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March 20, 2012

Michael E. Wiles, Esq.
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

VIA EMAIL

Re: East End Eruv Association
Our File No. 110004

Dear Mr. Wiles:

I have received your letter of March 14, 2012. I have been authorized by my client to respond to it as follows.

Your letter seems to be a well-calculated attempt to swat the ball over the net after you failed to respond to the issues that I mentioned in my papers and during the preliminary injunction hearing. The issues I raised logically precede the questions you put to me. The issues that I have raised demonstrate that Verizon's very questions to me are *ultra vires*.

In response to our demand for franchise and licensing agreements between Verizon and the Village of Westhampton Beach, you have indicated that Verizon's authority to contract with the EEEA was based upon New York State Transportation Corporation Law, § 27. Had you undertaken the requested review of records held by Verizon and its predecessor, New York Telephone Company, which we demanded, you would have found that the Village granted a franchise to New York Telephone Company with respect to the utility poles on Dune Road. This agreement is binding upon Verizon, is not subject to the Transportation Corporation Law, and precludes Verizon from entering into sublicensing agreements with private entities for private purposes. A copy of this agreement is attached. Section 27 also precludes Verizon from entering into sublicensing agreements with private entities for private purposes.

I ask again, in view of the franchise agreement between New York Telephone Company and the Village, how you can reconcile your position that Verizon is empowered to issue a sublicense to the EEEA with the holding in Greenwood Lake & Port Jervis Railroad Company v. New York & Greenwood Lake Railroad Company, 134 N.Y. 435, 440 (1892), where the Court of Appeals stated: "A

license is a personal, revocable and non-assignable privilege … to do one or more acts upon land without possessing any interest therein."[1]

In Rochester Tel. Corp. v. Village of Fairport, 84 A.D.2d 455, 456 (4th Dep't 1982), the court held that a Village acting pursuant to N.Y. Village Law § 4-412(3)(6) in granting a franchise to a utility "grants the utility no property interest in the right of way, only a license to maintain its facilities there." Verizon has not cited any authority for the proposition that, as a public utility, it has the power to do anything other than "to maintain its facilities" on site of its licensed property.

Finally, you have failed to explain how Verizon can contract with the EEEA when Village Law § 6-602 and Attorney General Opinion 1953-35 instruct that the public highways are held in public trust for the benefit of the public in general and cannot be devoted to a private use. Neither Verizon nor the EEEA has the power to amend or repeal a statute. That power belongs only to the Legislature and the Governor.

If LIPA, your co-plaintiff, had not rejected our demand for copies of franchise and license agreements with the Village, the research would have found that franchise agreements for providing electricity to the Town of Southampton (including Westhampton Beach) were entered into with the Town of Southampton and Riverhead Lighting Company in 1910, with Patchogue Electric and Lighting in 1911, and with Southampton Electric and Lighting in 1903. The franchise agreements with these predecessors-in-interest of LIPA are still in force and effect. They preclude LIPA from granting a sub-license to a private entity for private purposes. A copy of the franchise agreements is attached.

You made reference to Mr. Sugarman's letter of February 29, 2012. I am copying you on a response that I am sending to him simultaneously. It points out that there is a fundamental defect in his letter. It makes reference to a Westhampton Beach-only eruv but it describes an eruv that encroaches into – and involves one or more poles located in – the Town of Southampton. That municipality has given its position on a proposed eruv that is located in its borders. One would have thought Mr. Sugarman would have finalized these types of details before bringing a lawsuit or writing accusatory letters to counsel.

I look forward to either your demonstration of where in the law your clients obtained a right to sublicense to the EEEA for non-telephonic, private purposes or your admission that it has no such power. I am sure that we both agree that your client cannot create such power *ipse dixit*.

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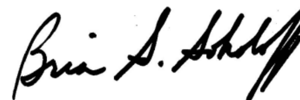
[1] That language has withstood the test of time and is still rock-solid law. See e.g. Kohman v. Rochambeau Realty & Development Corp., 17 A.D.3d 151, 153 (1st Dep't 2005).

Thank you for your attention to this matter.

Very truly yours,

SOKOLOFF STERN LLP



Brian S. Sokoloff

BSS/--
Encl.