

COURT RULING ON FCC'S LACK OF ADEQUATE REVIEW FOR WIRELESS EXPOSURE LIMITS

LANDMARK FEDERAL COURT RULING AGAINST THE FCC

On August 13, 2021 the U.S. Court of Appeals for the D.C. Circuit ruled the Federal Communications Commission (FCC) ignored scientific evidence and failed to provide a reasoned explanation for its determination that its 1996 regulations adequately protect the public against all the harmful effects of wireless radiation.

FCC'S REFUSAL TO UPDATE 1996 LIMITS

The legal case challenged the FCC's 2019 decision not to update its 1996 regulations regarding allowable radiofrequency radiation (RF) exposures from wireless technologies - including 5G, cell phones, cell towers, Wi-Fi, and wireless networks.

EVIDENCE OF HARMFUL EFFECTS BELOW FCC LIMITS

FCC limits are based on the belief that heating is the only proven harm from RF. Over 11,000 pages of evidence - 447 exhibits in 27 Volumes - was submitted to the Court documenting biological effects and illness from wireless radiation exposure below heating levels. Research has found brain damage, headaches, memory problems, reproduction damage, synergistic effects, nervous system impacts, brain cancer, genetic damage, as well as harm to trees, birds, bees, and wildlife.

THE COURT FINDINGS

The ruling stated that the FCC's "arbitrary and capricious" decision to maintain their 25 year old exposure limits did not address evidence indicating "non-cancer" harm such as:

- impacts to children
- testimony of persons injured by wireless radiation
- impacts to the developing brain
- impacts to the reproductive system
- impacts to wildlife and the environment

THE COURT ORDER

The Court ordered the FCC to provide a reasoned determination as to whether the evidence warrants a change to 1996 RF limits especially in regards to:

- children's vulnerability
- long-term exposure
- environmental impacts
- new technological developments and the ubiquity of wireless
- how FCC's cell phone tests only measure heat and allow a space between the phone and body

TIMELINE

1980s: EPA had robust research program and was tasked to develop RF safety limits by U.S. Science Advisory Board.

1995: EPA presents to FCC on the EPA timeline for its development of human exposure RF limits which would include both thermal effects and non thermal effects.

1996: EPA is fully defunded by Congress amid heavy lobbying for Telecom Act and halts all research on RF.

1996: The FCC adopts RF limits developed by industry-tied groups - based on short term heating - thermal- effects from high power exposures (based on studies of small animals exposed to high RF levels for under an hour).

1999: FDA requests the National Toxicology Program (NTP) study RF because of the lack of safety data on long-term exposure.

2008/2009 Congressional Hearings

2011: Wireless RF classified as a "possible" Class 2B Carcinogen by International Agency for Research on Cancer.

2012: GAO Report recommends rules be reassessed to reflect current use patterns and recent science.

2013-2019: FCC opens record on RF limits - gets over 1000 submissions.

2018: NTP/NIH releases \$30M animal study concluding "clear evidence" of cancer. FDA rejects the findings.

2019: FCC closes record, decides not to update its 1996 wireless RF limits.

2020: Cases filed against FCC.

2021: U.S. Court of Appeals, D.C Circuit ruled that the FCC decision not to change human exposure limits and regulations was "arbitrary and capricious." FCC ordered to respond.

2021: No FCC response to Court, so EHT and others filed request to refresh record.

Timeline is hyperlinked to sources.

FCC'S LACK OF ADEQUATE REVIEW FOR WIRELESS RADIATION EXPOSURE LIMITS

FCC Compliance Does Not Ensure Safety

Most of the public assumes that current FCC safety limits for cell phones, cell towers, Wi-Fi, 5G, and wireless networks are based upon an up to date robust review of all relevant research. This assumption of safety is now clearly documented to be erroneous.

Lack of Oversight by Health and Environmental Agencies

The ruling reveals a lack of accountability with our federal health agencies regarding wireless radiation. The EPA, CDC, NIOSH, and NCI did not submit any reports to the Court, revealing that none of these agencies has reviewed the science on health effects to ensure safety for the public. The U.S. has no pre- market safety testing for health effects, no post-market surveillance, no environmental monitoring, and no meaningful interagency coordination.

FDA's Dismissal of Harm Deemed Insufficient

The Court states the FCC improperly relied on the FDA's conclusions that RF limits did not need an update. The FDA's submissions were described by the Court as " cursory " and "insufficient." Although the FDA later released a literature review, it was only focused on cell phones, not cell towers, Wi-Fi nor 5G technology. It also was only focused on cancer, further confirming the fact that U.S. agencies have failed to evaluate the myriad of effects documented in scientific studies, such as brain, immune, fertility and endocrine impacts. A U.S. government review of *the full body of recent science* has simply never been done.

"the Commission's failure to provide a reasoned or even relevant explanation of its position that RF radiation below the current limits does not cause health problems unrelated to cancer renders its explanation as to the effect of RF radiation on children arbitrary and capricious. "

— 2021 EHT et al. v. FCC

The Court Did Not Agree That "Cell Phones Do Not Cause Cancer"

Contrary to the wireless industry's recent claims, the Court *did not make a scientific determination regarding cancer*. The ruling simply stated that in regards to cancer- the FCC passed the minimum legal requirement for adequate review because it (at least) referenced why the FCC dismissed cancer evidence. The FCC cited the rejections of NIH studies by the FDA and of ICNIRP (a small group with no oversight and whose members have a long history of industry ties).

Children's Vulnerability and Effects of Long Term Exposure Ignored by the FCC

The Court states the FCC "dismissed" the American Academy of Pediatrics recommendations to strengthen regs and ensure children and pregnant women are protected. The Court found the FCC failed to explain why it ignored research indicating children's developing brains are more sensitive. Children will have a lifetime of exposure, yet the FCC was found to ignore the issue of impacts *from long term exposure*.

Wildlife Remains Unprotected

FCC's limits were designed in 1996 to protect only humans, not flora or fauna. The Court found that the FCC had "completely failed" to address the "substantive evidence of potential environmental harms" on the record, which included science showing serious impacts to birds, bees, trees, and plants.

PETITIONERS: Environmental Health Trust, Consumers for Safe Cell Phones, Elizabeth Barris, Theodora Scarato, Children's Health Defense, Michelle Hertz, Petra Brokken, Dr. David Carpenter, Dr. Toril Jelter, Dr. Paul Dart, Dr. Ann Lee, Virginia Farver, Jennifer Baran, Paul Stanley M.Ed.

KEY RESOURCES: Court Ruling 8/13/2021, Evidence (11,000 pages), EHT Press Conference

Amicus Briefs

- Amicus of NRDC: Natural Resources Defense Council
- Amicus of Attorney Joe Sandri including declaration of Dr. Linda Birnbaum, former Director of the National Institute of Environmental Health Sciences
- Amicus of Catherine Kleiber
- Amicus of the Building Biology Institute

EHTrust.org for more.