



Legislation Text

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Res. No. 1445-A

By Council Members Salamanca and Moya (by request of the Mayor)

Authorizing resolution submitted by the Mayor pursuant to Section 363 of the Charter for the granting of franchises for the provision of telecommunications services.

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications (“DoITT”) 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 DoITT 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 the granting of such franchises pursuant to Section 363 of the Charter;

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;

WHEREAS, the City and the Council recognize the pressing need to expand broadband access opportunities to all New Yorkers, particularly more affordable broadband options;

The Council hereby resolves that:

A. The Council authorizes DoITT, or any successor thereto, to grant non-exclusive franchises for the installation of cable, wire and/or optical fiber and associated equipment in the inalienable property of the City (including through pipes, conduits and similar improvements thereto) to be used in providing one or more telecommunications services (as that term is defined in Section C 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. References herein to facilities “in the inalienable property” shall mean facilities located on, over or under the surface of such inalienable property.

C. The public services to be provided under such franchises shall be one or more “telecommunications services”, defined for the 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 59 and 40, respectively, 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 May 15, 2012 as Resolution No. 1334, or any successor resolution thereto; (ii) “mobile telecommunications services” as defined in the authorizing resolution adopted by the Council on March 9, 2016 as Resolution No. 935 or any successor resolution thereto; and (iii) “public pay telephones” as defined in the authorizing resolution adopted by the Council on December 21, 2009 as Resolution No. 2309 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 DoITT, 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 DoITT. 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 DoITT to evaluate responses to such RFP or other solicitation shall include, but not be limited to, the following to the extent permitted by law:

- (1) the financial, legal, technical and managerial experience and capabilities of the applicant(s);
- (2) the adequacy of the proposed compensation to be paid to the City; and

(3) 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 DoITT 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 DoITT 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 any option(s) to renew 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. Such compensation shall not be considered in any manner in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatever kind or description that are now or at any time hereafter may be required to be paid pursuant to any local law of the City or any law of

the State of New York;

(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 in the inalienable property of the City and to order the relocation of such facilities at the direction of DoITT;

(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 sufficient to assure franchisee's compliance with the franchise agreement, which books of account and records shall be made available on demand to the City for inspection;

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

(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 and investigations;

(11) there shall be provisions to ensure adequate oversight by the City of 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 Procurement and Sourcing Solutions Portal ("PASSPort") or any successor system;

(15) all franchises 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, installation, use, operation, maintenance, repair and/or removal of the franchisee's

facilities in the inalienable property of the City;

(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, repair and/or removal of the franchisee's facilities in the inalienable property of the City;

(19) there shall be provisions requiring the franchisee to provide maps and other information, including resiliency information, regarding locations of facilities in the inalienable property of the City and, in accordance with applicable law, labor transparency reports;

(20) there shall be provisions encouraging the franchisee to provide low cost affordable, high speed, broadband Internet access to both residential and commercial customers; and

(21) there shall be provisions requiring that in the provision of any broadband Internet access service, the franchisee shall comply with any service obligations in accordance with applicable City, State and Federal law, including but not limited to service on a net neutral basis;

H. DoITT 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

(3) 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.

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.