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6 **CITY OF LONG BEACH**  
7 **ADMINISTRATIVE APPEAL HEARING**  
8 **PER LONG BEACH MUNICIPAL CODE CHAPTER 15.34.030.L**

9 **ROBERT ALLISON and KATHY**  
10 **ALLISON,**

11 **Appellants,**

12 **vs.**

13 **CITY OF LONG BEACH,**

14 **Respondent/Permitting**  
15 **Authority**

16 **LOS ANGELES SMSA LIMITED**  
17 **PARTNERSHIP, d/b/a VERIZON**  
18 **WIRELESS,**

19 **Real Party in Interest /**  
20 **Permit Applicant**

) **HEARING OFFICER’S FINDINGS AND**  
) **RECOMMENDATION**

21 **I. INTRODUCTION**

22 This appeal came on regularly for hearing before Administrative Hearing Officer  
23 Jonathan C. Navarro on October 23, 2020 at 3:00 PM via WebEx virtual hearing. The WebEx  
24 hearing was administered by Daniel Ramirez with the Public Works Department (“PWD”) for  
25 the City of Long Beach. The Appellants, Robert Allison and Kathy Allison (“Appellants” or  
26 “Appellant”), appeared *pro se*. The City of Long Beach (“City” or “Respondent”) appeared and  
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HEARING OFFICER’S FINDINGS AND RECOMMENDATION

1 was represented by Erin Weesner-McKinley, Esq. with the Office of the City Attorney for the  
2 City of Long Beach. Applicant Los Angeles SMSA Limited Partnership, D/B/A Verizon  
3 Wireless (“Verizon” or “Applicant”) appeared and was represented mainly by Daisy Uy  
4 Kimpang. The following also appeared for the Applicant: Barbara Breeden, Ethan Rogers, Joel  
5 Crane, Mario De La Mora, Katherine Baxendale, Bill Hammett, Charaka Wijeweera, and Jesus  
6 Roman. The PWD for the City of Long Beach was represented by Joshua Hickman and Pablo  
7 Leon.  
8

9 The following member(s) of the public also appeared: Crystal Soto (residence address -  
10 1800 Carfax Avenue, Long Beach, CA 90815); Loraine Carnes (did not provide residence  
11 address); Nicole Carnes (residence address – 10531 Ketch Avenue, Garden Grove, CA 92843);  
12 Nicholas Cabeza (Field Rep with Assemblymember Patrick O’Donnell’s Office. No Public  
13 Comment provided); Stanley Hsu (did not provide residence address); Ramon Soto (did not  
14 provide residence address); and Jonathan Allison (10962 W. Ocean Air Dr., #2109, San Diego,  
15 CA 92130).  
16

17 **II. STATEMENT OF FACTS**  
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19 On or around February 28, 2020, Verizon submitted an application (“Application”) for a  
20 permit to the City for the installation of a “small cell” wireless telecommunications facility  
21 (“WTF”) in the public right-of-way. (Respondent’s Group Exhibit, pages 4-13). The Application  
22 process is governed by Chapter 15.34 of the Long Beach Municipal Code (“LBMC”) that  
23 includes requirements and applicable standards for WTFs in the public right-of-way to ensure  
24 that the proposed WTF complies with said requirements and standards. WTF means equipment  
25 installed for the purpose of providing wireless transmission of voice, data, images, or other  
26 information including but not limited to, cellular telephone service, personal communications  
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1 services, and paging services, consisting of equipment, antennas, and network components  
2 such as towers, utility poles, transmitters, base stations, conduits, pull boxes, electrical meters,  
3 and emergency power systems. WTF does not include radio or television broadcast facilities,  
4 nor radio communications systems for government or emergency services agencies. LBMC  
5 15.34.020.EE. “Public right-of-way” means any public highway, street, alley, sidewalk,  
6 parkway, parking lot, and all extensions or additions thereto which is either owned, operated,  
7 or controlled by the City, or is subject to an easement or dedication to the City, or is a  
8 privately-owned area within City’s jurisdiction which is not yet dedicated, but is designated as  
9 a proposed public right-of-way on a tentative subdivision map approved by the City. LBMC  
10 15.34.020.S.  
11

12  
13 The Application sought a permit for the installation of a proposed WTF in the public  
14 right-of-way in front of the property located at 1800 Carfax Avenue, which is in a residential  
15 zoning district. The proposed WTF is a “co-location facility”<sup>1</sup> that will be integrated into a new  
16 light pole that will replace the existing light pole at the site. The site is designated as  
17 “CA002\_LBC\_LNGBCH\_185” in the Application (“Site”), and it is located on the Northeast  
18 corner of Carfax Avenue and E. Atherton Street, which is a multi-lane street. The replacement  
19 light pole would be thirty (30) feet high with luminaire. (See Respondent’s Gr. Ex., pp. 213-  
20 214). Three shrouded antennas will be placed at the top of the pole, with the bottom of the  
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24 <sup>1</sup> “Co-location facility” means a Wireless Telecommunications Facility that has been co-  
25 located consistent with the meaning of “co-location” as defined above. It does not include the  
26 initial installation of a new Wireless Telecommunications Facility where previously there was  
27 none, nor the construction of an additional monopole on a site with an existing monopole.  
28 LBMC 21.56.020.D. “Co-location” means the placement or installation of Wireless  
Telecommunications Facilities, including antennas and related equipment onto an *existing*  
Wireless Telecommunications Facility in the case of monopoles, or onto the same building in  
the case of roof/building-mounted sites. LBMC 21.56.020.C.

1 antennas twenty-five (25) feet one (1) inch from the ground. (Id.) Three (3) pull boxes for fiber  
2 and power will be placed in the parkway next to the pole with all associated cables routed inside  
3 the pole. (Id.).

4           Upon two (2) subsequent rounds of reviews and six (6) plan revisions—the latest being  
5 June 11, 2020—the City approved the Application on August 21, 2020. (See approval stamp on  
6 Respondent’s Gr. Ex., pp. 206-225). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the  
7 approval was mailed out on September 2, 2020, and a posted notice was placed on the pole in  
8 front of Appellants’ home and on the Site on September 2, 2020. (See Respondent’s Gr. Ex., pp.  
9 227-233 [proof of mailing]; Respondent’s Gr. Ex., pp. 234-235 [proofs of posting]). Said posted  
10 notice triggered the commencement of the 10-day appeal period under LBMC 15.34.030.L. The  
11 deadline for filing an appeal was September 17, 2020. Appellants filed the Appeal on September  
12 10, 2020. (See Respondent’s Gr. Ex., pp. 1-3).

13 **III.    LEGAL AUTHORITY FOR APPEAL**

14 LBMC 15.34.030.L. (Appeal of Tier B Wireless Right-of-Way Facility Permit)  
15 provides ...

- 16
- 17 1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility  
18 Permit, and/or any person owning or residing at property that is adjacent to  
19 or across the street to the location of a proposed Tier B Wireless  
20 Telecommunications Facility, may appeal an approval or denial of an  
21 application for a Tier B Wireless Right-of-Way Facility Permit. An appeal  
22 must be in writing and must be submitted to the City Clerk within ten (10)  
23 business days of the date the notice was mailed and posted as required under  
24 Subsection 15.34.030.K.2, above.
  - 25 2. Public Hearing Required. If an appeal is timely submitted, an independent  
26 hearing officer selected by the City shall hold a public hearing. The City  
27 Clerk shall set a date for the hearing that is at least fifteen (15) business  
28 days, but no more than sixty (60) business days, after the City Clerk's receipt  
of the appeal, unless the applicant and any person submitting an appeal agree  
to a later hearing date.

- 1 3. Notice of Public Hearing Date. At least ten (10) business days before the  
2 public hearing, the City Clerk shall notify in writing any person submitting  
3 an appeal, the applicant, and any City department that reviewed the  
4 application of the date set for the public hearing. The City Clerk shall follow  
5 its regular procedures for notifying the general public of the hearing.
- 6 4. Public Hearing Record. The public hearing record shall include:  
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8 a. The application and the Department of Public Works' approval of the  
9 application;  
10 b. Any written determination from the Department of Public Works;  
11 c. Any further written evidence from any City departments submitted either  
12 prior to or during the hearing;  
13 d. Any written submissions from the applicant, any person submitting an  
14 appeal, or any other interested person submitted either prior to or during  
15 the hearing; and  
16 e. Any oral testimony from any City departments, the applicant, any person  
17 submitting a protest, or any interested person taken during the hearing.
- 18 5. Hearing Officer Determination. The Hearing Officer shall issue a written  
19 resolution containing its determination within fourteen (14) business days  
20 following the close of evidence at the conclusion of the public hearing on  
21 the appeal. The resolution shall include a summary of the evidence and the  
22 ultimate determination whether to grant, grant with modifications, or deny  
23 the appeal.
- 24 6. Notice of Determination on Appeal.  
25  
26 a. The City Clerk shall promptly mail a notice of a determination on an  
27 appeal to both the applicant, to any neighborhood association identified by  
28 the Department of Development Services for any neighborhood within three  
hundred (300) feet of the approved wireless telecommunications facility, and  
to any person who either filed a protest, submitted evidence, or appeared at  
the hearing, and whose name and address are known to the Department of  
Public Works.

**IV. LEGISLATIVE BACKGROUND FOR WIRELESS TELECOMMUNICATIONS**  
**FACILITIES**

1                   **1. Federal and State Laws and Regulations**

2                   In 1996, Congress conducted a major overhaul of the telecommunications law in almost  
3 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let  
4 anyone enter any communications business—to let any communications business compete in any  
5 market against any other. The Federal Communications Commission (“FCC”) was then tasked  
6 to create fair rules for this new era of competition. The advent of the newest generation of  
7 wireless broadband technology known as “5G” requires the installation of thousands of “small  
8 cell” wireless facilities. These facilities have become subject to a wide variety of local  
9 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The  
10 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to  
11 the installation and management of small cell facilities, including the manner in which local  
12 governments can regulate them. *Id.* Sections 253(a) and 332(c)(7) of the Act provided FCC with  
13 the statutory authority for limiting local regulation on the deployment of [5G] technology that  
14 reflects congressional intent in 1996 to expand deployment of wireless services. *Id.* at p. 30.

15 These limitations provide that local government regulations:

- 16                   a.       shall not unreasonably discriminate among providers of functionally equivalent  
17 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
- 18                   b.       shall not prohibit or have the effect of prohibiting the provision of personal  
19 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
- 20                   c.       a local government ... shall act on any request for authorization to place,  
21 construct, or modify personal wireless service facilities within a reasonable period  
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1 of time after the request is duly filed with such government<sup>2</sup>. 47 U.S.C. §  
2 332(c)(7)(B)(ii).

- 3 d. No State or local government or instrumentality thereof may regulate the  
4 placement, construction, and modification of personal wireless service facilities  
5 on the basis of the environmental effects of radio frequency emissions to the  
6 extent that such facilities comply with the Commission's regulations concerning  
7 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).  
8

9 Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or  
10 have the effect of prohibiting” any entity from providing telecommunications services. *Id.* See  
11 also 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local  
12 governments in regulating the deployment of 5G technology in order to remove the barriers to  
13 entry for businesses to compete in the telecommunications market.  
14

15 California case law and statutory authorities provide additional regulatory guidance for  
16 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the  
17 telecommunications business. Pub. Util. Code § 7901; *see also T-Mobile West LLC v. City and*  
18 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme  
19 Court held that while the California legislature did not intend to deprive local governments of  
20 the ability to impose aesthetic regulations and public safety issues, local agencies must  
21 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*  
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26 <sup>2</sup> The FCC has specifically shortened the shot clock for approving/denying applications for installation  
27 of WTFs on existing infrastructure (i.e., collocation) from 90 to 60 days and from 150 to 90 days for all  
28 other collocation applications. *Accelerating Wireless Broadband Deployment by Removing  
Barriers to Infrastructure Inv.*, 33 FCC Rcd. 9088 (2018), ¶¶ 104–05, ¶ 132, ¶ 136).

1 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to  
2 preempt local decisions about specific sites “when there is a clear conflict with the  
3 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3  
4 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>)  
5 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread  
6 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,  
7 citing General Order 159A, at p. 3.).  
8

9 **2. The City’s Telecom Ordinance**

10 On May 1, 2018, the City adopted LBMC §15.34, Wireless Telecommunications  
11 Facilities in the Public Rights-Of-Way (“Telecom Ordinance). The Telecom Ordinance governs  
12 the installation of WTFs within the jurisdiction of the City of Long Beach, and the City’s scope  
13 of regulatory authority for the installation of WTFs is limited to this ordinance. The Telecom  
14 Ordinance provides for the requirements and standards for WTFs in the public right-of-way.  
15 These include comprehensive permit requirements and standards (LBMC 15.34.030.B),  
16 application process requirements (application, review, and approval) (LBMC 15.34.030.D),  
17 conditions of approval (LBMC 15.34.030.F), notice following approval (LBMC 15.34.030.K),  
18 and the appeal process of a Tier B<sup>3</sup> WTF permit (LBMC 15.34.030.L). The Telecom Ordinance  
19 also provides for, among others, compliance and modifications, of WTFs after installation  
20 (LBMC 15.34.030.N; LBMC 15.34.030.S).  
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27 <sup>3</sup> “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility  
28 where the proposed location for the facility is in a Planning Protected Location, Coastal Zone  
Protected Location, or Zoning Protected Location.



1 **V. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER**

2 By letter dated September 10, 2020, Appellants expressed their strong opposition to the  
3 proposed WTF due to health concerns and its dangerous proximity to their two-story residence.  
4 In support, Appellants cited a 2017 letter of comment submitted by scientists with the  
5 International EMF Scientist Appeal to the U.S. FCC in opposition to FCC regulations that would  
6 allow streamlined approval of 5G infrastructure to be built on existing utility poles, in greater  
7 number than current cellular Antennas. Their letter calls on The FCC to consider the potential  
8 impact of the 5G wireless infrastructure on the health and safety of the U.S. population before  
9 proceeding to deploy the infrastructure, and stated that “[n]umerous recent scientific publications  
10 have shown that EMF affects living organisms at levels well below most international and  
11 national guidelines—[t]hese effects can include an increased cancer risk, genetic damage,  
12 structural and functional changes to the reproductive system, learning and memory deficits, and  
13 neurological disorders.” (See <<https://interestingengineering.com/the-danger-of-5g-5th-generation-cellular-technology-might-be-a-threat-to-public-health?fbclid=IwAR2PjoOtsA2clSDxAix9oQCWxbwxqLT5J6LhoBpp--i3qp9UsST4SBEUA3w>>).

14 In addition, Appellants cited a 2020 letter from over 400 medical and public health  
15 professionals to the FCC stating that:

16 “Americans are entitled to know the full extent of any potential health risks  
17 associated with exposure to RF microwave radiation, particularly at this time  
18 when wireless companies are busy installing hundreds of thousands of new  
19 wireless antennas in close proximity to homes and apartments. The determination  
20 of risk can best be evaluated from properly conducted, independent studies. The  
21 alternative of waiting for decades to learn whether or not these exposures increase  
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1 disease rates in human populations and in the natural world is a dangerous and  
2 irresponsible strategy.”(See <[https://ecfsapi.fcc.gov/file/1061850512373/  
3 FCC%20letter%20Medical%20Professionals.pdf](https://ecfsapi.fcc.gov/file/1061850512373/FCC%20letter%20Medical%20Professionals.pdf)>)

4 Appellants also addressed their concern regarding the effect the proposed WTF would  
5 have on the value of their home as it “will negatively affect [their] property value and aesthetic  
6 appearance as it will be a huge eyesore as [one] enter[s] [their] neighborhood.” (See  
7 Respondent’s Gr. Ex., p.2). Appellants thereafter requested the City to have the “proposed WTF  
8 be placed elsewhere.”  
9

10 Upon receipt of Appellants’ letter, the Long Beach City Clerk’s office then scheduled a  
11 formal hearing with regard to Appellants’ objections.  
12

## 13 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

### 14 **1. Appellants’ Evidence**

15 During the WebEx virtual hearing on October 23, 2020, this hearing officer explained to  
16 all the participants the guidelines for the hearing. These include examination of witnesses and  
17 presentation of evidence. It was stated on the record that the hearing officer received the City’s  
18 submission package<sup>4</sup> in advance of the hearing both in hardcopy and electronic format. The  
19 hardcopy was received at this hearing officer’s business address and included a Proof of Service  
20 indicating that the hardcopy was sent to said business address and to Appellants’ address on  
21 record. The package also included a Proof of Service that the electronic copy was transmitted to  
22 the email addresses of the hearing officer, the Appellants, and the Applicant’s representatives.  
23 During the hearing, all parties acknowledged receipt of the City’s submission package.  
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27 <sup>4</sup> The City’s submission package included a copy of Appellants’ letter dated September 10, 2020.  
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1 In addition to Appellants' September 10, 2020 letter, Appellants conducted a presentation  
2 during the hearing reiterating their strong opposition to the proposed WTF and requested the City  
3 to relocate the Site pursuant to the contract between the City and Applicant. (*See* Appellants'  
4 slide presentation, slide 2). Appellants contend that the Application doesn't take into account the  
5 height of their residential living area and the duration of RF exposure from the proposed WTF.  
6 (*See* Appellants' slide presentation, slides 12-16). Appellants also addressed the impact of "small  
7 cells" on residential property values (*See* Appellants' slide presentation, slides 18-19), and the  
8 current state of Federal and State legislation and court cases vis-à-vis local regulation of WTFs.  
9 (*See* Appellants' slide presentation, slides 20-22).

## 11 **2. The City's (and Applicant's) Evidence**

12 In advance of the formal hearing, the City submitted the following evidence (Respondent's  
13 Group Exhibit) in support of its opposition to the appeal:

- 14 • September 10, 2020 Appeal Letter to the City of Long Beach from Robert and  
15 Kathy Allison (Respondent's Group Exhibit, Pages 1-3)
- 16 • Verizon's February 28, 2020 City of Long Beach Application (Respondent's  
17 Group Exhibit, Pages 4-13)
- 18 • Verizon Master License Agreement (MLA) (which includes Verizon's  
19 maintenance obligations) (Respondent's Group Exhibit, Pages 14-109)
- 20 • Small Cell Noise Study (Respondent's Group Exhibit, Pages 110-128)
- 21 • Coverage Map - Verizon (Respondent's Group Exhibit, Page 129)
- 22 • Structural Analysis (Respondent's Group Exhibit, Pages 130-204)
- 23 • Radio Frequency Electromagnetic Fields Exposure Analysis Letter dated June 5,  
24 2020 (Respondent's Group Exhibit, Page 205)
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- 1 • August 21, 2020 - Approved Application (Respondent's Group Exhibit, Pages
- 2 206-225)
- 3 • Tier B Justification (Respondent's Group Exhibit, Pages 226)
- 4 • Mailing Map (Respondent's Group Exhibit, Pages 227)
- 5 • Mailing Notice List Affidavit (Respondent's Group Exhibit, Pages 228-229)
- 6 • September 2, 2020 - Mailing Notice (Respondent's Group Exhibit, Pages 230-
- 7 232)
- 8 • September 2, 2020 - Mailing Affidavit (Respondent's Group Exhibit, Page 233)
- 9 • September 2, 2020 - Certification of Posting (Respondent's Group Exhibit, Page
- 10 234)
- 11 • September 2,2020 - Proof of Posting (Respondent's Group Exhibit, Pages 235)

12 Immediately prior to the hearing, the Applicant submitted via email a Radio Frequency  
13 Electromagnetic Energy Measurement and Compliance Report to supplement the City's  
14 submission package. In addition, the Applicant also conducted a presentation during the hearing  
15 that discussed the (1) increasing need for better wireless infrastructure in the City of Long Beach,  
16 (2) photo depictions of the existing light pole and proposed WTF, (3) alternative locations for the  
17 proposed WTF that were evaluated by Applicant, and (4) health and safety key facts regarding  
18 wireless RF technology.  
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### 23 **3. Supplemental Issues and Evidence**

24 The public hearing record for the appeal of a Tier B Wireless Right-of-Way Facility  
25 Permit shall include any written submissions from the applicant, any person submitting an  
26 appeal, or any other interested person submitted either prior to or during the hearing; and any  
27 oral testimony from any City departments, the applicant, any person submitting a protest, or any  
28

1 interested person taken during the hearing. LBMC 15.34.030.L.4. The Hearing Officer shall  
2 determine the order of proceedings and shall afford all parties a reasonable opportunity to present  
3 any relevant evidence. (LBMC 2.93.050). The Hearing Officer has the discretionary authority to  
4 place reasonable time limits on the right to cross-examine and the presenting of evidence.  
5 (LBMC 2.93.040). Consequently, no single standard of proof governs in all types of  
6 administrative hearings; the standard applicable to a particular type of hearing depends on the  
7 relevant statute; and the burden of meeting this standard of proof may shift between the parties.  
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9         A typical public hearing is conducted in-person where the parties appear personally  
10 before the Hearing Officer. The parties are afforded an opportunity to present and offer  
11 additional relevant evidence in support of their arguments. Due to extraordinary circumstances in  
12 COVID-19 era, hearings are conducted virtually. Consequently, the Hearing Officer is unable to  
13 receive additional evidence in real time and in-person. Although the LBMC is silent with regard  
14 to additional evidence being offered and admitted in virtual hearings, LBMC nonetheless  
15 provides that all parties shall be afforded a reasonable opportunity to present any relevant  
16 evidence (LBMC 2.93.050), to which the Hearing Officer has the discretionary authority to place  
17 reasonable time limits on the presenting of evidence. (LBMC 2.93.040).  
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20         At the conclusion of Applicant's presentation during the hearing, a discussion was made  
21 regarding the height on the proposed WTF from which the radio signal was to be emitted and the  
22 height of the Appellants' residential structure. (*See* October 23, 2020 video recording of hearing,  
23 starting at 02:06:54). Appellants contend that the proposed WTF would be placed at a height  
24 where the radio signal will be emitted below the roofline of their two-story residence. Applicant  
25 disputed Appellants' contention and confirmed that for the proposed WTF to function properly,  
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1 “it has to be higher than the house.” (Id.). This factual issue remained in dispute at the conclusion  
2 of the public hearing.

3 Appellants were then given until Saturday, October 24, 2020, to supplement their  
4 arguments with additional evidence. On October 24, 2020, Appellants sent an email to all  
5 interested parties containing two (2) video files showing that: (1) the distance from their roof line  
6 to the base of their house is 26’ 4”;  
7 and (2) the distance from the sidewalk to the base of their  
8 house is 12” for a total distance from roof line to sidewalk being approximately 27’ 4”. However,  
9 Appellants did not provide any measurements for the distance between their home and the  
10 proposed WTF. The City and Applicant were given until the close of business on Tuesday,  
11 October 27, 2020, to submit any additional materials in response to Appellants’ supplemental  
12 submission. On October 27, 2020, Applicant sent an email to all interested parties containing  
13 arguments in direct opposition to the arguments Appellants addressed during the public hearing.  
14 (See Applicant’s email dated October 27, 2020). Applicant reiterated its position that: (1)  
15 notwithstanding Appellants’ contention that the small cell was at the same height as, and was  
16 directly pointed at, the second floor of the Appellants’ home,<sup>5</sup> Applicant has nonetheless  
17 complied with the City’s Public Health Compliance Standard; (2) alleged effect on Appellant’s  
18 home value should not be deciding a factor; (3) Appellants’ aesthetic comments should not be a  
19 deciding factor; (4) legislative pushback trends actually favor federal preemption in the areas of  
20 RF emissions exposure limits and property value issues; (5) Applicant’s contract with the City  
21 does not govern the issues on appeal; and (6) Applicant has concluded that proposed location for  
22 the Site is still the best overall location to achieve the network’s objectives in this area. On  
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27 <sup>5</sup> Applicant, in its October 27, 2020 email, does not dispute the height measurements of  
28 Appellants’ home provided by Appellants in their October 24, 2020 email.

1 October 28, 2020, on Appellants’ request, Appellants were granted an additional day to submit  
2 their rebuttal argument, but limiting Appellants’ response to the scope of Applicant’s responses.

3 On October 29, 2020, Appellants submitted their closing statement by email to all  
4 interested parties. In summary, Appellants argue that (1) LBMC § 15.34 and § 21.56 work in  
5 unison, with LBMC § 21.56 mostly imposing substantive limitations on WTFs and LBMC §  
6 15.34 mostly imposing procedural requirements; and (2) the Telecom Ordinance requires the  
7 City to deny the Application because the application, and its approval by the City, failed to  
8 comply with all of the requirements of both LBMC § 15.34 and § 21.56. The Appellants then  
9 stated eight (8) different reasons why the application and approval process were deficient, and  
10 thereby requested for the appeal to be granted and the permit be ultimately denied.  
11

## 12 **VII. DISCUSSION**

### 13 **1. Health Concerns**

14 Appellants’ main issue addressed on their appeal letter relates generally to “health  
15 concerns.” (*See* Respondent’s Gr. Ex., pp. 1-3; *See also* Appellants’ Slide Presentation, slides  
16 12-17, *See also* Appellants’ Closing Statement, p.1). Appellants contend that “based upon the  
17 enormity of peer-reviewed, scientific articles and letters of appeal from scientists and doctors on  
18 the issues regarding these WTFs, we are very concerned . . . [t]his [is] an enormous risk and  
19 detrimental to our health and the health of our neighbors!” Appellants argue that the City is in in  
20 non-compliance with LBMC 15.34.010.D. because the proposed WTF does not promote the  
21 ***public health and safety*** of the City’s residents in that it will be in close proximity to their two-  
22 story dwelling and duration that the Appellants would be exposed to RF emissions, at least eight  
23 hours a day, seven days a week.  
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1 Appellants contend that the reports submitted by the Applicant fail to adequately show  
2 that the proposed Facility does not exceed Public Health Compliance Standards pursuant to  
3 LBMC 15.34.030.D.7.<sup>6</sup> Appellants allege that the reports incorrectly assume the locations of  
4 individuals who would be near the antenna, and thus fail to acknowledge that there may be  
5 individuals located inside a two-story residence in close proximity<sup>7</sup> of the antennas or that the  
6 proposed antenna would be below the roofline of that residence. Furthermore, Appellants argue  
7 that the third (3<sup>rd</sup>) report submitted by Applicant subsequent to the hearing purports to include  
8 calculations of anticipated exposure on the second floor of the residence but still falls short of  
9 what is required for the specific location.  
10

11 Notwithstanding Appellants' assertion that the location, height, and angle of the proposed  
12 WTF in relation to their residence pose a serious health detriment to them and their neighbors,  
13 Appellants have failed to show that the RF emissions of the proposed WTF do not comply with  
14 FCC regulations. Appellants' argument that the FCC's RF guidelines make clear that the areas  
15 where exposure to emissions should be measured are those areas where "people may be located"  
16 does not take into account the language in the guidelines stating that "in order for a transmitting  
17 facility or operation to be *out of compliance* with the FCC's RF guidelines an area or areas  
18 where levels *exceed* the MPE limits must, first of all, be in some way accessible to the public or  
19 to workers. The Applicant's October 27, 2020 RF study states that the maximum calculated  
20 levels for a person on the ground and second floors of the adjacent residence are 0.81% and 3.7%  
21 of the applicable public exposure limit, respectively, and therefore do not exceed the MPE limits.  
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27 <sup>6</sup> See discussion on Paragraph 3 below regarding legal deficiency of the Application and the  
28 approval process.

<sup>7</sup> Appellants allege that their home is within 20 feet of the antennas.



1 The City’s regulatory authority in this regard is limited and preempted by federal law. 47 U.S.C.  
2 § 332(c)(7)(B)(iv) (“No State or local government or instrumentality thereof may regulate the  
3 placement, construction, and modification of personal wireless service facilities on the basis of  
4 the environmental effects of radio frequency emissions to the extent that such facilities comply  
5 with the [FCC]’s regulations concerning such emissions.) The Applicant’s submission of a Radio  
6 Frequency Electromagnetic Energy Measurement and Compliance Report (and a RF Study  
7 submitted after the hearing) demonstrating that the emissions from the proposed WTF is within  
8 general population and occupational limits established by the FCC for radio frequency emissions  
9 complies with FCC regulations. [See Applicant’s submission prior to hearing; See also Radio  
10 Frequency Electromagnetic Fields Exposure Analysis Letter (Respondent’s Gr. Ex., p. 205); See  
11 also RF Study prepared by Hammett & Edison, Inc. subsequent to the hearing on October 27,  
12 2020]. There is, therefore, no basis to deny the approved permit for the proposed WTF on the  
13 basis of “health concerns.”

## 16 **2. Property Values**

17 Appellants’ next argument hinges on the negative impact of the proposed WTF to  
18 “property values.” (See Respondent’s Gr. Ex., pp. 1-2). Aside from anecdotal evidence provided  
19 by Appellants in their appeal letter and slide presentation, Appellants submitted no evidentiary  
20 support on the impact of WTFs on residential property values, or more specifically, the impact of  
21 the proposed WTF on the value of their residential property. Although the purpose of the  
22 Telecom Ordinance, among others, is to promote property values (LBMC 15.34.010.D), the  
23 subsequent provisions in the Telecom Ordinance set forth the “requirements and standards” with  
24 which the City and prospective WTF permit applicants should comply in order to meet this  
25 Telecom Ordinance objective. (See LBMC 15.34.030). Consequently, the Telecom Ordinance  
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1 does not vest in this hearing officer the authority to consider property values in determining  
2 whether to deny or uphold the approved permit.

3 **3. Legal deficiency of the application and approval process**

4 Appellants also argued that the Telecom Ordinance required the City to deny the  
5 Application because the application and the City's approval process failed to comply with all of  
6 the requirements of the ordinance provided in LBMC 15.34 and LBMC 21.56. Appellants  
7 contend that the application and approval process were legally deficient because: (1) the City  
8 failed to issue a written approval of the permit detailing the reasons for the approval; (2) the  
9 Applicant failed to justify in writing why it was not feasible to place the pull boxes in the most  
10 preferred location; (3) the Applicant's Tier B Justification letter failed to adequately demonstrate  
11 that the wireless facility would not significantly detract from the any of the defining features of  
12 the residential area; (4) the Applicant made no evidentiary showing to justify placing a Wireless  
13 Facility in a residential area, as required by LBMC 21.56.040.A; (5) the Applicant failed to show  
14 that there were no feasible co-location sites nearby for placement of their Wireless Facility; (6)  
15 the Applicant failed to provide an actual coverage map, as required if they are making any  
16 arguments that placement of the Proposed Facility at the Site was necessary to provide adequate  
17 coverage in the area; (7) the Applicant failed to establish that it did not own any other Wireless  
18 Facilities within a 500-foot radius of the Proposed Facility; and (8) the Applicant did not submit  
19 an adequate Radio Frequency Emission study, as required by the Telecom Ordinance.  
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24 While the hearing officer notes that Appellants' legal argument regarding the legal  
25 deficiency of the Application and the corresponding approval process was only raised in their  
26 reply brief that was submitted along with their closing arguments, the hearing officer will  
27 nonetheless consider said argument as a matter of fairness and due process.  
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1 No single standard of proof governs in all types of administrative hearings; the standard  
2 applicable to a particular type of hearing depends on the relevant statute. (Hearing Officer’s  
3 Handbook, pursuant to LBMC §§ 2.93.050 and 3.80.429.1) The burden of meeting this standard  
4 of proof may shift between the parties. (Id.). While Appellants are correct that the Telecom  
5 Ordinance is silent on which party has the burden of proof during an appeal post-approval of a  
6 permit application, the California Administrative Procedures Act (“APA”) provides guidance in  
7 a similar scenario. In a “Statement of Issues” hearing where the agency has denied a license  
8 application and the applicant is appealing the denial, the burden of proof on the applicant is  
9 “preponderance of evidence.” (CA Gov. Code, § 11504; See also CA Evid. Code, § 500, 115 for  
10 Citation hearings.). Therefore, the burden of proof on an interested party appealing a post-  
11 approval permit of a proposed WTF is by “preponderance of evidence” that the approval of the  
12 permit was in non-compliance to the Telecom Ordinance.  
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15 Appellants acknowledge that the City and the Applicant have the unique experience in  
16 these cases, as well as the superior knowledge the City and Applicant have of what materials  
17 were submitted with the application and how the application was evaluated and approved (See  
18 Appellant’s brief, page 3). Therefore, due to the City and Applicant’s experience and knowledge,  
19 there is a presumption that the approval of the permit complied with all provisions of the  
20 Telecom Ordinance. The burden thus remains with the Appellants to prove by preponderance of  
21 the evidence that the City’s approval of the permit did not comply with the Telecom Ordinance.  
22 Although the Appellants urge the hearing officer, in making its determination, to only consider  
23 materials that were presented to the PWD in the application process, and not to accept evidence  
24 that was not presented to the PWD, fairness dictates for the hearing officer to consider all  
25 relevant evidence and arguments submitted on or before the respective deadlines given all  
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1 interested parties. Appellants' attempt at two bites at the apple by urging the hearing officer not  
2 to consider materials presented on or after the hearing while presenting new legal arguments in  
3 their closing arguments does not comport with due process and fairness.

4 Turning to Appellants' argument regarding the legal deficiency of the Application and  
5 the approval process, the hearing officer has no basis to conclude by preponderance of the  
6 evidence that the approval of the Application was granted in violation of the Telecom Ordinance.  
7 This determination does not take into account whether internal work documents within the PWD  
8 contain the materials that Appellants contend were not submitted as part of the appeal record.  
9 With respect to Appellants' bases (1), (3), (7), and (8), the hearing officer finds that the City and  
10 Applicant have provided sufficient evidence on the record that the permit was granted in  
11 compliance with the Telecom Ordinance. On bases (2) and (6), Appellants' contentions require  
12 further clarifications from the Applicant and/or modifications of the Application. Page 10 of the  
13 Application (See Respondent's Gr. Ex., p. 13) stating that the equipment is bundled in an all-in-  
14 one equipment is not consistent with Applicant's testimony on the record that the pull boxes will  
15 be below grade (See video recording of hearing). In addition, the City's evidence of a  
16 propagation map showing deficiencies in the existing coverage at or near the Site does not show  
17 purported gaps in the coverage areas, but merely show percentage of demand within the City of  
18 Long Beach. The City's coverage map is also inconsistent with the coverage map submitted by  
19 Appellants as Exhibit A with their reply brief.

20 With regard to bases (4) and (5), Appellants contention that the Application failed to  
21 comply with LBMC 21.56.040 is without merit. The proposed WTF in the Application is a co-  
22 location facility and is therefore not bound by the provisions of LBMC 21.56.040 (Development  
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1 and design standards for new Wireless Telecommunications Facilities that are *not* co-location  
2 facilities).

3 **4. Relocation and contract between the City and Applicant**

4 Appellants made numerous requests for the proposed WTF to be relocated pursuant to the  
5 contract between the City and the Applicant. However, Appellants have not shown a purported  
6 breach of the contract by either party or sufficient standing thereof. Furthermore, Appellants'  
7 request is outside the scope of authority vested in the hearing officer pursuant to LBMC  
8 15.34.030.L.5.<sup>8</sup>

9  
10 **VIII. RECOMMENDATION**

11 Appellants are credible witnesses. This hearing officer has no reason to doubt the  
12 veracity and sincerity of Appellants' statements in either their appeal letter(s) or during the  
13 formal hearing. However, inasmuch as Appellants' concerns and grievances warrant serious  
14 consideration and notwithstanding their relevant legal arguments, Appellants have otherwise  
15 not shown by a preponderance of the evidence that the appeal be granted and the permit be  
16 denied. Both the City and Applicant (as an interested party) submitted a comprehensive  
17 package in opposition to the appeal that included the City's brief and supporting legal  
18 authorities and relevant evidence. The City's evidence included all the materials and  
19 documentation that the Applicant submitted to the City as part of the application process. After  
20 two (2) subsequent rounds of plan review and six (6) plan revisions, the City determined that  
21 the Applicant's proposed WTF met all the applicable requirements and standards set forth in  
22 the LBMC 15.34, and approved the permit application accordingly. As stated above, this

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27 <sup>8</sup> The Hearing Officer shall issue a written resolution . . . shall include a summary of the  
28 evidence and the ultimate determination whether to grant, grant with modifications, or deny the appeal.

1 hearing officer is bound by the provisions of the LBMC 15.34, and cannot look elsewhere in  
2 making its determination. Accordingly, this hearing officer has found nothing on the record by  
3 a preponderance of the evidence to conclude that the Applicant's permit for the proposed WTF  
4 was granted in violation of LBMC 15.34.

5 Based on the foregoing, this hearing officer hereby recommends that Appellants'  
6 appeal be denied and that Applicant's permit for the proposed WTF be upheld with leave to  
7 modify/clarify the following:  
8

- 9 1. Modify/clarify Page 10 of the Application re: Equipment Preferences
- 10 2. Modify/clarify lack of Applicant's coverage map for the proposed WTF.

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13 Dated this 23<sup>th</sup> day of November 2020

14 /s/ JONATHAN C. NAVARRO, ESQ.  
15 Administrative Hearing Officer