

EHT WINS IN HISTORIC DECISION, FEDERAL COURT ORDERS FCC TO EXPLAIN WHY IT IGNORED SCIENTIFIC EVIDENCE SHOWING HARM FROM WIRELESS RADIATION

Aug 16, 2021



EHT WINS COURT CHALLENGE!
IN HISTORIC DECISION, FEDERAL COURT ORDERS FCC TO EXPLAIN WHY IT IGNORED SCIENTIFIC EVIDENCE SHOWING HARM FROM WIRELESS RADIATION

United States Court of Appeals for the District of Columbia Circuit judges in favor of environmental health groups and petitioners; finds FCC viol
Administrative Procedure Act and failed to respond to comments on
environmental harm.



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Today, the United States Court of Appeals for the District of Columbia Circuit [ruled in](#) the historic case EHT et al. v. the FCC that the December 2019 decision by the Federal Communications Commission (FCC) to retain its 1996 safety limits for human exposure to wireless radiation was “arbitrary and capricious.”

The court held that the FCC failed 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.” Further, the agency demonstrated “a complete failure to respond to comments concerning environmental harm caused by RF radiation.” The court found the FCC ignored numerous organizations, scientists and medical doctors who called on them to update limits and the court found the FCC failed to address these issues:

- impacts of long term wireless exposure
- impacts to children,
- the testimony of people injured by wireless radiation,
- impacts to wildlife and the environment
- impacts to the developing brain and reproduction.

On August 16, 2021 Environmental Health Trust held [a Press Conference](#) with:

- Devra Davis, PhD, MPH, EHT President
- Dr. Hugh Taylor, MD, Chair of Obstetrics, Gynecology and Reproductive Sciences, Yale School of Medicine and Yale-New Haven Hospital; president of American Society of Reproductive Medicine
- Edward B. Myers, EHT attorney
- Theodora Scarato, MSW, EHT Executive Director

- Frank Clegg, CEO of Canadians for Safe Technology and former President of Microsoft Canada
- Paul Ben Ishai, PhD, Professor Physics at Ariel University
- Cindy Franklin, founder of Consumers for Safe Cell Phones
- Elizabeth Barris, director of the Peoples Initiative Foundation



Press Conference: EHT et al. v. FCC | Landmark Case on Wire...



“We are delighted that the court upheld the rule of law and found that the FCC must provide a reasoned record of review for the thousands of pages of scientific evidence submitted by Environmental Health Trust and many other expert authorities in this precedent setting case. No agency is above the law. The American people are well served,” said Dr. Devra Davis, president of Environmental Health Trust.

Edward B. Myers, attorney for Environmental Health Trust, the lead petitioner in the case, EHT et al. v. the FCC stated, “The court granted the petitions for review because, contrary to the requirements of the Administrative Procedure Act (APA), the commission failed to provide a reasoned explanation for its assertion that its guidelines adequately protect against the harmful effects of exposure to radiofrequency radiation.”

“I am very pleased to see that the U.S. Court of Appeals for the District of Columbia Circuit has ruled that the FCC ignored decades of studies about

the potential health harms of cell phone radiation and must adequately review this material before making a decision about new regulations for phones,” said Dr. Jerome Paulson, former American Academy of Pediatrics Environmental Health Council Chair and now Professor Emeritus of Pediatrics and Environmental and Occupational Health at George Washington University School of Medicine and Health Sciences and Milken Institute School of Public Health. “It is very important that the court ruled that the FCC must address the impacts of radiofrequency radiation on the health of children amassed since 1996.” [The American Academy of Pediatrics’ submission to the FCC](#) called for a review of safety limits to protect children and pregnant women.



In overturning the FCC determination for its lack of reasoned decision making, the court wrote that the commission cannot rely on agencies like the Food and Drug Administration (FDA) if the FDA’s conclusions are provided without explanation.

“While imitation may be the highest form of flattery, it does not meet even the low threshold of reasoned analysis required by the APA under the deferential standard of review that governs here. One agency’s unexplained adoption of an unreasoned analysis just compounds rather than vitiates the analytical void. Said another way, two wrongs do not make a right,” the court wrote.

The court further noted that the FCC failed to respond to approximately 200 comments on the record by people who experienced illness or injury from electromagnetic radiation sickness.

The court ordered the commission to “(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 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.”

The landmark case centers around the FCC's decision not to update its 1996 exposure limits for wireless radiation from cell phones, cell towers, and wireless devices. Environmental Health Trust experts have long argued that the FCC's outdated limits place Americans everywhere at risk, especially in the era of 5G.

In response to the court's historic ruling, Environmental Health Trust and petitioners released the additional following statements:

Devra Davis PhD, MPH, President Environmental Health Trust, author of [Disconnect: The Truth About Cell Phone Radiation, What the Industry Is Doing to Hide It and How to Protect Your Family](#).

"If cell phones were a drug they would have been banned years ago. 5G would never have been allowed to market. An ever mounting body of published studies — ignored by the FCC — clearly indicates that exposure to wireless radiation can lead to numerous health effects, especially for children. Research indicates wireless radiation increases cancer risk, damages memory, alters brain development, impacts reproductive health, and much more. Furthermore, the way the FCC measures our daily exposure to cell phone and cell tower radiation is fatally flawed and provides a false sense of security."

"Environmental Health Trust submitted [hundreds of pages](#) of scientific evidence to the FCC over the last several years documenting the scientific data showing harm, the need for health agencies to create safety limits that protect against biological effects, and the urgency for infrastructure policy that prioritizes wired rather wireless communications to reduce public exposure. While there is a lot of work left to do, today's ruling is an important step in protecting people against the harms caused by wireless radiation exposure. Unfortunately, the telecom industry is now pushing millions of new 5G wireless antennas into neighborhoods and billions of new wireless

devices, putting more in harm's way everyday.



“While we celebrate today’s victory, we must look forward. Where do we go from here? We need a congressional hearing into how this agency operated above the law to ensure it never happens again. Committing to 5G merely ensures commercial success in selling new devices and cannot bridge the digital divide where many disadvantaged groups lack access to basic technologies. As we detail in EHT’s [letter to President Biden](#), the priority for infrastructure should be for wired rather than wireless internet connections. The U.S. needs a federal action plan on the issue of wireless radiation that should be informed by the latest science showing that current levels of radiation can damage human health and the environment.”

Theodora Scarato MSW, Executive Director of [Environmental Health Trust](#) and a petitioner in the case.

“This is a win for our children, our future, and our environment. The court’s decision should be a wake-up call worldwide. There was no premarket safety testing for cell phones or wireless networks before they came on the market decades ago. As the court points out in the ruling, silence from federal health and environmental agencies does ‘not constitute a reasoned explanation for the Commission’s decision.’ This ruling highlights how there has been no scientific review of the full body of scientific research to ensure people and the environment are protected. No federal agency has reviewed science indicating impacts to the brain, reproduction, trees, or wildlife — not the Food and Drug Administration, not the Centers for Disease Control, not the National Cancer Institute, not the Environmental Protection Agency. For decades, each of these agencies has downplayed the health effects of wireless radiation on their public websites. A telecom-financed scientist drafted webpages to be put online by our federal government. When people try to stop a cell tower from being built in front of their homes, they are told by their elected leaders that they cannot consider the issue of health effects due to the Telecommunications Act of 1996. This has to stop.

“We need an investigation of how our country ended up in this situation and a federal action plan to ensure it never happens again. It is imperative that

our federal agencies immediately act to protect human health and the environment.”



Cindy Franklin of Consumers for Safe Cell Phones, an organization that was a petitioner in the case.

“The FCC must now admit that its 25-year-old exposure guidelines are bogus. Our federal regulatory agencies are mandated to protect people and the environment from the known biological harm from exposure to microwave radiofrequency radiation. This ruling shows they have failed to do their jobs. The wireless industry can no longer hide behind the FCC’s so-called ‘safe’ exposure guidelines.”


Liz Barris of The People’s Initiative Foundation.

“This day is a long time coming! So many people are suffering from the effects of wireless radiation and SO MANY are not even connecting their symptoms, illnesses, cancers, and even deaths to the radiation that is causing it because they trust and believe their government! The FCC failed to respond to ANY of the documentation submitted to them that people are being injured by ALL types of wireless radiation, from cell phones and Wi-Fi to smart meters and cell towers. We need limits, backed by science, that do not harm people or our environment and thus far, the science shows that the only safe wireless radiation is no wireless radiation. Hard wired ethernet connections with plugin portals everywhere for cell phones and internet may be our best bet.”

Ellen Marks, President of California Brain Tumor Association

“We are thrilled that the court has ruled against the FCC and has shed light on the collusion between the telecom industry, the FCC and the FDA. Too many have suffered needlessly and this madness has to stop. This is definitely a step in the right direction and I am appreciative of the hard work of all involved.”

Excerpt of Statement by Dr. Joel Moskowitz of the University of California, Berkeley

“Today the dam of denial has begun to crack. A Federal appeals court ruled against the Federal Communications Commission (FCC) in favor of  **EN** safety advocates, This ruling represents a victory in the decades-long fight to get our government to adopt wireless radiation exposure limits that protect our health and the environment. The Court ruled that the FCC must “provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer” and justify its testing procedures for cellphones and other wireless devices.

“I hope this ruling serves as a wake-up call to the Congress and the Administration. In 2015, a [Harvard publication](#) investigated industry’s control over the FCC, “As a captured agency, the FCC is a prime example of institutional corruption. Officials in such institutions do not need to receive envelopes bulging with cash. But even their most well-intentioned efforts are often overwhelmed by a system that favors powerful private influences, typically at the expense of public interest.

“The FCC has no health expertise and must rely on federal health agencies to provide guidance on setting wireless safety limits. However, Congress defunded the Environmental Protection Agency’s research on wireless radiation in the 1990’s. The CDC has relied on industry-affiliated scientists for wireless radiation recommendations. Although the FDA weighed in with the FCC, the agency erroneously dismissed the results of the research it requested, namely, the National Toxicology Program’s \$30 million study which found [“clear evidence” of increased cancer incidence from cellphone radiation in male rats and DNA damage in male and female rats and mice from exposure to cellphone radiation.](#)



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USCA Case #20-1025

Document #1910110

Filed: 08/13/2021

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-1025**September Term, 2020**

FILED ON: AUGUST 13, 2021

ENVIRONMENTAL HEALTH TRUST, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,
RESPONDENTS

Consolidated with 20-1138

On Petitions for Review of an Order
of the Federal Communications Commission

Before: HENDERSON, MILLETT and WILKINS, *Circuit Judges***JUDGMENT**

These causes came on to be heard on the petitions for review of an order of the Federal Communications Commission and were argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the petitions for review be 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 filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Michael C. McGrail
Deputy Clerk

Date: August 13, 2021

Opinion for the court filed by Circuit Judge Wilkins.
Opinion dissenting in part filed by Circuit Judge Henderson.

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Dr. Hugh Taylor, Chief of OBGYN at Yale Medicine on Cell Pho...



Update on the EHT et al. v FCC Lawsuit on Wireless Rad



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FCC Lawsuit Update: FCC Says The Science Hasn't Changed i...



NEWS COVERAGE

- Jackson Hole News Guide, [Jackson Hole-based Environmental Health Trust wins lawsuit against FCC over radiation guidelines](#), Tom Halberg, August 17, 2021
- Consumer Electronics Daily, [RF Safety Advocates Urge FCC to Hire New Experts, Build Revised Record](#), Howard Buskirk, August 18, 2021
- Consumer Electronics [Daily Divided DC Circuit Remands 2019 RF Order to FCC](#), by Howard Buskirk, August 16, 2021
- National Law Review, [“Telecom Alert: DC Circuit Remands RF Rules”](#)

August 25, 2021

- Bloomberg Law: [FCC Ordered to Explain Cell Phone Radiation Guidelines \(2\)](#) by Maya Earls, August 13, 2021
- TR Daily: [D.C. Circuit Remands Wireless RF Radiation Case to FCC for Reasoned Explanation of Order](#), by Paul Kirby August 13, 2021
- Law 360: [DC Circ. Orders FCC To Revisit Possible 5G Wireless Harms](#),
- Multichannel News, [D.C. Court Smacks Down FCC Decision to Keep 5G RF Emission Standards](#) by John Eggerton August 13, 2021
- The Times of Israel: [The FCC has fallen to the sword of Lady Justice!](#), Paul Ben ishai
- AGL Media, [Court Orders FCC to Explain Cell Phone Radio-frequency Radiation Guidelines](#), Don Bishop
- Politico Morning Tech, [Are We Reading The Same Court Ruling? — Wireless safety advocates and a wireless industry group both reacted positively to a D.C. circuit court ruling](#), August 16, 2021
- Italy News [BYOBLU24 5G Lawsuit in USA](#) (Start video at minute 7:30) August 16, 2021
- Public News Service, [Advocates Press for New Cell-Phone Radiation Limits After Court Victory](#) Suzanne Potter, Aug 16, 2021
- Telecom Paper [Court orders FCC to reconsider RF radiation limits on mobile devices](#), August 17 2021
- Law Street Media: [D.C. Circuit Remands Radiofrequency Radiation Order to FCC](#)
- Bethesda Beat, [D.C. Court of Appeals rules FCC must provide more information related to 5G](#) by Steve Bohnel, August 16, 2021



The FCC put the Court opinion online at [this link](#)

Final Court Ruling

- Read August 13, 2021 United States Court of Appeals, District of Columbia Circuit ENVIRONMENTAL HEALTH TRUST, ET AL., PETITIONERS v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,



Briefs and Evidence

- Full Opening Brief of Petitioners, August 14, 2020
- FCC Reply Brief to Petitioners, September 22, 2020
- Petitioner's Reply to the FCC and Addendum to Petitioners Reply to the FCC, October 19, 2020
- Submissions the January 25, 2021 oral argument
 - FCC Submission to the Court
 - EHT and petitioner's response to the FCC
- Link to evidence used in the case, including referenced studies and court cases.

Amicus Briefs

- Amicus of NRDC: Natural Resources Defense Council
- Amicus of Attorney Joe Sandri, including the 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

Docket Links

- FCC 2013 Notice of Inquiry re human exposure limits
- FCC 13-84 Submissions
- FCC Item 19-226 (includes the FCC decision NOT to update regulations and to terminate the 2013 inquiry)
- Sampling of Published Research Submitted to the Docket
- EHT Submissions to 13-84

About the Case

In *EHT et al. v. the FCC*, petitioners argued that the FCC ignored thousands of pages of research and expert testimony showing harmful effects of wireless radiofrequency radiation to humans, wildlife, and the environment when it decided that the 1996 wireless radiation limits did not need to be updated with a full health and safety review.



Environmental Health Trust filed its case in the Court of Appeals with Consumers for Safe Cell Phones, Elizabeth Barris, and Theodora Scarato, MSW. They were represented by attorney Edward B. Myers. EHT's case was then consolidated with a separate case filed by Children's Health Defense, Michelle Hertz, Petra Brokken, Dr. David O. Carpenter, Dr. Toril Jelter, Dr. Paul Dart, Dr. Ann Lee, Virginia Farver, Jennifer Baran, and Paul Stanley M.Ed. Children's Health Defense was represented by attorney Scott McCollough and Robert Kennedy Jr. Evidentiary briefs were jointly filed. Scott McCullough represented Environmental Health Trust, Children's Health Defense, and petitioners in the oral arguments.

[Oral arguments](#) were held January 25, 2021, before a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit including Hons. Karen Henderson, Patricia Millett, and Robert Wilkins.


Environmental Health Trust attorney Edward B. Myers previously intervened in the [successful case](#) of the Natural Resources Defense Council (NRDC) and several Native American tribes against the FCC. In this earlier case, the [court upheld](#) the relevance of the National Environmental Policy Act (NEPA). The NRDC filed an [amicus brief](#) in the *EHT et al., v FCC* case as well.

The FCC is represented in-house by William J. Scher, Ashley Stocks Boizelle, Jacob M. Lewis, and Richard Kiser Welch.

About Environmental Health Trust

The Environmental Health Trust, a scientific nonprofit, has worked on wireless radiation and health for a decade. EHT scientists have published numerous [studies](#) on the harmful health effects of electromagnetic radiation and organized national and international [scientific conferences](#) on the issue.

EHT co-founder and president [Devra Davis PhD, MPH](#) was a founding

director of the Board on Environmental Studies and Toxicology of the U.S. National Research Council, National Academy of Sciences (NAS) a  **EN** worked on numerous environmental exposures, from chemicals to lead to air pollution. Among the NAS reports she directed were those advising that tobacco smoke be removed from airplanes and the environments of young children. She was also a Clinton appointee to the Chemical Safety And Hazard Investigation Board, former Senior Advisor to the Assistant Secretary for Health in the U.S. Department of Health and Human Services, and a member of the team of Intergovernmental Panel on Climate Change scientists [awarded the Nobel Peace Prize](#) with the Honorable Al Gore in 2007.

EHT, co-founder [Dr. Ronald Herberman](#) founded the [University of Pittsburgh Cancer Institute](#) (UPCI) and helped discover [natural killer cells](#) capable of killing cancer. In 2008, Herberman, then UPCI Director, issued the first [recommendations](#) by a US medical institution to his faculty and staff that they reduce cell phone radiation in a UPCI [memo](#) featured in the New York Times article "[Researcher warns of brain cancer risk from cell phones](#)".

Herberman's 2008 Memo was included in the [first of 27 drafts](#) of the California Department of Public Health cell phone guidance finally [issued in 2017](#) after legal action by [Dr. Joel Moskowitz](#) of University of California Berkeley forced the release.

Dr. Davis testified at the 2009 US Senate Subcommittee Hearing "[Health Effects of Cell Phone Use](#)" on, not only the science, but also the industry attacks on scientists finding harmful effects at non thermal levels. She also detailed to senators the fine print manufacturers warnings in cell phones to keep the phone at a distance from the body. ([Full hearing transcript](#) and [CSPAN video](#)) Dr. Ronald Herman [testified](#) in the 2008 Congressional Hearing "[Tumors and Cell Phone Use: What the Science Says](#)" on the scientific evidence indicating children are more vulnerable to cell phone radiation and receive higher exposures proportionate to adults ([Full hearing transcript](#) and [CSPAN video](#)).

Watch the Press Conference In Its Entirety



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[Read the Transcript](#)

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