



RF Exposure Limits Litigation: *Environmental Health Trust, et al. v. FCC*

On August 13, 2021, the DC Court of Appeals handed down its decision in *Environmental Health Trust, et al. v. FCC* regarding the Federal Communications Commission’s (FCC) RF health limits. The Court considered the FCC’s closing of the 2013 Notice of Inquiry on the matter of RF limits, thus upholding its existing limits, in light of the challenges raised by the Environmental Health Trust and the Children’s Health Defense. These groups argued that the FCC misused its authority under the Administrative Procedures Act by dismissing objections to the limits without adequately addressing certain health objections.

The Court found that the FCC reasoning in support of the existing RF limits to be adequate to address the cancer-related concerns:

“...the order provides a reasoned response to the NTP and Ramazzini Institute studies. It explains that the results of the NTP study “cannot be extrapolated to humans because (1) the rats and mice received RF radiation across their whole bodies; (2) the exposure levels were higher than what people receive under the current rules; (3) the duration of exposure was longer than what people receive; and (4) the studies were based on 2G and 3G phones and did not study WiFi or 5G.”¹

As a result the Court then turned to the non-cancer related claims. As the FCC is not considered to be a health agency it relied on the US Food & Drug Administration (FDA) for its conclusions. The Court, however, found that the FDA’s letter to FCC reporting that the current standards provided for public safety was not sufficiently explanatory to form a basis for an adequate reliance on safety from non-cancer concerns. The language of the court was:

“To be clear, we take no position in the scientific debate regarding the health and environmental effects of RF radiation—we merely conclude that the Commission’s cursory analysis of material record evidence was insufficient as a matter of law. As the dissenting opinion indicates, there may be good reasons why the various studies in the record, only some of which we have cited here, do not warrant changes to the Commission’s guidelines. But we cannot supply reasoning in the agency’s stead...and here the Commission has failed to provide any reasoning to which we may defer.”

Therefore the court remanded the case to the FCC for further action in providing a better record on the non-cancer concerns and made no findings on the substance of such claims.

As the CTIA stated in response to the decision:

“Today’s appeals court decision expressly upholds the FCC’s determination that mobile phones and networks do not cause cancer. Further, the opinion “take[s] no position” on claims of other adverse health effects, and simply directs the FCC to more fully explain its conclusions on that point. The consensus of the international scientific community is that radiofrequency energy from wireless devices and networks, including 5G, has not been shown to cause health problems.”

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¹ *Environmental Health Trust, et al. v. FCC* , 2019 Order, 34 FCC Rcd. at 11,693 n.33.