



Advancing Sound Public Policy
on the Use of Electromagnetic Radiation (EMR)
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Contact: Janet Newton

The EMR Policy Institute Carries Forward Challenge to the U.S. Court of Appeals for the D.C. Circuit On FCC Radiofrequency Radiation Safety Guidelines

The EMR Policy Institute, taking up where The EMR Network organization left off, is challenging the Federal Communication Commission's FCC's decision to shirk its responsibility in protecting the public from potentially hazardous exposure to radiofrequency radiation. "The EMR Policy Institute asserts that at this time when the technology is burgeoning beyond what anyone imagined when the RF safety standards were written, the FCC must address RF radiation exposure from antenna sites as a public health question, not merely a question of engineering feasibility," asserts President Janet Newton.

On October 3, 2003, an appeal was filed in the U.S. Court of Appeals for the D.C. Circuit to challenge the FCC's Order 03-191. This order, adopted on July 28, 2003, and released on August 14, 2003, affirmed the FCC's dismissal of The EMR Network's Petition for Inquiry In the Matter of the Environmental Effects of Radiofrequency (RF) Radiation filed on September 25, 2001. The EMR Policy Institute is providing legal and research support for the appeal at the request of The EMR Network. See: http://www.emrpolicy.org/litigation/case_law/index.htm for the documents leading up to this appeal.

Whitney North Seymour, Jr. will represent The EMR Policy Institute in this appeal. The firm of Miller and Van Eaton of Washington D.C. will assist under the direction of James R. Hobson.

The original Petition for Inquiry is based on the June 17, 1999, letter of W. Gregory Lotz of the federal Radiofrequency Interagency Work Group (RFIAWG) addressed to Richard Tell, then Chairman of the Institute of Electrical and Electronics Engineers (IEEE) subcommittee responsible for RF radiation exposure standards. The RFIAWG is composed of individuals from the federal agencies responsible for developing and implementing public policy for RF radiation, i.e., Environmental Protection Agency (EPA), FCC, Food and Drug Administration (FDA), National Institute of Environmental Health Sciences (NIEHS), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), and National Telecommunications Information Agency (NTIA).

The RFIAWG letter discusses 14 issues "that we believe need to be addressed to provide a strong and credible rationale to support RF [radiofrequency] exposure guidelines." That letter is the blueprint for the Inquiry The EMR Network petitioned the Commission to open. The issues include:

- Biological basis for local SAR (Specific Absorption Rate of RF radiation) limit.
- Selection of an adverse effect level.
- Acute and chronic exposures.
- Controlled vs. uncontrolled exposure limit.
- Uncertainty factors in the data used to develop the guideline.
- Intensity or frequency modulated (pulsed or frequency modulated) RF radiation.
- Time averaging of exposures.
- Limits for exposure at microwave frequencies.
- Replication/Validation of studies demonstrating adverse effects.
- Important health effects literature areas.
- Compatibility of IEEE RFR guidelines with other international RFR guidelines.

The FCC Order states: (Emphasis added.)

*By this action, we deny the Application for Review filed by the EMR Network ("EMR"), contesting the decision of the Chief, Office of Engineering and Technology ("OET") to dismiss EMR's Petition for Inquiry. EMR had requested that we initiate a proceeding to gather information and opinion about the need to revise our regulations for radiofrequency ("RF") radiation and use the information so obtained to revisit our current guidelines for evaluating human exposure to RF emissions from transmitters under the jurisdiction of the Commission. We find that OET was correct in dismissing the petition, **having determined that this Commission is not the most appropriate forum to initiate such an inquiry or proceeding concerning the environmental effects of RF radiation at this time.** Par. 1. (Emphasis added.)*

*. . . EMR relies primarily on the Lotz letter to support its contention that there are areas of insufficiently explored concern regarding the health effects of human exposure to RF radiation. **We agree that in this letter, knowledgeable individuals appropriately identified issues of potential interest in setting RF exposure guidelines.** These ideas had been solicited by another working group of experts convened to consider just such matters, the IEEE Risk Assessment Working Group. **It is telling, however, that the letter specifically noted that it did not reflect the views of the respective agencies by which the individual IWG members are employed.** Par. 7. (Emphasis added.)*

*While EMR correctly notes, in a related argument, that it must petition the Commission for changes in Commission's rules, it fails to discriminate what constitutes an adequate basis for pressing such a case. Were EMR to demonstrate reliable pertinent information developed by an appropriate agency or other expert source, we would have a basis for opening a rulemaking or fact-finding proceeding. **In the absence of a demonstrable show of concern, or even interest, by other expert agencies with the same (or greater) knowledge of research in this field – and its implications - as we possess, we are not inclined to generate such an inquiry on our own. Additionally, we do not have the prerogative to order other agencies to do so or to participate in an inquiry that this agency might initiate in spite of their better-informed inaction.** Par. 11. (Emphasis added.)*

Whitney North Seymour, Jr. will argue this appeal. A graduate of Yale Law School, Mr. Seymour has had a distinguished career in public service and public interest legal work along with many years of community service as director/trustee of numerous non-profit community and civic groups. He was Independent Counsel for the Michael Deaver Investigation from 1986-89. He served as United States Attorney for the Southern District of New York from 1970-73. He served as New York State Senator from 1966-68.

Mr. Seymour's private practice of the law has included a partnership in a prominent New York law firm from 1950-1983. He served as President of the New York Bar Association from 1974-75 and President of the Federal Bar Council from 1980-82.

Mr. Seymour's interest in environmental law includes having co-founded The Natural Resources Defense Council in 1969. He views the issues encompassed in policy development for the public's exposure to RF radiation as the cutting edge of environmental law in the 21st century. He notes:

This case raises issues on the cutting edge of environmental law which result from the massive increase in high-frequency radio waves to operate cell phones, transmit emails, and run wireless internet systems and other new communication technologies. The court will be asked to decide whether the FCC has a legal duty to the people of the United States to request federal research into the impact of unregulated radiofrequency radiation on young children, the elderly, and even birds and other small creatures who are powerless to defend themselves against electronic bombardment from the exploding number of high-frequency transmitters.

The October 30, 2003, filing of the *Statement of Issues to be Raised* in this Case No. 03-1336, the FCC August 14, 2003, Order 03-191, and all future related documents can be found at:

http://www.emrpolicy.org/litigation/case_law/index.htm