

## EMERGENCY ORDER

### **REQUIRING THAT VERIZON WIRELESS AND FARLEY WHITE SOUTH STREET, LLC SHOW CAUSE WHY THE BOARD SHOULD NOT ISSUE A CEASE AND DESIST ORDER ABATING A NUISANCE AT 877 SOUTH STREET AND CONSTITUTING IMMEDIATE ORDER OF DISCONTINUANCE AND ABATEMENT IF NO HEARING IS REQUESTED**

Pursuant to *inter alia* MGL 111 ss 122-125, 127-127I, 130, 143-144, 146-150 and State Sanitary Code 410.750, 410.831-832, .850-.960, the Board of Health deems the following action necessary to protect the public health.

**Whereas**, Verizon Wireless has an operational wireless system (the “facility”) located at 877 South Street on property owned by Farley White South Street LLC. The facility was activated in August, 2020.

**Whereas**, soon after the facility was activated, the city began receiving reports of illness by residents living nearby the facility. The reports include complaints of headaches, sleep problems, heart palpitations, ringing in the ears, dizziness, nausea, skin rashes, memory and cognitive problems, among other medical complaints.

**Whereas**, as further documented below, the neurological and dermatological symptoms experienced by the residents are consistent with those described in the peer-reviewed scientific and medical literature as being associated with exposure to pulsed and modulated Radio Frequency (“RF”) radiation, including that from cell towers.

**Whereas**, those symptoms are sometimes referenced in the scientific and medical literature as electromagnetic sensitivity, also known as Electro-Hypersensitivity, Microwave Sickness and Radiation Sickness. All these names describe a syndrome where the injured develop one or more recognized symptoms as a result of pulsed and modulated RF radiation (“RFR”). It is a spectrum condition. For some the symptoms can become debilitating and severely affect their ability to function.

**Whereas**, the federal government has officially recognized this syndrome in various ways. For example, in 2002, the “Access Board,” an independent federal agency responsible for publishing Accessibility Guidelines used by the Justice Department to enforce the Americans with Disabilities Act (“ADA”), recognized that “electromagnetic sensitivities may be considered disabilities under the ADA.” The Access Board contracted the National Institute of Building Sciences 2005 report, which concluded radiofrequency/electromagnetic frequency (RF/EMF) radiation is an “access barrier” and can render buildings “inaccessible” to those with electromagnetic sensitivity and recommended accessibility guidelines. For ADA Title I purposes the US. Department of Labor’s Office of Disability Employment Policy issued guidelines for accommodations in 2015.57, which also emphasize exposure avoidance.

**Whereas**, The Centers for Disease Control’s 2022 Classification of Diseases Codes Clinical Modification and Procedural Classification System implements the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM). The “diagnosis code” for Radiation Sickness” is “T66.” The “injury” code for “Exposure to Other Nonionizing Radiation”

is “W90.” These codes cover Electro-sensitivity along with other RF exposure-related injuries and maladies.

**Whereas**, the Health Board does not administer disability laws, but this authority strongly confirms that RF/EMF – even if emitted at FCC-authorized levels – can be injurious to health or cause common injury to at least a portion of the public. Stated differently, pulsed and modulated RF can constitute a “public nuisance” or a “cause of sickness” and a trade which may result in a nuisance or be dangerous to the public health for purposes of G.L. ch. 111 ss 122-125, 127B, 127C, 143-150 and 152.

**Whereas**, the federal government’s recognition that pulsed RF can directly cause harm to at least certain individuals or create an access barrier means that for Massachusetts law purposes RF/EMF may effectively render certain dwellings Unfit for Human Habitation or constitute a Condition Which May Endanger or Materially Impair the Health or Safety and Well-Being of an Occupant as defined in State Sanitary Code 410.020 and 410.750(P).

**Whereas**, the wireless facility is not itself a dwelling unit, but the Sanitary Code and other Massachusetts law allow the Health Board to act as necessary to ensure that activity or operations in a non-dwelling building, structure or facility do not contribute to conditions that impact occupants of a dwelling to the point they render a dwelling unfit for habitation for purposes of Sanitary Code 410.831.

**Whereas**, the Health Board has been presented with credible independent and peer-reviewed scientific and medical studies and reports that provide convincing evidence that pulsed and modulated RFR is bio-active and affects all living things over the long term. RFR can and does also cause more immediate harm and injury. The Health Board has also received strong evidence that the facility is presently causing such harm and injury.

**Whereas**, Pittsfield residents have submitted to the Health Board over 11,000 pages of evidence of studies, reports, scientific and medical experts’ opinion. The Board also heard testimony from medical professionals that directly treat those injured by RF/EMF and scientific experts and was presented with personal testimony by the many who have been harmed by pulsed and modulated RF exposure as a result of the facility’s operation. Specifically, but without limitation, the Health Board bases its conclusions and actions on all the scientific and medical evidence that has been submitted, but provides this general summary:

\* The evidence presented to the Board includes well over a thousand peer reviewed scientific studies and medical literature consistently finding that pulsed and modulated RFR has bio-effects and can lead to short- and long-term adverse health effects either directly or by aggravating other existing conditions. The evidence reveals profound effects including but not limited to: neurological and dermatological effects; increased risk of cancer and brain tumors; DNA damage; oxidative stress; immune dysfunction; cognitive processing effects; altered brain development, sleep and memory disturbances, ADHD, abnormal behavior, sperm dysfunction and damage to the blood-brain barrier.<sup>1</sup>

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<sup>1</sup> <http://www.parentsfor safetechnology.org/california-medical-association-resolution-on-wireless.html>;  
<https://bioinitiative.org/conclusions/>; <https://bioinitiative.org/table-of-contents/>;  
<https://www.emfscientist.org/index.php/emf-scientist-appeal>.

\* Peer-reviewed studies have demonstrated that pulsed and modulated RFR can cause the symptoms suffered by Pittsfield’s residents, including studies showing that these symptoms can be developed as a result of exposure to cell towers specifically.

\* The symptoms described by the Pittsfield’s residents are often referred to in the scientific and medical literature as “electrosensitivity.” The record evidence shows that exposure to FCC-authorized pulsed and modulated RFR can cause the symptoms, injuries, and mechanisms of harm associated with electrosensitivity and exhibited by the residents near the facility.<sup>2</sup>

\* Electrosensitivity describes a constellation of mainly neurological symptoms that occur as a result of exposure to pulsed and modulated RFR. The symptoms described in the scientific literature include headaches, sleep problems, heart palpitations, ringing in the ears, dizziness, nausea, skin rashes, memory and cognitive problems among others. According to the evidence, exposure avoidance is the only effective management.

\* There are diagnosis guidelines. The European Academy of Environmental Medicine (EUROPAEM) published the “*EUROPAEM EMF Guideline 2016 for the prevention, diagnosis and treatment of EMF-related health problems and illnesses.*”<sup>3</sup> These peer reviewed guidelines cite 235 scientific references for symptoms, physiological damage, and mechanisms of harm. These guidelines have been used by doctors in the US and throughout the world. Dr. Sharon Goldberg MD, who diagnosed one of the residents with electro-sensitivity following the exposure to the facility, also provided documentation and supporting information on this injury.

\* The recent US government’s reports regarding the “mystery illness” of US diplomats in Cuba and China provide further support that pulsed RF can cause injury similar to that suffered by our residents. In December 2020, the National Academy of Sciences, Engineering and Medicine (NAS) concluded<sup>4</sup> that the diplomats’ “mystery illness” is likely caused by pulsed RF. Prof. Beatrice Golomb, MD PhD, 2018 wrote the first paper analyzing the science and showing that pulsed RFR is the likely cause of the symptoms suffered by some US diplomats in Cuba and China.<sup>5</sup> Her analysis relies on government studies as well as studies on commercial wireless devices and technology and shows how the diplomats’ symptoms can result from pulsed RFR exposure. She concluded that the diplomats suffer from electrosensitivity (which she refers to as “Microwave Illness”). Most recently, on February 1, 2022, the federal government published a report adopting

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<sup>2</sup> <https://pubmed.ncbi.nlm.nih.gov/27454111/>;  
<https://emfacademy.com/wp-content/uploads/2017/12/Mallery-Blythe-v1-EESC.pdf>;  
<https://maisonsaine.ca/uploads/2016/09/ehs-bray-13-08-2016.pdf>;  
<https://alliance4mra.org/eighty-years-of-primary-source-materials-on-microwave-radiation-syndrome/>.

<sup>3</sup> <https://pubmed.ncbi.nlm.nih.gov/27454111/>.

<sup>4</sup> <https://www.nap.edu/read/25889/chapter/1>.

<sup>5</sup> <https://pubmed.ncbi.nlm.nih.gov/30183509/>.

the conclusion of the NAS and finding that pulsed RFR is likely the cause of the diplomats' sickness.<sup>6</sup>

\* As the record shows, there is evidence of clusters of sickness around cell towers. Evidence filed in a DC Circuit case<sup>7</sup> and provided to the Board of Health contains evidence of California firefighters who developed electrosensitivity after a cell tower was installed on their station. They experienced the typical symptoms and reported memory/concentration difficulties like getting lost in their hometown and forgetting basic CPR. Computer-tomography scans revealed pervasive neuron hyper-excitability. Following these incidents, the International Association of Fire Fighters Division of Occupational Health Safety and Medicine investigated evidence of pulsed and modulated RF harm and published a resolution opposing the use of fire stations as base stations for towers and/or antennas for the conduction of cell phone transmissions.<sup>8</sup>

\* In November 2020, New Hampshire's Commission to Study the Environmental and Health Effects of Evolving 5G Technology (established by the legislature to learn the health effects of 5G wireless radiation), published a report, concluding that RF emissions in levels below the FCC guidelines can be harmful. The Committee report followed a thorough study of the evidence. The committee's final report recommended adoption of cell tower antenna setbacks and acknowledged electrosensitivity and its association with RFR exposure.<sup>9</sup> Dr. Kent Chamberlin, former Chair, Dept. of Computer and Electrical Engineering, University of New Hampshire, and Dr. Paul Heroux, PhD, Professor of Toxicology and Health Effects of Electromagnetism, McGill University Faculty of Medicine, two of the expert members of the NH committee, provided testimony to Pittsfield City Council and this information has been included in the record of this matter.

\* Other experts also offered testimony in support of the residents' contention that the cell towers are the cause of their symptoms. Experts include Dr. Martha Herbert, MD PhD, pediatric neurologist and former assistant professor at Harvard Medical School and Dr. Magda Havas PhD., Professor Emeritus, Trent School of the Environment, Trent University.

\* Prof. David Carpenter MD, former Dean, School of Public Health at University of Albany, NY, wrote a letter to the city referencing studies showing that cell towers increase cancer risk and cause change in hormones and electrosensitivity symptoms including headaches, fatigue, "brain fog" and ringing in the ears. Dr. Carpenter is the co-editor of the BioInitiative Report,<sup>10</sup> a scientific review of the science on RF/EMF by independent expert scientists. The report reviewed approximately 2,000 studies on RFR health effects. It concludes that bio-effects from wireless technology and infrastructure,

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<sup>6</sup>[https://www.dni.gov/files/ODNI/documents/assessments/2022\\_02\\_01\\_AHI\\_Executive\\_Summary\\_FINAL\\_Redacted.pdf](https://www.dni.gov/files/ODNI/documents/assessments/2022_02_01_AHI_Executive_Summary_FINAL_Redacted.pdf).

<sup>7</sup> *Env'tl. Health Tr., et al v. FCC*, 9 F.4th 893 (D.C. Cir. 2021).

<sup>8</sup> International Association of Fire Fighters Division of Occupational Health, Safety and Medicine, Position on the Health Effects from Radio Frequency/Microwave (RF/MW) Radiation in Fire Department Facilities from Base Stations for Antennas and Towers for the Conduction of Cell Phone Transmissions (2004).

<sup>9</sup> <http://www.gencourt.state.nh.us/statstudcomm/committees/1474/reports/5G%20final%20report.pdf>.

<sup>10</sup> <https://bioinitiative.org/table-of-contents/>.

including from cell towers, occur at radiation levels significantly below the FCC's guidelines. The report reveals that the overwhelming majority of neurological studies show bio-effects.<sup>11</sup> Over 90 percent of the studies looking at the oxidative stress mechanism (a mechanism of harms that has been associated also with electro-sensitivity) show bio-effects.<sup>12</sup> The report contains cell tower studies that show harmful effects of radiation emitted by cell towers. Among other studies, the report references a 2012 study conducted over a period of 1.5 years and showed the exposure to pulsed RF caused hormonal and cell stress effects and found evidence of dose-response at radiation levels of up to 1,000,000 times lower than the FCC guidelines.<sup>13</sup> According to the 2012 report's conclusion, public safety standards are 10,000 or more times higher than levels now commonly reported in mobile phone base station studies that reveal bio-effects. Because of the actual evidence of harm to humans from cell towers, the report uses mobile phone base station-RFR levels studies to determine the "lowest observed effect level" for RFR exposure as the basis for its recommendations for biologically-based exposure guidelines.<sup>14</sup>

\* Dr. Cindy Russell, the executive director of "*Physicians for Safe Technology*,"<sup>15</sup> provided a synopsis of 28 studies showing cell tower harm.<sup>16</sup> One of the reports she referenced in her letter shows that, contrary to public perception, the majority of studies on RFR do show harm.

\* These and other studies and reports in the record<sup>17</sup> show that cell towers' radiation may have adverse effects even when the pulsed and modulated RF emissions are significantly lower than the FCC's safety guidelines. Studies show neurological effects and adverse effects on well-being, clear measurable physiological effects from cell towers, hormonal changes, oxidative stress damage, negative effects on sperm, increased cancer risk<sup>18</sup> and DNA damage.<sup>19</sup>

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<sup>11</sup><https://bioinitiative.org/wp-content/uploads/2020/10/13-Neurological-Effects-Studies-Percent-Comparison-2020.pdf>.

<sup>12</sup> <https://bioinitiative.org/research-summaries/>;  
<https://bioinitiative.org/wp-content/uploads/2020/09/9.-Free-Radical-Studies-Percent-Comparison-2020.pdf>.

<sup>13</sup> A Long-term Study under Real-life Conditions, Klaus Buchner and Horst Eger E.; Umwelt-Medizin-Gesellschaft 24(1): 44-57 (2011).

<sup>14</sup> <https://bioinitiative.org/research-summaries/>;  
<https://bioinitiative.org/wp-content/uploads/2020/09/9.-Free-Radical-Studies-Percent-Comparison-2020.pdf>.

<sup>15</sup> <https://mdsafetech.org/cell-tower-health-effects/>;

<sup>16</sup><https://wearetheevidence.org/wp-content/uploads/2022/02/Cell-Tower-Transmitter-Studies-28-Summary-Findings.pdf>.

<sup>17</sup><https://health.maryland.gov/phpa/OEHFP/EH/Shared%20Documents/CEHPAC/CEHPAC%20Dec%2013%20Comments%20Part%203.pdf>.

<sup>18</sup> <https://pubmed.ncbi.nlm.nih.gov/21716201/>;  
<https://wearetheevidence.org/wp-content/uploads/2022/02/Cell-Tower-Transmitter-Studies-28-Summary-Findings.pdf#page=6>.

<sup>19</sup> <https://pubmed.ncbi.nlm.nih.gov/25006864/>;  
<https://wearetheevidence.org/wp-content/uploads/2022/02/Cell-Tower-Transmitter-Studies-28-Summary-Findings.pdf#page=7>.

\* Epidemiological studies show that exposure to emissions from cell towers causes symptoms similar to those suffered by Pittsfield’s residents.<sup>20</sup> The record includes a 2010 review of the evidence of cell towers studies<sup>21</sup> and other studies which are relevant to chronic long-term exposure similar to that from cell towers.<sup>22</sup> The effects found include various neurological symptoms in the vicinity of cell towers such as fatigue, sleep problems, headaches and other effects on “wellbeing” proportionate to the distance from the cell tower.<sup>23</sup> A telecom company study found exposure to cell towers causes a variety of neurological symptoms and a dose response. It also found a causal relationship with sleep disturbance. When, unknown to the subjects, the company secretly turned off the antennas for three days, the sleep quality improved in all subject groups that were studied.<sup>24</sup> A 2014 study concluded that cell towers should be located at least 300 meters from residential homes.<sup>25</sup>

\* Evidence of electrosensitivity and its association to pulsed and modulated RF exposure as well as evidence of cell towers’ harm was filed in the cases of Environmental Health Trust and the Children’s Health Defense challenge of the Federal Communications Commission (FCC) 2019 decision not to review its 1996 guidelines based on insufficient evidence of harm.<sup>26</sup> The US Court of Appeals for the DC Circuit ruled in August 2021 against the FCC. The Court held that the agency’s decision that there is no evidence of non-cancerous harm from RF emissions below the FCC 1996 guidelines was arbitrary, capricious and not evidence-based. The DC Circuit court ruled that the FCC failed to respond to the evidence and did not explain why, despite the substantial evidence of harm filed in the FCC record, the agency decided to not further review its 1996 guidelines for potential change.

\* The questions raised by the court and the compelling scientific evidence submitted to us allows only one conclusion: pulsed and modulated RFR can and does cause harm and that at least a segment of the population can be severely harmed when exposed to this radiation. Exposure can lead to significant temporary and possibly permanent injury and

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<sup>20</sup><https://wearetheevidence.org/wp-content/uploads/2022/02/Cell-Tower-Transmitter-Studies-28-Summary-Findings.pdf>.

<sup>21</sup> Biological effects from exposure to electromagnetic radiation emitted by cell tower base stations and other antenna arrays, Levitt, B. & Lai, Henry, Environmental Reviews. 18. 369-395. 10.1139/a10-903 (2010).

<sup>22</sup>

<https://health.maryland.gov/phpa/OEHFP/EH/Shared%20Documents/CEHPAC/CEHPAC%20Dec%2013%20Comments%20Part%203.pdf> ; <https://wearetheevidence.org/wp-content/uploads/2022/02/Oberfeld.pdf#page=30>.

<sup>23</sup> <https://pubmed.ncbi.nlm.nih.gov/16962663/>;

[https://www.researchgate.net/publication/45387389\\_Epidemiological\\_Evidence\\_for\\_a\\_Health\\_Risk\\_from\\_Mobile\\_Phone\\_Base\\_Stations](https://www.researchgate.net/publication/45387389_Epidemiological_Evidence_for_a_Health_Risk_from_Mobile_Phone_Base_Stations).

<sup>24</sup> Evidence of Neurological effects of Electromagnetic Radiation: Implications for degenerative disease and brain tumor from residential, occupational, cell site and cell phone exposures; Dr Neil Cherry O.N.Z.M., page 9.

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<https://wearetheevidence.org/wp-content/uploads/2022/02/Cell-Tower-Transmitter-Studies-28-Summary-Findings.pdf#page=2>.

<sup>26</sup> *Envtl. Health Tr., et al v. FCC*, 9 F.4th 893 (D.C. Cir. 2021).

according to the evidence it seems that the most effective method to reduce the symptoms and mitigate the harm is through exposure avoidance.

\* We also conclude that the information provided by Verizon does not convince us otherwise. The material was mostly self-promotional brochures or industry-funded advocacy pieces rather than peer-reviewed scientific studies. They generally deny any prospect of harm, but do not meaningfully address the scientific evidence in the record or counteract the fact that the majority of independent studies, especially studies that use pulsed and/or modulated signals do show harm.<sup>27</sup> Furthermore, Verizon cannot and does not adequately rebut the human evidence before the Health Board of actual harm from this facility. Simply stated, Verizon's position is that what is plainly happening in Pittsfield cannot occur. But it is.

\* The evidence shows that involuntary exposure in homes has effectively evicted people injured by pulsed and modulated RFR; they have no choice but to leave. Pulsed and modulated RFR from nearby sites renders their homes uninhabitable – unfit for human habitation – because the continued exposure causes them severe pain, inability to function and endangers and materially impairs their health and safety.

**Whereas**, the Health Board has received direct testimony and written submissions from specific individuals that reside, or previously resided, within the reach of the wireless facility in issue. These residents state that they and/or other family members (including their children) developed symptoms shortly after the facility was activated. Many of the residents have testified on multiple occasions, which indicates the symptoms are persisting. It appears, based on the evidence, that there is a cluster of illness around the facility that is caused by the facility's operation. Since no survey has been conducted there may be additional affected residents.

**Whereas**, the symptoms reported by residents are mainly neurological and include headaches, ringing in the ears, dizziness, heart palpitations, nausea, and skin rashes. As the evidence that was provided to us shows, these symptoms are consistent with the scientific literature regarding adverse health effects from exposure to pulsed and modulated RF, including evidence specific to cellular antennas.

**Whereas**, the Health Board has received evidence of at least seventeen residents who have suffered on-going symptoms. We find their letters and oral testimonies to be authentic, compelling and credible. As a result of the symptoms, some of these residents have decided to leave their homes, while others split their time between their home and other temporary locations. This indicates that some have been constructively evicted from their homes and effectively rendered homeless. According to the evidence in the record, these symptoms are consistent with a diagnosis of electromagnetic sensitivity.

**Whereas**, the Health Board has received and reviewed, *inter alia*, the following evidence:

\* Courtney Gilardi, a pre-school teacher, has testified that she and both her daughters developed various symptoms immediately after the facility went into operation. Ms. Gilardi has provided a physician's medical diagnosis by Dr. Sharon Goldberg, MD, an internal and environmental medicine physician. This diagnosis linked Ms. Gilardi's

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<sup>27</sup> <https://pubmed.ncbi.nlm.nih.gov/26346766/>.

symptoms to the RF/EMF emitted by the facility by way of causation. Ms. Gilardi's diagnosis letter indicates her symptoms improve when she is away from home but resume when she returns and is again exposed again to the facility's radiation.

\* Amilia Gilardi, Courtney Gilardi's daughter, testified that after the facility went into operation, she and her sister both started getting headaches. They feel dizzy and develop sleeping problems. Her sister also suffered itchiness and developed skin rashes, frequent nausea and often has to sleep with a bucket next to her bed. Both girls have missed school. Amelia explained that when she is away from home (and out of range of the facility) she feels better.

\* Jessica and Frank Scago reported that following the facility's activation they began to suffer nausea, headaches and dizziness. They are especially concerned for their five year old son who has Sensory Processing Disorder, a neurological disease. Since he has limited verbal skills they do not know whether he too suffers from the cell tower and are concerned that the exposure to the cell tower's emissions would aggravate his condition. The literature indicates that it is not unusual for individuals to have or develop sensitivity to multiple toxins, and this can become an escalating feedback loop.

\* Paul and Diana Dalton and their two children all developed headaches and insomnia after the facility became operational. They left their home because it is essentially uninhabitable and inaccessible to them.

\* Charlie Herzig, an elderly resident, testified that both he and his wife have been unable to sleep since the tower was activated and that his wife has been especially affected.

\* Angie and Mark Markham reported that they have been severely affected. He is nauseous and has headaches in the morning and again as soon as he returns from work.

\* Elaine Ireland testified that she and her husband developed tinnitus and other serious health issues following the facility's activation. They are suffering from headaches and sleeplessness. They are deciding whether they must abandon their home because it is inaccessible and uninhabitable.

\* William Coe testified that he developed ringing in the ears and that his wife Luci has developed horrible headaches and migraines. He stated that he sent his wife and their three year old daughter Luci away from the house because they believe it is unsafe and therefore uninhabitable. They are concerned for their daughter as she also has limited verbal skills and therefore they don't know if she suffers.

**Whereas**, this evidence clearly demonstrates that specific residents in the vicinity of the facility have suffered and are suffering injuries and illnesses directly caused by the pulsed and modulated RFR emitted by the facility in issue, and for so long as the facility is in operation it will continue to be injurious to the public health and continue to drive residents from their homes.

**Whereas**, the FCC's safety guidelines provide limits for general population purposes. These guidelines were designed to measure and address only "thermal" or heating related effects. The guidelines for whole body exposure (such as for exposure from cell towers), are for 30 minutes exposure and protect only from thermal injury. They ignore the effects of pulsation and

modulation and non-thermal effects from long-term chronic exposure, cumulative effects and effects of exposure to numerous sources of RF exposure.

**Whereas**, the FCC guidelines do not address the now conclusively demonstrated scientific, medical and even legally-established fact that these general population limits do not adequately recognize that pulsed and modulated RF radiation emissions are “bioactive” – living things biologically respond to pulsed and modulated RF radiation and this response can lead to harmful effects. More importantly, these guidelines entirely fail to address or provide for the situation where at least certain individuals develop adverse reactions such as those who experience electromagnetic sensitivity.

**Whereas**, the Health Board concludes that the FCC guidelines do not prevent state or local authorities from taking action to protect the health and safety of those specific individuals who have demonstrated that a wireless facility has directly made them ill. The FCC has ruled that state and local zoning authorities can condition a land use permit on compliance with generally applicable state or local health and safety codes.<sup>28</sup> Verizon Wireless’ permit for this facility does precisely that. Verizon Wireless’ permit expressly requires compliance with the Massachusetts Sanitary Code and Pittsfield’s health-related rules, regulations and requirements. By this Order the Health Board is finding the facility in violation and we are requiring Verizon Wireless and the property owner to bring their facility and the premise into compliance with Massachusetts’ and Pittsfield’s generally applicable health and safety codes, just as FCC precedent and the permit expressly allow.

**Now, therefore, the Pittsfield Board of Health hereby FINDS AND ORDERS as follows:**

- \* The facility operated by Verizon Wireless is a public nuisance, a cause of sickness and a trade which may result in a nuisance or be dangerous to the public health for purposes of G.L. ch. 111 ss 122-125, 127B, 127C, 143-150 and 152.
- \* The premises owner, Farley White South Street LLC is also responsible for all activities on its premises and within its direction and control.
- \* The facility operated on the premises creates an access barrier that directly causes harm to certain individuals, and renders dwellings Unfit for Human Habitation or constitute a Condition Which May Endanger or Materially Impair the Health or Safety and Well-Being of an Occupant as defined in State Sanitary Code 410.020 and 410.750(P).
- \* The facility operated on the premises creates conditions that impact occupants of a dwelling to the point that it renders a dwelling unfit for habitation for purposes of Sanitary Code 410.831.
- \* Verizon Wireless and Farley White South Street LLC are jointly and severally responsible for these unsafe conditions.

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<sup>28</sup> *Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; 2012 Biennial Review of Telecommunications Regulations*, 29 FCC Rcd 12865, 122951, ¶202 (Oct. 17, 2014): (“We therefore conclude that States and localities may require a covered request to comply with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, and that they may condition approval on such compliance.”).

\* This Order shall be served on Verizon Wireless, through its authorized agents and Farley White South Street LLC, through its authorized agents, the persons responsible for the violations as provided by *inter alia*, G.L. ch. 111 ss 124, 127B, 127D, 144 and State Sanitary Code for 410.833, 410.850 and 410.851.

\* Verizon Wireless and Farley White South Street LLC are hereby ORDERED to show cause why the Board of Health should not issue an order requiring cessation of operations at the facility pursuant to the Board of Health's statutory and historical police power to protect its citizens from injury and harm.

\* Verizon Wireless and Farley White South Street LLC shall have SEVEN (7) DAYS from the date of this order to request a hearing on this order to show cause. The Board of Health will promptly schedule such hearing in accordance with the provisions of G.L. ch. 111 and the State Sanitary Code and provide public notice thereof.

\* In the event Verizon Wireless and Farley White South Street LLC do not timely request a hearing the Board this Order shall become and constitute a notice of discontinuance requiring that Verizon Wireless and Farley White South Street LLC abate and eliminate all activities and operations leading to the present and ongoing nuisance and violations of the State Sanitary Code at their own expense within SEVEN (7) DAYS of the expiration of the deadline to request a hearing.

\* Verizon Wireless and Farley White South Street LLC shall have the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices and other documentary information in the possession of the Board of Health; the right to be represented at the hearing.

\* Any affected party has a right to appear at said hearing and present evidence and argument in favor of or against discontinuance.

\* This is an important legal document. It may affect your rights.

The Health Board reserves the right to take such other and further action as it deems necessary to ensure that all injurious activities and conditions end, including directly acting to remove the offending facilities at the expense of Verizon Wireless and Farley White South Street LLC and or appointment of a receiver responsible for accomplishing the same.

This Order shall take effect upon issuance.