

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

VERIZON NEW YORK INC. and LONG ISLAND
LIGHTING COMPANY d/b/a LIPA,

Plaintiffs,

-against-

THE VILLAGE OF WESTHAMPTON BEACH,
THE VILLAGE OF QUOGUE and THE TOWN
OF SOUTHAMPTON,

Defendants.

11-CV-252 (LDW)

**JOINT STIPULATION OF FACTS REGARDING VERIZON'S AND LIPA'S
AUTHORITY TO LICENSE ATTACHMENTS TO THEIR UTILITY POLES**

Pursuant to this Court's February 4, 2013 Order, Plaintiffs Verizon New York Inc. ("Verizon") and Long Island Lighting Company d/b/a LIPA ("LIPA") along with Defendants the Village of Westhampton Beach ("Westhampton Beach") and the Village of Quogue ("Quogue") hereby submit this Joint Stipulation of Uncontested Facts Regarding Verizon's and LIPA's Authority to License Attachments to their Utility Poles.

STIPULATED FACTS

1. In March of 2010, the East End Eruv Association ("the EEEA"), a private organization, was formed for the purpose of working to establish an eruv in Suffolk County.
2. An eruv is a defined area that enables members of the Jewish faith with certain religious beliefs to carry and push objects within that area on the Jewish Sabbath and Yom Kippur.

3. The demarcation of the eruv the EEEA seeks to establish will be created, in part, by using telephone poles and wires, utility poles and wires, existing boundaries, and by attaching wooden or plastic strips (“lechis”) to the sides of the poles.

4. The EEEA seeks to establish an eruv for the benefit of its members.

5. The EEEA requested that Verizon and LIPA allow the EEEA to use their utility poles to create an eruv by attaching lechis to certain utility poles.

6. LIPA is a corporate municipal instrumentality and political subdivision of the State of New York. LIPA was created pursuant to the LIPA Act adopted in 1986, which is found generally at Pub. Auth. Law § 1020 (“the LIPA Act”). A true and correct copy of the LIPA Act is attached as Exhibit A.

7. The Village of Westhampton Beach is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. The Village of Quogue is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

9. Verizon is a telephone corporation, organized under the laws of the State of New York, that provides telephone services in New York State, including Long Island.

10. The EEEA and Verizon entered into an Eruv-Lechi Stave Agreement. The EEEA signed the agreement on May 10, 2010, and Verizon signed the agreement on August 16, 2010. A true and correct copy of the agreement is attached as Exhibit B.

11. On or about June 13, 2011, EEEA and Verizon entered into an updated Pole Attachment Agreement for Miscellaneous Attachments in order to provide for the attachment of 5/8” half-round PVC lechis, which will be no more than ten to fifteen feet in length, to certain of

Verizon's utility poles within Westhampton Beach, Quogue, and Southampton. A true and correct copy of the agreement is attached as Exhibit C.

12. On or about July 27, 2010, the EEEA and LIPA entered into a License Agreement, whereby LIPA agreed to allow the EEEA to affix lechis to certain of LIPA's poles, some of which are located within Westhampton Beach and Quogue. A true and correct copy of the agreement is attached as Exhibit D.

13. The lechis to be attached to Verizon's and LIPA's utility poles are 5/8" half-round strips of PVC that would measure no more than ten to fifteen feet in length and that would be indefinitely affixed vertically to the utility poles. The strips would stretch up from the ground.

14. Verizon and LIPA would permit but not require – unless directed to do so by the Court – the lechis to be painted subject to LIPA's restrictions that poles may not be painted yellow or red. The lechis could be visible, with the degree of visibility varying based on the observer's attentiveness and proximity to the poles.

15. Westhampton Beach and Quogue do not own the utility poles on which the lechis would be placed. The utility poles on which the lechis would be placed belong to Verizon and LIPA.

16. Verizon and LIPA do not own the real property on which their utility poles stand. Some or all of the utility poles stand within the bounds of the public streets of the Village of Westhampton Beach and the Village of Quogue, as the term "streets" is defined in New York Village Law § 6-600. *See Donnelly v. Village of Perry*, 451 N.Y.S.2d 494 (N.Y. App. Div. 1982).

17. The lechis proposed to be attached to Verizon's and LIPA's poles do not contribute to the generation or physical distribution of electricity, cable, telephone, internet, or other utility or communications service.

18. EEEA has requested licenses from Verizon to attach lechis to, among other utility poles, three of Verizon's utility poles located on Dune Road in the Village of Westhampton Beach.

19. LIPA has provided examples of agreements it has executed with other organizations to allow temporary attachments (which ultimately may or may not have been actually attached), including banners related to the Westhampton Beach St. Patrick's Day parade, the Holy Family Parish festival, the Don Scott Memorial Foundation run, the Plainedge Union Free School District budget vote, and the Town of Islip Earth Day Celebration. Of these examples, the Holy Family Parish festival, the Don Scott Memorial Foundation run, the Plainedge Union Free School District budget vote, and the Town of Islip Earth Day Celebration did not take place in the Town of Southampton, and the corresponding attachment agreements did not involve utility or telephone poles in the Town of Southampton, including the incorporated villages of Westhampton Beach and Quogue. The Westhampton Beach St. Patrick's Day parade did not take place in Quogue and did not involve utility or telephone poles in Quogue. Copies of such agreements are attached as Exhibits E-I.

20. The Board of Trustees of the Village of Quogue has denied the EEEA's application to attach lechis to utility poles in Quogue. Attached as Exhibit J is a copy of the decision of the Board of Trustees.

21. In 1949, the Westhampton Beach Board of Trustees adopted a resolution related to a request that LILCO had made to the Coast Guard seeking a Coast Guard permit to allow

LILCO to install an aerial power crossing over the Quogue Canal. Attached as Exhibit K is a copy of the Westhampton Beach Board of Trustee meeting minutes containing the resolution.

22. Attached as Exhibits L and M are copies of agreements between New York Telephone Company and the Village of Westhampton Beach regarding the installation or placement of new utility poles.

23. The location of the Verizon/LIPA poles in Quogue that are proposed to have lechi staves attached to form the eruv are set forth in the attached Exhibit N.

24. Attached as Exhibits O, P, and Q are true and correct copies of license agreements that Verizon has entered into with Westhampton Beach.

25. In 1910, the Town Board of the Town of Southampton (“Southampton Town Board”) granted a franchise agreement to Riverhead Electric Light Company for the area west of Quantuck Creek. A true and correct copy of the agreement is attached hereto as Exhibit R.

26. In 1911, the Southampton Town Board granted to Patchogue Electric Light Company a franchise for the area west of the Speonk River. A true and correct copy of the agreement is attached hereto as Exhibit S.

27. In 1912, the Southampton Town Board consented to the transfer of the franchise from Riverhead Electric Light Company to either the Patchogue Electric Light Company or Suffolk Light Heat and Power Company. A true and correct copy of the agreement is attached hereto as Exhibit T.

28. In 1917, the Southampton Town Board approved the assignment of the franchise to Long Island Lighting Company. A true and correct copy of the agreement is attached hereto as Exhibit U.

29. In 1964, the Southampton Town Board approved the transfer of the franchise from Patchogue Electric Light Company to Long Island Lighting Company. A true and correct copy of the agreement is attached hereto as Exhibit V.

30. The franchise agreement granted to Riverhead Electric Light Company, and subsequently assigned to Long Island Lighting Company, sets forth the authorization for the franchise. A true and correct copy of the agreement is attached hereto as Exhibit R.

31. LIPA acquired all of the common stock of the Long Island Lighting Company. LIPA acquired from LILCO all electric franchise and electric utility service responsibilities for all ultimate consumers of electricity within LILCO's former service territory.

32. Some or all of the poles that are proposed to be used for the eruv fall within the areas described in the Patchogue and Riverhead franchise agreements.

33. The Board of Trustees of the Village of Westhampton Beach adopted a resolution on November 7, 1938 regarding the restoration or replacement by the United States Coast Guard of certain utility poles on Dune Road, a true and correct copy of which is attached hereto as Exhibit W.

34. The Board of Trustees of the Village of Westhampton Beach adopted a resolution on December 1, 1952 regarding certain utility poles located on Dune Road, a true and correct copy of which is attached hereto as Exhibit X. To date, Verizon and the Village of Westhampton Beach have not located a signed franchise or consent for the New York Telephone Company to take over and operate the pole line along Dune Road, within the limits of the Village of Westhampton Beach.

35. The utility poles to which EEEA seeks to attach lechis include three of Verizon's utility poles located on Dune Road in Westhampton Beach.

36. An agreement on stipulated facts in this stipulation is not a concession that those facts are relevant to the legal issue being decided.

Respectfully submitted,

Dated: March 20, 2013
Washington, D.C.

Dated: March 20, 2013
Westbury, New York

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