

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

In the Matter of)	
)	
Notice of Proposed Rulemaking)	
18 FCC Red 13187, 13188 ¶1 (2003))	ET Docket No. 03-137
)	
And)	
)	
Service Rules for the Advanced Wireless Services)	WT Docket No. 12-357
H Block---Implementing Section 6401 of the)	
Middle Class Tax Relief and Job Creation Act of)	
2012 Related to the 1915-1920 MHz and)	
1995-2000 MHz Bands ¶53 footnote 95)	

To: Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Comment Filed by: Electromagnetic Safety Alliance
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February 6, 2013

AFFIDAVIT OF ELIZABETH A. KELLEY

State of Arizona

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- I. Elizabeth A. Kelley, attest that my statements are true to the best of my knowledge.

Comments submitted on: ET Docket No. 03-137

And,

WT Docket No. 12-357.

1. My name is Elizabeth A. Kelley. My address is 3031 N. Gaia Place, Tucson, AZ 85625.
2. I am the Director of the Electromagnetic Safety Alliance, Inc, a nonprofit organization registered in the State of Arizona. Our website is www.electromagneticsafety.org. This organization engages in public education and advocacy regarding the adverse health effects of radiofrequency radiation and electromagnetic fields.
3. Until 2010, I served as managing director of the International Commission for Electromagnetic Safety, www.icems.eu, composed of scientists and medical doctors who conduct research on electromagnetic radiation and fields. This organization has issued resolutions advising more precaution based on their review of the science since 1998, including the Benevento and Porto Alegre EMF Resolutions. I was a signer to the Porto Alegre Resolution.
4. I frequently give presentations on the health, scientific and policy issues related to human exposure to radiofrequency radiation and electromagnetic fields. I have briefed members of the U.S. Congress and staff as well as state and local public officials too many times to count over the past 17 years. I testified before the Stewart Commission, chaired by Dr. William Stewart, who is a Member of the British Parliament, as well as

the UK's National Radiation Protection Board, in 2000. I testified before the Mayor and City Council of Porto Alegre, Brazil; before members of the Japanese Parliament as part of a presentation I gave conference in Tokyo in 2003, and at conferences held in Italy, sponsored by CODACONS, an Italian national consumer rights organization, and the International Commission for Electromagnetic Safety.

4. I presented to staff who work for Members of the U.S. Congress at a workshop held in the U.S. Capitol in 2003, organized by the EMR Network, Inc. I served on a committee of the National Institute of Building Services and helped develop voluntary guidelines to guide safe access and accommodation by public facilities and services for persons who are functionally impaired due to electrical or chemical sensitivities. I have testified before the Arizona Center for Disability Law about how persons who are functionally impaired due environmental illness are discriminated against by new White House initiatives to provide more wireless assistive devices to those with physical disabilities. I have collaborated with the EMR Policy Institute, Electromagnetic Health, Inc., and the Center for Safer Wireless, Inc, the North American Institute for Building Biology and Ecology, Inc., and numerous citizens groups and local government agencies across the U.S. to organize and present at workshops, conferences and public forums. I am a co-founder of the International ElectroMagnetic Alliance, based in Norway. I am a past member of the International Bioelectromagnetics Society and have attended many of their annual conferences.

5. Because of my high visibility I am frequently contacted by citizens for advice and assistance. For example, I receive inquiries on a daily basis from parents who are worried about their children using cell phones or their being involuntarily exposed to WiFi signals in their school classrooms; those people who are opposing a proposed cell tower near their home; from people who have become highly electrically sensitive and want to ask their local utility to remove a wireless digital "smart" meter, a Power Line Communications or, other EMF emitting utility meters, from their home.

6. Through these interactions, I have learned that as society is undergoing rapid change

in wireless technologies, and as these technologies advance there is simultaneously the emergence of a major public health problem where people's health and well being is being adversely affected by involuntary, Chronic exposure to wireless transmitters. Such exposure conditions are responsible for causing harm to a segment of the population that is growing as wireless technologies are expanding. Some people are no longer to live in their own home or, having retreated to a living in a remote area, they are now experiencing ill effects due to new and toxic sources of EMF from newly deployed wireless enabled infrastructure for wireless broadband and/or smart grid. Many people tell me they are not able to find a safe place to live, work, pray or play that is free from exposure to electromagnetic radiation or electromagnetic field hazards.

7. Due to Federal preemption, the widespread manifestation of harm or concern is not being acknowledged. Mainstream media is promoting more wireless technologies. The U.S. government health agencies and the FCC are silent. It has taken decades to for the U.S. government to investigate the link between smoking and lung cancer and to issue a health advisory. It took another 15 years before then U.S. Surgeon General Richard Carmona, MD, after confirming that second hand smoke also caused cancer for governments to issue protective policies that regulate places and spaces where people are protected from second hand smoke. With all these early adaptors and more and more studies coming from other nations of the world where this research is taking place that mortality and morbidity rates are increasing among cell phone users, their children and in communities where cell towers have been placed, it is past time for Congress and the Administration to intervene with the business as usual approach by the FCC and take action and revise its rules to assure greater health protection

8. From the founding of the Electromagnetic Safety Alliance, Inc. and before, through the Council on Wireless Technology Impacts, Inc. a national non-profit organization that I founded and directed, and, the Ad Hoc Association of Parties Concerned about the FCC's Radio Frequency Human Health Guidelines, AKA "Ad Hoc Association", a national non-profit organization that I directed, I have attempted to educate the FCC with scientific reports, affidavits and numerous demonstrations of health harm from the

current FCC electromagnetic guidelines. David Fichtenberg, who was an officer in these organizations, and me, as the Director, of the Ad Hoc Association, in representing fifty-four (54) members of this organization, submitted public comments on FCC's proposed rulemaking to revise these electromagnetic guidelines starting in 1997, under Docket Nos. 97-4328(L).

9. Following FCC's issuance of the final rule, the Ad Hoc Association filed an appeal on behalf of its members with the U.S. Court of Appeals to challenge these rules, under Docket Nos. 97-4328(L); 98-4003(Con); 98-4005(Con); 98-4025(Con); 98-4122(Con). The major legal issues raised in the appeal were: 1) The Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, 11 F.C.C Rcd. 15123 (1996), and, 2) Constitutional violations under the 10th, 5th and 1st Amendment, and statutory violations pursuant to FCC procedures for reviewing requests for relief from State and Local Regulations pursuant to Section 332(c) (7) (B) (v) of the Communications Act of 1934, 12 F.C.C. Rcd 13494 (1997). The lead attorney in the consolidated appeal was James R. Hobson, Esq., of Donelan, Cleary, Wood and Maser, P.C., Washington D.C. Filing an amicus brief in support of the petitioners on behalf of citizens in New England was the law firm of Seymour and Landy in New York.

10. The Ad Hoc Association appellate court appeal of this final rule was combined with appeals filed simultaneously by the Cellular Phone Task Force and the Communications Workers of America. That combined appeal became known as Cell Phone Task Force vs. FCC, as named by the court, was represented to the appellate court by James Hobson, Esq., of Donelan, Cleary, Wood and Maser, P.C., Washington D.C.

11. The petitioners claimed in lengthy arguments, supported by numerous affidavits and scientific information, that FCC Guidelines violates the Americans with Disabilities Act and the Rehabilitation Act; that FCC was arbitrary and capricious in enacting the Guidelines in violation of the Administrative Procedures Act (APA), specifically 5 U.S.C. 706(2)(A); that FCC violated the National Environmental Policy Act (NEPA) by failing to prepare an environmental impact report; 4) that FCC exceeded its powers when it prohibited state and local governments from regulating the operation of personal

wireless service facilities according to the FCC's radiofrequency guidelines; and, by preempting state and local powers to consider health and environment in making wireless telecommunications decisions, the Federal Telecommunications Act of 1996 (47 U.S.C. 332(c)(7)(B)(iv), is unconstitutional.

12. The U.S. Court of Appeals denied this appeal in February 2000. The impact of that legislation, and the FCC's response, was summarized succinctly by the Second Circuit in *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, at 88 (2d Cir. 2000).

See the court ruling at on this consolidated appeal at:

<http://transition.fcc.gov/ogc/documents/opinions/2000/97-4328.html>.

13. In December 2000, the offices of Whitney North Seymour, Jr., Esq., Seymour and Landy, filed a writ for certiorari with the U.S. Supreme Court on behalf of the EMR Safety Network, the Council on Wireless Technology Impacts and other citizens groups and individuals nationwide. The court denied the writ for cert in 2000.

14. It is our desire to revise the FCC's RF safety guidelines by lowering them to make them more biologically compatible based on the precautionary principle and as a result of a strong federal public health oversight capability that places as the top priority, ensuring the health and welfare of the citizens and residents of the United States; issue and maintain electromagnetic radiation and electrical and magnetic field exposure guidelines on a timely basis that are biologically based and assure the population that health and safety protections are in effect.

15. Through a coordinated approach, inspired and supported by Congressional legislation and White House Policy Initiatives, a federal interagency working group composed of U.S. Environmental Protection Agency, the Food and Drug Administration, the National Institutes of Health, the Centers for Disease Control, the National Institute of Occupational Safety and Health, the Department of Labor's Occupational and Health Administration, the Federal Communications Commission, the Department of Energy's Federal Energy Regulatory Commission, the National Institute of Standards and Technology, and other related agencies will ensure that new and emerging technologies

that employ radiofrequency radiation and electrical and magnetic fields do not pose a risk to mankind or the environment.

16. Such activities would include but not be limited to a sustained federally sponsored independent EMF research program; a research agenda that conducts clinical and epidemiological studies and reviews studies reported outside the U.S; the ongoing development and promulgation of uniform federal electromagnetic health and safety guidelines that are biologically based, taking into account the most vulnerable including fetal, neonatal, early childhood and young adult development, pregnant women, those with neurological and immune deficiencies, those who are functionally impaired due to electrical hypersensitivity and the elderly in the general public as well as military, industrial and office workers who are more highly exposed to increasing power densities due to environmental electromagnetic pollution from electrical and wireless devices and infrastructure.

17. We strongly urge the National Institutes of Health to adopt the May 2011 position of the World Health Organization, classifying radiofrequency radiation (RFR) as a class 2b carcinogen and its 2001 position, classifying extremely low frequency electrical and magnetic fields (ELF) as a human carcinogen. This would give U.S. recognition to the view held by the European Environmental Agency and many nations of the world that electromagnetic radiation and electromagnetic fields (EMF) is an environmental toxin and that there is an emerging public health issue related to chronic EMF exposure that must be addressed on behalf of all citizens and residents of the United States.

18. We ask the current U.S. Surgeon General of the United States to take immediate action as the “nation’s doctor” by immediately undertake an investigation into growing evidence that the health of the people is at risk due to chronic EMF exposure to cell phones, other personal wireless devices, electrical appliances and infrastructure for Personal Communications Services and emerging infrastructures to deploy wireless broadband and smart grid infrastructure nationwide. In a recent communication from the Office of the U.S. Surgeon General to a letter I sent through U.S. Senator John McCain,

we were informed that since electromagnetic radiation was not on the list of preventive health concerns, they did not plan to investigate it.

19. Most these recommended changes must be put into place prior to the issuance of FCC rules to revise its current radiofrequency health and safety guidelines

20. See additional comments that we subscribe to want to see incorporated by reference that were submitted to the FCC on February 5, 2013 by the EMR Radiation Policy Institute on ET Docket No. 03-137 and WT Docket No. 12-357 (Procedure Docket No. 12-357).

http://apps.fcc.gov/ecfs/comment_search/execute?proceeding=&applicant=The+EMR+Policy+Institute&lawfirm=&author=&disseminated.minDate=02%2F05%2F2013&disseminated.maxDate=02%2F06%2F2013&recieved.minDate=2%2F7%2F12&recieved.maxDate=&dateCommentPeriod.minDate=&dateCommentPeriod.maxDate=&dateReplyComment.minDate=&dateReplyComment.maxDate=&address.city=&address.state.stateCd=&address.zip=&daNumber=&fileNumber=&bureauIdentificationNumber=&reportNumber=&submissionTypeId=&checkbox_exParte=true are

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February, 6, 2013