

**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.

Dated: New York, New York
August 2, 2012

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