

**Department of Information Technology and Telecommunications
Testimony before the City Council Subcommittee on Zoning and Franchises
Cable Television Authorizing Resolution Hearing
Monday, August 14, 2006**

Good morning, Chair Avella and members of the City Council. My name is Radhika Karmarkar and I am the Senior Counsel for Regulatory and Legislative Affairs with the Department of Information Technology and Telecommunications, or DoITT. With me today is Bruce Regal, Senior Counsel with the New York City Law Department. Thank you for the opportunity to testify on Land Use number 197—the Cable Television Authorizing Resolution. The prior authorizing resolution expired five years ago, and in order to renew existing franchises and grant new franchises, as described below, a new resolution is now required.

The resolution pending before you will give DoITT the authority to renew, grant, or deny, consistent with Federal, State, and City law, franchises to all companies that may seek to enter the cable market in New York City. The resolution gives DoITT the authority to evaluate all potential cable operators in an equitable manner, ensure that such operators have the ability to provide service, guarantee that the City is properly compensated for use of its rights-of-way, and that operators use such rights-of-way in a manner that causes minimal disruption to City residents and businesses.

Before continuing, I should emphasize that cable television franchises are not exclusive agreements. Federal and State law prohibit the granting of exclusive franchises. Hence, the authorizing resolution pending before you will allow for multiple entrants in the cable market, and the Administration looks forward to greater competition in this regard.

In my testimony, I will outline the City's existing franchise structure, discuss key provisions contained in the pending authorizing resolution, as well as certain Federal and State law requirements that the City will have to follow in renewing and granting franchises. Finally, I will provide an overview of Federal initiatives that would limit municipal franchising authority, and an explanation of why prompt passage of this resolution will help the City in its efforts to combat such moves.

Current Status of Cable Television Franchises and Service Providers

Let me begin with an overview of the existing cable providers in New York City.

The City currently has nine cable television franchises whose combined coverage comprises the entire five boroughs. Each of these nine franchise areas was originally served by one of several different companies, now all owned or controlled by either Time Warner or Cablevision. Time Warner provides service in Manhattan, Staten Island, Queens, and a portion of Brooklyn, while Cablevision provides service in the Bronx and the remaining portion of Brooklyn. Time Warner has about 1.1 million subscribers in the City in its seven franchise areas. Cablevision has approximately 600,000 subscribers in its two franchise areas. All nine existing franchises are up for renewal in 2008.

Sustained, head-to-head competition in the provision of landline cable television service has, to date, been rare, although one experiment in cable competition in the City has had some success. A company called RCN provides cable service in Manhattan and Queens to about 100,000 subscribers, under a special "open video system" (OVS) agreement with the City,

authorized by the Federal government in 1996. Under Federal rules at the time, an OVS provider was exempt from the City's requirements to obtain a local franchise. In return, RCN is required by Federal law to make available two-thirds of its channel capacity to anyone who wishes to lease it. A subsequent Federal court decision in Texas, however, has called into question RCN's future authority to provide OVS service without a local franchise. Consequently, once its OVS agreement expires in December 2007, RCN may be required to obtain a City franchise.

In addition, Verizon has publicly declared its intention to offer cable television services in communities within its telephone service footprint, which covers much of the northeastern United States. It has already substantially upgraded facilities in certain parts of the City that could offer cable television services once the requisite franchise authority is received, and has announced its intent to continue with such upgrades in other parts of the City.

The resolution before you today would authorize DoITT to grant non-exclusive franchises for the construction, installation, use, operation, and/or maintenance of cable, wire and associated equipment on, over, and under the inalienable property of the City for the provision of cable television services in the City. The resolution would enable DoITT, subject to approval by the Franchise and Concession Review Committee and the Mayor, to renew, consistent with Federal, State, and City requirements, franchises for existing providers in the City and also to grant new franchises for competing entrants.

Authorizing Resolution and Federal and State Requirements

I will now discuss the key provisions in the authorizing resolution and critical Federal and State requirements. Consistent with Federal and State law, the authorizing resolution provides that, prior to the granting of any franchise, a request for proposals, or other form of solicitation, shall be issued by DoITT. The criteria to be used by DoITT in evaluating responses to such a solicitation shall include:

- The degree to which the public interest will be served by the proposed service;
- The financial, legal, technical, and managerial experience and capabilities of the applicant, including the ability of the applicant to maintain City property in good condition throughout the term of the franchise; and
- The adequacy of the proposed compensation to be paid to the City.

Pursuant to the authorizing resolution, all franchises shall contain terms and conditions that are consistent with the following:

- 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;
- The franchisee shall be required to provide security to ensure the performance of its obligations;
- The franchisee will be required to maintain complete and accurate books of account and records sufficient to assure the franchisee's compliance with the franchise agreement, which books of account and records shall be made available on demand to the City for inspection;
- There shall be provisions requiring the franchisee to comply with applicable City laws and regulations related to employment and investigations;

- There shall be provisions to ensure adequate oversight by the City of the franchisee's performance of its franchise obligations; and
- 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 or removal of the franchisee's facilities in City property.

Consistent with the New York Public Service Commission's "level playing field" requirement for cable service providers, the authorizing resolution states that no franchise shall place 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. Also, consistent with the Public Service Commission's regulations, the authorizing resolution gives DoITT the ability to grant franchises for a term of up to 15 years.

In acting pursuant to the authorizing resolution, DoITT will also need to be mindful of other key Federal and State law requirements. With regard to renewal of existing cable television franchises, Federal law establishes a three-year process for municipalities to determine whether renewal is to be granted. Both Time Warner and Cablevision have commenced this process by sending letters to the City stating their intention to seek renewal. Pursuant to Federal law, DoITT will consider the following four factors in reviewing proposals for renewal:

- Whether the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
- Whether the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs;
- Whether the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- Whether the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

As part of its deliberative process regarding these factors, DoITT will seek comments from the public—both in written form and in one or more public hearings.

The City will also follow Federal and State requirements pertaining to the granting of new franchises. Both State and Federal law place limitations on the City's ability to deny an additional competitive franchise. Under Federal law, "a franchising authority may not unreasonably refuse to award an additional competitive franchise" [See 47 U.S.C. § 541(a)(1)]. Likewise, as mentioned above, both Federal and State law prohibit the City from granting exclusive franchises.

With regard to all franchises, Federal law also requires the City to ensure that access to cable service is not denied to any group of potential residential cable subscribers, based on its income level. New York State has a similar requirement.

Federal Cable Franchising Initiatives

In addition to promoting competition among video service providers in the City, passage of the pending resolution will also have the salutary effect of placing the City in a stronger position to lobby against so-called "pro-competitive" Federal initiatives that would eviscerate municipal

franchising authority. There have been various legislative proposals in Washington that, while ostensibly crafted to speed the entry of new providers, would effectively preempt the City's franchising authority. Indeed, the City Council voted 50-0 on a resolution earlier this year to oppose such legislation. Likewise, the Federal Communications Commission (FCC) is conducting a rulemaking proceeding to determine if it should adopt rules to "streamline" the municipal cable franchising process, and this may also curtail the City's authority in this area.

We believe that prompt passage of the resolution before you will assist the City in its efforts before Congress and the FCC. There have already been some suggestions by legislative aides in Washington that, without an authorizing resolution in place, the City is not in a position to assert that it can promptly respond to requests to provide cable television service.

Conclusion

In conclusion, we look forward to prompt passage of this resolution and to working with the Council on cable television matters. Thank you again for the opportunity to testify and we would now be happy to answer any questions you may have.