

DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS
TESTIMONY BEFORE THE CITY COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES
RE: INTRO. 935-2015 / MOBILE TELECOMMUNICATIONS AUTHORIZING RESOLUTION RENEWAL
TUESDAY, JANUARY 12, 2016

Good morning Chairman Richards and members of the Zoning and Franchises Subcommittee. My name is Alphonso Jenkins, and I am the Deputy Commissioner for Telecommunications Planning for the Department of Information Technology and Telecommunications, or DoITT. With me is Stanley Shor, DoITT's Assistant Commissioner of Franchise Administration. Thank you for the opportunity to testify today to discuss proposed Authorizing Resolution 935-2015.

The resolution before you would renew DoITT's authority to grant franchises to allow for the installation and use of telecommunications equipment and facilities on, over, and under the inalienable property of the City of New York in connection with the provision of mobile telecommunications services. Authorized franchisees are allowed to install their telecommunications equipment within City rights of way, including certain City-owned light poles and, with approval of the utility companies, privately-owned utility poles located on City streets. These Mobile Telecommunications Franchises (MTFs) enable companies to use this equipment to enhance existing services or to provide new wireless services, including cellular and broadband Internet access. Proposed Resolution 935 would succeed three earlier resolutions previously adopted by the Council for the same purpose: Resolution 191 of 2010, Resolution 519 of 2004, and Resolution 957 of 1999.

Pursuant to the previous resolutions, the Franchise and Concession Review Committee (FCRC), has approved 12 such franchises since 2004 – 10 of which are still active. The benefits of allowing franchisees to use the City's inalienable property to install mobile telecommunications equipment are twofold. The first benefit is increased coverage, capacity, and competition; the second benefit is increased City revenue.

Granting access to City street poles creates an opportunity for wireless companies to provide their services where other sites are not available or practical, while enabling the City to foster increased competition in the mobile telecommunications market and generate City revenue. Carriers are also able to supplement areas of weak coverage, improving capacity and service in previously underserved areas of the city. These franchises can also provide a practical alternative to the installation of larger antennas typically seen on building rooftops.

The ability to offer City property for the siting of mobile telecommunications equipment has proven to be an attractive and effective method of increasing capacity and providing reliable coverage for mobile telecommunication companies. Telecommunications equipment has been installed on existing poles throughout the five boroughs, benefitting many areas of the city. The City's franchise with Citybridge, for implementation and maintenance of the LinkNYC network, also leverages the MTF authorizing resolution; as does our franchise with MTA contractor Transit Wireless, to install and operate fiber optic cables and related equipment for wireless transmission of voice and data service in all 279 underground subway stations by 2017.

As a result of the franchise, a new "low cost" cellular provider entered the New York City market in 2008, partnering with a mobile telecom franchisee and ultimately building-out its cellular network from the ground up – predominantly using poles. Additionally, major wireless carriers often partner with mobile telecommunications franchises to identify usable poles on which they may install their equipment to address coverage deficiencies within their networks, or to expand capacity in response to the public's ever-growing increase in mobile device usage. The use of a "distributed antenna system" installed on pole tops continues to address the challenges associated with providing ubiquitous coverage in a dense urban environment such as New York City.

In addition to improving wireless coverage for the public, the franchises generate millions of dollars in general fund revenue each year. Approval of this resolution and the subsequent granting of prospective franchises would increase competition and potentially generate additional annual revenue.

If adopted by the Council, this authorizing resolution would permit DoITT to issue a Request for Proposals for new franchises similar in nature to those are currently active. Pursuant to the evaluation criteria as described in the authorizing resolution, DoITT would then select one or more franchisees and enter into a written agreement with each one.

Any such franchise agreements would be subject, pursuant to the City Charter, to approval by the FCRC and the separate approval of the Mayor, a process followed by each of the current franchises.

The current franchise agreements include the following provisions:

- Equipment installed on light poles must conform to particular size limitations and only one installation per pole is allowed. Since there are multiple franchises, the agreement details a process for competing requests, rollout, and concentration of facilities.
- Franchisees must fully comply with Federal Communications Commission (FCC) rules and requirements regarding radio frequency energy exposure and in the operation and maintenance of their telecommunications equipment.

Now that I have detailed some of the benefits of the proposed resolution, and of the City's mobile telecommunication franchises in general, I would like to highlight some of the resolution's pertinent terms and conditions. In drafting this resolution and in negotiating the existing agreements with the franchisees, DoITT's primary concern was to protect the interests of the City and the New Yorkers we serve. To achieve these ends and grant the most effective franchises possible, the resolution includes the following terms:

1. The term of any franchise granted pursuant to this authorizing resolution franchise will not be longer than 15 years;
2. The compensation to be paid to the City will be adequate and may include monetary or in-kind compensation or both;
3. The franchise may be terminated in the event of the franchisee's failure to comply with the terms and conditions of the agreement;
4. A security fund will be established to ensure the performance of the franchisee's obligations under the agreement;
5. The City will have the right to inspect the facilities of the franchisee and to order the relocation of facilities as appropriate;
6. There will be adequate insurance and indemnification requirements to protect the interests of the public and the City;
7. There will be provisions to ensure access by the City to books and records of the franchisee to review and/or enforce compliance;
8. There will be provisions to ensure quality workmanship and construction methods in the use of the City's property;
9. There will be provisions relating to collective bargaining and other matters;
10. The franchisees will be required to comply with City laws, regulations, and policies related to, but not limited to, employment, purchasing, and investigations;
11. There will 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 will 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 will be subject to review under the City's Vendor Information Exchange System ("VENDEX");
14. Franchisees will be required to hold any applicable licenses and permits required by the New York State Public Service Commission and the FCC;
15. The City will reserve the right to perform public works or public improvements in and around those areas subject to the franchise;
16. Franchisees will be required 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. Provisions designed to minimize the extent to which the public's use of City streets are disrupted in connection with franchise construction improvements will be included;
18. Prior to installation of a wireless antenna on any pole (whether City or utility-owned) on a City street where the pole is less than 10 feet from an existing building, DoITT will provide at least 15 business days' notice of – and opportunity to submit written comment regarding – the proposed installation to applicable Community Board.
19. Provisions that offer incentives to the franchisee to serve areas beyond the core business districts of Manhattan south of 96th Street will be included.
20. Each franchisee will be required to comply on an ongoing basis with the FCC's maximum permitted levels of radio frequency energy exposure; with all FCC rules and requirements regarding the protection of health and safety with respect to radio frequency energy exposure; and, at the direction of the City, pay the costs of testing such facilities for compliance with these rules and requirements.
21. There will be provisions designed to encourage the franchisee, in selecting contractors who will perform work affecting City facilities, to choose entities that are qualified Minority-owned and Women-owned business enterprises, and emerging businesses enterprises;
22. Provisions requiring franchisee to provide maps and other information – including resiliency information – regarding locations of facilities placed on, over, or under City property will be included.

This concludes our prepared testimony. Thank you once again for the opportunity to address this Subcommittee on proposed Authorizing Resolution 935.

We will now be happy to answer any questions you may have.

Thank you.

