

Liberty Cable Co., Inc.  
New York, New York

Exhibit 2  
FCC Form 402  
File No. 708778  
Page 1 of 2

### **STATEMENT OF ELIGIBILITY AND USE**

Liberty Cable Co., Inc. ("Liberty") is engaged in the operation of a commercial activity as a provider of video entertainment programming to customers and is eligible for operational fixed microwave frequencies under Section 90.75(a)(1) of the Commission's Rules. Pursuant to Section 94.31(j) of the Rules, the nature of the products and services to be distributed are described below.

Liberty proposes to distribute its own products and services to customers using operational-fixed frequencies in the 18,142-18,580 MHz band. Liberty owns and operates an alternative multichannel video delivery system in the New York metropolitan area. It proposes the point-to-point distribution of video entertainment material as authorized in Video Distribution Systems - 18 GHz, 6 FCC Rcd 1270 (1991). Although Section 94.9(a)(1) prohibits the distribution of video entertainment material to customers on frequencies below 21,200 MHz, it allows exceptions as provided by Section 94.61(b) and Section 94.9(a)(2). Section 94.9(a)(2) authorizes a licensee to transmit any of its own products or services, including video entertainment programming, to any receiving location on frequencies in the 18,142-18,580 MHz band.

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Accordingly, Liberty's proposed use of the 18,142-18,580 MHz band frequencies is consistent with the Commission's Rules.

The facilities requested in this application contemplate only the distribution of multichannel video entertainment material via point-to-point microwave. The transmit site is not fed via a hardwire connection from a location that is non-commonly owned, managed or controlled.

Although the receive sites located at 170 West End, 55 Central Park, 150 and 152 West 57th Street are presently fed via hardwire connections from non-commonly owned, managed or controlled buildings located at 160 West End and 10 West 66th Street and Park Meridian respectively, grant of the pending application will permit Liberty to convert the connection to microwave and discontinue the hardwire connection. The facilities will not be extended by a hardwire connection unless and until Liberty is authorized to make such a connection or unless such a connection is otherwise authorized by law.

7/6/95  
Date

  
Peter O. Price  
President  
Liberty Cable Co., Inc.

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July 12, 1995

**VIA FEDERAL EXPRESS**

Federal Communications Commission  
Wireless Telecommunications Bureau  
Private Microwave Branch  
1270 Fairfield Road  
Gettysburg, PA 17325-7245



Re: Liberty Cable Co., Inc.;  
Amendment of Modification Application,  
FCC File No. 708781, FCC Call Sign WNTM212;  
205 East 64th Street, NYC (Bristol Plaza)

Dear Sir or Madam:

Submitted herewith, on behalf of Liberty Cable Co., Inc., is an original and one copy of an amended Statement of Eligibility and Use, which is intended to replace the existing Statement, included as Exhibit 2 in the above referenced application.

Kindly refer any questions regarding this matter to the undersigned.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. Lehmkuhl".

Michael J. Lehmkuhl  
Attorney for  
Liberty Cable Co., Inc.

Enclosure

cc: Arthur H. Harding, Esq.  
(Counsel for Time Warner)

bcc: Larry S. Soloman, Esq.  
Lloyd Constantine, Esq.  
William Kellett, Esq. (FCC)

MJL/kaw  
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Liberty proposes to distribute its own products and services to customers using operational-fixed frequencies in the 18,142-18,580 MHz band. Liberty owns and operates an alternative multichannel video delivery system in the New York metropolitan area. It proposes the point-to-point distribution of video entertainment material as authorized in Video Distribution Systems - 18 GHz, 6 FCC Rcd 1270 (1991). Although Section 94.9(a)(1) prohibits the distribution of video entertainment material to customers on frequencies below 21,200 MHz, it allows exceptions as provided by Section 94.61(b) and Section 94.9(a)(2). Section 94.9(a)(2) authorizes a licensee to transmit any of its own products or services, including video entertainment programming, to any receiving location on frequencies in the 18,142-18,580 MHz band.

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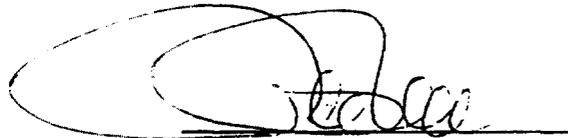
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Page 2 of 2

Accordingly, Liberty's proposed use of the 18,142-18,580 MHz band frequencies is consistent with the Commission's Rules.

The facilities requested in this application contemplate only the distribution of multichannel video entertainment material via point-to-point microwave. The transmit site is not fed via a hardwire connection from a location that is non-commonly owned, managed or controlled.

Although the receive sites located at 60 Sutton Place, 425 East 58th Street, and 239 East 79th Street are presently fed via hardwire connections from non-commonly owned, managed or controlled buildings located at 420 East 54th Street, 400 East 59th Street, and 229 E. 79th Street respectively, grant of the pending application will permit Liberty to convert the connection to microwave and discontinue the hardwire connection. The facilities will not be extended by a hardwire connection unless and until Liberty is authorized to make such a connection or unless such a connection is otherwise authorized by law.

7/6/95  
Date



Peter O. Price  
President  
Liberty Cable Co., Inc.



ALL STATE LEGAL 900-225-0910 ECT-PC RECYCLED

THE CITY OF NEW YORK  
DEPARTMENT OF INFORMATION TECHNOLOGY  
AND TELECOMMUNICATIONS

REQUEST FOR PROPOSALS

FOR

FRANCHISES FOR CABLE TELEVISION SERVICES  
NOT UTILIZING THE INALIENABLE PROPERTY OF THE CITY

IMPORTANT: IT IS UNLAWFUL TO ENGAGE IN ACTIVITY THAT UNDERMINES OR THWARTS THE FAIR AWARD OF ANY FRANCHISE AGREEMENTS RELATED TO THIS RFP. THE NEW YORK CITY COMPTROLLER IS CHARGED WITH, AMONG OTHER THINGS, THE AUDIT OF CONTRACTS OF NEW YORK CITY. IF YOU BELIEVE THERE HAS BEEN UNFAIRNESS, FAVORITISM OR IMPROPRIETY IN CONNECTION WITH THIS RFP PROCESS, PLEASE CONTACT THE COMPTROLLER, OFFICE OF CONTRACT ADMINISTRATION, ONE CENTRE STREET, ROOM 835, NEW YORK, NEW YORK, 10007, TELEPHONE NUMBER (212) 669-3000.

APPLICANTS ARE ADVISED THAT THE DEPARTMENT'S AUTHORIZED CONTACT PERSON FOR ALL MATTERS CONCERNING THIS REQUEST FOR PROPOSALS IS:

DAVID BRONSTON, GENERAL COUNSEL - (718) 403-8501  
11 METROTECH CENTER, 3RD FLOOR  
BROOKLYN, NEW YORK 11201

PIN NUMBER: 96CR10246

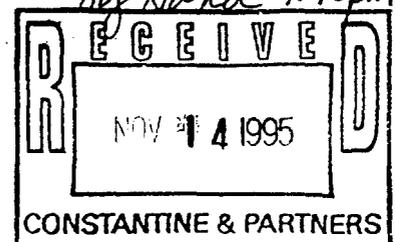
RELEASE DATE: November 13, 1995

CONSTANTINE & PARTNERS  
DISTRIBUTION LIST

LC	<input checked="" type="checkbox"/>	MCS	<input type="checkbox"/>	LFS	<input checked="" type="checkbox"/>
RLB	<input checked="" type="checkbox"/>	YC	<input type="checkbox"/>	JIS	<input type="checkbox"/>
CT	<input type="checkbox"/>	FN	<input type="checkbox"/>	RR	<input type="checkbox"/>
ES	<input checked="" type="checkbox"/>	J. Moran	<input checked="" type="checkbox"/>		

CI/M#: 2000 Subfil: 05

Note: RFP - Franchise for Cable  
Television Services Not Utilizing  
the Inalienable Property of City



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## I. INTRODUCTION

### A. Background

There are currently ten (10) franchises for the provision of cable television services in the City of New York. Two franchises for the borough of Manhattan were issued in 1970, renewed in 1990, and are due to expire in 1998. The eight franchises in the Bronx (one), Brooklyn (two), Queens (three) and Staten Island (two) were issued in 1983 and are due to expire in 1998.

By Executive Order No. 44 dated April 12, 1990, the Mayor of the City of New York designated the Department of Telecommunications as the agency responsible for granting telecommunications franchises. Pursuant to Local Law 71 of 1990, the Department of Telecommunications became the Department of Telecommunications and Energy ("DTE").

Pursuant to Section 363 of the Charter of the City of New York (the "Charter"), the Commissioner of DTE made the initial determination that there was a need for franchises for cable television services, in addition to those franchises currently in existence, in the five (5) boroughs.

Pursuant to Section 363 of the Charter, the Mayor submitted to the Council of the City of New York (the "Council") a proposed authorizing resolution for such additional franchises.

On October 13, 1993, the Council, after making several modifications thereto, adopted said authorizing resolution (Resolution No. 1639, attached hereto as "Exhibit I") and thereby authorized DTE to grant additional non-exclusive franchises for the provision of cable television services, subject to the terms and conditions set forth in said Resolution No. 1639.

The Council determined that the granting of such franchises would promote the public interest, increase access to information, enhance the health, welfare and safety of the public and stimulate commerce and competition in multichannel video programming by assuring the universal availability and effective provision of cable television services throughout the entire City of New York.

Pursuant to Local Law 24 of 1994, DTE merged with the Computer and Data Communications Services Agency and became the Department of Information Technology and Telecommunications ("DoITT" or the "Agency").

Pursuant to Resolution No. 1639, DoITT hereby issues this Request for Proposals ("RFP") to award non-exclusive franchises for the provision of cable television services, not utilizing the inalienable property of the City.

For the purposes of this RFP, "cable television services" shall mean only "cable service" as defined in the Cable Communications Policy Act of 1984, as amended (47 U.S.C. 521 et seq.) (the "Cable Act"), but shall not include "high capacity telecommunications services," as defined in the authorizing resolution adopted by the Council on March 26, 1992 (Resolution No. 404), and shall not include "mobile telecommunications services" as defined in the authorizing resolution adopted by the Council on July 19, 1994 (Resolution No. 438).

It should be noted that multiple franchise awards may be made by DoITT pursuant to this RFP. By granting franchises to applicants as contemplated by this RFP, DoITT hopes to contribute to the strength of the City's telecommunications infrastructure and promote fair competition within the industry. It should be further noted that, pursuant to the authorizing resolution, DoITT reserves the right to issue additional RFPs for cable television services in the future.

Capitalized terms used herein and not otherwise defined (including in "Definitions" on page 59), shall have the meanings given in Exhibit I.

#### **B. Franchise Area**

The individual geographic areas (the "Franchise Area") for which proposals should be submitted and for which franchises may be awarded pursuant to this RFP shall consist of at least one entire community board district ("CBD") and shall cover an area that includes at least 30,000 (thirty thousand) households (according to the 1990 census). However, any proposal to provide cable television services to any households in a CBD must serve the entire CBD. (All CBD's in the City are indicated in Exhibit II.)

#### **C. Purpose of RFP**

This RFP has been designed to achieve two principal purposes. The first is to obtain comparable information from all applicants in order to assist DoITT in determining which applicants should be selected to proceed to the possible negotiation and franchising processes. The second is to set forth certain information for additional cable television systems which the City may franchise.

Section II of this RFP addresses the basic characteristics for cable systems to be franchised and requires, in addition to a description of the proposed Franchise Area desired by the applicant, a detailed description of the cable television system proposed by the applicant.

In addition to wanting cable television systems with comparable basic characteristics, DoITT desires to minimize its interference with the marketing decisions of the City's

franchisees. Indeed, it wishes to encourage diversity and experimentation within each cable system. Moreover, since the requirements set forth in Section II are only basic characteristics, DoITT would expect that each applicant's response to Section II of this RFP would describe fully all aspects of the system it intends to build and operate, and to delineate particularly those characteristics which exceed the basic characteristics.

Section III-A of this RFP is designed to elicit information regarding each applicant's technical qualifications and the technical features and performance standards of its proposed cable television system.

Section III-B is intended to give each applicant the opportunity to describe special, non-technical characteristics or qualifications, if any, unique to such applicant or its proposed system, which the applicant believes weigh in its favor.

Section IV of this RFP and its accompanying schedules seek information regarding the experience of the applicant and its affiliates in the design, construction and operation of other cable television systems, as well as certain information regarding the applicant's financial commitments, if any, with respect to other systems proposed or under construction.

Section V of the RFP relates to construction and requests each applicant to describe its construction qualifications and plans.

Section VI and its accompanying schedules request information concerning the applicant's organizational structure, financial plans, forecasts and resources for its proposed cable television system.

**D. Proposal Due Date/RFP Timetable**

The release date of this RFP will be November 13, 1995. All applicants must respond to all matters set forth in this RFP and all proposals must be received by 5:00 p.m. on January 31, 1996. ("Proposal Due Date")

The projected date of selecting applicants who comply with the criteria established within this RFP is: March 1, 1996.

DoITT reserves the right to seek information in addition to the information called for in this RFP. However, unless specifically requested by DoITT, no further information will be accepted from any applicant after the Proposal Due Date. Although DoITT reserves the right to extend the deadline, it is not anticipated that any extensions of time will be granted.

Requirements regarding the format for all applicants' responses are set forth in Section I.G. below. RESPONSES SHALL BE DELIVERED TO: DAVID BRONSTON, CITY OF NEW YORK DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS, 11 METROTECH CENTER, 3RD FLOOR, BROOKLYN, NEW YORK 11201. Except as otherwise indicated in this RFP, all responses should be current as of the Proposal Due Date.

**E. Posting of Interest Period**

The City recognizes that the financial resources required to construct, maintain and operate a cable television system are substantial. In order to insure that entities which themselves may not have the financial resources to participate as a cable television franchisee on their own (such entities may include, for example, but are not limited to smaller businesses, local businesses, and minority and women owned businesses) have an opportunity to participate, DoITT will provide a "posting of interest" period for the first thirty (30) days after the issuance of this RFP. During this thirty day (30) period, which shall commence on November 14, 1995 at 10:00 a.m. and end on December 14, 1995 at 4:00 p.m., entities which may not have the resources to participate in this RFP alone, but which may be interested in exploring or participating in a joint venture, partnership or other collective arrangement to submit a response to this RFP, may submit a request for posting of interest in the form set forth in Exhibit III attached hereto. DoITT will compile a list of all entities which have submitted such requests during the thirty (30) day period, and within ten (10) business days of the end of such period will: (i) distribute such list to all recipients of this RFP and (ii) publish such list in the City Record. DoITT will provide this service in the hope that it will help such entities and other potential participants become aware of the interest of listed entities in cooperative ventures to participate in this RFP and will facilitate the ability of such entities to participate. Participation in the posting of interest process shall not foreclose any entity from subsequently submitting a response to this RFP on its own.

**F. General Information**

**(i) Status of Information**

DoITT shall not be bound by any oral or written information released prior to the issuance of this RFP.

**(ii) Applicant Inquiries**

All inquiries regarding this solicitation must be addressed to the authorized contact person designated on the cover sheet of this RFP. Applicants should identify in their proposals one key contact person with whom DoITT should communicate concerning this RFP

Applicants are advised that DoITT cannot ensure a response to inquiries received later than ten (10) business days prior to the Proposal Due Date.

(iii) Communication with DoITT

Applicants are further advised that from the date this RFP is issued until the award of the franchise, no contact with DoITT personnel related to this RFP is permitted, except as expressly set forth in this RFP or as may be authorized by the Agency Contact Person designated on the cover sheet of this RFP.

(iv) Addenda

DoITT will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Proposal Due Date.

Applicants should not rely on any representations, statements or explanations other than those made in this RFP or in a formal addendum.

It is the applicant's responsibility to assure receipt of all addenda. The applicant should verify with the agency contact person prior to submitting a proposal that all addenda have been received.

(v) Modified Proposals

Applicants may submit modified proposals to replace all or any portion of a previously submitted proposal up until the Proposal Due Date. Only the latest version of the proposal will be considered.

(vi) Late Proposals or Modifications

Proposals or modifications of proposals received after the Proposal Due Date shall be deemed late and will not be considered for franchise award.

(vii) Costs

The City shall not be liable for any costs incurred by applicants in the preparation or presentation of proposals or for any work performed in connection therewith.

In the event that an applicant is selected to enter into franchise negotiations with DoITT, such applicant shall be responsible for all costs incurred by the City with respect to the City's legal counsel retained for such negotiations which shall be Arnold & Porter. An applicant or applicants which ultimately receive franchises pursuant to this RFP shall be responsible for

payment of the City's costs in preparing and administering this RFP.

**(viii) Oral or Visual Presentations and Interviews**

DoITT may require applicants to give oral or visual presentations, or may request to interview applicants, in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.

**(ix) Negotiations**

DoITT will decide which applicants, if any, to enter into negotiations with. In no event will DoITT or the City be obligated to enter into negotiations with any applicant.

No applicant shall have any rights against DoITT or the City arising from such negotiations or from DoITT's or the City's failure to negotiate.

**(x) Applicability of Authorizing Resolution Provisions**

By submitting a proposal to this RFP, an applicant confirms to the City that it understands that, at a minimum, the terms and conditions set forth in Resolution No. 1639, adopted by the Council on October 13, 1993 and attached hereto as "Exhibit I," will become part of any franchise granted pursuant hereto. Specifically, applicants acknowledge that a franchise contract will be subject to, among other things, certain conditions, including: (a) a term, including options to renew, if any, of not more than ten (10) years; (b) the requirement to maintain a local office in the City; (c) the requirement to recognize the right of employees to collective bargaining through representatives of their own choosing with respect to rates of pay, hours of employment, etc., as set out in Section 363 of the Charter; and (d) completion and submission of questionnaires in connection with the City's Vendor Information Exchange System ("VENDEX") and Integrated Comprehensive Contract Information System ("ICCIS") and review of the information contained therein by the Department of Investigation.

Applicants are encouraged to review examples of cable television franchise agreements which the City has entered into in the past, in order to become familiar with matters that have been relevant in previous cable television franchising transactions. Samples of a 1990 franchise agreement and a 1983 franchise agreement will be available for applicants to review at DoITT's offices. Applicants should contact the agency contact person to arrange to review these sample agreements.

Applicants should also insure that all information required to be included in proposals pursuant to the rules of the New York State Commission on Cable Television (see especially Section 594.5

of Title 9 of the New York State Code of Rules and Regulations) are included.

(xi) Approval of Franchise Agreement

IF AGREEMENT IS REACHED BETWEEN DOITT AND AN APPLICANT OR APPLICANTS AS TO THE TERMS AND CONDITIONS OF A FRANCHISE CONTRACT CONSISTENT WITH THE AUTHORIZING RESOLUTION, THE PROPOSED FRANCHISE CONTRACT WILL BE SUBMITTED TO THE FRANCHISE AND CONCESSION REVIEW COMMITTEE FOR ITS APPROVAL, FOLLOWING A PUBLIC HEARING, CONSISTENT WITH THE REQUIREMENTS OF SECTIONS 371 AND 373 OF THE CHARTER. ADDITIONALLY ALL PROPOSED FRANCHISE AGREEMENTS SHALL BE PRESENTED TO THE MAYOR FOR APPROVAL PURSUANT TO SECTION 372 OF THE CHARTER AND SHALL BE REGISTERED WITH THE COMPTROLLER PURSUANT TO SECTION 375 OF THE CHARTER. NO FRANCHISE SHALL BE DEEMED GRANTED UNLESS AND UNTIL THE APPROVALS, REGISTRATION AND THE REQUIREMENTS SET FORTH IN THIS PARAGRAPH HAVE BEEN GRANTED AND COMPLETED AND ANY REQUIREMENT FOR CONFIRMATION OR APPROVAL BY A STATE ENTITY OR OFFICIAL PURSUANT TO STATE LAW HAS BEEN RECEIVED. THE CITY HAS APPLIED FOR A WAIVER OF CERTAIN REQUIREMENTS OF THE STATE'S FRANCHISING PROCEDURES AT PART 594 OF THE NEW YORK STATE CODE OF RULES AND REGULATIONS. THE GRANTING OF ANY FRANCHISE IS FURTHER CONTINGENT UPON THE RECEIPT OF SUCH WAIVER.

(xii) RFP Postponement or Cancellation

DoITT reserves the right to postpone or cancel this RFP or to reject any or all proposals at any time, and shall have no obligation whatsoever to any applicant

(xiii) Confidential or Proprietary Information

It is not expected that information supplied by an applicant in its proposal(s) will be confidential or proprietary. In the event an applicant believes the information it must submit in order to respond fully and completely to this RFP should be treated confidentially by the City, it should so advise DoITT in writing. DoITT will attempt to protect proprietary information of any applicant, consistent with legal requirements. Any allegedly proprietary information contained in a proposal must be clearly designated as such, and should be separately bound and labeled with the words "Confidential Proprietary Information." Appropriate reference to this separately bound information must be made in the body of the proposal. MARKING THE ENTIRE PROPOSAL AS PROPRIETARY WILL RESULT IN THE PROPOSAL BEING RETURNED TO THE APPLICANT UNREAD.

Applicants should be aware, however, that DoITT is required by law to make its records available for public inspection and copying, with certain exceptions (see New York Public Officers Law) and subject further to public policy. If it becomes necessary, in the City's opinion, to disclose any information designated as confidential or proprietary, DoITT will seek a waiver, prior to so

disclosing, from the applicant. In the event a waiver cannot be obtained, such applicant will be permitted to withdraw the subject proposal.

The applicant, by submission of materials marked proprietary, expressly acknowledges and agrees that neither DoITT nor the City of New York will have any obligation or liability to applicant in the event a court of competent jurisdiction compels the disclosure of these materials.

**G. Format for Responses**

To the maximum extent possible, RFP applicants will be expected to respond to this RFP in a uniform format. While each applicant may submit whatever additional information it feels will enhance the likelihood of its receiving a cable television franchise, the following procedures shall govern responses to the basic information sought by this RFP:

(1) An original and five (5) copies of each proposal must be submitted to the address of DoITT set forth in Section D above in sealed envelopes (or boxes) marked with the applicant's name, the borough or boroughs covered by the proposal, and the title "Response to Request for Proposals."

(2) Each copy of each proposal must be accompanied by a notarized affidavit signed by a duly authorized officer of the applicant which: (a) attests to the accuracy of all information contained in the proposal, (b) acknowledges that all representations in the response are binding on the applicant and that failure to adhere to any such representations may, at DoITT's option, result in termination of any franchise awarded to the applicant, and (c) grants consent to DoITT to inquire by any means into any matters contained in the response and into the legal, character, technical, financial, and other qualifications of the applicant.

(3) Each proposal to this RFP should provide detailed information which addresses and is responsive to the matters presented in Sections II, III-A, III-B, IV, V and VI below.

**IN ORDER TO PROVIDE SUCH REQUIRED INFORMATION IN A UNIFORM FORMAT, THE APPLICANT'S PROPOSAL SHOULD CONTAIN SEPARATE SECTIONS, SEPARATED BY TABS TO THE EXTENT FEASIBLE, ENTITLED AND DEVOTED TO THE FOLLOWING WHICH CORRESPOND TO SECTIONS II THROUGH VI OF THIS RFP:**

- II -- basic characteristics/system description;
- III-A -- technical qualifications and performance standards;
- III-B -- unique characteristics;

IV -- other cable systems (include Schedules from corresponding Exhibit IV);

V -- construction; and

VI -- financial and background information (include schedules from corresponding Exhibit VI).

## H. Proposal Evaluation Procedures

### (i) Evaluation Committee

Proposals shall be reviewed by an Evaluation Committee to be selected by the Commissioner of DoITT ("the Commissioner") consisting of not fewer than three (3) persons with knowledge, expertise and experience sufficient to make a fair and reasonable evaluation of the proposals. The Evaluation Committee may also consult with experts to assist in the evaluation of proposals.

*above the  
Evaluation  
Committee  
Consent of  
private  
parties?*

### (ii) Proposal Evaluation Criteria

The criteria to be used by the Evaluation Committee in evaluating proposals shall include, but not be limited to, the following to the extent applicable:

(a) the financial, legal, technical and managerial experience and capabilities of the applicant;

(b) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise;

(c) the efficiency of the public service to be provided;

(d) the impact, if any, on existing franchises and the services provided thereunder; and

(e) the adequacy of the compensation to be paid to the City.

The result of the evaluation procedure is that certain applicants may be identified to proceed to negotiation of a franchise agreement.

Following the receipt of all responses, DoITT will begin the evaluation of all applicants. During this period, it may be necessary to contact one or more applicants in order to clarify matters addressed in the responses. Reports regarding such contacts will be provided to all applicants.

At the conclusion of the evaluation work, DoITT will determine whether franchise negotiations should commence with a particular applicant.

## II. BASIC CHARACTERISTICS/SYSTEM DESCRIPTION

### A. Basic Characteristics

#### (i) Franchise Area

In its response to this Section of the RFP, each applicant is required to identify the specific Franchise Area for which its proposal is being submitted.

The applicant shall also describe, in detail, the cable television system it proposes to design and operate in the Franchise Area. The technical features and services of such cable television system should include the following:

#### (ii) Technical Features

a. Subscriber Network. Proposed systems should include subscriber cable(s) providing activated upstream bandwidth of at least 24 Mhz and seventy (70) activated downstream video channels. Responses should provide information on the projected usage during the franchise term of such channel capacity (including but not limited to, anticipated growth in pay-per-view, or other specialized services), and whether the minimum characteristics set forth above will be adequate in view of such projections.

The applicant may propose a system which includes greater channel capacity on the subscriber network than the system described above, either from initial operation, or thereafter pursuant to a planned upgrade. The City will require that channel capacity on the subscriber networks of the systems be maintained at a "state of the art" level (as defined in the City Council Resolution No. 1639). The applicant should set forth its suggestion(s) for mechanisms of when and how to increase the channel capacity on the subscriber network during the franchise term to maintain a "state of the art" obligation.

The City will require in the franchise agreement that certain channel capacity on the subscriber network be dedicated to public, educational and governmental access uses ("PEG") (See Section B below) and for commercial access use and each applicant's response shall include a proposal for this purpose.

b. Institutional Network. Proposed systems should also include a proposal for enhancing the City's Institutional Network ("I-NET") for government and educational use, which is described in Exhibit V. The City invites each applicant to describe how it would contribute to the City's I-Net. Such contribution(s) should be compatible with the I-Net architecture and equipment as described in Exhibit V

c. Interconnection. The proposal should describe how certain features of the subscriber network, such as PEG channels

and EAS (defined below) capability, and the institutional network, shall be optically interconnected at the system headends and hubs with (1) each of the other cable systems within the City; and (2) such other systems as the Commissioner may determine is appropriate.

d. Interactive Capability. Proposals should include a description of proposed interactive capability for its subscriber network, to the extent appropriate in the provision of cable services. Each applicant's proposal should describe how the applicant will maximize the development of interactive subscriber services and how it intends to provide interactive capability to subscribers, including the types of interactive services it intends to offer to subscribers. In addition, each applicant should describe how it will control its interactive services in order to protect the privacy rights of subscribers and the confidentiality of information transmitted on the cables.

e. Emergency Alert System. Each proposal should confirm that applicant will comply with FCC (defined below) rules regarding Emergency Alert Systems ("EAS") adopted November 10, 1994 and participate in the City's emergency alert program.

(iii) Services

a. Proposals should describe in detail the range of cable television services the applicant intends to offer, addressing separately each broad category of services (e.g., local and distant off-the-air broadcast signals; operator-originated programming; local sports, cultural, news, and children's programming or other categories of local origination programming; nonpay satellite; pay cable and pay-per-view services; audio services; public, educational and governmental access services; commercial access services; institutional services; and services for physically or mentally challenged persons and elderly persons).

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<sup>1</sup> Proposals should describe the extent to which the proposed systems will be addressable, that is, the extent to which systems will include addressable converters and/or other state-of-the-art addressable technology -- allowing for changes in service configurations without interruption of service or the need to make service calls to subscribers' premises -- which would be provided by the franchisee to any subscriber who subscribes to any service requiring such a device. Proposals should describe the total channel capacity of the converter to be utilized as part of the system. In addition, each applicant should state whether additional equipment, if any, will be necessary if a subscriber elects to subscribe to pay services or higher tiers of services, and should describe all such additional equipment. Proposals should describe the method of signal encoding to be used, which channels will be encoded, and what provisions will be made to

(continued...)

b. Proposals should describe the nature and types of broad categories of services the applicant intends to offer as a part of the basic service package for all categories of subscribers (e.g., local and distant off-the-air broadcast signals; operator-originated programming; local sports, cultural, news and children's programming or other categories of local origination programming; nonpay satellite or microwave programming services; audio services; public, educational and governmental access services and for commercial access services; institutional services; and services for physically or mentally challenged persons and elderly persons). Proposals should indicate how and when the applicant intends to provide such service package and each part thereof and should also describe the equipment to be used in providing the basic residential subscriber service package.

c. Proposals should describe, in detail, the applicant's plans to foster local access and, separately, local origination programming and the use of cable television on a local basis so as to reflect the ethnic and racial diversity of the franchise area, including broad categories of local origination programming (i.e., local sports, cultural, news and children's programming, etc.) which the applicant intends to foster.

**B. Public, Education and Governmental Access**

(i) Channel Capacity on Subscriber Network

In order to ensure the availability of a wide diversity of information sources to the public, the City seeks proposals that offer to dedicate a significant number of channels on the subscriber network for public, educational and governmental access use. Applicants should note that current franchisees dedicate four (4) video channels for public use which are under the control of the community access organization for the corresponding borough and five (5) video channels for governmental and educational use which are under the control of the City and include provisions for additional channels as subscriber network capacity increases. Proposals shall include the applicant's offer with respect to channels for public access use and for governmental and educational use as well as a mechanism for dedicating additional channels as subscriber network capacity increases.

(ii) Other Facilities and Equipment

"Crosswalks," the City's cable television network which consists of the City's five (5) governmental and educational access cable channels, and the community access organizations for each

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<sup>1</sup> (...continued)

accommodate cable-ready subscriber receivers or the rights of subscribers to use publicly available equipment (including, but not limited to, converters) in place of equipment provided by the franchisee.

borough which administer the four (4) public access channels in their respective boroughs, require facilities and equipment for their activities.

Each applicant should include as part of its proposal a discussion of its plans to contribute to such facilities and equipment.

(iii) Other Support

The City is a special and complex cable market. The residents, institutions, governmental agencies and businesses of the major international center of commerce and the arts have extensive and diverse information needs and aesthetic interests. In addition, the City's population size and density demand a uniquely sophisticated government services infrastructure.

The City believes that the development of public, educational and governmental access to the maximum extent possible is of primary importance. Accordingly, DoITT welcomes offers by the applicant for support to increase the public service potential of, and programming diversity offered by, cable television. Each applicant is invited to describe in detail whether and, if so, how it intends to support the public access channels and the governmental and educational access channels on an ongoing basis throughout the franchise term, including but not limited to, through financial support in the form of grants, contracts for services, joint ventures, or otherwise, advertising and publicity, training access users how to operate and maintain facilities and equipment and other training and technical assistance.

C. State-of-the-Art System

The City anticipates that all components of each of the systems, including, but not limited to, the technical and customer service components of the systems, shall be operated, maintained and upgraded to correspond to improvements in the "state-of-the-art" (as defined in Exhibit I to this RFP) of cable television technology or in the provision of services to the public.

In response to this RFP each applicant shall describe, in detail, its plans to ensure the foregoing.

D. Universal Service/Nondiscrimination

Each applicant should describe in detail the practices and procedures it commits to follow to ensure that the provision of cable service is nondiscriminatory throughout the franchise term, including the terms and conditions associated with such service. Such description shall include a statement as to how cable service is to be provided in a manner which ensures that access to cable service is not denied to any group of potential cable service subscribers. The applicant should also describe in detail how it intends to monitor the provision of cable service so as to ensure

that such service is offered on a nondiscriminatory basis throughout the Franchise Area.

**E. Customer Service**

Each applicant should describe in detail customer service standards the applicant would agree to meet in the operation of its system. Such standards should include at a minimum requirements imposed by state and federal law and regulation. Applicants are encouraged to also review Appendix I of the City's 1990 Manhattan franchise agreements and to specify whether the applicant is prepared to meet these standards where they exceed federal and state requirements. In addition, the applicant is asked to describe any other consumer protection issues which the applicant intends to address during the requested franchise term, as well as its detailed plans for doing so.

Finally, the City seeks to encourage assistance to persons who are economically disadvantaged so that cable service is affordable by all segments of the City's population. The applicant is requested to describe its plans for meeting the needs of economically disadvantaged persons, through discounts or otherwise.

**F. Cable Rates**

Each applicant should describe, in its proposal, rates proposed to be charged for various services, including but not limited to subscriber fees, installation charges, equipment, etc., and what channels will be included in each tier of service. The City recognizes that its authority to regulate such rates is subject to limitations imposed by federal law.

**G. Franchise Fee**

Applicants shall include in their proposals a franchise fee offer. In this connection, applicants may wish to review existing cable television franchise agreements granted by the City.

**H. Cable Act**

Nothing contained in this RFP, including the attachments hereto, establishes or is intended to establish any requirements inconsistent with the Cable Act.

### III-A. TECHNICAL QUALIFICATIONS AND PERFORMANCE STANDARDS

This Section of the RFP has been designed to elicit information regarding each applicant's technical qualifications and the technical features and performance standards of its proposed cable television system.

Each applicant shall, at a minimum, confirm that it will comply with the technical standards developed by the Federal Communications Commission (the "FCC") pursuant to the Cable Act and the regulations promulgated thereunder (i.e., 47 C.F.R., Ch. I, Subpart K) and shall maintain the system at a state-of-the-art level, as defined in City Council Resolution 1639 (Exhibit I of this RFP). Proposals should describe how the proposed system will meet or exceed these requirements.

It is essential that each applicant shall provide a separate response to each of the following paragraphs, rather than a narrative summary covering all paragraphs. In its response to this RFP, each applicant must describe in detail:

(i) Qualifications. The technical qualifications of the applicant or, if applicable, its Cable Affiliates to design and operate the system it proposes in the City as well as a complete identification, including the qualifications, of each additional entity which will participate substantially in design of the system. State whether in-house personnel, consultants, or manufacturers will perform the design work and describe the nature of any agreement(s) with such entity(ies) and the extent of any prior experience of such entity(ies) in the design of a cable system. Descriptions of the qualifications of any entity should include identification and qualifications of the entity's leading technical personnel.

(ii) Technical Performance. The technical performance commitment of the applicant which, shall at a minimum comply with the technical standards designed by the FCC and set out in the Code of Federal Regulations at 47 C.F.R. § 76.601 et seq. (subpart K).

(iii) Testing. The methodology, procedures, and equipment to be employed by the applicant in connection with performance tests of its system, including initial proof-of-performance, semi-annual, periodic, and other performance tests.

(iv) Technology. The applicant's plans to ensure that at all times its system is operated, maintained, and as necessary, upgraded to correspond to improvements in the state-of-the-art of cable television technology.

(v) Preventive Maintenance Program and Reporting. Each applicant should describe its plans for preventive maintenance and the reporting of such plans and their results to DoITT.