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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 **DEBORAH REED,** ) **HEARING OFFICER’S FINDINGS AND**  
10 **Appellant,** ) **RECOMMENDATION**  
11 **vs.** )  
12 **CITY OF LONG BEACH,** )  
13 **Respondent/Permitting** )  
14 **Authority** )  
15 **CROWN CASTLE NG WEST LLC,** )  
16 **Real Party in Interest /** )  
17 **Permit Applicant** )

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19 **I. INTRODUCTION**

20 This appeal came on regularly for hearing before Administrative Hearing Officer  
21 Jonathan C. Navarro on October 23, 2020 at 10:00 AM via WebEx virtual hearing. The WebEx  
22 hearing was administered by Daniel Ramirez with the Public Works Department (“PWD”) for  
23 the City of Long Beach. The Appellant, Deborah Reed (“Appellant”), appeared *pro se*. The City  
24 of Long Beach (“City” or “Respondent”) appeared and was represented by Erin Weesner-  
25 McKinley, Esq. with the Office of the City Attorney for the City of Long Beach. Licensee  
26 Crown Castle NG West LLC (“Crown” or “Applicant”) appeared and was represented by  
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1 Stephen Garcia. The PWD for the City of Long Beach was represented by Joshua Hickman and  
2 Pablo Leon.

3 The following member(s) of the public also appeared: Laurella Theus (residence address  
4 at 1455 Lemon Avenue) and Rob Allison (residence address at 1800 Carfax Avenue).

5 **II. STATEMENT OF FACTS**

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7 The facts in this matter are not in dispute. On or around April 13, 2020, Applicant  
8 submitted an application (“Application”) for a permit to the City for the installation of a “small  
9 cell” wireless telecommunications facility (“WTF”) in the public right-of-way. (See  
10 Respondent’s Group Exhibit, Pages 2-14). The Application process is governed by Chapter  
11 15.34 of the Long Beach Municipal Code (“LBMC”) that includes requirements and applicable  
12 standards for WTFs in the public right-of-way to ensure that the proposed WTF complies with  
13 said requirements and standards. WTF means equipment installed for the purpose of providing  
14 wireless transmission of voice, data, images, or other information including but not limited to,  
15 cellular telephone service, personal communications services, and paging services, consisting  
16 of equipment, antennas, and network components such as towers, utility poles, transmitters,  
17 base stations, conduits, pull boxes, electrical meters, and emergency power systems. WTF does  
18 not include radio or television broadcast facilities, nor radio communications systems for  
19 government or emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way”  
20 means any public highway, street, alley, sidewalk, parkway, parking lot, and all extensions or  
21 additions thereto which is either owned, operated, or controlled by the City, or is subject to an  
22 easement or dedication to the City, or is a privately-owned area within City’s jurisdiction  
23 which is not yet dedicated, but is designated as a proposed public right-of-way on a tentative  
24 subdivision map approved by the City. LBMC 15.34.020.S.  
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1 The Application sought a permit for the installation of a proposed WTF in the public  
2 right-of-way in front of the property located at 1452 Lemon Avenue—that is also Appellant’s  
3 residence. Lemon Avenue is between Martin Luther King, Jr. Avenue and Alamitos Avenue,  
4 which is in a residential zoning district. The proposed WTF will be integrated into an existing  
5 light pole at the site that is designated as “T3LA2647M1” in the Application (“Site”). As  
6 proposed, the WTF will be integrated into a new light pole that will replace the existing light  
7 pole at the Site. The existing light pole, including the luminaire, is twenty-seven (27) feet high,  
8 and will remain that height after installation. (Respondent’s Gr. Ex., p. 196.) Three shrouded  
9 antennas will be placed at the top of the pole, with the bottom of the antennas twenty-one (21)  
10 feet three (3) inches above the ground. (Id. at pp. 197-198). The equipment will be bundled in an  
11 all-in-one equipment cabinet with integrated antennas which limits the WTF to one (1) pole  
12 mounted attachment measuring 11.36” wide X 9.0” deep X 35.4” high. (Id. and pp. 198, 202).  
13 The equipment shroud will be painted to match the color of the existing pole. (Id.). The  
14 installation includes setting a hand-vault in the parkway to conceal fiber and a connection to  
15 power. (Id. at p. 200).

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19 Upon three (3) subsequent rounds of reviews and plan revisions—the latest being May 7,  
20 2020—the City approved the Application on May 20, 2020. (See approval stamp on  
21 Respondent’s Gr. Ex., pp. 191-201). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the  
22 approval was mailed out on May 28, 2020, and a posted notice was placed on the pole in front of  
23 Appellant’s home and on the Site on May 29, 2020. (See Respondent’s Gr. Ex., pp. 205 [proof of  
24 mailing] and pp. 206-208 [proofs of posting]). Said posted notice triggered the commencement  
25 of the 10-business day appeal period under LBMC §15.34.030.L. The deadline for filing an  
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1 appeal was June 12, 2020. Appellant filed the Appeal on June 3, 2020. (See Respondent's Gr.  
2 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 government<sup>1</sup>. 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 <sup>1</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 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 B<sup>2</sup> 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 June 3, 2020, Appellant stated her objections with regard to the health  
12 risks associated with the proposed WTF and that “residential neighborhoods are not designed for  
13 [WTFs].” More specifically, Appellant stated that WTFs “emit radiation, which is known to  
14 cause cancer and other serious health problem among adults and children over time.” Appellant  
15 also stated that the “neighborhood is comprised of families with young children and seniors that  
16 live and play [there].” (*See* Respondent’s Gr. Ex., p.1)

17 Appellant then requested the City to deny the permit for the proposed WTF outside her  
18 home and to consider the health and safety of her family and neighbors.

19 Upon receipt of Appellant’s letter, the Long Beach City Clerk’s office then scheduled a  
20 formal hearing with regard to Appellant’s objections.

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27 <sup>2</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 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

2 **1. Appellant’s Evidence**

3 During the WebEx virtual hearing on October 23, 2020, this hearing officer explained to  
4 all the participants the guidelines for the hearing. These include examination of witnesses and  
5 presentation of evidence. It was stated on the record that the hearing officer received the City’s  
6 submission package<sup>3</sup> in advance of the hearing both in hardcopy and electronic format. The  
7 hardcopy was received at this hearing officer’s business address and included a Proof of Service  
8 indicating that the hardcopy was sent to said business address, the Appellant’s address on record,  
9 and the Applicant’s address on record in care of its representative, Stephen Garcia. The package  
10 also included a Proof of Service that the electronic copy was transmitted to the email addresses  
11 of the hearing officer, the Appellant, and the Applicant’s representative. During the hearing, all  
12 parties acknowledged receipt of the City’s submission package.  
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15 Appellant offered no additional evidence during or subsequent to the hearing.

16 **2. The City’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:  
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- 20 • June 3, 2020 Appeal Letter to the City of Long Beach from Deborah Reed  
21 (Respondent’s Group Exhibit Page 1)  
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23 • Crown Castle’s April 13, 2020 City of Long Beach Application (Respondent’s  
24 Group Exhibit Pages 2-14)  
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27 <sup>3</sup> The City’s submission package included a copy of Appellant’s letter dated June 3, 2020.  
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- 1 • Crown Castle Master License Agreement (MLA) (which includes Crown Castle's
- 2 maintenance obligations) (Respondent's Group Exhibit Pages 15-70)
- 3 • Ericsson Radio Description - Radio 2203; Noise Analysis No. 1 (Respondent's
- 4 Group Exhibit Pages 71-119)
- 5 • Ericsson Radio Description - Radio 2205; Noise Analysis No. 2 (Respondent's
- 6 Group Exhibit Pages 120-156)
- 7 • Propagation Maps - T Mobile RF Plots - Small Cell Capacity Solution
- 8 (Respondent's Group Exhibit Pages 157-162)
- 9 • Structural Analysis (Respondent's Group Exhibit Pages 163-177)
- 10 • Radio Frequency Electromagnetic Fields Exposure Report (Respondent's Group
- 11 Exhibit Pages 178-190)
- 12 • May 20, 2020 - Approved Application (Respondent's Group Exhibit Pages 191-
- 13 201)
- 14 • Tier B Justification (Respondent's Group Exhibit Page 202)
- 15 • Mailing List (Respondent's Group Exhibit Page 203)
- 16 • Mailing Map (Respondent's Group Exhibit Page 204)
- 17 • May 28, 2020 - USPS Proof of Mailing (Respondent's Group Exhibit Page 205)
- 18 • Public Notice Site Posting (Respondent's Group Exhibit Page 206)
- 19 • May 29, 2020 - Proof of Posting No. 1 (Respondent's Group Exhibit Page 207)
- 20 • May 29, 2020 - Proof of Posting No. 2 (Respondent's Group Exhibit Page 208)
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The City offered no additional evidence on the record during or subsequent to the hearing.

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1 **VII. DISCUSSION**

2 **1. Health Effects**

3 Appellant’s main issue on appeal is the effect of wireless radiation on her and her  
4 family’s health (*See* Respondent’s Gr. Ex., p. 1). More specifically, Appellant stated that WTFs  
5 “emit radiation, which is known to cause cancer and other serious health problem among adults  
6 and children over time.” (Id.). However, the City’s regulatory authority in this regard is limited  
7 and preempted by federal law. 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local government or  
8 instrumentality thereof may regulate the placement, construction, and modification of personal  
9 wireless service facilities on the basis of the environmental effects of radio frequency emissions  
10 to the extent that such facilities comply with the [FCC]’s regulations concerning such emissions”).  
11 The Applicant’s submission of a Radio Frequency Electromagnetic Fields Exposure Report  
12 demonstrating that the emissions from the proposed WTF is within general population and  
13 occupational limits established by the FCC for radio frequency emissions complies with FCC  
14 regulations. (See Respondent’s Gr. Ex., pp. 178-190). There is, therefore, no basis to deny the  
15 approved permit for the proposed WTF on the basis of alleged effects of wireless technology on  
16 one’s health.  
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20 **2. WTFs in Residential Neighborhoods**

21 Appellant also claims that “residential neighborhoods are not designed for [WTFs].” (*See*  
22 Respondent’s Gr. Ex., p.1). However, Appellant failed to explain why residential neighborhoods  
23 are not designed for WTFs, or why other types of areas, such as commercial or industrial zoned  
24 neighborhoods are more appropriately designed for WTFs. Moreover, upon closer examination  
25 of the Telecom Ordinance and relevant federal regulations, the FCC, as well as the City,  
26 expressly provide for the installation of small cells in residential areas. To that end, the City’s  
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1 Telecom Ordinance expressly allows for an appeal process for an approval or denial of proposed  
2 WTFs in residential neighborhoods. (*See* LBMC 15.34.030.L.1 [“...any person owning or  
3 residing at property that is adjacent to or across the street to the location of a proposed Tier B  
4 Wireless Telecommunications Facility, may appeal an approval or denial of an application for a  
5 Tier B Wireless Right-of-Way Facility Permit.”]).

7 Furthermore, the selection of the Site location of the proposed WTF was made out of  
8 practical necessity. The record shows that the City required Applicant to provide propagation  
9 maps showing both the existing and proposed coverage in the vicinity of the Site. (*See*  
10 Respondent’s Gr. Ex., pp. 157-162). Those maps indicate that it was necessary to locate the  
11 proposed WTF at the Site in order to improve existing weak/poor coverage at and around that  
12 location. (*Id.*). The Applicant and City’s objective to improve signal coverage in and around the  
13 Site is consistent with the City’s plan allowing provision of wireless communications services  
14 adequate to serve the public’s interest within the City. LBMC 15.34.010.

16 **VIII. RECOMMENDATION**

18 Appellant is a credible witness. This hearing officer has no reason to doubt the veracity  
19 and sincerity of Appellant’s statements in her appeal letter or during the formal hearing.  
20 However, inasmuch as Appellant’s concerns and grievances warrant serious consideration,  
21 Appellant has otherwise offered no legal basis or relevant evidence in support of her appeal. In  
22 contrast, the City submitted a comprehensive package in opposition to the appeal that included  
23 its brief and supporting legal authorities and relevant evidence. The City’s evidence included  
24 all the materials and documentation that the Applicant submitted to the City as part of the  
25 application process. After three (3) rounds of plan review and revisions, the City determined  
26 that the Applicant’s proposed WTF met all the applicable requirements and standards set forth  
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1 in the LBMC 15.34, and approved the permit application accordingly. As stated above, this  
2 hearing officer is bound by the provisions of the LBMC 15.34, and cannot look elsewhere in  
3 making its determination. Accordingly, this hearing officer has found nothing on the record to  
4 determine that the Applicant's permit for the proposed WTF was granted in violation of LBMC  
5 15.34.

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

9 Dated this 16<sup>th</sup> day of November 2020

10 /s/ JONATHAN C. NAVARRO, ESQ.  
11 Administrative Hearing Officer