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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 MICHAEL RAHBAN, KATHY DASILVA,) HEARING OFFICER’S FINDINGS AND
10 CARL DASILVA, MELANIE GORE, and) RECOMMENDATION
11 GREG GORE,)
12 Appellants,)
13 vs.)
14 CITY OF LONG BEACH,)
15 Respondent/Permitting)
16 Authority)
17 _____)
18 LOS ANGELES SMSA LIMITED)
19 PARTNERSHIP, d/b/a VERIZON)
20 WIRELESS,)
21 Real Party in Interest /)
22 Permit Applicant)

23 I. INTRODUCTION

24 This appeal came on regularly for hearing before Administrative Hearing Officer
25 Jonathan C. Navarro on December 1, 2020 at 10:00 AM via WebEx virtual hearing. The WebEx
26 hearing was administered by Daniel Ramirez with the Public Works Department (“PWD”) for
27 the City of Long Beach. The Appellants, Michael Rahban, Kathy Dasilva, Carl Dasilva, Melanie
28 Gore, and Greg Gore (“Appellants”) appeared *pro se*. The City of Long Beach (“City” or

1 “Respondent”) appeared and was represented by Erin Weesner-McKinley, Esq. with the Office
2 of the City Attorney for the City of Long Beach. Applicant Los Angeles SMSA Limited
3 Partnership, D/B/A Verizon Wireless (“Verizon” or “Applicant”) appeared and was represented
4 mainly by Daisy Uy Kimpang. The following also appeared for the Applicant: Barbara Breeden,
5 Bill Hammett, Charaka Wijeweera, Elizabeth Nygard, Esperanza Benitez, Gary Kraus, Korina
6 Arvizu, and Mario De La Mora. The PWD for the City of Long Beach was represented by
7 Joshua Hickman and Pablo Leon. No member of 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 February 7, 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 3-12). 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 and/or across from Appellants’ residences at 253 Ximeno Avenue, 4338
6 E. Vista Street, and 252 Ximeno Avenue, which are in a residential zoning district. The proposed
7 WTF will be integrated into a new light pole that will replace the existing light pole at the site
8 that is designated as “CA002_LBC_LNGBCH-153A” in the Application (“Site”). The existing
9 light pole is twenty-five (25) feet and five (5) inches high and the top of the existing luminaire is
10 twenty-six (26) feet and eight (8) inches high. (Respondent’s Gr. Ex., pp. 218-219). The
11 replacement light pole would be twenty-six (26) feet high and the top of the proposed luminaire
12 would be twenty-seven (27) feet high. (Id.) This accomplishes the City’s goal of maintaining
13 the same luminaire height within an eighteen (18) inch variance. Three integrated antennas will
14 be placed at the top of the pole, with the bottom of the antennas twenty-one (21) feet and seven
15 (7) inches from the ground. (Respondent’s Gr. Ex., pp. 218-219). Three (3) pull boxes for fiber
16 and power will be placed adjacent to the pole with all associated cables routed inside the pole.
17 (Id.)

18 Upon three (3) subsequent rounds of reviews and plan revisions—the latest being August
19 27, 2020—the City approved the Application on September 25, 2020. (See approval stamp on
20 Respondent’s Gr. Ex., pp. 210-243). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the
21 approval was mailed out on October 2, 2020, and a posted notice was placed on the Site on
22 October 2, 2020. (See Respondent’s Gr. Ex., pp. 247-251 [proof of mailing]; Respondent’s Gr.
23 Ex., pp. 252-254 [proofs of posting]). Said posted notice triggered the commencement of the 10-
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1 day appeal period under LBMC 15.34.030.L. The deadline for filing an appeal was October 16,
2 2020. Appellants filed the Appeal on October 11, 2020. (See Respondent's Gr. Ex., pp. 1-2).

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.).

21 22 23 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).

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

11 By letter dated October 11, 2020, Appellants stated their objections regarding the alleged
12 health effects associated with the proposed WTF. More specifically, Appellants allege that the
13 FCC requirements for Specific Absorption Rate (SAR) are exceeded with the proposed
14 installation. In addition, Appellants contend that the line-of-site exposer from this cell site device
15 exposes several second floor living areas (bedrooms) which are all less than 120 feet away.
16 Appellants cite that numerous studies show exposure to radio-frequency microwave radiation of
17 this magnitude can result in damage to DNA, cells and organs leading to serious human health
18 problems including cancer, neurological problems and reproductive harm.
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20 Appellants also argue that in order to grant the permit for the proposed WTF, the City
21 must have completed its due diligence to ensure that documentation from the installer/vendor
22 substantiates that they are complying with Federal Law, or otherwise grant an appeal for lack of
23 confirmation. If the City possesses documentation regarding this specific concern from the
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26 ² “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility
27 where the proposed location for the facility is in a Planning Protected Location, Coastal Zone
28 Protected Location, or Zoning Protected Location.

1 Appellants, Appellants appeal in order to receive and review such documentation pursuant to the
2 Brown Act as identified in the California Government Code § 54950.

3 Upon receipt of Appellants' letter, the Long Beach City Clerk's office then scheduled a
4 formal hearing with regard to Appellants' objections.

5 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

6 **1. Appellants' Evidence**

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8 During the WebEx virtual hearing on December 1, 2020, this hearing officer explained to
9 all the participants the guidelines for the hearing. These include examination of witnesses and
10 presentation of evidence. It was stated on the record that the hearing officer received the City's
11 submission package³ in advance of the hearing both in hardcopy and electronic format. The
12 hardcopy was received at this hearing officer's business address and included a Proof of Service
13 indicating that the hardcopy was sent to said business address and to Appellants' addresses on
14 record. The package also included a Proof of Service that the electronic copy was transmitted to
15 the email addresses of the hearing officer and the Applicant's representatives. During the
16 hearing, all parties acknowledged receipt of the City's submission package.
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19 On the morning of December 1, 2020 and immediately preceding the hearing, Appellants
20 submitted an appeal brief by e-mail to all interested parties. In their brief, Appellants further state
21 that "six of seven adjacent residences have second floor living quarters as close as 70 feet from
22 the proposed antennas . . . estimated power density for these residences that house more than 12
23 adults and 9 minors qualifies medium power densities under World Health Organization
24 classifications, where weak but noticeable thermal effects exist."
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28 ³ The City's submission package included a copy of Appellants' letter dated October 11, 2020.

1 Appellants also requested the following in their appeal brief:

- 2 • Select antenna locations that are not adjacent to residences with second
3 floor living quarters; alternatively, for locations with adjacent residences
4 with second floor living quarters, locate the antennas at a higher elevation
5 so that second floor living quarters are analogous to ground level relative
6 to the antenna elevation;
- 7 • A copy of the full radio frequency electromagnetic fields exposure
8 analysis that supports the letter June 5, 2020;
- 9 • A pre- and post- radio frequency emission study for this particular
10 location;
- 11 • Specific site monitoring and testing plans. If they do not exist,
12 [Appellants] request annual testing of random sample of Verizon's small
13 cell antennas each year. If any are out of compliance with federal health,
14 safety, and radio frequency regulations, Verizon must immediately shut
15 down the site and remedy the situation. Moreover, Verizon will then be
16 required to test a larger sample of small wireless facilities;
- 17 • Information pertaining to small cell antennas and risk factors relating to
18 health and/or life insurance;
- 19 • Written documentation of any and all corporate and/or other legal entities
20 indemnifying the City for potential liabilities. More generally, who is
21 responsible and accountable for potential health and/or environmental
22 liabilities?
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1 These same items were also addressed by the Appellants on the record during the
2 appeal hearing.

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

4 In advance of the formal hearing, the City submitted the following evidence
5 (Respondent's Group Exhibit) in support of its opposition to the appeal:
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- 7 • October 11, 2020 Appeal Letter to the City of Long Beach from Michael Rahban,
8 Kathy & Carl Propst-Dasilva, and Melanie & Greg Gore (Respondent's Group
9 Exhibit, Pages 1-2)
- 10 • Verizon's February 7, 2020 City of Long Beach Application (Respondent's
11 Group Exhibit, Pages 3-12)
- 12 • Verizon Master License Agreement (MLA) (which includes Verizon's
13 maintenance obligations) (Respondent's Group Exhibit, Pages 13-107)
- 14 • Small Cell Noise Study (Respondent's Group Exhibit, Pages 108-126)
- 15 • Coverage Map - Verizon (Respondent's Group Exhibit, Page 127)
- 16 • Structural Analysis (Respondent's Group Exhibit, Pages 128-207)
- 17 • Radio Frequency Electromagnetic Fields Exposure Analysis Letter dated June 5,
18 2020 (Respondent's Group Exhibit, Pages 208-209)
- 19 • September 25, 2020 - Approved Application (Respondent's Group Exhibit, Pages
20 210-243)
- 21 • Tier B Justification (Respondent's Group Exhibit, Pages 244-246)
- 22 • Mailing and Posting Notification (Respondent's Group Exhibit, Pages 247-
23 000254)
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1 On the morning of December 1, 2020 and immediately preceding the hearing, Applicant
2 submitted two (2) documents from Hammett & Edison, Inc., Consulting Engineers. The first is a
3 letter signed by William F. Hammett, P.E., that contradicts Appellants’ assertion that Specific
4 Absorption Rate (SAR) are exceeded with the proposed WTF installation, and that all exposure
5 levels are well below the FCC limits. The second is a statement, also signed by William F.
6 Hammett, P.E., certifying that the “operation of the small cell proposed by Verizon Wireless near
7 253 Ximeno Avenue in Long Beach, California, will comply with the prevailing standards for
8 limiting public exposure to radio frequency energy and, therefore, will not for this reason cause a
9 significant impact on the environment.”
10

11 In addition to the statements submitted by the Applicant prior to the hearing, the
12 Applicant also conducted a presentation during the hearing that discussed the (1) increasing need
13 for better wireless infrastructure in the City of Long Beach, (2) photo depictions of the existing
14 light pole and proposed WTF, (3) alternative locations for the proposed WTF that were evaluated
15 by Applicant, and (4) health and safety key facts regarding wireless RF technology.
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17 Upon conclusion of Applicant’s presentation, no additional evidence was submitted by
18 the Appellants, City, or Applicant during the hearing. However, all interested parties were
19 provided until the end of business day on December 4, 2020 to submit their final arguments
20 regarding the appeal. On December 4, 2020, the City and Applicant both submitted their final
21 arguments. In further support of its final arguments, Applicant also submitted a Radio Frequency
22 – Electromagnetic Energy (RF-EME) Jurisdictional Report.
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1 **VII. DISCUSSION**

2 **1. Health Concerns**

3 Appellants’ sole issue addressed on their appeal letter relates generally to “health
4 concerns.” (Respondent’s Gr. Ex., pp. 1-2). More specifically, Appellants allege that the FCC
5 requirements for Specific Absorption Rate (SAR) are exceeded with the proposed WTF
6 installation. In support of their allegation, Appellants provided power density estimates for each
7 of the residence near the Site. However, in response to the Appellants’ estimated figures,
8 Applicant submitted several reports from their engineering consultant indicating that exposure
9 levels are well below the FCC limits and that the proposed WTF near 253 Ximeno Avenue will
10 comply with the prevailing standards for limiting public exposure to radio frequency energy.
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13 Furthermore, the City’s regulatory authority in this regard is limited and preempted by
14 federal law. 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local government or instrumentality
15 thereof may regulate the placement, construction, and modification of personal wireless service
16 facilities on the basis of the environmental effects of radio frequency emissions to the extent that
17 such facilities comply with the [FCC]’s regulations concerning such emissions.) The Applicant’s
18 submission of several reports demonstrating that the emissions from the proposed WTF is within
19 general population and occupational limits established by the FCC for radio frequency emissions
20 complies with FCC regulations. There is, therefore, no basis to deny the approved permit for the
21 proposed WTF on the basis of “health concerns.”
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23 **2. Appellants’ Requests in their Appeal Brief**

24 Appellants also made several requests in their appeal brief that was submitted
25 immediately prior to the hearing. However, these requests are outside the scope of authority and
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1 jurisdiction vested into this hearing officer pursuant to LBMC 15.34.030, and may not form the
2 basis to either grant or deny the permit for the proposed WTF.

3 **VIII. RECOMMENDATION**

4 Appellants are credible witnesses. This hearing officer has no reason to doubt the
5 veracity and sincerity of Appellants' statements in either their appeal letter (and appeal brief)
6 or during the formal hearing. However, inasmuch as Appellants' concerns and grievances
7 warrant serious consideration, Appellants have otherwise offered no legal basis or relevant
8 evidence in support of their appeal. In contrast, the City submitted a comprehensive package in
9 opposition to the appeal that included its brief and supporting legal authorities and relevant
10 evidence. The City's evidence included all the materials and documentation that the Applicant
11 submitted to the City as part of the application process. After three (3) rounds of reviews and
12 plan revisions, the City determined that the Applicant's proposed WTF met all the applicable
13 requirements and standards set forth in the LBMC 15.34, and approved the permit application
14 accordingly. In addition, the Applicant submitted several reports addressing specifically the
15 issues raised by Appellants in order to demonstrate that the emissions from the proposed WTF
16 is within general population and occupational limits established by the FCC for radio
17 frequency emissions. As stated above, this hearing officer is bound by the provisions of the
18 LBMC 15.34, and cannot look elsewhere in making its determination. Accordingly, this
19 hearing officer has found nothing on the record to determine that the Applicant's permit for the
20 proposed WTF was granted in violation of LBMC 15.34.
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1 Based on the foregoing, this hearing officer hereby recommends that Appellants'
2 appeal be denied and that Applicant's permit for the proposed WTF be upheld.

3 Dated this 23rd day of December 2020

4 /s/ JONATHAN C. NAVARRO, ESQ.
5 Administrative Hearing Officer