

**DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS TESTIMONY
BEFORE THE CITY COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES
CABLE TELEVISION AUTHORIZING RESOLUTION
TUESDAY, APRIL 3, 2012**

Good morning, Chairman Comrie, Chairman Weprin and members of the City Council Subcommittee on Zoning and Franchises. My name is Stanley Shor and I am Assistant Commissioner for Franchise Administration at the Department of Information Technology and Telecommunications, or DoITT. With me today is Tanessa Cabe, Telecom Counsel at DoITT and Bruce Regal, Senior Counsel with the New York City Law Department. Thank you for the opportunity to testify on Land Use number 590 -- the citywide Cable Television Authorizing Resolution. The prior authorizing resolution expired last year, and in order grant new franchises, as described below, a new resolution is now required.

The resolution pending before you would give DoITT the authority to grant, consistent with Federal, State, and City law, franchises to companies that may seek to enter the cable market in New York City. The resolution gives DoITT the authority to evaluate potential cable operators, ensure that such operators have the ability to provide service consistent with the public interest, 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.

I would like to emphasize that cable television franchises are not exclusive agreements and the City has historically encouraged fair competition in the cable television market. Consistent with that policy, the authorizing resolution pending before you will allow for additional entrants in the cable market, and the Administration looks forward to continuing to support competition in this regard.

Current Status of Cable Television Franchises and Service Providers

The City currently has franchises with three cable television providers: Time Warner Cable, Cablevision Systems Corporation, and Verizon. Time Warner Cable provides service in Manhattan, Staten Island, Queens, and a portion of Brooklyn, while Cablevision Systems provides service in the Bronx and the remaining portion of Brooklyn. Verizon is in the process of building out its fiber optic, or "FiOS" network to all residences in the five boroughs. Verizon now provides service in approximately 66 percent of the City, and is scheduled to complete its buildout to all residential streets in the City by July 30, 2014.

In addition, RCN provides cable service to a relatively small number of subscribers in Manhattan, Brooklyn, and Queens under a special "open video system" (OVS) agreement with the City, authorized by the Federal government in 1996. Under Federal rules at that time, an OVS provider was exempt from the City's requirements to obtain a local franchise. In return, RCN was required by Federal law to make available two-thirds of its channel capacity to anyone who wished 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. RCN's OVS agreement has expired and we will therefore require RCN to obtain a City cable franchise.

The resolution before you today would authorize DoITT, subject to approval by the Franchise and Concession Review Committee and the Mayor, 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.

Authorizing Resolution and Federal and State Requirements

The authorizing resolution we have submitted is identical to the one that the Council passed in 2006. We are not seeking any changes in that resolution.

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.

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.

The City will follow Federal and State requirements pertaining to the granting of new franchises. 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.

Under Federal law, municipalities may not, with a few limited exceptions for public, educational and governmental programming, direct cable companies to provide specific programming. Also, because the FCC has found that the cable television market in the City is subject to effective competition, we may not regulate rates for cable television service.

Federal Cable Franchising Initiatives

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

We believe that prompt passage of the resolution before you will assist the City in its efforts to maintain local franchising authority before Congress and the FCC.

Conclusion

In conclusion, we urge the Committee to approve the resolution. Thank you again for the opportunity to testify and we will be happy to answer any questions you may have.