

MEETING

FRANCHISE AND CONCESSION REVIEW COMMITTEE

WEDNESDAY, JANUARY 9, 2008 @ 2:30 P.M.

22 READE STREET, BOROUGH OF MANHATTAN

NOTE: INDIVIDUALS REQUESTING SIGN LANGUAGE INTERPRETERS SHOULD CONTACT THE MAYOR'S OFFICE OF CONTRACT SERVICES, 253 BROADWAY, 9TH FL., NEW YORK, NEW YORK, N.Y. 10007 (212) 788-7490, NO LATER THAN SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC MEETING. TDD USERS SHOULD CALL VERIZON RELAY SERVICE.

*Franchise and Concession Review Committee Meeting –
Wednesday, January 9, 2008 @ 2:30PM*

DEPARTMENT OF PARKS & RECREATION

No. 1: IN THE MATTER of approval to use different procedures, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with Cirque du Soleil, Inc. to operate a performance space on Randall's Island, Manhattan. The License Agreement will be for an approximate 16-week term, beginning on or about March 16, 2009, and consisting of approximately 70 performances.

A proposed resolution was submitted, relative thereto.

RESOLUTION FOR ADOPTION.

DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS

No. 2: IN THE MATTER of the intent to award of a non-exclusive mobile telecommunication services franchise to Lexent Metro Connect, LLC ("Lexent"). The Franchise Agreement will provide Lexent the non-exclusive right to install and use telecommunications equipment and facilities on City-owned and managed street light poles, traffic light poles, highway support poles and certain utility poles (as defined in 47 USC Section 224) in the City of New York.

A proposed resolution was submitted, relative thereto.

RESOLUTION FOR ADOPTION.

DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS

No. 3: **IN THE MATTER** of intent to award a non-exclusive mobile telecommunication services franchise to NextG Networks of NY, Inc. (“NextG”). The Franchise Agreement will provide NextG with the non-exclusive right to install and use telecommunication equipment and facilities on City-owned and managed street light poles, traffic light poles, highway support poles and certain utility poles (as defined in 47 USC Section 224) in the City of New York.

A proposed resolution was submitted, relative thereto.

RESOLUTION FOR ADOPTION.

DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS

No. 4: **IN THE MATTER** of the proposed amendment of Mobilitie, LLC’s mobile telecommunication franchise agreement with the City of New York (the “Franchise”) to include certain utility poles (as defined in 47 USC Section 224).

A proposed resolution was submitted, relative thereto.

RESOLUTION FOR ADOPTION.

DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS

No. 5: **IN THE MATTER** of the proposed amendment of Dianet Communications, LLC’s mobile telecommunication franchise agreement with the City of New York (the “Franchise”) to include certain utility poles (as defined in 47 USC Section 224).

A proposed resolution was submitted, relative thereto.

RESOLUTION FOR ADOPTION.

DEPARTMENT OF PARKS & RECREATION

No. 6: **IN THE MATTER** of approval to utilize different procedures pursuant to Section 1-16 of the Concession Rules of the City of New York to enter negotiations with incumbent New York City concessionaires or other qualified entities to operate, as a short-term concession, the Premises located at 201-10 Cross Island Parkway, between 201st and 202nd Street, in the borough of Queens (d/b/a “Caffé on the Green”) from such time as said concession is registered through a date no later than February 28, 2010.

A proposed resolution was submitted, relative thereto.

RESOLUTION FOR ADOPTION.

00001

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PUBLIC HEARING
FRANCHISE AND CONCESSION REVIEW COMMITTEE
22 READE STREET
NEW YORK, NEW YORK
WEDNESDAY, JANUARY 9, 2008
2:30 P.M.

00002

1 P R E S E N T :
2 CAS HOLLOWAY,
Chairperson, Office of the Mayor
3
4 CARLE SCISSORA,
Brooklyn Borough President's Office
5 VALERIE BUDZIK,
Comptroller's Office
6
7 BOB CASTELLANETE,
Bronx Borough President's Office
8 STEPHEN FURNO,
Staten Island Borough President's Office
9
10 BRIAN GELLER,
Office of the Mayor
11 HOWARD FRIEDMAN,
Corporation Counsel
12
13 MARC McMILLAN,
Queens Borough President's Office
14 YVONNE QUINTAIN,
Office of Management and Budget
15
16 JIMMY YAN,
Manhattan Borough President's Office
17 THE CLERK
18 ERIC RUMBAKIN

19 MR. WEISS

* * *

20
21
22
23
24
25

00003

P R O C E E D I N G S

1 CHAIRPERSON HOLLOWAY: Good afternoon.
2 Will the meeting of the Franchise and Concession
3 Review Committee come to order?
4 Will the Clerk call the roll?
5 THE CLERK: Mayor.
6 MR. HOLLOWAY: Present.
7 THE CLERK: Office of the Mayor?
8 MR. GELLER: Present.
9 THE CLERK: Comptroller's Office?
10 MS. BUDZIK: Present.
11 THE CLERK: Corporation Counsel?
12 MR. FRIEDMAN: Present.
13 THE CLERK: Office of Management and
14 Budget?
15 MS. QUINTAIN: Present.
16 THE CLERK: Borough President of
17 Manhattan?
18 MR. YAN: Present.
19 THE CLERK: Borough President of
20 Brooklyn?
21 MR. SCISSARA: Present.
22 THE CLERK: Borough President of Queens?
23 MR. McMILLAN: Present.
24 THE CLERK: Borough President of Staten
25

00004

1 Island?
2 MR. FURNO: Present.
3 THE CLERK: Borough President of the
4 Bronx?
5 MR. CASTELLENATE: Present.
6 CHAIRPERSON HOLLOWAY: Will the Clerk
7 call the first calendar item?
8 THE CLERK: The Department of Parks and
9 Recreation, Calendar No. 1: In the matter of
10 approval to use different procedures, pursuant to
11 Section 1-16 of the Concession Rules of the City of
12 New York, to negotiate a Sole Source License
13 Agreement with Cirque du Soleil, Inc., to operate a
14 performance space on Randall's Island, Manhattan.
15 The License Agreement will be for an
16 approximate 16-week term, beginning on or about
17 March 16, 2009, and consisting of approximately 70
18 performances.

19 A proposed resolution was submitted,
20 relative thereto.
21 CHAIRPERSON HOLLOWAY: Does anyone wish
22 to ask a question or make a statement on this item?
23 If not, can I have a motion?
24 MR. FRIEDMAN: Motion.
25 MR. SCISSORA: Second.

00005

1 CHAIRPERSON HOLLOWAY: Will the Clerk
2 take a vote?
3 THE CLERK: Mayor.
4 MR. HOLLOWAY: Yes.
5 THE CLERK: Office of the Mayor?
6 MR. GELLER: Yes.
7 THE CLERK: Comptroller's Office?
8 MS. BUDZIK: Yes.
9 THE CLERK: Corporation Counsel?
10 MR. FRIEDMAN: Yes.
11 THE CLERK: Office of Management and
12 Budget?
13 MS. QUINTAIN: Yes.
14 THE CLERK: Borough President of
15 Manhattan?
16 MR. YAN: Yes.
17 THE CLERK: Resolution adopted.
18 CHAIRPERSON HOLLOWAY: I would note the
19 next four calendar items are from the Department of
20 Information Technology and Telecommunications. We
21 have a request to hold these over to the next FCRC
22 meeting. I'm going to ask the Clerk to read them
23 into the record.
24 THE CLERK: Department of Information
25 Technology and Telecommunications. In the matter

00006

1 of the intent to award a non-exclusive mobile
2 telecommunication services franchise to Lexent
3 Metro Connect, LLC.
4 The Franchise Agreement will provide
5 Lexent the non-exclusive right to install and use
6 telecommunications equipment and facilities on
7 City-owned and managed street light poles, traffic
8 light poles, highway support and certain utility
9 poles (as defined in 47 USC Section 224) in the
10 City of New York.
11 This item is held over to the FCRC for
12 February 6, 2008.
13 Calendar Item 3: The Department of
14 Information Technology and Telecommunications. In
15 the matter of the intent to award a non-exclusive
16 mobile telecommunication services franchise to
17 NextG Networks of NY, Inc.
18 The Franchise Agreement will provide
19 NextG with the non-exclusive right to install and

20 use telecommunication equipment and facilities on
21 City-owned and managed street light poles, traffic
22 light poles, highway support poles and certain
23 utility poles (as defined in 47 USC Section 224) in
24 the City of New York.
25 This item was held over to the meeting

00007

1 of the FCRC, scheduled for February 6, 2008.
2 Calendar Item 4: The Department of
3 Information Technology and Telecommunications.
4 In the matter of the proposed amendment
5 of Mobilite, LLC's mobile telecommunication
6 franchise agreement with the City of New York to
7 include certain utility poles (as defined in 47 USC
8 Section 224).
9 This item is held over to the FCRC
10 meeting of February 6, 2008.
11 Calendar Item 5: The Department of
12 Information Technology and Telecommunications. In
13 the matter of the proposed amendment of Dianet
14 Communication, LLC's mobile telecommunication
15 franchise agreement with the City of New York to
16 include certain utility poles (as defined in 47 USC
17 Section 224).
18 This item is held over to the FCRC
19 meeting of February 6, 2008.
20 MR. CASTELLANETE: Can somebody explain
21 the reasons for Dianet's request for the layover?
22 CHAIRPERSON HOLLOWAY: Is a
23 representative from Dianet here?
24 THE SPEAKER: Yes.
25 CHAIRPERSON HOLLOWAY: Identify yourself

00008

1 for the record.
2 THE SPEAKER: Jeff Earle [sic], Director
3 of the Mobile Telephone Franchise Unit.
4 Would you repeat the question?
5 MR. CASTELLANETE: The explanation for
6 why Dianet is requesting a layover?
7 CHAIRPERSON HOLLOWAY: I can do that.
8 Actually, the Committee is seeking additional
9 information on these franchises, and we are going
10 to share whatever that information is about certain
11 issues; and we will get that back to the Committee
12 members. We thought it would be more prudent to
13 get that information and then proceed.
14 MR. CASTELLANETE: Okay.
15 CHAIRPERSON HOLLOWAY: Thanks.
16 Any other questions?
17 Will the Clerk call the next calendar
18 item?
19 THE CLERK: Calendar No. 6: In the
20 matter of the approval to utilize different

21 procedures pursuant to Section 1-16 of the
22 Concession Rules of the City of New York to enter
23 negotiations with incumbent New York City
24 concessionaires or other qualified entities to
25 operate, as a short-term concession, the Premises

00009

1 located at 210-10 Cross Island Parkway, between
2 201st and 202nd Street, in the borough of Queens
3 (d/b/a "Caffe on the Green") from such time as said
4 concession is registered through a date no later
5 than February 28, 2010.

6 A proposed resolution was submitted
7 thereto.

8 Resolution for adoption.

9 CHAIRPERSON HOLLOWAY: Thanks. Is there
10 a member who wishes to ask a question or make a
11 statement?

12 MR. McMILLAN: Are any representatives
13 from Caffe on the Green here?

14 THE SPEAKER: Yes.

15 CHAIRPERSON HOLLOWAY: Identify
16 yourself, please.

17 MR. WEISS: Howard Weiss... We're
18 counsel for Caffe on the Green. I want to provide
19 you with copies of an order to show cause with a
20 temporary restraining order that was entered by the
21 Supreme Court, Queens County -- and I'd like to
22 take a few minutes to give the history so you
23 understand the context of that.

24 In October of this year, the Department
25 of Parks and Recreation issued an RFP soliciting

00010

1 proposals for a licensee to take over operation of
2 this concession at the end of its term, which would
3 be March of 2010, or a sooner date, as early as
4 January 8th of 2008.

5 That was in the annals of procurement
6 of the City, particularly with respect to the
7 Franchise and Concession, somewhat extraordinary;
8 that so early prior to the termination of the term
9 that the process would begin.

10 We commenced an action in the Supreme
11 Court, Queens County, challenging the solicitation
12 of concessionaires to take over this concession as
13 early as January, 2008, for a variety of reasons,
14 not the least of which it's a breach of the terms
15 of the license agreement. It's against public
16 policy.

17 The Supreme Court, Queens County
18 entered a temporary restraining order against
19 continuing with that procurement. At the request
20 of the City Law Department, it was transferred to
21 Supreme Court, New York County, where it is

22 presently pending.
23 As a result of discussions with the
24 Corporation Counsel, the return date of the motion
25 for preliminary injunction and the City's time to

00011

1 answer was extended to February 21, 2008.
2 Yesterday, our client received, via
3 fax, a notice of termination of its license, and
4 notification of today's request to bypass the
5 normal procurement procedure; and in fact, to
6 bypass the normal procedure for bringing on an
7 application to bypass a normal procedure and waive
8 the 40-day notice that is required with respect to
9 the community board.
10 I think it is government at its worst.
11 There is really no compelling reason to take a
12 licensee who has operated admirably, impeccably,
13 without any issues as to performance over its
14 entire term of performance, and to ask so
15 precipitously and attempt to do an end run around
16 court proceedings that presently are intended to
17 review the actions of the Department of Parks and
18 Recreation, with respect to this licensee.
19 We notified the Corporation Counsel
20 that we view what you are being asked to do today
21 as contempt of court, a violation of the
22 restraining order; if not the letter, than
23 certainly the spirit, because it contemplated that
24 the Court would review the City's action with
25 respect to trying to early end this license; and in

00012

1 the context of that review, would stay the City
2 from taking any action against this licensee.
3 So, if this committee today bypasses
4 the procedure that, in fact, is mandated for the
5 consideration of concessions and licenses, we
6 intend in fact to move for contempt.
7 We would ask that you all really
8 consider carefully what you are doing here and the
9 message that you are sending out.
10 I will tell you, apart from the
11 legality, I spent a lot of years in government and
12 now have been spending 20 years out of government
13 dealing with government issues, zoning issues and
14 concessions.
15 And you have got to ask yourself, what
16 lender, what bank, is going to fund a licensee
17 who's called upon to make substantial capital
18 improvements with respect to a licensed premises
19 when they can't rely on the validity of the license
20 for a term, where there is no allegation the
21 licensee has committed wrongdoing with respect to
22 the license itself.

23 There are allegations that have been
24 made about the background of the manager of these
25 premises, not against the licensee. The manager

00013

1 does not have an interest in the licensed premises.
2 If there was a concern about the manager and his
3 background after all of these years, mind you, that
4 could have been addressed without acting so
5 precipitously and violating the rights of the
6 licensee.

7 We think that this Committee, before it
8 acts on this end run, ought to be considering as
9 well what you are doing in terms of the regularity
10 and the validity of the license and concession
11 arrangements.

12 Having said that, you will do what you
13 will do, and we certainly will do what's necessary
14 to protect the interest of this innocent licensee,
15 who never was alleged of committing any wrongdoing
16 or any way of violating the terms of its license.

17 Thank you.

18 CHAIRPERSON HOLLOWAY: Thanks. I think
19 there is an member of the Law Department here,
20 Eric, Rumbakin [sic].

21 Mr. Rumbakin, based on the comments of
22 Mr. Weiss that the action of the FCRC would somehow
23 result in contempt of an order that the City is
24 under in an ongoing proceeding. If you could speak
25 to that, and what the City's view is on that?

00014

1 MR. RUMBAKIN: My name is Eric Rumbakin.
2 I'm the Chief Commercial and Real Estate Litigation
3 for the City Law Department.

4 You have in front of you the actual
5 order of the court that was signed in November of
6 last year. It is clear that the order of the court
7 prevents the Parks Department from taking certain
8 specific actions with regard to the specific
9 proposal that Mr. Weiss referred to, which is
10 solicitation Q10AR.

11 We can't issue amendments, we can't
12 receive or accept proposals or do certain specified
13 actions. A contempt is a specific remedy. If
14 actions are taken that are specifically prohibited,
15 then a court can hold an entity in contempt.

16 I'm not sure this entity was stayed by
17 the Supreme Court of Queens County. In any event,
18 the Parks Department would be responsible if it
19 violates any of the specific injunctions contained
20 in that order.

21 We do not believe that the action
22 proposed to be taken today by the FCRC is either
23 related to the specific proposal or to any of the

24 specific actions that are prohibited under that
25 proposal.

00015

1 We would defend any attempt to hold
2 anybody in contempt very vigorously.

3 I would like to also address, briefly,
4 a couple of things that Mr. Weiss said.

5 MR. SCISSORA: Wouldn't you look at
6 Section A in the order, where Judge Flug is
7 restraining defendants, their agents, employees, et
8 cetera; and then she lists some things on
9 procurement of proposals for license to operate.

10 Wouldn't you include what we're doing
11 today as part of that?

12 MR. RUMBAKIN: I'm glad you asked that
13 question. On page 2, there are a list of A, B, C
14 and D, which are the request for ultimate relief by
15 the plaintiffs, the Caffe on the Green. These are
16 not things which the Court ordered at this time.

17 These are things being requested to be
18 ordered ultimately by court after the matter has
19 been fully briefed by both sides.

20 The restraints in existence right now
21 are on page 3 only; which is the same page as the
22 judge's signature. Where it says, "pending the
23 hearing of this motion," there are three specific
24 items that are enjoined. It's much more limited
25 than the ultimate request for relief which you are

00016

1 referring to.

2 MR. SCISSORA: Item 2 on that third
3 page? Today's hearing wouldn't be part of that?

4 MR. RUMBAKIN: We don't believe
5 receiving or accepting any proposals in connection
6 with the particular request for proposals that's
7 set forth here, which is Park's request for
8 proposals for an operator to come in sometime in
9 the future.

10 MR. SCISSORA: What about otherwise
11 engaging in the procurement of such proposals?

12 MR. RUMBAKIN: It's still in connection
13 with that particular request for proposals. It is
14 not -- this is a separate item. The reason it is
15 separate is that in the interim, Parks has seen fit
16 to terminate the license of the Caffe on the Green,
17 which is permitted under the license, a termination
18 without cause.

19 However, it can be challenged, and we
20 believe we have more than adequate grounds to
21 defend it. In fact, if this provision were not
22 included in the license, it would not be a valid
23 license at all.

24 Parks must have the ability to

25 terminate concessions and licenses at will;

00017

1 otherwise they may be construed as leases and would
2 be illegal. There's a history of case law on that
3 subject, and each and every concessionaire from the
4 Parks Department knows that Parks has the inherent
5 authority to terminate it at will, as long as that
6 termination is not arbitrary and capricious.

7 MR. FRIEDMAN: The reason we have to
8 have termination at will is because Parks property
9 is inalienable. It has to be true.

10 MR. RUMBAKIN: There has been this
11 termination that has occurred pursuant to the at
12 will clause. As a result of that, you are being
13 asked to start the process, so that should that
14 termination be upheld, there would be a possibility
15 of an interim operator coming into the premises
16 before the full request for proposal process could
17 be completed.

18 Therefore, the people of Queens and the
19 people of New York who use this facility would have
20 an interim operator in place if the termination is
21 upheld. To do that, we need your consent to the
22 matters before you today. That's summation.

23 CHAIRPERSON HOLLOWAY: My understanding
24 is that this action enables the Parks Department,
25 if it becomes necessary to do so, to bring somebody

00018

1 in on an interim basis in the event, or until, this
2 issue with the RFP or any RFP that might be issued
3 to bring a new operator in, or any operator in, is
4 resolve?

5 MR. RUMBAKIN: That's correct. That's
6 my understanding of the intention, yes.

7 MR. HOLLOWAY: Any other questions?

8 MR. McMILLAN: Are there presently
9 negotiations going on between you and the
10 representatives of the Merissa Corporation?

11 MR. RUMBAKIN: This morning we reached
12 out to them to see if there's any way to make the
13 litigation process run smoother. It's clear there
14 are disputes between the parties, and we remain
15 available to do that.

16 At this time, there was no response to
17 our request, a firm response of particulars. We
18 believe it is certainly possible to continue
19 discussions.

20 CHAIRPERSON HOLLOWAY: If there are no
21 other questions or statements on this matter, is
22 there a motion?

23 MR. FRIEDMAN: Moved.

24 MS. QUINTAIN: Second.

25 CHAIRPERSON HOLLOWAY: Will the Clerk

00019

1 take the vote?
2 THE CLERK: Mayor?
3 MR. HOLLOWAY: Yes.
4 THE CLERK: Office of the Mayor?
5 MR. GELLER: Yes.
6 THE CLERK: Comptroller's Office?
7 MS. BUDZIK: Yes.
8 THE CLERK: Corporation Counsel?
9 MR. FRIEDMAN: Yes.
10 THE CLERK: Office of Management and
11 Budget?
12 MS. QUINTAIN: Yes.
13 THE CLERK: Borough President of Queens?
14 MR. McMILLAN: Yes.
15 THE CLERK: The resolution is adopted.
16 CHAIRPERSON HOLLOWAY: Thanks very much.
17 This meeting of the FCRC is adjourned.
18 (Time noted: 3:15 p.m.)
19
20
21
22
23
24
25

00020

1
2 C E R T I F I C A T I O N
3
4 I, Jeffrey Shapiro, a
5 Shorthand Reporter and Notary Public, within and
6 for the State of New York, do hereby certify that I
7 reported the proceedings in the within-entitled
8 matter, on Wednesday, January 9, 2008, at 22 Reade
9 Street, New York, New York, and that this is an
10 accurate transcription of these proceedings.
11 IN WITNESS WHEREOF, I have
12 hereunto set my hand this _____ day of
13 _____, 2008.
14
15
16 _____
17 JEFFREY SHAPIRO
18
19
20
21
22
23
24
25

