DEBEVOISE & PLIMPTON LLP

919 Third Avenue
New York, NY 10022
Tel 212 909 6000
Fax 212 909 6836
www.debevoise.com

April 5, 2012

Brian S. Sokoloff, Esq.
Sokoloff Stern LLP
355 Post Avenue, Suite 201
Westbury, New York 11590

East End Eruv Association

Dear Mr. Sokoloff:

I am writing in response to your letter dated March 20, 2012. We sent our March 14 letter to obtain a clear statement as to whether the Village has any legal objection to the issuance of licenses to attach lechis to Verizon's utility poles, so that we could give the parties the opportunity to resolve any such objection before we actually issue the licenses. Your letter seems to raise an objection based upon a contention that Verizon does not have authority to issue licenses to the EEEA. While I do not recall your previously having asked me to address the issues mentioned in your letter, we are happy to address them now.

Verizon disagrees with your contention that Verizon's rights over its utility poles are the subject of a "franchise" issued by the Village of Westhampton Beach. As Verizon stated in its responses to your discovery requests in June 2011, Verizon erects and maintains utility poles under the authority granted under Section 27 of the New York Transportation Corporation 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. The New York Court of Appeals confirmed long ago that "telegraph and telephone companies derive the right to erect their poles and string their wires directly from the state." *See Village of Carthage v. Central New York Tel. & Tel. Co.,* 185 N. Y. 448, 451 (1906). More recently, the Court of Appeals confirmed that Section 27 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). The Court of Appeals rejected North Hempstead's attempted reliance on "franchise" theories because the right to install and use utility poles "came from the State of New York and not from" a franchise granted by the municipality. *Id.* at 698.

Verizon similarly disagrees with your statement that Section 27 of the New York Transportation Corporation Law "precludes Verizon from entering into sublicensing agreements with private entities for private purposes." This issue was decided by the courts in the *North Hempstead* case. The court in that case specifically rejected the contention (similar to that raised in your letter) that a telephone company "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." Instead, the court confirmed that Verizon's predecessor had the

right "to 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).

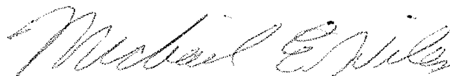
In fact, the Village of Westhampton Beach has previously executed license agreements with Verizon (copies of which were introduced during the preliminary injunction hearing before Judge Wexler), each of which contained an express acknowledgement by the Village of Verizon's rights "to grant, renew and 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."

Your letter refers to certain board resolutions authorizing the Coast Guard to replace telephone poles on Dune Road following a storm in the 1930s and, later, allowing the Coast Guard to transfer ownership of those poles to Verizon, which your letter characterizes as the grant of a "franchise" to Verizon. We do not believe those resolutions can accurately be described as such. Even if those board resolutions could be construed as a "franchise," however, Verizon notes that there is no express limitation in the resolutions as to the manner in which the utility poles may be used or as to the items that may be attached to them. When a franchise is granted, it becomes "property protected by the Constitution and, except for conditions attached to the consent, subject to regulation only under the police power." *See City of Olean v. Western New York and Pennsylvania Traction Company*, 214 N.Y. 526, 528 (1915). Here, the board resolutions cannot be construed as limiting the items that can be attached to telephone poles because "there was no such express reservation" in the resolutions themselves. *See New York Tel. Co. v. North Hempstead*, *supra*, 41 N.Y.2d at 698. Nor does the attachment of lechis raise any issues as to the Village's police powers, because you have acknowledged that the Village of Westhampton Beach has no ordinances or other "police power" laws or regulations that apply to the attachment of lechis to utility poles.

* * *

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.

Very truly yours,



Michael E. Wiles