



Advancing Sound Public Policy
on the Use of Electromagnetic Radiation (EMR)
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CITIZEN FILES SUIT IN U.S. DISTRICT COURT TO BLOCK FCC'S JUNE, 2006 AUCTION OF LICENSES FOR ADVANCED WIRELESS SERVICES

New York, New York, April 27, 2006 -- Plaintiff Maria Gonzalez, a critical-care nurse and mother of two daughters who attend public school in Astoria, Queens, filed suit in the United States District Court for the Eastern New York District asking the court to halt the Federal Communications Commission's scheduled auction of licenses for spectrum in the radiofrequency range intended to provide "Advanced Wireless Services" (AWS) nationwide.

This action challenges the failure of the FCC to prepare an Environmental Impact Statement (EIS) in connection with the up-coming auction on June 29, 2006, of 1,122 licenses to telecommunications companies to operate "AWS" in hundreds of market areas throughout the United States (including the Eastern District of New York).

This action also seeks a declaratory judgment that by their failure to prepare an EIS the FCC Commissioners have violated the National Environmental Policy Act of 1969 (NEPA). The action seeks a preliminary and permanent injunction, and a writ of mandamus to compel the Commissioners to cause an EIS to be prepared.

NEPA requires that all agencies of the federal government include in every recommendation or report on proposals for legislation and "other major Federal actions significantly affecting the quality of the human environment," a detailed statement delineating the impacts of the proposed action. The FCC's documents summarizing the up-coming AWS spectrum auction state that 1,122 licenses will be sold for market areas nationwide for a total dollar amount of \$1,167,037,500.00. By any reasonable yardstick, this FCC auction is a "major federal action significantly affecting the quality of the human environment."

In its rulemaking proceeding 04-218 leading up to this auction, the FCC invited public comment on its radiofrequency radiation (RF) Safety policies. The FCC's existing RF safety standards are based solely on the physical impact of RF radiation levels emitted by transmitters – the level at which the electrical energy is high enough to heat human flesh, i.e., the so-called “thermal” effect, analogous to microwave oven technology. The rulemaking document assured that, “All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.”

Ms. Gonzalez, along with The EMR Policy Institute, The American Skin Association and others opposes the FCC's current policies as “short-sighted and inaccurate,” and Ms. Gonzalez urges the FCC “to initiate or request thorough and comprehensive research and study of the rule's impact on human health using a biological approach.”

However, no FCC response to these comments on the RF Safety issue has been forthcoming. No EIS has been issued by the FCC. The citizens, scholars, and responsible organizations who conscientiously responded to the FCC's request for comments in this proceeding have been disregarded. That is the trigger point for the dispute presented in this lawsuit.

Whitney North Seymour, Jr. is providing legal counsel for this appeal pro bono. His legal career has included private practice, a term as federal prosecutor for New York, and public interest work with a particular interest in environmental law, having co-founded the Natural Resources Defense Council in 1969. The EMR Policy Institute assisted in preparing the brief.

The complete brief and exhibits are found at:
http://www.emrpolicy.org/litigation/case_law/index.htm