

**DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS
TESTIMONY BEFORE THE CITY COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES
PUBLIC PAY TELEPHONE AUTHORIZING RESOLUTION
MONDAY, MAY 17, 2010**

Good morning Chairman Weprin and members of the Zoning and Franchises Subcommittee. My name is Stanley Shor, and I am the Assistant Commissioner of Franchise Administration for the Department of Information Technology and Telecommunications, or DoITT. With me is Brett Sikoff, DoITT's Director of Mobile Telecommunications Franchises. Thank you for the opportunity to testify today to discuss proposed Authorizing Resolution 191-2010.

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. More specifically, authorized franchisees are allowed to install their telecommunications equipment on certain City-owned light poles and, with the approval of the utility companies, privately-owned utility poles located on City streets. Proposed resolution 191 would succeed two earlier resolutions previously adopted by the Council for the same purpose: Resolution 519 of 2004 and Resolution 957 of 1999.

Pursuant to the previous resolutions, the Franchise and Concession Review Committee (FCRC), has approved eight such franchises since 2004 – six of which are still active. One of the City's fundamental goals in granting these franchises was to leverage the City's resources and inalienable property to strengthen wireless networks and provide a practical alternative to the installation of larger, and often unsightly, antennas typically seen on building rooftops.

The benefits of allowing franchisees to use existing poles on the City's inalienable property to install mobile telecommunications equipment are twofold. The first benefit is increased coverage and capacity, and the second benefit is increased City revenue.

Having the ability to offer City property as an alternative to private 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. To date, there have been 1,294 installations of telecommunications equipment on existing poles throughout the five boroughs – benefitting many areas of the city.

As a result of the franchise, a new "low cost" cellular provider has entered the New York City market, partnering with a mobile telecom franchisee and ultimately building-out its cellular network from the ground up – predominantly using poles. Additionally, a nascent mobile broadband company that is planning to launch its high speed wireless Internet network in the City later this year has entered into an agreement with another mobile telecom franchisee to design part of its network utilizing poles. The use of a "distributed antenna system" installed on pole tops will 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 approximately \$2 million in general fund revenue each year. With the approval of this resolution and the subsequent granting of prospective franchises, the City could 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 such franchisee.

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 six 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.
- Franchisees are also required to conform to any new FCC standards that may be adopted anytime in the future.

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 take a moment 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. These interests include the City of New York's public safety interests, property interests and financial interests, among others. To achieve these ends and grant the most effective franchises possible, the resolution includes the following terms:

1. The term of the franchise 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 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 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. The franchisees will be required to comply with City laws, regulations and policies related to, but not limited to, employment, purchasing, and investigations;
10. 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;
11. 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;
12. All franchisees shall be subject to review under the City's Vendor Information Exchange System ("VENDEX");
13. Franchisees shall be required to hold any applicable licenses and permits required by the New York State Public Service Commission and the FCC;
14. 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;

15. 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; and
16. There shall be provisions designed to minimize the extent to which the public's use of City streets are disrupted in connection with the construction of improvements relating to the franchise.

This concludes my testimony. Once again, thank you for the opportunity to address this Subcommittee on proposed Authorizing Resolution 191-2010. We will now be happy to answer any questions you may have.