fifteen (15) years;

(2) the compensation to be paid to the City shall be adequate and may include the provision of facilities or services to the City or both;

(3) the franchise may be terminated or cancelled in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;

(4) a security fund shall be established to ensure the performance of the franchisee's obligations under the agreement;

(5) the City shall have the right to inspect the facilities of the franchisee located on the inalienable property of the City 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

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for purposes of reviewing and/or enforcing compliance with the franchise agreement;

(8) there shall be provisions to ensure quality workmanship and construction methods in the use of the inalienable property;

(9) there shall be provisions that include 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 of the franchisee's performance of its franchise obligations;

(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 have been subject, prior to the commencement of the franchise term, to review under the City's Vendor Information Exchange System ("VENDEX") or any successor system;

(15) all franchisees shall include provisions incorporating the MacBride Principles;

(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 through, along or across such property, from damage or interruption of operation, as a result of the construction, operation, maintenance, repair and/or removal of franchisee's facilities in the inalienable property of the City; 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, installation, use, operation, maintenance and/or removal of franchisee's facilities in the inalienable property.

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

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

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

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(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.

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

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