



Legislation Details (With Text)

File #: Res 0191-2010 **Version:** * **Name:** Granting of franchises for installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services.

Type: Resolution **Status:** Adopted

In control: Committee on Land Use

On agenda: 4/29/2010

Enactment date: **Enactment #:**

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

Sponsors: Leroy G. Comrie, Jr., (by request of the Mayor)

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| Date | Ver. | Action By | Action | Result |
|-----------|------|---------------------------------------|-----------------------------|--------|
| 4/29/2010 | * | City Council | Introduced by Council | |
| 4/29/2010 | * | City Council | Referred to Comm by Council | |
| 5/17/2010 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 5/17/2010 | * | Subcommittee on Zoning and Franchises | Recessed | |
| 5/25/2010 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 5/25/2010 | * | Subcommittee on Zoning and Franchises | Laid Over by Subcommittee | |
| 6/1/2010 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 6/1/2010 | * | Subcommittee on Zoning and Franchises | Laid Over by Subcommittee | |
| 6/15/2010 | * | Subcommittee on Zoning and Franchises | Recessed | |
| 6/15/2010 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 6/17/2010 | * | Subcommittee on Zoning and Franchises | Laid Over by Subcommittee | |

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|-----------|---|---------------------------------------|---------------------------|------|
| 6/17/2010 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 8/23/2010 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 8/23/2010 | * | Subcommittee on Zoning and Franchises | Recessed | |
| 8/24/2010 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 8/24/2010 | * | Subcommittee on Zoning and Franchises | Approved by Subcommittee | Pass |
| 8/24/2010 | * | Committee on Land Use | Approved by Committee | Pass |
| 8/24/2010 | * | Committee on Land Use | Hearing Held by Committee | |
| 8/25/2010 | * | City Council | Approved, by Council | Pass |

THE COUNCIL OF THE CITY OF NEW YORK
RES. NO. 191

CITYWIDE

20105618 GFY

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

By Council Member 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

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 installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services, and has prepared a proposed authorizing resolution for the granting of such franchises; and

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

WHEREAS, the Council has determined that it is appropriate to authorize the granting of such franchises as described hereinafter;

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 telecommunications equipment and facilities on, over and under the inalienable property of the City to be used in providing mobile telecommunications services in the City of New York.

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. For purposes of this resolution, "mobile telecommunications services" shall mean any "mobile service", as defined in Section 153 of Title 47 of the United States Code, and other voice and/or data communications or information services employing electromagnetic waves propagated through space to serve portable sending and/or receiving equipment.

D. The public services to be provided under such franchises shall be mobile telecommunications services.

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.

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 distribution list for each such RFP or other solicitation shall include, without limitation, certified minority owned business enterprises and certified women owned business enterprises as defined in Section 1304 of the City Charter. The criteria to be used by the Department of Information Technology and Telecommunications to evaluate responses to such RFPs or other solicitations shall include, but not be limited to, the following to the extent permitted by law:

(1) the adequacy of the proposed compensation (which may include monetary and/or in-kind compensation, as provided in the applicable RFP or other solicitation) to be paid to the City for the use of City property;

(2) the ability of the respondent(s) to maintain the property of the City in good condition throughout the term of the franchise;

(3) the consistency of the response(s) to the City's management of local rights-of-way activities, plans and goals.

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 hereafter, 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 hereafter, shall be included in a written franchise 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 monetary or in-kind compensation 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 as appropriate at the direction of the applicable agency;
- (6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;
- (7) there shall be provisions to ensure access by the City to books and records of the franchisee as necessary or appropriate to review and/or enforce 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 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 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;
- (12) 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;
- (13) all franchisees shall be subject to review under the City's Vendor Information Exchange System ("VENDEX");
- (14) franchisees shall be required to hold any applicable licenses and permits required by the New York State Public Service Commission and the Federal Communications Commission;
- (15) 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;
- (16) there shall be provisions requiring the franchisee to protect the property of the City, and the delivery of public services that utilize the property of the City, from damage or interruption of operation resulting from the construction, operation, maintenance, repair or removal of facilities, equipment or other improvements related to the franchise;
- (17) 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;

(18) there shall be provisions requiring that prior to installation of a wireless antenna on any pole (whether City or utility-owned) on a City street which pole is less than ten (10) feet from an existing building, DoITT will provide not less than fifteen (15) business days notice of, and opportunity to submit written comment regarding, such proposed installation to the Community Board in whose community district such building lies (for purposes of this provision, the distance from a pole to a building shall be measured by the distance from the base of the pole facing the building to the building line);

(19) there shall be provisions that offer incentives to the franchisee to serve areas beyond the core business districts of Manhattan south of 96th Street

(20) there shall be provisions requiring the franchisee to (i) comply, on an on-going basis, with respect to any facilities installed by the franchisee within the City's public rights-of-way, with FCC maximum permitted levels of radio frequency energy exposure (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), (ii) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of such facilities (taking into account the actual conditions of human proximity to such facilities), and (iii) at the direction of the City, pay the costs of testing such facilities for compliance with the preceding clauses (i) and (ii); and

(21) there shall be provisions designed to encourage the franchisee, in selecting contractors who will perform work affecting City facilities, to choose entities that are also "Contractors" as that term is defined in Section 6-129 of the Administrative Code (which section is titled "Participation by minority-owned and women-owned business enterprises and emerging businesses s enterprises in city procurement") .

K. 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) simultaneously with each notice to an applicable Community Board pursuant to Section G.(1) above, a copy of such notice shall be sent to the City Council member in whose Council district the building that is the subject of such notice lies;

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

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

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 August 25, 2010, on file in this office.

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City Clerk, Clerk of The Council