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)

MEMORANDUM OF LAW IN OPPOSITION TO WESTHAMPTON BEACH'S MOTION TO DISMISS

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MEMORANDUM OF LAW IN OPPOSITION TO
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Plaintiffs Verizon New York, Inc. ("Verizon") and Long Island Lighting Co. d/b/a LIPA ("LIPA") (together, the "Plaintiffs") respectfully submit this memorandum of law in opposition to the motion to dismiss filed by the Village of Westhampton Beach (the "Village" or "WHB").

The Complaint

Verizon and LIPA have each entered into agreements with the East End Eruv Association (the "EEEA") to permit the attachment of thin wooden or plastic strips ("lechis") to Verizon's and LIPA's 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 Yom Kippur. *See* Compl. ¶¶ 1-2, 13-17.

In 2009, trustees of WHB sent a letter to Verizon counsel referring to the potential establishment of the Eruv and contending that the prior approval of WHB was required before lechis could be attached to utility poles in the Village. *Id.* ¶¶ 2, 22-25. Various WHB officials have made clear that any application by the EEEA to establish the Eruv would be rejected out of hand. (*See, e.g.*, Compl. Exs. E, F, G, H, I, J.) At the same time, the EEEA has contended that the Village's prior approval is not required, and has threatened legal action to enforce its contracts. Compl. ¶¶ 3, 26.

The EEEA filed suit against WHB and against the Village of Quogue ("Quogue") and the Town of Southampton ("Southampton"), seeking injunctive relief and declarations of the parties' rights. Verizon and LIPA also filed suit on January 18, 2011, seeking a declaration as to their own rights and obligations. Verizon and LIPA seek clarification of their rights and resolution of the various issues raised by EEEA, because otherwise "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)." *Id.* ¶¶ 4, 47, 54, 59.

Subsequent Communications Between Verizon and WHB

WHB's counsel has argued in these and related proceedings that there is no controversy before the Court because WHB has not taken "official action" or an "official position" with respect to the Eruv or as to whether WHB's prior approval is required.

In June 2011, counsel for Verizon sent a letter to WHB's counsel requesting that WHB clarify its position. (*See* Wiles Decl. Ex. 1) The letter referred to the statements that WHB's counsel had made and stated as follows:

> Verizon has understood that the Village of Westhampton Beach believes that its approval is required before Verizon may issues licenses to the EEEA and before the lechi staves may actually be installed on Verizon's utility poles. However, the papers that you have filed on behalf of the Village in the pending litigation, and comments made by you during oral argument on May 18, 2011, suggest that Westhampton Beach does not take the position that its sign laws or other ordinances apply to the attachment of lechis or that the prior approval of the Village is required before the installation of the lechis may occur.
>
> Please clarify your position. If the Village believes that its approval is required before the lechis may be installed or that its laws or rules restrict the attachment of lechis to Verizon's utility poles, please let me know which laws or ordinances require such approval or impose such restrictions. If our prior understanding was incorrect, and if the Village does not contend that its approval is needed or that its ordinances restrict the attachment of lechis, then we will be happy to issue the licenses with respect to the poles located within the Village and to dismiss, without prejudice, our pending action against the Village.

Id. WHB did not respond to Verizon's request.

Verizon's counsel repeated the foregoing request in a telephone conversation with WHB's counsel in January 2012. Subsequently, in March 2012, Verizon's counsel sent another letter to WHB's counsel, again asking for clarification of WHB's position. (Wiles Decl. Ex. 2 at

1.) Verizon noted that if WHB refused to take a position, Verizon would have no choice but to issue licenses to the EEEA in compliance with its contract. (*Id.* at 2.)

WHB's counsel responded in a letter dated March 20, 2012. (Wiles Decl. Ex. 3 at 1.) In that letter, WHB's counsel questioned whether Verizon has authority to enter into sublicensing agreements with private entities for the use of its poles. WHB's counsel further argued that Verizon's control of utility poles is the subject of a franchise granted by WHB and that the franchise rights are limited. *Id.* WHB has referred to this issue in prior papers (and also in its motion to dismiss, *see* WHB Br. at 9-10), but has stopped short of seeking a ruling on the issue.

On this same date, Verizon's counsel has replied to WHB, explaining that Verizon's right to use and maintain utility poles derives from New York State law and not from a franchise granted by WHB. (Wiles Decl. Ex. 4 at 1-2). Verizon also identified decisions by New York courts confirming that Verizon has the right to grant licenses to other parties to permit attachments to its utility poles. *Id.*

Verizon has informed WHB that Verizon is willing to continue to defer the issue of licenses if WHB wishes to present the foregoing issues to this Court for resolution, but that otherwise Verizon will need to issue the licenses in accordance with its contract with EEEA:

> As I stated earlier and in my prior letter, it has always been Verizon's preference (if the Village has an objection to the issuance of the licenses) to give the parties the opportunity to obtain a court determination as to the merits of that objection before actually proceeding with the attachment of the lechis. If the Village of Westhampton Beach wishes to contest the matters discussed above, and agrees to submit the issue to Judge Wexler for decision, then Verizon will refrain from issuing the licenses to give the Court time to issue a decision. Otherwise, Verizon will issue the licenses. Please advise me of the Village's position no later than April 13, 2012.

Id.

The Motion to Dismiss

WHB has moved to dismiss the Complaint, asserting that (1) the case is not ripe for resolution; (2) Plaintiffs purportedly lack standing to seek a declaratory judgment on the First Amendment and RLUIPA issues; (3) Plaintiffs fail to allege municipal or individual action sufficient to support liability under Section 1983; (4) Plaintiffs' claims under the Free Exercise clause fail as a matter of law, and (5) the RLUIPA claims allegedly fail as a matter of law because EEEA has no property interest in utility poles. WHB has also challenged Verizon's and LIPA's ability to issue licenses, while not officially seeking a ruling on that issue.

In reviewing the motion to dismiss the Court must accept the factual allegations set forth in the complaint as true and draw all reasonable inferences in favor of the plaintiffs. *See Cleveland v. Caplaw Enters*., 448 F.3d 518, 521 (2d Cir. 2006); *Nechis v. Oxford Health Plans, Inc*., 421 F.3d 96, 100 (2d Cir. 2005). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint*." Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 (2007) (citations omitted).

Plaintiffs submit that actual controversies plainly exist, that Plaintiffs are entitled to a resolution of the controversies and a declaration of Plaintiffs' respective rights and obligations, and that the motion to dismiss should be denied.

ARGUMENT

I. The Complaint Presents a Judiciable Controversy Over Which the Court Has Subject Matter Jurisdiction

The Complaint identifies three issues that require resolution:

(a) The EEEA's contention that there is no compelling governmental interest in restricting the attachment of lechis to utility poles and that the Free Exercise Clause of

the First Amendment to the United States Constitution prevents WHB from interfering with the attachment of lechis. *See* Compl. ¶¶ 44-48.

(b) The EEEA's contention that local laws are being asserted in a manner that serves no compelling governmental interest and that therefore violates the terms of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). *Id.* ¶¶ 50-55.

(c) The EEEA's contention that by their own terms the cited local laws do not apply to lechis installed on utility poles. *Id.* ¶¶ 57-60.

Developments in this litigation have made clear that there is an actual and intense disagreement between the various parties as to each of the foregoing issues.

WHB contends that there is no actual controversy that is ripe for resolution because the WHB defendants have not taken official action. WHB Br. at 7. The gist of WHB's position is that it may challenge Verizon's and LIPA's authority to issue licenses, and that the members of its board of trustees may make public statements of their intent not to permit the attachment of lechis to utility poles, but that WHB can evade litigation by refusing to say (officially) whether it believes that its prior approval is required or whether it intends to take any action if the lechis are attached.

If there truly is no controversy – meaning that WHB does not contend that its approval is required – then WHB should simply say so, and the licenses can then be issued. There is a big difference however, between contending that there is no issue to be decided, and simply refusing to say what one's position is. Where (as here), there is a clear risk of action by a municipality, and the municipality has refused to disclaim an intent to take action, a dispute exists that is ripe for determination, and a formal statement of the municipality's intentions is not required. *See Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 299 & n.13 (1979) (pre-enforcement

challenge is justiciable when "state has not disavowed intention of invoking" challenged criminal statute against plaintiff; ruling that case would still be ripe even if plaintiff merely faced an administrative cease-and-desist order or a court-ordered injunction); *see also City of Auburn v. Qwest Corp*., 260 F.3d 1160, 1171-73 (9th Cir. 2001) (holding that an action challenging local ordinances was ripe even though no permit application had been made), *overruled on other grounds by Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571, 575 (9th Cir. 2008); *cf. Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392-93 (1988) ("We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise."); *Amnesty Int'l USA v. Clapper*, 638 F.3d 118, 135 (2d Cir. 2011) (permitting pre-enforcement suit by third-party plaintiffs and noting that "even in cases where plaintiffs allege an injury based solely on prospective government action, they need only show a realistic danger of direct injury, and where they allege a prospective injury to First Amendment rights, they must show only an actual and well-founded fear of injury" (collecting cases)).

Here, the Complaint alleges that the WHB Mayor and trustees have spoken out against the Eruv in numerous public statements:

- In 2010, all five members of the Westhampton Beach Village Board, including Mayor Teller, stated that they would oppose an eruv application if it was presented to them (Compl. Ex. E.);
- Trustee Tucker stated that "the [e]ruv will never happen on my watch" (Compl. Ex. I);
- Trustee Birk stated that she continued to oppose the eruv (Compl. Ex. G);

- Trustee Farrell stated that she would not support the creation of an eruv and that "the community has made it clear that it opposes the idea" (Compl. Ex. H); and
- Trustees Levan and Tucker campaigned on an anti-eruv platform, distributing a flyer stating that "[we] 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." (Compl. Ex. J).

WHB's correspondence with Verizon – in which WHB has requested assurances that Verizon would not issue licenses without the Village's prior approval, and in which WHB has challenged Verizon's authority to issue licenses under any circumstances – also makes clear that issues exist that fairly require resolution. *See* Compl. Ex. D; Wiles Decl. Exs. 1-4.

The "ripeness" doctrine is meant "to prevent the courts . . . from entangling themselves in abstract disagreements . . . ." *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). Here, there is nothing "abstract" or academic about the dilemma in which Verizon finds itself. If WHB does not believe that its approval is needed before lechis may be attached to utility poles, or if it otherwise does not intend to take action to prevent the attachment of lechis or to punish parties for doing so, then WHB should say so. Otherwise, it should be estopped (by its own refusal to take a clear position) from contending that there is no dispute that needs to be resolved by this Court.

II. Plaintiffs Have Standing to Seek Declaratory Judgment With Respect to the Free Exercise Clause and RLUIPA

"Standing" requirements exist to make certain that a party has a real and legitimate interest in the resolution of the issue that has been posed. Verizon and LIPA plainly have such an interest. The EEEA contends that the Free Exercise Clause, and the RLUIPA, entitle the

EEEA to install lechis without interference from WHB, and has threatened legal action against Verizon and LIPA. At the same time, WHB's trustees have publicly stated their opposition to the Eruv, and WHB has made clear that it challenges Verizon's and LIPA's authority to issue licenses for the attachment of lechis. Verizon and LIPA, as the entities who are caught in the middle of this dispute, have the authority to bring this suit to obtain a declaration as to the parties' rights and obligations, including the EEEA's contentions with respect to the Free Exercise Clause and RLUIPA, so that Verizon's and LIPA's own rights and obligations can be clarified.

Standing is not precluded just because another party (the EEEA and its members) is the owner of the First Amendment rights that are at issue. Verizon and LIPA have standing because they are affected by the controversy and because their conduct has been altered in light of the uncertainties created by WHB's statements. *See Amnesty Int'l USA v. Clapper*, 638 F.3d 118, 140-41 (2d Cir. 2011) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992)); *accord Garelick v. Sullivan*, 987 F.2d 913, 919 (2d Cir. 1993) ("A plaintiff does not lack standing merely because her injury is an indirect product of the defendant's conduct."). A plaintiff seeking standing on the basis of indirect injury need only demonstrate: (1) an injury in fact; (2) that is causally related to the challenged statute or conduct; and (3) is likely to be redressed by a favorable judicial decision. *Amnesty Int'l*, 638 F.3d at 141 (citing *Lujan,* 504 U.S. at 560-61). A plaintiff may establish a cognizable injury in fact by showing that he has altered or ceased conduct as a reasonable response to the challenged statute or conduct. *Id.*

These criteria are satisfied in the instant case. Verizon and LIPA have altered their conduct in response to WHB's conduct: they have refrained from issuing licenses to the EEEA to install lechis on their poles. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S.

167, 184-85 (2000) (granting environmental groups standing to sue a corporation under the Clean Water Act because the defendant corporation's alleged environmental damage deterred members of the plaintiff organizations from using and enjoying certain lands and rivers).

WHB has also argued that Verizon and LIPA lack standing because they have not been subjected to fines or to money damages. *See* WHB Br. at 7-8. However, Verizon and LIPA are not obligated to submit to fines in order to entitle them to a declaration of their rights and obligations. The "ripeness" doctrine is meant "to prevent the courts . . . from entangling themselves in abstract disagreement." *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). Here, there is nothing "abstract" or academic about the dilemma in which Plaintiffs find themselves. WHB's public statements (and its refusal to disclaim an intent to take action if lechis are installed) have created uncertainties and Verizon and LIPA have standing to seek resolution of those uncertainties. *See* cases cited above; *see also NextG Networks of N.Y., Inc. v. City of New York*, 513 F.3d 49, 53-55 (2d Cir. 2008) (reversing dismissal of telecommunications provider's § 1983 action seeking declaratory and injunctive relief, holding that there was an active controversy as to the City's assertion of regulatory authority).

III. Plaintiffs Have Alleged Sufficient Municipal Involvement to Support Section 1983 Liability

WHB argues that Plaintiffs have failed to identify any official act by WHB or its final decisionmakers on which to predicate Section 1983 liability. At the outset, Verizon and LIPA note that this is an issue that goes to the merits of EEEA's claims against WHB. The fact that WHB seeks a resolution of the issue (and entry of judgment upon it) merely confirms that there are controversies that are ripe for decision.

As to the merits of the issue: the Complaint identifies numerous public statements by the WHB Trustees and Mayor of their intent not to allow the Eruv to be established, as noted above.

By their terms these were statements of official intent. The Trustees and Mayor Teller are policymakers for WHB and their decisions "represent government policy." *See Gronowski v. Spencer*, 424 F.3d 285, 296 (2d Cir. 2005). WHB's contentions to the contrary raise factual issues, not matters that are appropriate for resolution on a motion to dismiss.

In addition, WHB's opposition has been confirmed by the letters received from WHB's counsel, which challenge Plaintiffs' right to grant licenses to EEEA.

IV. The Complaint Adequately States a Claim for Declaratory Judgment With Respect to the Free Exercise Clause

WHB argues that "it is the observance of the Sabbath and the practice of Judaism, not government action, that restricts some observant Jews' ability to carry or push objects on the Sabbath." *See* WHB Br. at 17. This argument misses the mark.

This is not a case in which the EEEA is requesting affirmative action by WHB. Instead, this is a case where Verizon and LIPA have agreed to permit the EEEA to attach lechis to utility poles, and where WHB officials have publicly confirmed their intent to interfere with the grant of those licenses and to stop the Eruv from being established.

In any event, WHB's argument demonstrates the plain existence of a controversy between WHB and the EEEA in which Verizon and LIPA find themselves caught in the middle. No matter which party is right, Verizon and LIPA are entitled to clarification and to a declaration of the parties' rights and obligations.

V. The Complaint States a Claim as to the Applicability of RLUIPA

WHB's challenge to the applicability of RLUIPA merely confirms that there is an "active controversy" on this point that is ripe for resolution. The EEEA contends that RLUIPA applies and that RLUIPA bars the application of Southampton's sign law to prevent the attachment of

lechis. Regardless of which party is correct, Verizon and LIPA are entitled to have the parties' respective rights and obligations clarified.

WHB argues that the EEEA does not own an interest in the utility poles that would allow a claim to be made under RLUIPA. *See* WHB Br. at 18-19. However, Verizon and LIPA clearly have such an interest, as they are the owners of the utility poles, and it is Verizon and LIPA's use of their utility poles (by granting licenses to EEEA) that is being challenged by WHB. Verizon and LIPA – as the entities whose authority has been challenged, and who have altered their conduct in response to the uncertainties created by the public comments and other statements by WHB officials – have the right to bring this suit to obtain a declaration as to the merits of the parties' competing contentions. *See Amnesty Int'l USA v. Clapper*, 638 F.3d 118, 140-41 (2d Cir. 2011) (party who is affected by a challenged statute or conduct or whose conduct is altered or affected has standing to address issues (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561–62 (1992)); *accord Garelick v. Sullivan*, 987 F.2d 913, 919 (2d Cir. 1993); *see also Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 184–85 (2000) (environmental groups had standing to sue a corporation under the Clean Water Act because the alleged environmental damage deterred members of the plaintiff organizations from using and enjoying certain lands and rivers and thereby altered their conduct).

VI. Verizon and LIPA Have the Authority to Grant Licenses to the EEEA

As noted above, the EEEA has raised issues under both federal and state law regarding WHB's opposition to the attachment of lechis to Verizon's and LIPA's utility poles. The only ground for opposition that WHB has ever identified is its contention that Verizon and LIPA lack authority to issue such licenses. WHB referred to this issue in its counsel's recent letter to Verizon and also raised the issue in its motion to dismiss, though WHB did not formally ask the

Court to rule on the issue. Verizon and LIPA respectfully submit that they have the authority to issue licenses, and that this Court should reject WHB's contentions to the contrary.

A. Verizon's Authority

Section 27 of the New York State Transportation Corporations Law provides the following rights to Verizon and to other telephone and telegraph companies:

> 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 through, across or under any of the waters within the limits of this state, 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.

See N.Y. Transportation Corporations Law § 27. Section 27 makes clear that "telegraph and telephone companies derive the right to erect their poles and string their wires directly from the state" and not from local municipalities. *See Vill. of Carthage v. Central N.Y. Tel. & Tel. Co.*, 185 N. Y. 448, 451 (1906). More recently, the Court of Appeals confirmed that Section 27 of the N.Y. Transportation Corporations Law granted Verizon's predecessor, the New York Telephone Co., an "unconditional right to erect and maintain poles for its lines upon public streets and highways." *See New York Tel. Co. v. North Hempstead*, 41 N.Y.2d 691, 693 (1977).

There is nothing in Section 27 of the Transportation Corporation Law that restricts the manner in which telephone poles may be used or the items that may be attached to them, and the New York courts have squarely rejected the argument that any such limitation exists:

> The defendants urge in their memorandum submitted on these motions . . . that the plaintiff may only use its poles for telephone purposes and that the use of the poles for purposes other than that for which the plaintiff was granted a special franchise under section 27 of the Transportation Corporations Law is beyond its powers. This argument lacks merit. The thrust of this claim is that the special franchise granted to plaintiff by section 27 of the Transportation Corporations Law gives the plaintiff the right to erect, construct and maintain the necessary fixtures for its telephone lines in the public roads, streets and highways. It is argued further that the words "necessary fixtures" can only relate to plaintiff's use of telephone lines for

> telephone purposes as indicated by the definition of a telephone company contained in section 25 of the Transportation Corporations Law. Therefore, the argument runs, the plaintiff's special franchise permitted it to use public streets only for the purpose of providing telephone service and for no other purpose. This narrow construction of the statute granting the special franchise is not supported by the statute's language. That is to say, there is no express prohibition against the use of the "necessary fixtures" such as poles for purposes other than telephonic communication. Moreover, the plaintiff's certificate of incorporation contains a grant of power to use its equipment for purposes other than providing telephonic communication. In addition, as a result of subdivision (a) of section 4 of the Transportation Corporations Law making the plaintiff subject to the provisions of the Business Corporation Law, the plaintiff possesses the right to enter into contractual arrangements with others for the use of space on its poles pursuant to the powers granted in subdivision (a) of section 202 of the Business Corporation Law.

See New York Tel. Co. v. North Hempstead, 86 Misc. 2d 487 (N.Y. Sup. Ct. Nassau Co. 1975), *aff'd* 52 A.D.2d 934 (2d Dep't 1976), *modified by* 41 N.Y.2d 691(1977).

In fact, the Village of Westhampton Beach has previously executed license agreements with Verizon (copies of which were introduced into evidence at the preliminary injunction hearing), each of which contained an express acknowledgement by the Village of Verizon's rights "to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any poles and/or anchors covered by this Agreement." *See* Wiles Decl. Exs. 5-7.

B. LIPA's Authority

Section 1020, *et. seq.* of the Public Authorities Law (the "LIPA Act") governs and grants power to LIPA. Section 1020-f of the LIPA Act sets forth LIPA's general broad powers, including the power:

> (f) to sell, convey, lease, exchange, transfer, abandon or otherwise dispose of, or mortgage, pledge or create a security interest in, all or any of its assets, properties or any interest therein, wherever situated;

> (h) to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this title.

Thus, LIPA's statutory authority clearly includes the power to dispose of interests in its property through contractual agreements or otherwise.

WHB's reliance on the State Attorney General's Opinion dated October 9, 2007 (Formal Opinion 2007 F-4), 2007 N.Y. A.G. LEXIS 10 (the "Opinion"), is misplaced. The Opinion, which was rendered in response to a narrow request made by LIPA's former Chief Executive Officer related to the issues of employee compensation and financial or charitable contributions, cannot reasonably be construed to prohibit LIPA from exercising its statutory rights with respect to its assets and properties. While the Opinion concluded that "improving community goodwill or the well-being of the community unrelated to the provision of electric service" was not a power granted to LIPA, *see* 2007 N.Y. A.G. LEXIS at *14, the conclusion was rendered only with respect to "financial contributions," *id.*, and "payments to business, civic and not-for-profit entities" made by LIPA, *id.* WHB's attempt to stretch the meaning of the Opinion beyond its natural limits is unavailing. In fact, contrary to the Village's assertion, the Opinion confirms that LIPA "as a creature of statute" has all of the powers granted to it by the legislature, which reasonably includes, not excludes, the ability to grant leases, licenses and other similar property interests to third parties pursuant to §1020-f.

Further statutory evidence of LIPA's ability to convey interests in its assets and properties can be found in the "Public Authorities Accountability Act," *see* Article 9, Title 5-A of the Public Authorities Law – the "Accountability Act", which governs "Disposition of Property by Public Authorities," *see* N.Y. Pub. Auth. Law §§2895-2897. Specifically, the Act at §2895 defines a "disposal" of property as one involving the "transfer of title or any other beneficial interest in personal or real property," and then further defines "property" to include

"personal property in excess of five thousand dollars in value, real property, and any inchoate or other interest in such property, to the extent that such interest may by conveyed to another person *for any purpose*, excluding an interest securing a loan or other financial obligation of another party." *Id.* § 2895 (emphasis added). Thus, in addition to the LIPA Act, the clear language of the Accountability Act authorizes LIPA to dispose of its interests in property to others without limitations in purpose, such as those suggested by the Village, albeit in accordance with its requirements. For these reasons, WHB's argument fails.

VII. Plaintiffs Do Not Object to a Stay of the Action

Plaintiffs have no objection if the EEEA and other parties, or the Court, believe it would be proper to stay this action (and to stay consideration of the motion to dismiss) pending a determination with respect to the EEEA's applications to Southampton and Quogue, such that the action can proceed against all three municipalities at once. A court has the inherent power to control its own docket, including the power to stay proceedings where necessary to promote judicial economy and to prevent the waste of litigants' resources. *Landis v. N. Am. Co*., 299 U.S. 248, 254-55 (1936). However, dismissal would not be appropriate. In fact, the only thing that a dismissal would accomplish would be to open the door to the possibility that Westhampton Beach, or the EEEA, or one of the other parties interested in this intensely public dispute would file suit against Verizon and LIPA in a different court, creating a risk of inconsistent decisions in addition to unnecessary expense.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an order denying WHB's motion to dismiss in its entirety, and granting such other relief as may be just and proper.

Dated: New York, New York
April 5, 2012

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