



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, Joel Crane, Mario  
5 De La Mora, Katherine Baxendale, Bill Hammett, Charaka Wijeweera, Jesus Roman, Nico  
6 Zuniga, and Tami Pritchard. The PWD for the City of Long Beach was represented by Joshua  
7 Hickman and Pablo Leon.  
8

9       The following member(s) of the public also appeared: Shirley Long<sup>1</sup> (residence address -  
10 131 East Eagle St., Long Beach, CA 90806); Rob and Kathy Allison (residence address – 1800  
11 Carfax Avenue, Long Beach, CA 90815); Laurella Theus (residence address – 1455 Lemon  
12 Avenue, Long Beach, CA 90813); Brenda Goossens (120 East Eagle St., Long Beach, CA  
13 90806); and “BW” (did not provide address or full name).  
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16 **II.     STATEMENT OF FACTS**

17       The facts in this matter are not in dispute. On or around January 27, 2020, Verizon  
18 submitted an application (“Application”) for a permit to the City for the installation of a “small  
19 cell” wireless telecommunications facility (“WTF”) in the public right-of-way. (Respondent’s  
20 Group Exhibit, pages 2-11). The Application process is governed by Chapter 15.34 of the Long  
21 Beach Municipal Code (“LBMC”) that includes requirements and applicable standards for WTFs  
22 in the public right-of-way to ensure that the proposed WTF complies with said requirements and  
23 standards. WTF means equipment installed for the purpose of providing wireless transmission  
24 of voice, data, images, or other information including but not limited to, cellular telephone  
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27 \_\_\_\_\_  
28 <sup>1</sup> Shirley Long submitted a letter in advance of the hearing and provided a public comment on the  
record during the hearing (collectively “public comment”).

1 service, personal communications services, and paging services, consisting of equipment,  
2 antennas, and network components such as towers, utility poles, transmitters, base stations,  
3 conduits, pull boxes, electrical meters, and emergency power systems. WTF does not include  
4 radio or television broadcast facilities, nor radio communications systems for government or  
5 emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way” means any public  
6 highway, street, alley, sidewalk, parkway, parking lot, and all extensions or additions thereto  
7 which is either owned, operated, or controlled by the City, or is subject to an easement or  
8 dedication to the City, or is a privately-owned area within City’s jurisdiction which is not yet  
9 dedicated, but is designated as a proposed public right-of-way on a tentative subdivision map  
10 approved by the City. LBMC 15.34.020.S.  
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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 2336 Earl Avenue, which is in a residential  
15 zoning district and is centrally located between Pacific Avenue and Long Beach Boulevard. The  
16 proposed WTF will be integrated into an existing light pole at the site that is designated as  
17 “CA002\_LBC\_LNGBCH-021” in the Application (“Site”). The existing light pole is twenty-  
18 seven (27) feet high (including the luminaire). (Respondent’s Gr. Ex., pp. 201-202). The  
19 replacement light pole would be five (5) inches higher, for a new height of twenty-seven (27)  
20 feet five (5) inches (including the luminaire). (Id.). Three shrouded antennas will be placed at the  
21 top of the pole, with the bottom of the antennas twenty-one (21) feet seven (7) inches from the  
22 ground. (Id. at pp. 203-216). Two (2) pull boxes for fiber and power will be placed in the  
23 parkway next to the pole with all associated cables routed inside the pole. (Id.).  
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26 Upon two (2) subsequent rounds of reviews and six (6) plan revisions—the latest being  
27 June 3, 2020—the City approved the Application on July 17, 2020. (See approval stamp on  
28

1 Respondent's Gr. Ex., pp. 194-216). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the  
2 approval was mailed out on August 10, 2020, and a posted notice was placed on the pole in front  
3 of Appellants' home and on the Site on August 7, 2020. (See Respondent's Gr. Ex., pp. 228-230  
4 [proof of mailing]; Respondent's Gr. Ex., pp. 231-233 [proofs of posting]). Said posted notice  
5 triggered the commencement of the 10-day appeal period under LBMC 15.34.030.L. The  
6 deadline for filing an appeal was August 24, 2020. Appellants filed the Appeal on August 14,  
7 2020. (See Respondent's Gr. Ex., p. 1).

9 **III. LEGAL AUTHORITY FOR APPEAL**

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

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

- a. The application and the Department of Public Works’ approval of the 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
- e. Any oral testimony from any City departments, the applicant, any person submitting a protest, or any interested person taken during the hearing.

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

6. Notice of Determination on Appeal.

- a. The City Clerk shall promptly mail a notice of a determination on an appeal to both the applicant, to any neighborhood association identified by 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. Federal and State Laws and Regulations**

In 1996, Congress conducted a major overhaul of the telecommunications law in almost 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let anyone enter any communications business—to let any communications business compete in any market against any other. The Federal Communications Commission (“FCC”) was then tasked

1 to create fair rules for this new era of competition. The advent of the newest generation of  
2 wireless broadband technology known as “5G” requires the installation of thousands of “small  
3 cell” wireless facilities. These facilities have become subject to a wide variety of local  
4 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The  
5 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to  
6 the installation and management of small cell facilities, including the manner in which local  
7 governments can regulate them. *Id.* Sections 253(a) and 332(c)(7) of the Act provided FCC with  
8 the statutory authority for limiting local regulation on the deployment of [5G] technology that  
9 reflects congressional intent in 1996 to expand deployment of wireless services. *Id.* at p. 30.

11 These limitations provide that local government regulations:

- 12
- 13 a. shall not unreasonably discriminate among providers of functionally equivalent  
14 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
  - 15 b. shall not prohibit or have the effect of prohibiting the provision of personal  
16 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
  - 17 c. a local government ... shall act on any request for authorization to place,  
18 construct, or modify personal wireless service facilities within a reasonable period  
19 of time after the request is duly filed with such government<sup>2</sup>. 47 U.S.C. §  
20 332(c)(7)(B)(ii).
  - 21 d. No State or local government or instrumentality thereof may regulate the  
22 placement, construction, and modification of personal wireless service facilities  
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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 on the basis of the environmental effects of radio frequency emissions to the  
2 extent that such facilities comply with the Commission's regulations concerning  
3 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

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

9  
10 California case law and statutory authorities provide additional regulatory guidance for  
11 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the  
12 telecommunications business. Pub. Util. Code § 7901; see also *T-Mobile West LLC v. City and*  
13 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme  
14 Court held that while the California legislature did not intend to deprive local governments of  
15 the ability to impose aesthetic regulations and public safety issues, local agencies must  
16 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*  
17 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to  
18 preempt local decisions about specific sites “when there is a clear conflict with the  
19 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3  
20 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>)  
21 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread  
22 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,  
23 citing General Order 159A, at p. 3.).  
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1                   **2.     The City’s Telecom Ordinance**

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

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

16                   By letter dated August 14, 2020, Appellants stated their objections regarding various  
17 issues. More specifically, Appellants stated that:

- 18                   (1) Fiber optics cable is a better alternative to the small Cell.  
19                   (2) Small cell[s] are not safe (radio frequency)  
20                   (3) The small cell[s] are a nuisance  
21                   (4) The small cells proximity of the residential lot diminishes the value of the house.  
22                   (5) The small cells were meant to be installed in commercial zones.  
23                   (6) I have pets that will be exposed to the RF

26 \_\_\_\_\_  
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 (7) Residents - occupants [with] health issues will be affected by the installation of the  
2 cell tower.

3 (8) The small cell[s] will affect[ed] the vegetable garden planted on the residents  
4 property.

5 Appellants thereafter requested the City to “reconsider an alternative site for the small  
6 cell away from residential sites or compensate the residents of 2336 [Earl] for the potentially  
7 hazardous exposure on the installation of the small cell.”

8  
9 Upon receipt of Appellants’ letter, the Long Beach City Clerk’s office then scheduled a  
10 formal hearing with regard to Appellants’ objections.

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

12 **1. Appellants’ Evidence**

13  
14 During the WebEx virtual hearing on October 20, 2020, this hearing officer explained to  
15 all the participants the guidelines for the hearing. These include examination of witnesses and  
16 presentation of evidence. It was stated on the record that the hearing officer received the City’s  
17 submission package<sup>4</sup> in advance of the hearing both in hardcopy and electronic format. The  
18 hardcopy was received at this hearing officer’s business address and included a Proof of Service  
19 indicating that the hardcopy was sent to said business address and to Appellants’ address on  
20 record. The package also included a Proof of Service that the electronic copy was transmitted to  
21 the email addresses of the hearing officer, the Appellants, and the Applicant’s representatives.  
22 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 August 14, 2020.  
28

1 On October 19, 2020, Appellants submitted a second (2<sup>nd</sup>) letter via email to the PWD  
2 supplementing their original letter of appeal. In their 2<sup>nd</sup> letter, Appellants stated that they are not  
3 opposed to 5G, because they, in fact, have a 5G router installed in their residence. What  
4 Appellants oppose is how the FCC apparently removes local city ordinance/oversight and  
5 regulation of small cell towers. Appellants also cited various sources of information that they  
6 used to submit their complaints. Appellants argue that while the spectrum of the 5G small cell  
7 tower doesn't penetrate the structure of a family resident dwelling, a broadband spectrum can  
8 nonetheless penetrate the windows and siding of a dwelling. Therefore, residents within the  
9 small cell radius have to install protective EMF curtains and accessories to protective themselves  
10 from the EMF. Consequently, EMF and radiation accessories once installed will become fixtures  
11 of the dwelling and resulting in the depression of the house. Appellants also argue 5G small cell  
12 towers are an economic obsolescence due to due to health concerns. In addition, small cell  
13 towers require a setback, and that the proposed installation site doesn't meet the criteria on a  
14 setback from the (20ft) residence nor the setback from the (30ft) fire hydrogen. The small cell  
15 tower proposed site installation doesn't meet the standard guidelines of at least 100 ft. to 150 ft.  
16 from a residence site. Appellants pointed out that National Conference of State Legislatures  
17 (NCSL) has published recently passed state legislation requiring an Environmental Impact Study  
18 an in addition a National standard for setback in residential and school zones. The current  
19 proposed installation site of the small cell antennas meets neither an Environmental Impact  
20 Study nor the required setbacks already being imposed in other California counties. In addition,  
21 Appellants argue that under California legal Doctrine, utilities can be held liable for damages  
22 caused by their equipment. It is therefore important to implement an Environmental Impact  
23 Study before small cell equipment is installed in a residential area. And if any of the NCSL  
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1 legislation initiatives prove that the small cell antennas liable are harmful under the California  
2 Legal Doctrine, Appellants seek damages for negligence.

3 In addition to the August 14, 2020 letter and October 19, 2020 email from Appellants,  
4 Appellants discussed several items on the record during the hearing. However, most of  
5 Appellants' statements made during the hearing were items of inquiry rather than factual  
6 allegations or legal arguments: (1) Does Applicant have a monopoly on WTF installations in the  
7 area, or are they open to other competitors?; (2) Is the City or Applicant aware of the standards  
8 and requirements for WTF installations in other counties, cities, etc.?; and (3) Had there been an  
9 environmental impact study conducted for the proposed WTF? Appellants also mentioned the  
10 Commerce Clause and California Legal Doctrine (where utilities are liable for damage caused by  
11 their equipment). Insofar as Appellants' inquiries during the hearing were not factual allegations  
12 or legal arguments for the purposes of this hearing officer's determination, such inquiries were  
13 left unanswered during the hearing.  
14  
15

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

17 In advance of the formal hearing, the City submitted the following evidence  
18 (Respondent's Group Exhibit) in support of its opposition to the appeal:  
19

- 20 • August 14, 2020 Appeal Letter to the City of Long Beach from Alfredo and  
21 Yukiko Zavala (Respondent's Group Exhibit Page 1)
- 22 • Verizon's January 27, 2020 City of Long Beach Application (Respondent's Group  
23 Exhibit Pages 2-11)
- 24 • Verizon Master License Agreement (MLA) (which includes Verizon's  
25 maintenance obligations) (Respondent's Group Exhibit Pages 12-107)
- 26 • Small Cell Noise Study (Respondent's Group Exhibit Pages 108-126)  
27  
28

- 1 • Propagation Maps - Verizon (Respondent's Group Exhibit Page 127)
- 2 • Structural Analysis (Respondent's Group Exhibit Pages 128-192)
- 3 • Radio Frequency Electromagnetic Fields Exposure Analysis Letter (Respondent's
- 4 Group Exhibit Page 193)
- 5 • July 17, 2020 - Approved Application (Respondent's Group Exhibit Pages 194-
- 6 225)
- 7 • Tier B Justification (Respondent's Group Exhibit Page 226)
- 8 • Mailing Map (Respondent's Group Exhibit Page 227)
- 9 • Mailing Notice dated August 7, 2020 (Respondent's Group Exhibit Pages 228-
- 10 229)
- 11 • August 10, 2020 - USPS Proof of Mailing (Respondent's Group Exhibit Page
- 12 230)
- 13 • Public Notice Site Posting (Respondent's Group Exhibit Page 231)
- 14 • April 7, 2020 - Proof of Posting No. 1 (Respondent's Group Exhibit Page 232)
- 15 • 15. April 7, 2020 - Proof of Posting No. 2 (Respondent's Group Exhibit Page
- 16 233)
- 17
- 18
- 19
- 20

21 Immediately prior to the hearing, the Applicant submitted via email a Radio Frequency  
22 Electromagnetic Energy Measurement and Compliance Report to supplement the City's  
23 submission package. In addition, the Applicant also conducted a presentation during the hearing  
24 that discussed the (1) increasing need for better wireless infrastructure in the City of Long Beach,  
25 (2) photo depictions of the existing light pole and proposed WTF, (3) alternative locations for the  
26 proposed WTF that were evaluated by Applicant, and (4) health and safety key facts regarding  
27 wireless RF technology. The Applicant also clarified to Appellants the distinction between their  
28

1 5G router at home and 5G wireless technology employed by the proposed WTF that is at issue  
2 here. The “5G” in Appellants’ wireless router at home actually represents “5Ghz” (five giga-  
3 hertz), which is the short radio frequency band for some wireless home networking systems. The  
4 “5G” for the proposed WTF is the fifth (5G) generation technology of mobile networks.  
5 Ultimately, there will be “6G” and “7G” technologies that the mobile network industry will  
6 implement in the future.  
7

8           Upon conclusion of Applicant’s presentation, no additional evidence was submitted by  
9 the City or Applicant during the hearing, and this hearing officer then closed the evidentiary  
10 portion of the appeal.  
11

## 12 **VII. DISCUSSION**

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

14           Appellants’ second, third, sixth, seventh, and eighth issues addressed on their appeal  
15 letter appear to relate generally to “health concerns.” (Respondent’s Gr. Ex., p. 1). However,  
16 their letter does not explain or elaborate “health concerns.” Without more, this hearing officer  
17 can only assume that Appellants’ reference to “health concerns” relates to the alleged impact of  
18 radio frequency emissions on human health. In fact, the only reference to a particular health  
19 effect is contained in Appellants’ email sent on October 19, 2020 wherein Appellants stated that  
20 “[t]he American Cancer Society has determined that exposure to cellular towers causes cancer.”  
21 Appellants did not submit any other relevant evidence in support of this issue prior to or during  
22 the hearing. Notwithstanding the lack of evidence submitted by Appellants in support of this  
23 issue, their argument is nonetheless without merit. The City’s regulatory authority in this regard  
24 is limited and preempted by federal law. 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local  
25 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 Radio Frequency Electromagnetic  
4 Energy Measurement and Compliance Report demonstrating that the emissions from the  
5 proposed WTF is within general population and occupational limits established by the FCC for  
6 radio frequency emissions complies with FCC regulations. [See Applicant’s submission prior to  
7 hearing; See also Radio Frequency Electromagnetic Fields Exposure Analysis Letter  
8 (Respondent’s Gr. Ex., p. 193); See also Small Cell Noise Study (Respondent’s Gr. Ex., pp. 108-  
9 126)]. There is, therefore, no basis to deny the approved permit for the proposed WTF on the  
10 basis of “health concerns.”  
11

## 12 **2. Property Values**

13 Appellants’ next argument hinges on “property value decrease.” (See Respondent’s Gr.  
14 Ex., p. 1). Appellants submitted no evidentiary support on the impact of WTFs on residential  
15 property values, or more specifically, the impact on the value of their residential property.  
16 Notwithstanding the lack of evidentiary support for Appellants’ argument with regard to  
17 “property value decrease,” the Telecom Ordinance is silent with regard to property values and  
18 does not factor this criterion in evaluating WTF installations. LBMC 15.34.030. Consequently,  
19 the Telecom Ordinance does not vest in this hearing officer the authority to consider property  
20 values in determining whether to deny or uphold the approved permit.  
21

## 22 **3. Better alternatives to small cells and installation in residential zones**

23 Appellants also argue that fiber optics cable is a better alternative to small cells and that  
24 small cells were meant to be installed in commercial zones. However, Appellants fail to  
25 elaborate as to how or why fiber optics cable is a better alternative to small cells, or how fiber  
26  
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1 optics connectivity is able to be deployed or compatible with wireless mobile technology that  
2 small cells are designed for. Appellants also fail to explain why small cells are meant to be  
3 installed in commercial zones, and not residential ones. In fact, the FCC, as well as the City,  
4 expressly provide for the installation of small cells in residential areas. To that end, the City's  
5 Telecom Ordinance expressly allows for an appeal process for an approval or denial of proposed  
6 WTFs in residential neighborhoods. (*See* LBMC 15.34.030.L.1 [...any person owning or  
7 residing at property that is adjacent to or across the street to the location of a proposed Tier B  
8 Wireless Telecommunications Facility, may appeal an approval or denial of an application for a  
9 Tier B Wireless Right-of-Way Facility Permit."]).

11 Furthermore, the record shows that demand dictates better wireless infrastructure in the  
12 City. Expansion of existing wireless network is necessary to meet the growing demand for  
13 wireless connectivity in the areas of personal use, business, emergency services, education,  
14 medicine, etc. (*See* Applicant's slide presentation). The Applicant and City's objective to  
15 improve signal coverage in and around the Appellants' neighborhood is only consistent with the  
16 City's plan allowing provision of wireless communications services adequate to serve the  
17 public's interest within the City. LBMC 15.34.010.

#### 20 **4. California Legal Doctrine**

21 Appellants' final contention is that the California Legal Doctrine provides that "utilities  
22 can be held liable for damages caused by their equipment," and thereby "seek damages for  
23 negligence." However, this issue is not ripe and outside the purview of this hearing officer's  
24 authority for a determination under the Telecom Ordinance. Should Appellants suffer damages  
25 "caused" by the proposed WTF, Appellants have the right to pursue remedies available to them  
26 in any appropriate venue.  
27  
28

1 **VIII. RECOMMENDATION**

2 Appellants are credible witnesses. This hearing officer has no reason to doubt the  
3 veracity and sincerity of Appellants' statements in either their appeal letter(s) or during the  
4 formal hearing. However, inasmuch as Appellants' concerns and grievances warrant serious  
5 consideration, Appellants have otherwise offered no legal basis or relevant evidence in support  
6 of their appeal. In contrast, the City submitted a comprehensive package in opposition to the  
7 appeal that included its brief and supporting legal authorities and relevant evidence. The City's  
8 evidence included all the materials and documentation that the Applicant submitted to the City  
9 as part of the application process. After two (2) rounds of plan review and six (6) plan  
10 revisions, the City determined that the Applicant's proposed WTF met all the applicable  
11 requirements and standards set forth in the LBMC 15.34, and approved the permit application  
12 accordingly. As stated above, this hearing officer is bound by the provisions of the LBMC  
13 15.34, and cannot look elsewhere in making its determination. Accordingly, this hearing  
14 officer has found nothing on the record to determine that the Applicant's permit for the  
15 proposed WTF was granted in violation of LBMC 15.34.  
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17  
18

19 Based on the foregoing, this hearing officer hereby recommends that Appellants'  
20 appeal be denied and that Applicant's permit for the proposed WTF be upheld.

21 Dated this 10<sup>th</sup> day of November 2020

22 **/s/ JONATHAN C. NAVARRO, ESQ.**  
23 Administrative Hearing Officer  
24  
25  
26  
27  
28