



Legislation Text

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THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 538

L.U. No. 197A

CITYWIDE

20075011 GFY

Resolution authorizing franchises for cable television services.

By Council Members Katz and Avella (at the 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, the Commissioner of the Department of Information Technology and Telecommunications has made an initial determination, pursuant to Section 363 of the Charter (the "Charter") of the City of New York (the "City"), of the need for franchises for cable television services (as that term is defined hereinafter); 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, use of the inalienable property of the City (as defined hereinafter) helps to facilitate the availability of cable television service;

The Council hereby resolves that:

A. The Council authorizes the Department of Information Technology and Telecommunications to grant non-exclusive franchises for the construction, installation, use, operation and/or maintenance of cable, wire and/or optical fiber and associated equipment on, over and under the inalienable property of the City (including through pipes, conduits and similar improvements thereto) for provision of cable television services in the City.

B. The public services to be provided under such franchises shall be cable television services, as defined hereinafter.

C. 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 in, on, over or under the surface of such inalienable property of the City.

D. For purposes of this resolution, "cable television services" shall mean "cable service" as defined in the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Sections 521 et seq.).

E. All franchises granted pursuant to this resolution shall require, as provided in Charter Sections 363 and 372, the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.

F. 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.

G. Prior to the grant of any such franchise, and to the extent consistent with New York State and federal law, a request for proposals or other solicitation ("solicitation") shall be issued by the Department of Information Technology and

Telecommunications. Prior to issuing any such solicitation, all legally required 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 solicitation shall include, but not be limited to, the following, if and to the extent permitted by law:

- (1) the adequacy of the proposed compensation to be paid to the City;
- (2) the financial, legal, technical and managerial experience and capabilities of the applicant(s), including (without limitation, except as limited by law) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise; and
- (3) the degree to which the public interest will be served by the service proposed to be provided.

H. Any franchise granted pursuant to this authorizing resolution shall be by written agreement which shall include, but not be limited to, terms and conditions consistent with the following to the extent permitted by law (and shall not include any provision which is prohibited by law from inclusion in such franchise agreement):

- (1) no franchise granted pursuant hereto shall have a term that exceeds fifteen (15) years, including options to renew if any;
- (2) the compensation for the franchise to be paid to the City shall be adequate and may include monetary compensation, the provision of facilities and/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) the franchisee shall be required to provide security to ensure the performance of the franchisee's obligations under the agreement;
- (5) 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 franchise agreement;
- (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 with respect to those facilities constructed, installed, used, operated and/or maintained pursuant to the franchise and located in 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 applicable City laws and regulations 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 requiring the consent of the City prior to an assignment or other transfer of, or change in control of, the franchise;
- (13) there shall be provisions regarding City rights to inspect facilities constructed, installed, used, operated and/or maintained pursuant to the franchise and located in the inalienable property, and regarding City rights to

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direct relocation of such facilities;

(14) all franchisees shall have been subject, prior to commencement of the franchise term, to review under the City's Vendor Information Exchange System ("VENDEX") 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 from damage, and the delivery of public services from interruption, resulting from the construction, installation, use, operation, maintenance and/or removal of franchisee's facilities in the inalienable property;

(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; [and]

(19) no franchise granted hereunder shall contain economic or regulatory burdens on the franchisee which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchisee operating in the same area[.];

(20) all franchises shall be subject to comparable obligations and requirements provided that where the imposition of such obligations and requirements would be duplicative, then alternative but comparable obligations or requirements shall be imposed; and

(21) there shall be provisions requiring capacity and support for public, educational and governmental access.

I. 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 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 from each franchise granted pursuant to this resolution during the preceding calendar year.

J. 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.

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 September 27, 2006, on file in this office.

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City Clerk, Clerk of The Council