

**EXHIBIT C**

# SUMMONS ISSUED

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U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

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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.

**CV 11 - 0252**

COMPLAINT

**SEYBERT, J.  
TOMLINSON, M.J.**

Plaintiffs Verizon New York Inc. ("Verizon New York") and Long Island Lighting Company d/b/a LIPA ("LIPA"), by their undersigned attorneys, for their Complaint herein, allege as follows:

**Introduction and Nature of the Action**

1. This is an action for a declaratory judgment and injunctive relief. Verizon New York and LIPA own and operate utility poles located in the Town of Southampton, including in The Village of Westhampton Beach and the Village of Quogue. The East End Eruv Association ("EEEE") and its members have asked Verizon New York and LIPA to allow the EEEA to

attach “lechis” to their utility poles in order to create an eruv (the “Eruv”). An eruv is a demarcated area that enables members of the Jewish faith with certain religious beliefs to carry or push objects within that area on the Sabbath and on Yom Kippur.

2. Lechis are wooden or plastic strips that do not interfere with the use or operation of utility poles; they have been installed in many locations throughout the country, including on Long Island, and they raise no health or safety concerns. Verizon New York and LIPA, who own the utility poles, are willing to allow the installation of such lechis to establish the Eruv and have entered into written agreements with the EEEA to that effect. However, Defendants the Town of Southampton, the Village of Westhampton and the Village of Quogue (collectively, the “Defendants”) have contended that the attachment of lechis to utility poles either is not permitted at all or requires Defendants’ prior approval pursuant to local laws that regulate the display of “signs” or that restrict intrusions upon public rights of way. Representatives of Defendants have stated publicly that they will not permit the Eruv to be established, that the installation of lechis would violate various local laws, and have threatened to impose fines and/or to take other legal action against Verizon New York and LIPA if they permit the installation of lechis.

3. The EEEA contends (and has provided photographs suggesting) that the local laws invoked by Defendants have not been consistently applied and that other attachments to utility poles and other intrusions over public rights of way have been permitted in the Defendants’ jurisdictions. The EEEA contends that under the circumstances the free exercise clause of the First Amendment to the United States Constitution, and federal statute, do not permit the cited local laws to be invoked by Defendants to bar the installation of lechis. The EEEA also contends that the cited local laws do not apply to the installation of lechis. As a result, the EEEA has asked Verizon New York and LIPA to permit the installation of lechis in

accordance with their contracts. The EEEA has also threatened legal action to enforce its contracts.

4. Defendants' actions affect Verizon New York and LIPA because they threaten to subject Verizon New York and LIPA to fines and other potential legal actions and to prevent Verizon New York and LIPA from fulfilling their agreements with EEEA. Verizon New York and LIPA therefore seek a declaration that they may permit lechis to be installed on their utility poles without incurring any fines or other legal sanctions and without any liability to the Defendants. Verizon New York and LIPA also ask that the Court enjoin the Defendants from interfering in any way with, or otherwise restricting or attempting to restrict, the installation of such lechis, and that the Court grant such other and further relief as may be just and proper.

#### **JURISDICTION AND VENUE**

5. This action arises in part under the Constitution and laws of the United States. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over each Defendant because each Defendant is located in this district.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because all of the defendants are located or reside in this district and because the actions by Defendants giving rise to the claims occurred in this district.

#### **THE PARTIES**

8. Plaintiff Verizon New York is a corporation organized under the laws of the State of New York with its principle office at 140 West Street, New York, NY 10007. Verizon New York is a subsidiary of Verizon Communications Inc. Verizon New York provides telecommunications services in New York State, including Long Island.

9. Plaintiff LIPA is a corporation organized under the laws of the State of New York and a wholly-owned subsidiary of the Long Island Power Authority. LIPA has its principle office at 333 Earle Ovington Blvd., Uniondale, NY 11510. LIPA owns and operates the electric transmission and distribution systems on Long Island and provides electric service to approximately 1.1 million customers on Long Island and the Rockaway Peninsula.

10. Defendant Village of Westhampton Beach (“Westhampton Beach”) is an incorporated village in Suffolk County, New York.

11. Defendant Village of Quogue (“Quogue”) is an incorporated village in Suffolk County, New York.

12. Defendant Town of Southampton (“Southampton”) is a town in Suffolk County, New York.

#### **FACTUAL ALLEGATIONS**

##### **I. Verizon New York’s and LIPA’s Agreements to Permit Attachments of Lechis**

13. An eruv, under Jewish law, is a demarcated area. The demarcation of an eruv boundary is created, in part, by using telephone or utility poles and wires and attaching small wooden or plastic strips (“lechis”) to the sides of the poles. The demarcation of an eruv allows Jews with certain religious beliefs to carry objects (purses, wallets and other items) or to push objects (wheelchairs, baby strollers, and other items) within the demarcated area on the Sabbath and Yom Kippur.

14. The demarcation of an eruv accommodates the religious beliefs of certain Jewish residents and visitors to an area and facilitates the exercise of their religious beliefs. Eruvs have been established in many areas in New York State (including Huntington, Stony Brook and elsewhere) and other areas throughout the country.

15. In 2010, the EEEA approached Verizon New York and LIPA and requested permission to affix lechis to Verizon New York's and LIPA's poles in order to complete the Eruv, which would fall within certain portions of the Defendants' boundaries. The lechis proposed to be used in the demarcation of the Eruv are smooth, sanded, soft wood or plastic strips that are no larger than 1" x 4" x 40" and that would be affixed to selected utility poles with the 40" dimension running vertically along the pole and attached flush against the pole.

16. Verizon New York and LIPA have determined that the installation of lechis does not interfere with the use or operation of utility poles. Verizon New York and LIPA are willing to permit the installation of such lechis in accordance with the agreements they have executed with the EEEA. This is in keeping with their practice in other areas and in other cases in which similar permissions have been sought.

17. In or about May 2010, Verizon New York entered into an Eruv-Lechi Stave Agreement with EEEA, a true and correct copy of which is attached hereto as Exhibit A (the "Verizon Agreement"). Pursuant to the Verizon Agreement, Verizon New York agreed to allow EEEA to affix lechis to Verizon New York's poles to complete the Eruv, subject to any permits or authorizations required by State or City laws and regulations.

18. On or about July 27, 2010, EEEA and LIPA entered into a License Agreement, a true and correct copy of which is attached hereto as Exhibit B (the "LIPA Agreement"). Pursuant to the LIPA Agreement, LIPA agreed to allow EEEA to affix lechis to LIPA's poles to complete the Eruv subject to the terms and conditions thereof, including the EEEA's compliance with all applicable laws, rules and regulations of governmental authorities.

## II. Defendants' Opposition

19. The EEEA's efforts to establish the Eruv have been the subject of intense local debate and opposition. Those efforts have prompted the formation of opposition groups, such as the Jewish People Opposed to the Eruv and the Alliance for Separation of Church and State in the Greater Westhampton Area, and have generated significant press coverage. Some opponents of the Eruv have expressed a desire to avoid an influx of Orthodox Jewish people into the affected area, including citing fears that the Eruv will lead to the creation of an Orthodox Jewish enclave, that property values will decline, or that the "character" of the communities will be disturbed.

20. Defendants, through their various official representatives, have reacted to the intense opposition from local residents by making public commitments to oppose the creation of the Eruv and by invoking local ordinances in an effort to accomplish that goal. This has included threatening to impose fines and other legal sanctions against Verizon New York and LIPA if they permit the installation of lechis.

### A. Westhampton Beach

21. In 2008, Westhampton Beach Building Inspector Paul Houlihan was quoted in local press sources as acknowledging that local ordinances do not prohibit the attachment of lechis to utility poles. *See* Jessica DiNapoli, Tenafly Eruv Battle Resonates in Westhampton Beach, The Southampton Press, August 18, 2008 (stating that "there is no sign ordinance special to the telephone poles," and that, in any event, the lechis would not qualify as signs for purposes of the local laws) attached hereto as Exhibit C.

22. Nevertheless, the trustees of Westhampton Beach sent a letter dated May 18, 2009 to Verizon New York counsel William Balcerski, referring to the potential establishment of the

Eruv and contending that the local sign laws required the prior approval of Westhampton Beach before lechis could be attached to utility poles in the Village. The letter referred to the Westhampton Beach sign law, and stated:

It's the Board's understanding that Verizon has again been discussing with the Hampton Synagogue an agreement that would result in attachments to utility poles owned by Verizon and/or the Long Island Power Authority located within Village limits in order to create an "eruv" under Jewish law. The Board further understands Verizon's position to be that it will not execute the proposed agreement, and will not take or permit any action with respect to utility pole attachments, unless and until the Village approves the attachments.

Westhampton Beach Letter, attached hereto as Exhibit D.

23. Mayor Teller of Westhampton Beach has publicly announced that he is opposed to the establishment of the Eruv. Will James, Debate over Jewish religious boundary begins to heat up, The Southampton Press, September 29, 2010, attached hereto as Exhibit E (noting that "[a]ll five members of the Westhampton Village Board, including Mr. Teller, said they will oppose an eruv if an application is ever presented to them"). More recently, Mayor Teller has confirmed that "he would abide by the wishes of his constituents and oppose the Eruv." Jennifer Barrios, Nonprofit Gets Preliminary Oks For Hamptons Eruv, Newsday, October 31, 2010, attached hereto as Exhibit F.

24. Members of the Board of Trustees of Westhampton Beach have also announced their opposition to the establishment of the Eruv. More particularly:

(a) In June 2010, Trustee Birk stated that her position with respect to the Eruv had not changed and that she continues to oppose it. Hallie D. Martin, Toni-Jo Birk Seeks Third Term in Westhampton Beach, The Southampton Press, June 16, 2010, attached as Exhibit G.



(b) Trustee Farrell has stated that she would not support the creation of an Eruv in Westhampton Beach and that “the community has made it clear that it opposes the idea.” Hallie D. Martin, Sue Farrell Makes First Bid for Public Office in Westhampton Beach, The Southampton Press, June 16, 2010, attached as Exhibit H.

(c) Trustee Tucker has stated that “the Eruv will never happen on my watch.” Hallie D. Martin, Hank Tucker Seeks to Unseat Mayor in Westhampton Beach, The Southampton Press, June 16, 2010, attached as Exhibit I.

(d) A June 2009 campaign flyer bearing both Trustee Levan’s and Trustee Tucker’s names stated, “[w]e will vigorously oppose any effort to obtain an eruv proclamation from any government official or entity outside of our Village. We will continue to make certain you have an opportunity to express your views, and will defend your right to oppose the eruv.” Levan and Tucker Campaign Flyer, June 2009, attached as Exhibit J.

25. The Mayor and Trustees of Westhampton Beach therefore have made clear that they oppose installation of lechis and would reject any application to permit the installation of lechis in furtherance of creating the Eruv in Westhampton Beach and that they justify their opposition on the perceived desires of local residents.

26. Verizon New York and LIPA have been informed by the EEEA (and the EEEA has provided photographs suggesting) that other signs and objects have been placed on utility poles in Westhampton Beach that apparently have not been subject to enforcement under the Westhampton Beach sign law that allegedly bars such objects.

**B. Quogue**

27. On or about September 9, 2010, Mayor Peter S. Sartorius of the Village of Quogue sent a letter (“Quogue Letter”) to Mr. Balcerski and to LIPA counsel Lynda Nicolino, which referred to the potential establishment of an eruv and which stated:

The purpose of this letter is to advise you that Chapter 158 of the Quogue Village Code, which is available at [www.villageofquogue.com](http://www.villageofquogue.com), prohibits any encroachments or projections (as those terms are defined) in any public right-of-way. Thus, any attachment of a non-utility device to any utility pole located in the right-of-way would be prohibited.

In any event, I understand that the position of Verizon with regard to attachment of a device to any pole (taken in connection with Westhampton Beach) is that local municipal approval is required.

Quogue Letter, attached hereto as Exhibit K.

28. By email dated September 17, 2010, Mr. Balcerski informed EEEA that, because the villages of Westhampton Beach and Quogue had sent letters voicing their position that their approval was required for the establishment of the Eruv, Verizon New York would not license any attachments to its poles in those communities until the communities’ opposition was resolved.

29. Subsequently, EEEA provided Verizon New York with an opinion by its counsel, Weil, Gotshal & Manges (“Weil”), to the effect that no Quogue rule or ordinance applied to the establishment of the Eruv, that no rule or ordinance prevented the installation of lechis, and that the opposition of Quogue to the Eruv was in violation of the First Amendment and federal law. *See* October 4, 2010 Letter from Robert Sugarman to EEEA, attached hereto as Exhibit L. Among other things, the EEEA provided photographs suggesting that local officials have permitted signs and other objects to be placed on utility poles throughout Quogue.

30. Thereafter, by letter dated October 26, 2010, addressed to the Mayor of Quogue and copied to other parties (including Westhampton Beach), Verizon New York affirmed that

Verizon New York had no objection to the attachment of lechis to Verizon New York's poles, and invited a response to the opinion letter received from Weil (a copy of which was enclosed with the October 26 letter). Verizon New York later agreed to withhold action to give Quogue time to retain counsel and to provide a response.

31. By letter dated November 22, 2010, the Village of Quogue provided Verizon New York and LIPA with a memorandum prepared by Village Attorney Richard DePetris and Special Counsel Marci Hamilton. The memorandum expressed the opinion that "permission from the Village Board of Trustees is required for the attachment of lechis to utility poles located on Village streets for the purpose of establishing an eruv." November 19, 2010 Memorandum from Marci Hamilton and Richard DePetris ("Counsel's Memo") at 4, attached hereto as Exhibit M.

32. By letter dated December 17, 2010, a copy of which is attached as Exhibit N, Mayor Sartorius informed Verizon New York and LIPA that "there are laws that we believe clearly prohibit the attachment of lechis to utility poles without the Village's permission, and we will enforce them against Verizon and LIPA as the owners of the poles. The Village's ordinance provides for fines of \$1,000 per day and other penalties."

33. Thus, the Village of Quogue has made clear that it opposes the installation of lechis, and takes the position that it would reject, any application to install such lechis to create the Eruv in the Village of Quogue.

34. Verizon New York and LIPA have been informed by the EEEA (and the EEEA has provided photographs suggesting) that there are other objects placed on utility poles in Quogue that apparently have not been subject to enforcement under the Quogue law that allegedly bars such objects as encroachments upon public rights of way.

**C. Southampton**

35. Southampton Town Attorney Michael C. Sordi wrote a letter to Mr. Balcerski dated November 16, 2010, copying LIPA counsel Michele Pincus, Mayor Sartorius, Mayor Teller, and EEEA, advising each such person of Southampton's position that the proposed Eruv would be "in contravention" of local sign laws. *See* Letter, attached hereto as Exhibit O. Citing § 330-203(B) of the Code of the Town of Southampton prohibiting the placement of signs throughout the town, the letter contended:

Base[d] upon the definitions of our sign law, and based upon the specification you provided to us with your letter, I am compelled to conclude that the lechis constitute a "sign" within the meaning and intendment of our Statute. Accordingly, the same are prohibited.

Sordi Letter at 2.

36. In response, EEEA provided Verizon New York and LIPA with a letter from Weil, explaining that affixing lechis to poles as part of the construction of the Eruv presents no violation of the sign law or any other provision of the Code of the Town of Southampton. November 18, 2010 Letter from Robert Sugarman to EEEA, attached hereto as Exhibit P. By email dated November 30, 2010, Mr. Sordi acknowledged receipt of a copy of the letter that Verizon New York had forwarded and asked for a statement of Verizon New York's intentions, but did not change the position asserted by Southampton as to the application of the sign law.

37. Verizon New York and LIPA have been informed by the EEEA (and the EEEA has provided photographs suggesting) that other signs and objects on utility poles in Southampton apparently have not been subject to enforcement under the Southampton sign law that allegedly bars such objects.

### **III. Plaintiffs' Dilemma**

38. Defendants' threats and actions have created a situation in which the obligations and rights of Verizon New York and LIPA are uncertain and the resolution of which turns, in part, on significant questions of federal constitutional and statutory law.

39. Lechis do not interfere with the operation of utility poles. Verizon New York and LIPA have permitted the attachment of lechis in other areas in Long Island and are fully willing to permit their installation here. Verizon New York and LIPA have entered into contracts that would permit the lechis to be installed, subject only to the satisfaction of any legitimate laws or regulations relating to the installation of such lechis and certain other conditions which EEEA has satisfied.

40. Defendants have threatened to impose fines and/or to pursue other legal remedies and actions in the event that Verizon New York and LIPA permit the installation of lechis on their utility poles. On the other hand, Verizon New York and LIPA face potential liability to the EEEA, and action by the EEEA, if they do not permit the lechis to be installed on their respective poles.

41. No matter which party or parties are right, Verizon New York and LIPA require clarification of the applicability and enforceability of the cited local laws and of Verizon New York's and LIPA's associated rights and obligations.

#### **FIRST CLAIM FOR RELIEF**

42. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 41, inclusive, as though fully set forth herein.

43. Verizon New York and LIPA are contractually obligated to permit the installation of lechis, provided such installations conform with valid local laws and regulations.

44. Without the Eruv, Orthodox Jews in the relevant municipalities are limited in their religious observance because they cannot carry objects, or push baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur. Such Orthodox Jews would not have this difficulty were the lechis installed and the Eruv established.

45. Verizon New York and LIPA are not aware of any aesthetic, safety, traffic, fiscal, or other problem that that would be caused by the attachment of lechis to utility poles in Westhampton Beach, Quogue, and Southampton, and are not aware of any compelling governmental interest sufficient to restrict the attachment of such lechis.

46. The EEEA has made clear that it believes the local laws are being invoked in a manner that violates the right to free exercise of religion under the First Amendment. Defendants have made clear that they intend to enforce the cited local laws and to proceed against Verizon New York and LIPA should lechis be installed.

47. Without a declaration as to the applicability and enforceability of the asserted local rules and ordinances, including their legality in light of the First Amendment's Free Exercise Clause, Verizon New York and LIPA face potential legal liability, either from Defendants (which have threatened fines or other legal action in the event that Verizon New York and LIPA permit the installation of lechis) or from the EEEA (which has contractual rights to install the lechis and has threatened legal action).

48. The issues raised herein represent a present controversy as to whether the Free Exercise Clause of the First Amendment applies to prevent the threatened invocation of local laws and the threatened actions against Verizon New York and LIPA. That controversy is ripe and appropriate for resolution by this Court.

**SECOND CLAIM FOR RELIEF**

49. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 41 and 43 through 48 as if fully set forth herein.

50. The local laws invoked by Defendants with respect to the attachment of lechis constitute the imposition or implementation of a land use regulation within the meaning of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §2000cc(a)(1).

51. Without the Eruv, Orthodox Jews in the relevant municipalities are limited in their religious observance because they cannot carry objects, or push baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur. Such Orthodox Jews would not have this difficulty were the lechis installed and the Eruv established.

52. Verizon New York and LIPA are not aware of any aesthetic, safety, traffic, fiscal, or other problem that that would be caused by the attachment of lechis to utility poles in Westhampton Beach, Quogue, and Southampton, and are not aware of any compelling governmental interest sufficient to restrict the attachment of such lechis.

53. The EEEA has made clear that it believes the local laws are being invoked in a manner that violates RLUIPA. Defendants have made clear that they intend to enforce the cited local laws and to proceed against Verizon New York and LIPA should lechis be installed.

54. Without a declaration as to the applicability and enforceability of the asserted local rules and ordinances, including their legality in light of RLUIPA, Verizon New York and LIPA face potential legal liability, either from Defendants (which have threatened fines or other legal action in the event that Verizon New York and LIPA permit the installation of lechis) or from the EEEA (which has contractual rights to install the lechis and has threatened legal action).

55. The issues raised herein represent a present controversy that is ripe and appropriate for resolution by this Court.

**THIRD CLAIM FOR RELIEF**

56. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 41, 43 through 48 and 50 through 55 as if fully set forth herein.

57. As alleged herein above, EEEA has sought to establish the Eruv in Westhampton Beach, Quogue, and Southampton. To that end, EEEA has entered into private contracts with Verizon New York and LIPA to allow EEEA to affix lechis to Verizon New York's and LIPA's utility poles.

58. Defendants have taken the position that local laws prohibit the installation of lechis for the creation of the Eruv and/or that their approvals are required for the installation of lechis for the creation of the Eruv. EEEA has taken the position that by their own terms, such local laws do not apply to lechis installed on utility poles and there is no legal or factual basis for Defendants' positions.

59. Without a declaration as to the applicability of the asserted local rules and ordinances, Verizon New York and LIPA face potential legal liability, either from Defendants (which have threatened fines or other legal action in the event that Verizon New York and LIPA permit the installation of lechis) or EEEA (which has contractual rights to install the lechis and has threatened legal action).

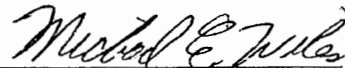
60. By virtue of the foregoing, there now exists an actual, justiciable controversy between Plaintiffs and Defendants relating to their respective legal rights, duties, and obligations under the local laws, ordinances and regulations of Westhampton Beach, Quogue, and Southampton, which controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201.



WHEREFORE, Plaintiffs respectfully demand judgment against Defendants as follows:

- A. Declaring that Defendants are barred from enforcing the local laws, ordinances and regulations to prevent the installation of lechis;
- B. Permanently enjoining the Defendants from taking any actions which would prevent the Plaintiffs from allowing the installation of lechis on their utility poles for the creation of the Eruv;
- C. In the alternative, granting such other declarations as to the applicability of the cited local laws, ordinances and regulations, and of the rights and obligations of Verizon New York and LIPA under such laws, ordinances and regulations, as may be appropriate; and
- D. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 18, 2011



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**EXHIBIT D**

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.

Docket No:  
11-CV-0252 (LDW)

**ANSWER**

Defendant THE VILLAGE OF WESTHAMPTON BEACH, by and through its attorneys, SOKOLOFF STERN, LLP hereby answers plaintiffs' Complaint (the "complaint") as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "1" of the complaint.
2. Denies the allegations set forth in paragraph "2" of the complaint.
3. Denies the allegations set forth in paragraph "3" of the complaint.
4. Denies the allegations set forth in paragraph "4" of the complaint.
5. Denies the allegations set forth in paragraph "5" of the complaint, and refers all questions of law to the Court for adjudication.
6. Denies the allegations set forth in paragraph "6" of the complaint, and refers all questions of law to the Court for adjudication.
7. Denies the allegations set forth in paragraph "7" of the complaint, and refers all questions of law to the Court for adjudication.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "8" of the complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the complaint.

10. Admits the allegations set forth in paragraph “10” of the complaint.

11. Admits the allegations set forth in paragraph “11” of the complaint.

12. Admits the allegations set forth in paragraph “12” of the complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the complaint.

15. Denies the allegations set forth in paragraph “15” of the complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the complaint.

20. Denies the allegations set forth in paragraph “20” of the complaint.

21. Denies the allegations set forth in paragraph “21” of the complaint.

22. Denies the allegations set forth in paragraph “22” of the complaint.

23. Denies the allegations set forth in paragraph “23” of the complaint.

24. Denies the allegations set forth in paragraph “24” of the complaint.

25. Denies the allegations set forth in paragraph “25” of the complaint.
26. Denies the allegations set forth in paragraph “26” of the complaint.
27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the complaint.
28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the complaint.
29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the complaint.
30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the complaint.
31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the complaint.
32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the complaint.
33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the complaint.
34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the complaint.
35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “35” of the complaint.
36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the complaint.

38. Denies the allegations set forth in paragraph “38” of the complaint.

39. Denies the allegations set forth in paragraph “39” of the complaint.

40. Denies the allegations set forth in paragraph “40” of the complaint.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “41” of the complaint.

#### **FIRST CLAIM FOR RELIEF**

42. Defendant repeats, reiterates, and realleges the responses set forth in paragraphs “1” through “41” of this answer as if fully set forth herein.

43. Denies the allegations set forth in paragraph “43” of the complaint.

44. Denies the allegations set forth in paragraph “44” of the complaint.

45. Denies the allegations set forth in paragraph “45” of the complaint.

46. Denies the allegations set forth in paragraph “46” of the complaint.

47. Denies the allegations set forth in paragraph “47” of the complaint.

48. Denies the allegations set forth in paragraph “48” of the complaint.

#### **SECOND CLAIM FOR RELIEF**

49. Defendant repeats, reiterates, and realleges the responses set forth in paragraphs “1” through “48” of this answer as if fully set forth herein.

50. Denies the allegations set forth in paragraph “50” of the complaint.

51. Denies the allegations set forth in paragraph “51” of the complaint.

52. Denies the allegations set forth in paragraph “52” of the complaint.

53. Denies the allegations set forth in paragraph “53” of the complaint.
54. Denies the allegations set forth in paragraph “54” of the complaint.
55. Admits the allegations set forth in paragraph “55” of the complaint.

**THIRD CLAIM FOR RELIEF**

56. Defendant repeats, reiterates, and realleges the responses set forth in paragraphs “1” through “55” of this answer as if fully set forth herein.

57. Denies the allegations set forth in paragraph “57” of the complaint.
58. Denies the allegations set forth in paragraph “58” of the complaint.
59. Denies the allegations set forth in paragraph “59” of the complaint.
60. Denies the allegations set forth in paragraph “60” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

1. The complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

2. Plaintiffs lack standing to assert some or all of the claims set forth in the complaint.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

3. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have they violated any Act of Congress providing for the protection of civil rights.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

4. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has it violated any Act of Congress providing for the protection of civil rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

5. At all times relevant to the acts alleged in the complaint, defendant, its agents and officials, acted reasonably, properly, and in the lawful exercise of their discretion.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

6. Verizon and LIPA lack authority to issue licenses for the attachment of lechis to public utility and telephone poles in the Village of Westhampton Beach.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

7. The attachment of lechis to public utility and telephone poles in the Village of Westhampton Beach would expose the Village to liability under the First Amendment's prohibition against the establishment of religion.



**VILLAGE OF WESTHAMPTON BEACH  
COUNTERCLAIMS AGAINST VERIZON AND LIPA**

**The East End Eruv Association, Verizon, and LIPA Seek to Use  
Public Resources to Create a Purely Religious Boundary**

1. The East End Eruv Association (“EEEE”) seeks to establish an eruv in the Village of Westhampton Beach.

2. The EEEA claims that an eruv is a religious boundary which allows certain observant religious Jews to carry objects to the Sabbath and Yom Kippur, where they otherwise would be prohibited by their religion from doing so.

3. The eruv or eruvin the EEEA claims that it seeks and which Verizon and LIPA have agreed to help establish are to be created by, *inter alia*, attaching lechis (long plastic strips) to telephone and utility poles in the Village of Westhampton Beach.

4. These lechis are visible to people who are on or are traversing the public roads abutting the poles on which they are attached.

5. Both the lechis and the poles to which plaintiffs and the EEEA seek to attach them are located exclusively on public property.

6. Eruvin and the lechis from which they are made are religious symbols that communicate a religious message. To observant Jews, they communicate the demarcation of an area and imbue that area with religious meaning. To these observant Jews, lechis signify an area set apart, where they may carry objects and perform other tasks otherwise prohibited on the Sabbath in areas that are not enclosed by the eruv.

7. The religious symbol and its religious message is known to the general public, as well.

8. By virtue of earlier public discussions by Orthodox Jews about the nature of an eruv, and by virtue of this litigation, and earlier litigation in the New York Metropolitan Area, the religious meaning of an eruv has been a part of the local public discourse for several years. Upon information and belief, the majority of local residents, residents of adjoining towns, and visitors to those municipalities are familiar with the religious message conveyed by an eruv.

9. To reasonable observers, including atheists, agnostics, non-Jews, non-observant Jews, and observant Jews who do not share EEEA members' beliefs with regard to eruv, the existence of an eruv in Westhampton Beach (and its lechis) on public property would communicate the message that the municipality or municipalities in which the lechis are situated has endorsed and put its official stamp of approval on one particular set of Jewish beliefs. In addition, the affixing of a lechi, a religious symbol, on public property would communicate that the Village government has cordoned off a religious area, in the manner of a religious ghetto, using public property and resources to create a purely religious boundary.

**Verizon Poles on Dune Road are Subject to Franchise Agreements**

10. Verizon intends to issue licenses to the EEEA to allow the EEEA to affix lechis to telephone and utility poles within the Village of Westhampton Beach for the purpose of creating an eruv.

11. A number of the poles for which Verizon intends to issue licenses are located on Dune Road in the Village of Westhampton Beach.

12. Verizon's poles on Dune Road in the Village are subject to franchise agreements that do not permit diversion to private use.

13. In November 1938, two months after the 1938 hurricane destroyed most of the homes and other structures on Dune Road in the Village,<sup>1</sup> the United States Coast Guard, a federal agency, in recognition of the Village's jurisdiction over Dune Road, requested a franchise agreement with the Village to construct poles on Dune Road in order to maintain the circuits for the Coast Guard.

14. The Village granted the Coast Guard a franchise ("1938 Franchise") to construct the poles.

15. In granting the franchise to the Coast Guard, the Village imposed several conditions, including a limitation on the entities that could use the poles.

16. The 1938 Franchise limited the use of the poles to the Coast Guard, New York Telephone Company and Long Island Lighting Co.

17. The 1938 Franchise makes no mention of any other entity authorized to use the poles, including any private entity for private purpose.

18. In 1952, at the request of the New York Telephone Company, the Village granted New York Telephone Company a franchise ("1952 Franchise") to take over and operate the poles on Dune Road.

19. The 1952 Franchise did not give New York Telephone any additional or greater rights beyond those rights originally granted to the Coast Guard.

20. Nothing in the 1938 or 1952 Franchise Agreements with the Village permits Verizon, now, to enter into the sublicense agreement at issue, *i.e.*, one that allows the EEEA, a private entity, to attach anything to the Verizon utility poles for private purposes.

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<sup>1</sup> The 1938 hurricane (which occurred before official forecasters gave hurricanes human names) was the sixth most costly hurricane in 1998 dollars. See [www2.sunysuffolk.edu/mandias/38hurricane](http://www2.sunysuffolk.edu/mandias/38hurricane).

**New York Transportation Corporation Law § 27 Does Not Apply to Poles on Dune Road**

21. Verizon, through its counsel, has indicated that it believes that N.Y. Transportation Corporations Law § 27 (“Section 27”) gives it the authority to grant the EEEA licenses to attach items to their poles.

22. Section 27, however, does not apply to the Dune Road Franchise Agreements with the Village.

23. The 1938 Franchise Agreement between the Coast Guard and the Village was not subject to Section 27, since the Coast Guard is not subject to the provisions of the law.

24. Section 27 provides in part:

Any such corporation may erect, construct and maintain the necessary fixtures for its lines upon, over or under any of the public roads, streets and highways... and may erect, construct and maintain its necessary stations, plants, equipment or lines upon, through or over any other land, subject to the right of the owners thereof to full compensation for the same.

25. The utility poles on Dune Road are outside the reach of this statute. The Coast Guard, not Verizon or any of its predecessors, erected, constructed, and maintained by facilities pursuant to a separate franchise granted by the Village. Section 27 did not alter that agreement or create any further legal rights.

26. When, in 1952, the Village granted New York Telephone Company (now, Verizon) the franchise in 1952 to take over the poles on Dune Road, New York Telephone Co. assumed the obligation of the Coast Guard under the 1938 franchise agreement, which, in turn, was not subject to the provisions of § 27.

**LIPA’s Poles in the Village are Subject to Franchise Agreements**

27. LIPA lacks authority to issue licenses to the EEEA for the attachment of lechis to utility poles in the Village of Westhampton Beach.

28. Transportation Corporation Law § 11(3) (“§ 11(3)”) provides that an electric corporation can lay, erect, and construct wires, etc. in, on, and over the streets of towns and villages with the consent of the municipal authorities.

29. Additionally, like Verizon, LIPA’s telephone poles in the Village are subject to franchise agreements.

30. In 1910, the Town of Southampton granted a franchise (“1910 Franchise”) to Riverhead Electric Light Company (“Riverhead”) to erect and maintain poles for the purpose of supplying electricity to the town residents west of Quantuck Creek.

31. Nothing in the 1910 Franchise Agreement permitted Riverhead or its successors to sublicense its utility poles to private entities, such as the EEEA, for private purposes.

32. Riverhead was subsequently acquired by LILCO, which, in turn, was acquired by LIPA.

33. LIPA is bound by the 1910 Franchise Agreement with Riverhead, and it does not have the authority to grant a sublicense to EEEA.

34. Additionally, in 1911 the Town of Southampton granted a franchise to Patchogue Electric Light Company, with the easterly boundary being the Speonk River and the westerly boundary being the westerly boundary of the Town of Southampton. The franchise granted to Patchogue is the same as granted to Riverhead, except the covered area was the western end of the Town of Southampton.

35. These franchise agreements are still in existence with the utilities, and these agreements do not allow the utilities to sublicense the use of the poles for private purposes.

**AS AND FOR A FIRST COUNTERCLAIM**

36. Defendant repeats and realleges each and every allegation of paragraphs 1 through 35, inclusive, as though fully set forth herein.

37. Verizon has indicated that it intends to issue licenses to the EEEA for the attachment of lechis to certain utility poles located on public property on Dune Road in the Village of Westhampton Beach.

38. Verizon maintains that it has authority under New York State Law to issue licenses for the attachment of lechis to those utility poles located on Dune Road.

39. Verizon lacks any such authority.

40. In, fact, if Verizon issues licenses to the EEEA for the attachment of lechis to utility poles on Dune Road, Verizon will act outside its authority under state law, will exceed its authority under the 1938 and 1952 Franchise Agreements with Westhampton Beach, and will interfere with Westhampton Beach's right and responsibility to exercise exclusive control and supervision of its streets and highways pursuant to N.Y. Village Law § 6-602.

41. If Verizon issues licenses to the EEEA for the attachment of lechis, it will be acting *ultra vires*.

42. By virtue of this disagreement, there exists an actual, justiciable controversy between Verizon and Westhampton Beach relating to their respective legal rights, duties, and obligations under state and local law, which controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201.

**AS AND FOR A SECOND COUNTERCLAIM**

43. Defendant repeats and realleges each and every allegation of paragraphs 1 through 35, inclusive, as though fully set forth herein.

44. LIPA intends to issue licenses to the EEEA for the attachment of lechis to certain utility poles on public property located on Dune Road in the Village of Westhampton Beach.

45. LIPA maintains that it has authority under New York State Law to issue licenses for the attachment of lechis to those utility poles located on Dune Road.

46. LIPA lacks any such authority.

47. In fact, if LIPA issues licenses to the EEEA for the attachment of lechis to utility poles on Dune Road, LIPA will act outside its authority under state law, will exceed its authority under the 1910 and 1911 Franchise Agreements, and will interfere with Westhampton Beach's legal requirement to exercise exclusive control and supervision of its streets and highways pursuant to N.Y. Village Law § 6-602.

48. If LIPA issues licenses to the EEEA for the attachment of lechis, it will be acting *ultra vires*.

49. By virtue of this disagreement, there exists an actual, justiciable controversy between LIPA and Westhampton Beach relating to their respective legal rights, duties, and obligations under state and local law, which controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201.

**AS AND FOR A THIRD COUNTERCLAIM**

50. Defendant repeats and realleges each and every allegation of paragraphs 1 through 35, inclusive, as though fully set forth herein.

51. The attachment of lechis to utility and telephone poles on public property in the Village of Westhampton Beach would subject the Village of Westhampton Beach to liability for violation of the First Amendment's Establishment Clause.

52. The attachment of lechis to utility and telephone poles on public property in the Village of Westhampton Beach would put the Village in the position of promoting and/or affiliating and/or endorsing the religious concept of an eruv or the religious faith that seeks its benefits.

53. The Establishment Clause prohibits a government from appearing to take a position on questions of religious belief. The permanent placement of an eruv on public property would put the Village of Westhampton Beach in the position of appearing to take a position on questions of religious belief.

54. The Establishment Clause prohibits a government from making adherence to a religion relevant in any way to a person's standing in the political community. The permanent placement of an eruv on public property would create the only such religious symbol on public property within the Village and would convey the message that those Orthodox Jews who secured the permanent placement of their religious symbol on public property have an enhanced standing in community.

55. Since N.Y. Village Law § 6-602 charges the Village with exclusive control and supervision of its streets and highways, if an eruv is created through the attachment of lechis to telephone and utility poles in the Village of Westhampton Beach, the public will conclude that



the Village government has authorized the placement of such lechis, thereby creating a religious boundary, endorsing the Jewish faith over the faiths of others, and endorsing one particular set of Jewish religious beliefs.

56. Verizon and LIPA should be barred from issuing licenses for the attachment of lechis to telephone and utility poles in the Village of Westhampton Beach because the issuance of such licenses and attachment of such lechis would expose the Village to liability for violation of the Establishment Clause of the First Amendment of the United States Constitution.

**AS AND FOR A FOURTH COUNTERCLAIM**

57. Defendant repeats and realleges each and every allegation of paragraphs 1 through 35 inclusive, as though fully set forth herein.

58. LIPA is a corporate municipal instrumentality and political sub-division of the State of New York. As such, LIPA is a state actor, subject to the strictures of the United State Constitution, including the First Amendment's Establishment Clause.

59. LIPA's issuance of licenses for the permanent attachment of lechis to utility poles in the Village of Westhampton would violate the First Amendment's Establishment Clause in that it would divert public property to a purely religious purpose and place LIPA's imprimatur on the establishment of a purely religious boundary. Based on the issuance of such licenses, together with LIPA's efforts in coordinating with the EEEA and Verizon to bring the instant action against the Westhampton Beach, it is reasonable for the public to conclude that there was collusion between LIPA and the Village of Westhampton Beach and that LIPA seeks to advance the goals of one religious group over others and over those with no religious beliefs.

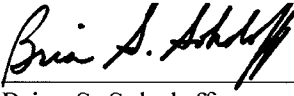
**WHEREFORE**, defendants respectfully demand judgment against plaintiffs as follows:

- A. Dismissing plaintiffs' Complaint;
- B. Declaring that Verizon and LIPA are barred from issuing licenses for the attachment of lechis to telephone and utility poles on public property on Dune Road in the Village of Westhampton Beach;
- C. Permanently enjoining Verizon and LIPA from issuing licenses for the attachment of lechis to telephone and utility poles on public property on Dune Road in the Village of Westhampton Beach;
- D. Declaring that LIPA is barred from issuing licenses for the attachment of lechis to utility poles on public property in the Village of Westhampton Beach;
- E. Declaring that the placement of lechis on utility poles on public property is an *ultra vires* act by the utilities responsible for the poles;
- F. Permanently enjoining LIPA from issuing licenses for the attachment of lechis to utility poles on public property in the Village of Westhampton Beach;
- G. In the alternative, granting such other declarations as to the applicability of the First Amendment, New York State laws, local laws, ordinances and regulations, and of the rights and obligations of Verizon New York and LIPA under the First Amendment, New York State laws, local laws, ordinances and regulations, as may be appropriate; and

H. Granting such other and further relief as the Court may deem just and proper.

Dated: Westbury, New York  
July 9, 2012

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Defendants

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**EXHIBIT E**

**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)**

**ANSWER TO  
COUNTERCLAIMS**

**ANSWER OF VERIZON NEW YORK INC. TO COUNTERCLAIMS  
FILED BY THE VILLAGE OF WESTHAMPTON BEACH**

Plaintiff/Counterclaim Defendant VERIZON NEW YORK INC. (“Verizon”), by and through its undersigned attorneys, as and for its Answer to the counterclaims (the “Counterclaims”) asserted by Defendant/Counterclaim Plaintiff THE VILLAGE OF WESTHAMPTON BEACH (“WHB”), states as follows:

1. Verizon denies that paragraph 1 of WHB’s Counterclaims is a complete and accurate summary of the eruv that the East End Eruv Association (the “EEEE”) seeks to establish, but admits that the EEEA seeks to establish an eruv, part or all of which would be located in the Village of Westhampton Beach.

2. Verizon denies that paragraph 2 of WHB’s Counterclaims is a complete summary of the claims asserted by EEEA, but admits that an eruv is a defined area that enables members of the Jewish faith with certain religious beliefs to carry or push objects within that area on the Sabbath and on Yom Kippur.

3. Verizon admits that the EEEA has asked Verizon and the Long Island Power Authority (“LIPA”) to allow the EEEA to attach lechis (wooden or plastic strips that do not interfere with the use or operation of utility poles) to utility poles in order to create an eruv; admits that Verizon and LIPA have entered into written agreements with EEEA for the issuance of licenses to permit the attachment of lechis to certain poles; and admits that some of the telephone and utility poles are located in the Village of Westhampton Beach, but otherwise denies the allegations set forth in paragraph 3 of the Counterclaims.

4. Verizon admits that lechis could be visible to persons who make a close inspection of utility poles, but otherwise denies the allegations set forth in paragraph 4 of WHB’s Counterclaims.

5. Verizon denies the allegations set forth in paragraph 5 of WHB’s Counterclaims.

6. Verizon denies the allegations set forth in paragraph 6 of WHB’s Counterclaims, except admits that 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 Sabbath and Yom Kippur.

7. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 7 of WHB’s Counterclaims, and therefore denies them.

8. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 8 of WHB’s Counterclaims, and

therefore denies them, except admits that some residents of WHB and surrounding areas have objected to the attachment of lechis.

9. Verizon denies the allegations set forth in paragraph 9 of WHB's Counterclaims; avers that Verizon and LIPA have agreed (without involvement by WHB) to permit lechis to be attached to their utility poles; avers that WHB has not been asked to endorse or approve anything; and avers that WHB's interference with the attachment of lechis to utility poles is (and is perceived by reasonable observers to be) an unjustified interference with the free exercise rights of the EEEA and its members.

10. Verizon denies the allegations set forth in paragraph 10 of WHB's Counterclaims, and alleges that Verizon and WHB have entered into a stipulation under which Verizon will defer the issuance of licenses to the EEEA pending a ruling by the Court on the motions to be filed by WHB in this action. Verizon respectfully refers the Court to the Stipulation Between Verizon New York Inc. and the Village of Westhampton Beach, dated July 6, 2012 (Dkt. No. 59), which document speaks for itself.

11. Verizon denies the allegations set forth in paragraph 11 of WHB's Counterclaims, and alleges that the EEEA has requested licenses from Verizon to attach lechis to three of Verizon's utility poles located on Dune Road.

12. Verizon denies the allegations contained in paragraph 12 of WHB's Counterclaims.

13. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 13 of WHB's Counterclaims, and therefore denies them. Verizon respectfully refers the Court to the November 7, 1938



Resolution of the Village of Westhampton Beach, for a complete and accurate statement of its contents, which document speaks for itself.

14. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 14 of WHB's Counterclaims, and therefore denies them. Verizon respectfully refers the Court to the November 7, 1938 Resolution of the Village of Westhampton Beach, for a complete and accurate statement of its contents, which document speaks for itself.

15. Verizon denies the allegations set forth in paragraph 15 of WHB's Counterclaims, and respectfully refers the Court to the November 7, 1938 Resolution of the Village of Westhampton Beach, for a complete and accurate statement of its contents, which document speaks for itself.

16. Verizon denies the allegations set forth in paragraph 16 of WHB's Counterclaims, and respectfully refers the Court to the November 7, 1938 Resolution of the Village of Westhampton Beach, for a complete and accurate statement of its contents, which document speaks for itself.

17. Verizon denies the allegations set forth in paragraph 17 of WHB's Counterclaims, and respectfully refers the Court to the November 7, 1938 Resolution of the Village of Westhampton Beach, for a complete and accurate statement of its contents, which document speaks for itself.

18. Verizon denies the allegations set forth in paragraph 18 of WHB's Counterclaims, and respectfully refers the Court to the December 1, 1952 Resolution of

the Village of Westhampton Beach, for a complete and accurate statement of its contents, which document speaks for itself.

19. Verizon denies the allegations set forth in paragraph 19 of WHB's Counterclaims, and respectfully refers the Court to the December 1, 1952 Resolution of the Village of Westhampton Beach, for a complete and accurate statement of its contents, which document speaks for itself.

20. Verizon denies the allegations set forth in paragraph 20 of WHB's Counterclaims.

21. Verizon denies the allegations set forth in paragraph 21 of WHB's Counterclaims, and alleges that N.Y. Transportation Corporations Law § 27 authorizes Verizon to "erect, construct and maintain" facilities "upon, over or under any of the public roads, streets, and highways" in New York State, and is one basis upon which Verizon asserts it has authority to grant licenses to attach items to its utility poles.

22. Paragraph 22 purports to state legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 22.

23. Paragraph 23 purports to state legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 23.

24. Verizon denies the allegations in paragraph 24 of WHB's Counterclaims, and respectfully refers the Court to New York Transportation Corporations Law § 27 for a complete and accurate statement of its contents.

25. Paragraph 25 purports to state legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 25.

26. Paragraph 26 purports to state legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 26.

27. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 27 of WHB's Counterclaims, and therefore denies them.

28. Verizon denies the allegations in paragraph 28 of WHB's Counterclaims, and respectfully refers the Court to New York Transportation Corporations Law § 11(3) for a complete and accurate statement of its contents.

29. Verizon denies the allegations set forth in paragraph 29 of WHB's Counterclaims, except to the extent that they pertain to LIPA's telephone poles, for which allegations Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations, and therefore denies them.

30. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 30 of WHB's Counterclaims, and therefore denies them.

31. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 31 of WHB's Counterclaims, and therefore denies them.

32. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 32 of WHB's Counterclaims, and therefore denies them.

33. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 33 of WHB's Counterclaims, and therefore denies them.

34. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 34 of WHB's Counterclaims, and therefore denies them.

35. Verizon lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 35 of WHB's Counterclaims, and therefore denies them.

#### **FIRST COUNTERCLAIM**

36. In response to paragraph 36, Verizon incorporates its responses to paragraphs 1 through 35, as though fully set forth herein.

37. Verizon denies the allegations of paragraph 37 of WHB's Counterclaims and alleges that Verizon and WHB have entered into a stipulation under which Verizon will defer the issuance of licenses to the EEEA pending a ruling by the Court on the motions to be filed by WHB in this action. Verizon respectfully refers the Court to the Stipulation Between Verizon New York Inc. and the Village of Westhampton Beach, dated July 6, 2012 (Dkt. No. 59), which document speaks for itself.

38. Verizon denies the allegations of paragraph 38 of WHB's Counterclaims, except admits it maintains that it has the right to issue licenses for the attachment of lechis to its utility poles located on Dune Road.

39. Verizon denies the allegations contained in paragraph 39 of WHB's Counterclaims.

40. Verizon denies the allegations contained in paragraph 40 of WHB's Counterclaims.

41. Verizon denies the allegations contained in paragraph 41 of WHB's Counterclaims.

42. Verizon admits that there exists an actual, justiciable controversy between Verizon and WHB, and between WHB and EEEA, relating to Verizon's issuance of lechis to the EEEA, and that the controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201, but otherwise denies the allegations in paragraph 42 of WHB's Counterclaims.

#### **SECOND COUNTERCLAIM**

43. In response to paragraph 43, Verizon incorporates its responses to paragraphs 1 through 42, as though fully set forth herein.

44. Paragraph 44 contains allegations not directed toward Verizon, and thus no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 44.

45. Paragraph 45 contains allegations not directed toward Verizon, and thus no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 45.

46. Paragraph 46 contains allegations not directed toward Verizon, and thus no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 46.

47. Paragraph 47 contains allegations not directed toward Verizon, and thus no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 47.

48. Paragraph 48 contains allegations not directed toward Verizon and thus no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 48.

49. Paragraph 49 contains allegations not directed toward Verizon and thus no response is required.

### **THIRD COUNTERCLAIM**

50. In response to paragraph 50, Verizon incorporates its responses to paragraphs 1 through 49, as though fully set forth herein.

51. Paragraph 51 purports to state legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 51 of WHB's Counterclaims.

52. Verizon denies the allegations contained in paragraph 52 of WHB's Counterclaims; avers that Verizon and LIPA have agreed (without involvement by WHB)

to permit lechis to be attached to their utility poles; and avers that WHB has not been asked to promote or to endorse any religious concept.

53. Verizon denies the allegations contained in paragraph 53 of WHB's Counterclaims; avers that Verizon and LIPA have agreed (without involvement by WHB) to permit lechis to be attached to their utility poles; and avers that WHB has not been asked to promote or to endorse any religious concept.

54. Verizon denies the allegations contained in paragraph 54 of WHB's Counterclaims; avers that Verizon and LIPA have agreed (without involvement by WHB) to permit lechis to be attached to their utility poles; and avers that WHB has not been asked to promote or to endorse any religious concept.

55. Verizon denies the allegations in paragraph 55 of WHB's Counterclaims; avers that Verizon and LIPA have agreed (without involvement by WHB) to permit lechis to be attached to their utility poles; avers that WHB has not been asked to promote or to endorse any religious belief; and avers that WHB's interference with the attachment of lechis is (and should be perceived to be) an interference with the free exercise of religious beliefs by the EEEA and its members.

56. Paragraph 56 purports to state legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 56 of WHB's Counterclaims.

#### **FOURTH COUNTERCLAIM**

57. In response to paragraph 57, Verizon incorporates its responses to paragraphs 1 through 56, as though fully set forth herein.

58. Paragraph 58 contains allegations not directed toward Verizon, and thus no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 58.

59. Paragraph 59 contains allegations not directed toward Verizon, and thus no response is required. To the extent a response is required, Verizon denies the allegations contained in paragraph 59.

#### **PRAYER FOR RELIEF**

Verizon denies that WHB is entitled to any of the relief requested.

#### **DEFENSES AND AFFIRMATIVE DEFENSES**

Verizon asserts the following defenses and/or affirmative defenses and reserves the right to assert other defenses and claims, including, without limitations, counterclaims, cross claims, and third-party claims, as and when appropriate and/or available in this or any other action. The statement of any defense herein does not assume the burden of proof for any issue as to which applicable law otherwise places the burden of proof on Plaintiff.

Except as expressly stated above, Verizon denies each and every allegation in WHB's Counterclaims.

#### **OTHER DEFENSES**

The following defenses are listed here in an abundance of caution to ensure they are preserved. The listing of a defense as an "affirmative defense" below does not constitute an admission that the defense is properly characterized as an affirmative defense (as opposed to being a defense of another character or an example of how



WHB's Counterclaims are deficient) and is not an agreement as to who bears the burden of proof on any factual issues relevant to the listed defense.

**FIRST AFFIRMATIVE DEFENSE**

The Counterclaims fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

WHB lacks standing to assert some or all of the claims asserted in its Counterclaims.

**THIRD AFFIRMATIVE DEFENSE**

WHB's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, acquiescence, license, and/or ratification, as well as other applicable equitable doctrines.

**FOURTH AFFIRMATIVE DEFENSE**

Verizon erects and maintains utility poles under the authority granted under Section 27 of the New York Transportation Corporations Law, which authorizes Verizon to "erect, construct and maintain" facilities "upon, over or under any of the public roads, streets and highways" in New York State, and not pursuant to any franchise granted by WHB. *See* N.Y. Trans. Corps. Law § 27.

**FIFTH AFFIRMATIVE DEFENSE**

Under New York State law, a utility may enter into contractual arrangements with others for the use of space on its poles. *See New York Tel. Co. v. North Hempstead*, 86 Misc. 2d 487 (Nassau Co. 1975), *aff'd* 52 A.D.2d 934 (2d Dep't 1976), *modified* 41 N.Y.2d 691(1977).

**SIXTH AFFIRMATIVE DEFENSE**

Under New York State law, even if Verizon had installed its utility poles pursuant to a “franchise,” which Verizon contests, the right to use utility poles would be subject only to such limitations as were expressly set forth in the franchise itself, and in the absence of an express limitation, the utility would be free to issue licenses to other parties for the use of the utility’s poles. *See North Hempstead*, 41 N.Y.2d at 698.

**SEVENTH AFFIRMATIVE DEFENSE**

In 2008, 2009, and 2010, WHB applied to Verizon for licenses to make attachments to Verizon’s utility poles within WHB. WHB is thus estopped from claiming that Verizon lacks authority to issue licenses for attachments to its poles.

**PRAYER FOR RELIEF**

WHEREFORE, Verizon respectfully requests that the Court dismiss WHB’s claims against Verizon; enter a judgment that WHB takes nothing; award costs, disbursements, and attorneys’ fees to Verizon; and grant Verizon all such other and further relief, whether in law or equity, to which Verizon is entitled and that the Court deems just and proper.

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