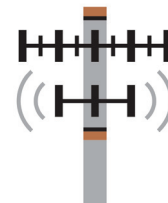




PHILLIPS LYTLE LLP CLIENT ALERT

TELECOMMUNICATIONS LAW



JUNE 2021

New York City Opens Solicitation for Proposals for Telecommunications and Information Services Franchises

On May 20, 2021, the New York City (“City” or “NYC”) Department of Information Technology and Telecommunications (DoITT) issued a solicitation regarding franchises that would authorize the deployment of “fixed wired facilities in the City’s public rights-of-way” for the provision of information and telecommunications services (using those terms as defined by federal law).

The City currently has several companies that have expired franchises for “high capacity broadband services” going back to the early 1990s. The City also has several companies that have unexpired franchises for “fixed wired broadband internet access services,” using the same dichotomy of information services and telecommunications services. Both sets of companies are able (or in the case of the expired franchises, encouraged) to renew or extend their rights by applying for these franchises.

It appears that the City plans to issue two different agreements — one for telecommunications services and one for information services, but only charge compensation once for the same fiber. These franchises DO NOT allow for the provision of cable television or multichannel video programming under Title VI of the Telecommunications Act of 1996, nor do they allow for the provision of mobile telecom services or attachment of small cells to light poles.

The franchise process is set by Chapter 14 of the NYC Charter. This solicitation was issued by DoITT pursuant to, and in compliance with, Resolution No. 1445-A (“Authorizing Resolution”) passed by the City Council in October 2020. DoITT will review responses received and create a franchise agreement template for potential franchisees. Although initial submissions are due on July 1, 2021, DoITT anticipates leaving the solicitation open so that potential franchisees in

the future are not shut out from applying for the franchises through October 2025 while DoITT’s authorization from the City Council remains in effect.

Submissions must have certain language agreeing to compliance with certain terms of the Authorizing Resolution, including payment of franchise compensation. Submissions must also contain information for evaluators to confirm the financial, legal, technical and managerial experience and capabilities of the potential franchisee, including the ability to maintain City property and rights-of-way in good condition.

The term of the potential franchises and the compensation payable to the City appears to still be fluid. The City’s goal is to encourage competition and to encourage deployment in areas outside of Manhattan below 96th Street. Towards that end, the City will be charging linear foot franchise fees only to franchisees providing services below 96th Street in Manhattan. How this compensation scheme will transpire still needs to be determined.

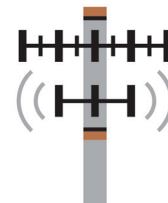
Potential franchisees must comply with NYC procurement and contracting rules, including registering with the Doing Business Database and the PASSPort system. Potential franchisees must clear the New York City Department of Investigation responsibility review and tax compliance with the City’s Department of Finance.

Most importantly, even if DoITT recommends a franchise for a potential franchisee based on the response to the solicitation, and the form of franchise agreement is agreed to by the parties, the NYC Charter requires the approval of the Franchise and Concession Review Committee (FCRC). This body is comprised of the following voting members: the NYC Mayor and one additional Mayoral appointee, the Comptroller, the



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Corporation Counsel, the Director of the Office of Management and Budget, and the collective vote of the five borough presidents. Five votes are required to approve a franchise. Following an FCRC public hearing, a vote of approval at an FCRC public meeting and execution by several city offices, the agreement must be registered with City contracts at the Comptroller's office. Finally, certain requirements must be met with DoITT (such as security deposits or bonds, insurance certificates, good standing and opinion of counsel) for the franchise agreement to become effective with DoITT.

We have assisted multiple current franchisees with negotiating franchise contracts with DoITT and navigating the franchise process over the years. We stand ready to assist others in connection with all legal aspects of this current open solicitation.

Additional Assistance

For further assistance, please contact a member of our [Telecommunications Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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