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August 11, 2014

Hon. A. Kathleen Tomlinson
United States District Court
100 Federal Plaza
Central Islip, NY 11722

VIA ECF

Re: Verizon v. The Village of Westhampton Beach, et al.
Docket No. CV-11-0252 (AKT)
Our File No. 110004

Dear Magistrate Judge Tomlinson:

We represent the Village of Westhampton Beach in this case and in East End Eruv Association, et al. v. Village of Westhampton Beach, et al., CV-11-0213 (AKT). In light of the Eruv Association's sudden and premature decision to attach *lechis* to utility poles in Westhampton Beach alone (with the approval of the utilities), in apparent reliance on the Court's June 16, 2014 decision, the Village, through motion practice, must seek expedited review of that decision. Pursuant to the Court's Rules, we conferred with plaintiffs' counsel and agreed on a briefing schedule for a motion seeking expedited appellate review.

While the Federal Rules of Civil Procedure generally require a final District Court judgment on all claims before the Court of Appeals door opens, the Federal Rules also recognize exceptions. As our motion will clarify, this case presents an exception. Every day the Eruv Association's religious symbols sit on public land (and on the poles of LIPA, a government authority), the public is damaged both by the trespass on its land and, discovery will show, by violation of the Establishment Clause of the First Amendment.

Until now, the Village believed the Eruv Association and/or the public utilities would wait until this Court ruled on all the issues before it took the action it just took. LIPA's position all along – expressed in letters and submissions to the Court – was that LIPA would issue no licenses until the issues in this litigation are resolved. Mr. Sugarman's July 31, 2014 letter revealed that LIPA reversed its position and went back on its representations, without warning or explanation, damaging the rights of the public and the Village. The Village cannot wait for (a) discovery to conclude and (b) a summary judgment motion to be briefed and decided, and/or (c) a trial to proceed to verdict before it asks the Second Circuit to review this Court's June 16, 2014 decision. The public and the Village are now victims every day going forward.

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The Village will file a motion asking this Court (a) to certify for immediate interlocutory appeal its June 16, 2014 decision, pursuant to 28 U.S.C. § 1292(b), or (b) to enter a final judgment, pursuant to Fed. R. Civ. P. 54, on the state law issue of the utilities' authority to re-license their poles to a private religious group for the affixture of religious symbols (the Village's First and Second Counterclaims).

Pursuant to Your Honor's rules, all counsel on the motion conferred and agreed to the following briefing schedule:

- moving papers to be submitted by August 29, 2014;
- opposition papers to be submitted by October 3, 2014; and
- reply papers to be submitted by October 17, 2014.

We respectfully request that the Court "so-order" this briefing schedule.

Thank you for your consideration of this matter.

Very truly yours,

SOKOLOFF STERN LLP



Brian S. Sokoloff

BSS/--

cc: All Parties

VIA ECF

SO ORDERED

A. Kathleen Tomlinson Tomlinson
United States Magistrate Judge
Date: August 13 20 14
Central Islip, N.Y.