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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 ALFONSO GARCIA and CATHERINE
10 UNGOS,

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 November 20, 2020 at 10:00 AM via WebEx virtual hearing. The
24 WebEx hearing was administered by Daniel Ramirez with the Public Works Department
25 ("PWD") for the City of Long Beach. The Appellants, Alfonso Garcia and Catherine Ungos
26 ("Appellants") 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, Bill Hammett,
5 Charaka Wijeweera, Katherine Baxendale, Mario De La Mora, and Tami Pritchard. The PWD
6 for the City of Long Beach was represented by Joshua Hickman and Pablo Leon. No member of
7 the public appeared during the hearing.
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9 **II. STATEMENT OF FACTS**

10 The facts in this matter are not in dispute. On or around January 31, 2020, Verizon
11 submitted an application (“Application”) for a permit to the City for the installation of a “small
12 cell” wireless telecommunications facility (“WTF”) in the public right-of-way. (Respondent’s
13 Group Exhibit, pages 2-11). The Application process is governed by Chapter 15.34 of the Long
14 Beach Municipal Code (“LBMC”) that includes requirements and applicable standards for WTFs
15 in the public right-of-way to ensure that the proposed WTF complies with said requirements and
16 standards. WTF means equipment installed for the purpose of providing wireless transmission
17 of voice, data, images, or other information including but not limited to, cellular telephone
18 service, personal communications services, and paging services, consisting of equipment,
19 antennas, and network components such as towers, utility poles, transmitters, base stations,
20 conduits, pull boxes, electrical meters, and emergency power systems. WTF does not include
21 radio or television broadcast facilities, nor radio communications systems for government or
22 emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way” means any public
23 highway, street, alley, sidewalk, parkway, parking lot, and all extensions or additions thereto
24 which is either owned, operated, or controlled by the City, or is subject to an easement or
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1 dedication to the City, or is a privately-owned area within City’s jurisdiction which is not yet
2 dedicated, but is designated as a proposed public right-of-way on a tentative subdivision map
3 approved by the City. LBMC 15.34.020.S.

4 The Application sought a permit for the installation of a proposed WTF in the public
5 right-of-way adjacent to the property located at 5402 E. Daggett Street, which is in a residential
6 zoning district. The proposed WTF will be integrated into a new light pole that will replace the
7 existing light pole at the site that is designated as “CA002_LBC_LNGBCH-176” in the
8 Application (“Site”). The existing wood light pole is twenty-nine (29) feet and nine (9) inches
9 high and the top of the existing luminaire is twenty-six (26) feet and ten (10) inches high.
10 (Respondent’s Gr. Ex., pp. 216-217). The replacement light pole would be twenty-six (26) feet
11 high and the top of the proposed luminaire would be twenty-seven (27) feet high. (Id). This
12 accomplishes City’s goal of maintaining the same luminaire height within an eighteen (18) inch
13 variance. Three integrated antennas will be placed at the top of the pole, with the bottom of the
14 antennas twenty-two (22) feet one (1) inch from the ground. (Respondent’s Gr. Ex., pp. 207,
15 216-217). Three (3) pull boxes for fiber and power will be placed adjacent to the pole with all
16 associated cables routed inside the pole. (Id).

17 Upon three (3) subsequent rounds of reviews and plan revisions—the latest being August
18 17, 2020—the City approved the Application on September 9, 2020. (See approval stamp on
19 Respondent’s Gr. Ex., pp. 208-234). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the
20 approval was mailed out on September 29, 2020, and a posted notice was placed on the pole
21 adjacent to Appellants’ home and on the Site on September 29, 2020. (See Respondent’s Gr. Ex.,
22 pp. 236-241 [proof of mailing]; Respondent’s Gr. Ex., pp. 242-244 [proofs of posting]). Said
23 posted notice triggered the commencement of the 10-day appeal period under LBMC
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1 15.34.030.L. The deadline for filing an appeal was October 13, 2020. Appellants filed the Appeal
2 on October 7, 2020. (See Respondent's Gr. Ex., p. 1).

3 **III. LEGAL AUTHORITY FOR APPEAL**

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

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- 7 1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility
8 Permit, and/or any person owning or residing at property that is adjacent to
9 or across the street to the location of a proposed Tier B Wireless
10 Telecommunications Facility, may appeal an approval or denial of an
11 application for a Tier B Wireless Right-of-Way Facility Permit. An appeal
12 must be in writing and must be submitted to the City Clerk within ten (10)
13 business days of the date the notice was mailed and posted as required under
14 Subsection 15.34.030.K.2, above.
 - 15 2. Public Hearing Required. If an appeal is timely submitted, an independent
16 hearing officer selected by the City shall hold a public hearing. The City
17 Clerk shall set a date for the hearing that is at least fifteen (15) business
18 days, but no more than sixty (60) business days, after the City Clerk's receipt
19 of the appeal, unless the applicant and any person submitting an appeal agree
20 to a later hearing date.
 - 21 3. Notice of Public Hearing Date. At least ten (10) business days before the
22 public hearing, the City Clerk shall notify in writing any person submitting
23 an appeal, the applicant, and any City department that reviewed the
24 application of the date set for the public hearing. The City Clerk shall follow
25 its regular procedures for notifying the general public of the hearing.
 - 26 4. Public Hearing Record. The public hearing record shall include:
 - 27 a. The application and the Department of Public Works' approval of the
28 application;
 - b. Any written determination from the Department of Public Works;
 - c. Any further written evidence from any City departments submitted either
prior to or during the hearing;
 - d. Any written submissions from the applicant, any person submitting an
appeal, or any other interested person submitted either prior to or during
the hearing; and

1 e. Any oral testimony from any City departments, the applicant, any person
2 submitting a protest, or any interested person taken during the hearing.

3 5. Hearing Officer Determination. The Hearing Officer shall issue a written
4 resolution containing its determination within fourteen (14) business days
5 following the close of evidence at the conclusion of the public hearing on
6 the appeal. The resolution shall include a summary of the evidence and the
7 ultimate determination whether to grant, grant with modifications, or deny
8 the appeal.

9 6. Notice of Determination on Appeal.

10 a. The City Clerk shall promptly mail a notice of a determination on an
11 appeal to both the applicant, to any neighborhood association identified by
12 the Department of Development Services for any neighborhood within three
13 hundred (300) feet of the approved wireless telecommunications facility, and
14 to any person who either filed a protest, submitted evidence, or appeared at
15 the hearing, and whose name and address are known to the Department of
16 Public Works.

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

18 **FACILITIES**

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

20 In 1996, Congress conducted a major overhaul of the telecommunications law in almost
21 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let
22 anyone enter any communications business—to let any communications business compete in any
23 market against any other. The Federal Communications Commission (“FCC”) was then tasked
24 to create fair rules for this new era of competition. The advent of the newest generation of
25 wireless broadband technology known as “5G” requires the installation of thousands of “small
26 cell” wireless facilities. These facilities have become subject to a wide variety of local
27 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The
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1 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to
2 the installation and management of small cell facilities, including the manner in which local
3 governments can regulate them. Id. Sections 253(a) and 332(c)(7) of the Act provided FCC with
4 the statutory authority for limiting local regulation on the deployment of [5G] technology that
5 reflects congressional intent in 1996 to expand deployment of wireless services. Id. at p. 30.

6 These limitations provide that local government regulations:

- 7 a. shall not unreasonably discriminate among providers of functionally equivalent
8 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
- 9 b. shall not prohibit or have the effect of prohibiting the provision of personal
10 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
- 11 c. a local government ... shall act on any request for authorization to place,
12 construct, or modify personal wireless service facilities within a reasonable period
13 of time after the request is duly filed with such government¹. 47 U.S.C. §
14 332(c)(7)(B)(ii).
- 15 d. No State or local government or instrumentality thereof may regulate the
16 placement, construction, and modification of personal wireless service facilities
17 on the basis of the environmental effects of radio frequency emissions to the
18 extent that such facilities comply with the Commission's regulations concerning
19 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).
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26 ¹ 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 Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or
2 have the effect of prohibiting” any entity from providing telecommunications services. *Id. See*
3 *also* 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local
4 governments in regulating the deployment of 5G technology in order to remove the barriers to
5 entry for businesses to compete in the telecommunications market.
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7 California case law and statutory authorities provide additional regulatory guidance for
8 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the
9 telecommunications business. Pub. Util. Code § 7901; *see also T-Mobile West LLC v. City and*
10 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme
11 Court held that while the California legislature did not intend to deprive local governments of
12 the ability to impose aesthetic regulations and public safety issues, local agencies must
13 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*
14 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to
15 preempt local decisions about specific sites “when there is a clear conflict with the
16 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3
17 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>)
18 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread
19 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,
20 citing General Order 159A, at p. 3.).
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24 **2. The City’s Telecom Ordinance**

25 On May 1, 2018, the City adopted LBMC §15.34, Wireless Telecommunications
26 Facilities in the Public Rights-Of-Way (“Telecom Ordinance). The Telecom Ordinance governs
27 the installation of WTFs within the jurisdiction of the City of Long Beach, and the City’s scope
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1 of regulatory authority for the installation of WTFs is limited to this ordinance. The Telecom
2 Ordinance provides for the requirements and standards for WTFs in the public right-of-way.
3 These include comprehensive permit requirements and standards (LBMC 15.34.030.B),
4 application process requirements (application, review, and approval) (LBMC 15.34.030.D),
5 conditions of approval (LBMC 15.34.030.F), notice following approval (LBMC 15.34.030.K),
6 and the appeal process of a Tier B² WTF permit (LBMC 15.34.030.L). The Telecom Ordinance
7 also provides for, among others, compliance and modifications, of WTFs after installation
8 (LBMC 15.34.030.N; LBMC 15.34.030.S).

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

11 By letter dated October 7, 2020, Appellants stated their objections regarding the alleged
12 health effects associated with the proposed WTF. More specifically, Appellants stated that they
13 do not want 5G next to their home—their family lives in a two-story structure (adjacent to the
14 pole) and their young family will be exposed to electrical waves 24/7. Presently, Appellants have
15 five (5) grandchildren that are 16, 10, 8, 5 years old and an infant who is 6 months old.
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17 Upon receipt of Appellants’ letter, the Long Beach City Clerk’s office then scheduled a
18 formal hearing with regard to Appellants’ objections.
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20 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

21 **1. Appellants’ Evidence**

22 During the WebEx virtual hearing on November 20, 2020, this hearing officer explained
23 to all the participants the guidelines for the hearing. These include examination of witnesses and
24 presentation of evidence. It was stated on the record that the hearing officer received the City’s
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27 ² “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 submission package³ in advance of the hearing both in hardcopy and electronic format. The
2 hardcopy was received at this hearing officer's business address and included a Proof of Service
3 indicating that the hardcopy was sent to said business address and to Appellants' address on
4 record. The package also included a Proof of Service that the electronic copy was transmitted to
5 the email addresses of the hearing officer, the Appellants, and the Applicant's representatives.
6
7 During the hearing, all parties acknowledged receipt of the City's submission package.

8 During the hearing, Appellants affirmed on the record that they had no additional
9 evidence they wished to offer in support of their appeal.

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

11 In advance of the formal hearing, the City submitted the following evidence
12 (Respondent's Group Exhibit) in support of its opposition to the appeal:
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- 14 • October 7, 2020 Appeal Letter to the City of Long Beach from Alfonso Garcia &
15 Catherine Ungos (Respondent's Group Exhibit, Page 1)
- 16 • Verizon's January 31, 2020 City of Long Beach Application (Respondent's
17 Group Exhibit, Pages 2-11)
- 18 • Verizon Master License Agreement (MLA) (which includes Verizon's
19 maintenance obligations) (Respondent's Group Exhibit, Pages 12-106)
- 20 • Small Cell Noise Study (Respondent's Group Exhibit, Pages 107-125)
- 21 • Coverage Map - Verizon (Respondent's Group Exhibit, Page 126)
- 22 • Structural Analysis (Respondent's Group Exhibit, Pages 127-206)
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27 ³ The City's submission package included a copy of Appellants' letter dated October 7, 2020.
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- 1 • Radio Frequency Electromagnetic Fields Exposure Analysis Letter dated June 5,
- 2 2020 (Respondent’s Group Exhibit, Page 207)
- 3 • September 9, 2020 - Approved Application (Respondent’s Group Exhibit, Pages
- 4 208-234)
- 5 • Tier B Justification (Respondent’s Group Exhibit, Page 235)
- 6 • Mailing and Posting Notification (Respondent’s Group Exhibit, Pages 236-244)
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8 The Applicant also conducted a presentation during the hearing that discussed the (1)
9 increasing need for better wireless infrastructure in the City of Long Beach, (2) photo depictions
10 of the existing light pole and proposed WTF, (3) alternative locations for the proposed WTF that
11 were evaluated by Applicant, and (4) health and safety key facts regarding wireless RF
12 technology.
13

14 Upon conclusion of Applicant’s presentation, no additional evidence was submitted by
15 the City or Applicant during the hearing, and this hearing officer then closed the evidentiary
16 portion of the appeal.
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18 **VII. DISCUSSION**

19 **1. Health Concerns**

20 Appellants’ sole issue addressed on their appeal letter relates generally to “health
21 concerns.” (Respondent’s Gr. Ex., p. 1). More specifically, Appellants are concerned with the
22 alleged impact of radio frequency emissions from 5G towers on human health. However,
23 Appellants provided no evidence in support of their concerns regarding the deleterious health
24 effects of the proposed WTF. Furthermore, the City’s regulatory authority in this regard is
25 limited and preempted by federal law. 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local
26 government or instrumentality thereof may regulate the placement, construction, and
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1 modification of personal wireless service facilities on the basis of the environmental effects of
2 radio frequency emissions to the extent that such facilities comply with the [FCC]'s regulations
3 concerning such emissions.) The Applicant's submission of a Wireless Radio Frequency
4 Compliance Evaluation report demonstrating that the emissions from the proposed WTF is
5 within general population and occupational limits established by the FCC for radio frequency
6 emissions complies with FCC regulations. (Respondent's Gr. Ex., p. 207). There is, therefore,
7 no basis to deny the approved permit for the proposed WTF on the basis of "health concerns."
8

9 **VIII. RECOMMENDATION**

10 Appellants are credible witnesses. This hearing officer has no reason to doubt the
11 veracity and sincerity of Appellants' statements in either their appeal letter or during the formal
12 hearing. However, inasmuch as Appellants' concerns and grievances warrant serious
13 consideration, Appellants have otherwise offered no legal basis or relevant evidence in support
14 of their appeal. In contrast, the City submitted a comprehensive package in opposition to the
15 appeal that included its brief and supporting legal authorities and relevant evidence. The City's
16 evidence included all the materials and documentation that the Applicant submitted to the City
17 as part of the application process. After three (3) rounds of reviews and plan revisions, the City
18 determined that the Applicant's proposed WTF met all the applicable requirements and
19 standards set forth in the LBMC 15.34, and approved the permit application accordingly. As
20 stated above, this hearing officer is bound by the provisions of the LBMC 15.34, and cannot
21 look elsewhere in making its determination. Accordingly, this hearing officer has found
22 nothing on the record to determine that the Applicant's permit for the proposed WTF was
23 granted in violation of LBMC 15.34.
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