

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies	)	ET Docket No. 13-84 (Termination order remanded)
	)	
Targeted Changes to the Commission’s Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields	)	ET Docket No. 19-226

**PETITION TO IMPLEMENT D.C. CIRCUIT JUDGMENT AND MANDATE, REOPEN  
*NOTICE OF INQUIRY* AND PERFORM TASKS ORDERED BY THE COURT,  
PETITION TO IMPLEMENT CEQ-MANDATED NEPA PROCEDURES UPDATE  
AND  
REQUEST FOR PROMPT RULING**

Pursuant to 47 C.F.R. §1.1 Children’s Health Defense (“CHD”) petitions and requests that the Commission promptly comply with the judgment and mandate issued by the United States Court of Appeals for the District of Columbia Circuit in No. 20-1025, *Environmental Health Trust, et al v. Federal Communications Commission, et al.*<sup>1</sup> CHD separately petitions the FCC to open a proceeding mandated by the Council on Environmental Quality to update NEPA procedures, including promulgation of exposure limits relating for the entire “human environment” beyond just “human exposures.”

1. Petition to Implement D.C. Circuit Judgment and Mandate

The D.C. Circuit opinion and judgment in *Environmental Health Trust, et al v. Federal Communications Commission, et al*, 9 F.4th 893 (D.C. Cir. 2021) was filed on August 13, 2021. The mandate issued on October 5, 2021. The judgment states that the “petitions for review be

---

<sup>1</sup> Children’s Health Defense was a named Petitioner and is therefore entitled to the relief granted by the court.

granted in part and the case be remanded to the Commission to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer, in accordance with the opinion of the court.”

Environmental Health Trust (“EHT”) filed a “Request to Reopen and Refresh Record” on November 30, 2021. It has now been 19 months since the judgment, 17 months since the mandate and more than 15 months since the EHT request, but the Commission has not acted to obey the mandate. CHD now concurs in and adopts the EHT motion and further submits its own, separate petition, motion and request. CHD also specifically requests a prompt ruling on this petition.

The Court of Appeals rejected much of the Commission’s December 4, 2019 Order<sup>2</sup> terminating the Docket 13-84 *Notice of Inquiry* that was established “to determine whether there is a need for reassessment of the Commission radiofrequency (RF) exposure limits and policies.”<sup>3</sup> Most significantly, the D.C. Circuit held that the Commission’s 2019 Order failed to provide reasoned decision-making and was arbitrary and capricious with respect to its determination that the existing guidelines for radiofrequency radiation emissions adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer. More specifically, the D.C. Circuit ruled:

[W]e grant the petitions in part and remand to the Commission to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer. It must, in particular, (i) provide a reasoned explanation for its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines, (ii) address the impacts of RF radiation on children, the health implications of

---

<sup>2</sup> *Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, Resolution of Notice of Inquiry, ET Docket 13-84, FCC 19-126, ¶¶ 10-16, 34 FCC Rcd 11687, 11692-11697 (2019).

<sup>3</sup> *Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, Notice of Inquiry, ET Docket 13-84, ¶¶ 5-9, 205-252, 28 FCC Rcd 3498, 3501-3503, 3570-3589 (2013).

long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines, and (iii) address the impacts of RF radiation on the environment.  
9 F.4th at 914.

The Circuit Court emphatically concluded that the Commission’s Order was “arbitrary and capricious in its failure to respond to record evidence that exposure to RF radiation at levels below the Commission’s current limits may cause negative health effects unrelated to cancer.”

*Id.* at 903. The Court continued:

That failure undermines the Commission’s conclusions regarding the adequacy of its testing procedures, particularly as they relate to children, and its conclusions regarding the implications of long-term exposure to RF radiation, exposure to RF pulse or modulation, and the implications of technological developments that have occurred since 1996, all of which depend on the premise that exposure to RF radiation at levels below its current limits causes no negative health effects. Accordingly, we find those conclusions arbitrary and capricious as well. Finally, we find the Commission’s order arbitrary and capricious in its complete failure to respond to comments concerning environmental harm caused by RF radiation.”

*Id.*

The Commission cannot just sit on this matter any longer. Doing nothing to reopen the matter is functionally no different than termination – the action found unlawful and remanded by the Court. Any continued non-action will violate the judgment and mandate and expose the Commission to further judicial review and, ultimately, a *mandamus* order requiring compliance.

The decision was based on record evidence that went through the end of November 2019.<sup>4</sup> It is now March of 2023 – three years and more than three months after the remanded docket termination order. During that period even more scientific evidence has been published and it provides even more proof of a harmful biological response to RF exposures at and under

---

<sup>4</sup> The NOI termination decision was released on December 4, 2019. For all practical purposes, however, the determination had already been made three months earlier or around August 8, 2019 when the then-Chairman proposed to maintain current RF exposure limits. *See* FCC Daily Digest, Chairman Pai Proposes to Maintain Current Radiofrequency Exposure Safety Standards, [https://www.fcc.gov/edocs/daily-digest/2019/08/09\\_DOC-358968A1.docx](https://www.fcc.gov/edocs/daily-digest/2019/08/09_DOC-358968A1.docx), [DOC-358968A1.pdf](https://www.fcc.gov/edocs/daily-digest/2019/08/09_DOC-358968A1.pdf), [DOC-358968A1.txt](https://www.fcc.gov/edocs/daily-digest/2019/08/09_DOC-358968A1.txt).

the FCC’s emissions guidelines in 47 C.F.R. §§ 1.1307, 1.1310 and 2.1091. EHT has been assiduously lodging copies of the scientific developments in ET Docket Nos. 13-84 and 19-226 so the FCC is fully aware of these developments. The Commission cannot responsibly ignore this science any longer. As noted on page 9 of the FCC’s recent 2024 budget estimate to Congress, “There is no task at the FCC that is more important than keeping the American people safe.” Since the science now conclusively shows the current emissions regulations ***do not*** “keep the American people safe,” and do not at all protect the rest of the human environment it is time to act. There is no discretion and no other option. The Commission must reopen the *Inquiry* and take action regarding its emissions regulations.

## 2. Petition to Implement CEQ-Mandated NEPA Procedures Update

There is a separate reason to act: the Commission faces a significant and soon-to-arrive deadline as a result of a different mandate. The Council on Environmental Equality (“CEQ”) promulgated a significant set of revisions to its Title 40 rules in July 2020 and again on April 20, 2022. 40 C.F.R. §1507.3(b) requires that the Commission “revise, as necessary, proposed procedures to implement the regulations in this subchapter” “[n]o more than 36 months after September 14, 2020” or by September 14, 2023.<sup>5</sup> The Commission must consult with CEQ, then provide an opportunity for public review and comment.

The emissions provisions that the Commission decided to not change as part of its 2019 decision to terminate ET Docket No. 13-84 – the action and order the Court of Appeals found was arbitrary and capricious – are contained in 47 C.F.R. §§ 1.1307 and 1.1310. Those are part of the agency’s procedures implementing NEPA and are within the CEQ update task.

---

<sup>5</sup> See 40 C.F.R. § 1507.1 “Compliance. All agencies of the Federal Government shall comply with the regulations in this subchapter.”

Section 1.1307 addresses “actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.” It speaks to when an environmental assessment is required and advises when a Commission action “may require further Commission environmental processing.” Subsection (b)(3) – which contains the “exemptions”<sup>6</sup> from further “processing” (e.g., procedures) – is one of the places where the emissions limits for single and multiple RF sources are stated. Rule 1.1307 is an agency procedure implementing NEPA, it is impacted by the CEQ rule changes, and it must therefore be updated.

Similarly, § 1.1310 contains the SAR and MPE time-averaging methods that plug into the calculations required by § 1.1307. These rules must be updated as well pursuant to the CEQ rule change and deadline.<sup>7</sup>

Equally important, the Commission’s specific exposure limits address only “human exposures.” See 47 C.F.R. §§ 1.1307(b)(1)(i), (i)(B), (C), (ii), 1.1310(a), (b), (c), (d)(2), (d)(3), (d)(4). There are no express limits for the rest of the “human environment.” 40 C.F.R. §1508.1(m) (a CEQ rule) provides that “[h]uman environment means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment.” 40 C.F.R. §1508.14 then states that the “human environment” “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. ...”). The Commission’s NEPA procedural rules do not contain emissions guidelines for the natural and physical

---

<sup>6</sup> These are “exemptions” from further processing even though one of the Commissions “categorical exclusions” listed in § 1.1306 that CEQ deemed consistent with its rules do not apply. The categorical exclusion in §1.1306(c)(2) merely references the “the health and safety guidelines cited in § 1.1307(b).”

<sup>7</sup> The equipment authorization “human exposure evaluation” rules for mobile and portable devices are in 47 C.F.R. §§ 2.1091 and 2.1092. They essentially repeat the emissions guidelines in 47 C.F.R. §§ 1.1307 and 1.1310 but are technically not “NEPA procedures” subject to the CEQ mandate. They are, however, covered by the D.C. Circuit court mandate.

environment beyond direct human exposure. They must now be updated to conform to CEQ requirements, which do include the entire human environment beyond just human exposures.

The FCC has only a few months to comply with its court-mandated and CEQ-required tasks. Each requires immediate action regarding the Commission's emissions regulations. CHD petitions, moves, and requests that the agency quit stalling and get moving on both these requirements. CHD further requests a prompt ruling on this Petition and Motion.

Respectfully Submitted,

/s/ W. Scott McCollough  
McCollough Law Firm, PC  
2290 Gatlin Creek Road  
Dripping Springs, TX 78620  
512.633.3498  
[wsmc@dotlaw.biz](mailto:wsmc@dotlaw.biz)

Counsel for Childrens' Health Defense

April 4, 2023