

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Proposed Changes in the Commission's Rules) ET Docket No. 03-137
Regarding Human Exposure to Radiofrequency)
Electromagnetic Fields)

To: The Commission

**OPPOSITION TO THE PETITION OF THE AMERICAN ASSOCIATION
FOR JUSTICE ('AAJ') FOR RECONSIDERATION OF PINNA CLASSIFICATION**

COMES NOW the undersigned, JAMES EDWIN WHEDBEE, who pursuant to Section 1.429(f) of the Commission's rules and regulations [47 C.F.R. §1.429(f)] respectfully opposes and submits his opposition to the Petition for Reconsideration of the American Association for Justice ("AAJ") as follows.

[1] AAJ does not appear as participating in the proceedings prior to the Commission's March 27, 2013 Order in the above-styled proceeding; accordingly, for want of standing, it is uncertain that AAJ has, ex post facto, standing as an 'interested party,' as required by Section 1.429(a) of the Commission's rules and regulations to proceed on a Petition for Rulemaking. For the limited purpose of this opposition, assuming arguendo AAJ has requisite standing, what follows is the undersigned's opposition.

[2] In its extensive Order on March 27, 2013, the Commission determined that FDA's classification of the pinna as an extremity was conclusive, in that: "The FDA in particular has statutory responsibility to carry out a program designed to protect public health and safety from electronic product radiation and we therefore place heavy reliance on its public health and safety determinations." (*Citing in footnote 88, 20 U.S.C. §§ 360hh-360ss.*) If, for no better reason than this, the Commission lacks jurisdiction over the subject matter and cannot consider AAJ's Petition for Reconsideration. Nonetheless, and again, for the limited purpose of this opposition, assuming arguendo the Commission has jurisdiction over AAJ's Petition for Reconsideration, the

undersigned's opposition continues.

[3] In its Petition for Reconsideration, AAJ “*recommends that the Commission undertake more rigorous research into the long terms effects arising from cell phone radiation exposure before revising its policy.*” The Commission's notices prior to the March 27, 2013 Order amply stated that the Commission is not a public health agency; accordingly, this recommendation cannot be followed, nor has AAJ proposed how the Commission might undertake such research without an explicit statutory mandate to regulate a public health issue. In fact, AAJ's suggestion would seem to violate protocols for human ethics in experimentation; accordingly, this advice should be rejected summarily.

[4] In its Petition for Reconsideration, AAJ confuses mobile devices with cellular telephones. Within the telecommunications community, a mobile device is any device which is not fixed or portable, as those terms of art are defined in international radio rules and regulations and law. To narrow the definition of mobile devices to constrain its meaning to what AAJ recounts would be arbitrary and capricious, and contrary to international and domestic telecommunications law. For this and closely related reasons which follow, the Petition for Reconsideration must be denied.

[5] In its Petition for Reconsideration, AAJ suggests that since 2003 “*the number of mobile phone calls per day, the length of each call, and the amount of time people spend using mobile phones have all increased.*” The Petitioner is correct; however, the number of people using tablets and other wireless digital devices, the length of time spent using such tablets and wireless digital devices, and the number of such uses per day has also increased; however, AAJ is not suggesting that tablets and associated wireless digital devices are the sources of increased cancer in another extremity (i.e., the hands). Later in its Petition for Reconsideration, AAJ suggests that IEEE is a biased group of industry insiders, nevertheless, AAJ has demonstrated a clear bias against one aspect of the communications industry in its own Petition, namely against cellular telephone. What AAJ apparently is ignoring is that while, yes, IEEE is a group of industry insiders, IEEE and many other telecommunications groups are no less interested in the maintenance of their personal health in light of RF exposure than is AAJ, and they are perhaps better informed concerning its apparent

risks. Accordingly, it would appear AAJ's Petition for Reconsideration is an attack upon a single segment of the telecommunications industry (cellular telephone/SMRS/CMRS services) rather than a genuine disagreement with the underlying Order and, therefore, must be denied.

[6] In its Petition for Reconsideration, AAJ cites *Chamber of Commerce v. Securities and Exchange Commission* (412 F.3d 133 (D.C. Cir. 2005)) in suggesting a cost-benefit analysis of a public health condition to a regulatory agency without jurisdiction over public health concerns, which even the Commission acknowledges belong to FDA. The Commission's statutory function is the regulation of telecommunications rather than public health concerns, and nowhere does Title 47 of the United States Code confer upon the Commission unilateral authority to extend its jurisdiction beyond this limited subject matter of telecommunications. Therefore, AAJ fails to state any claim for which the Commission could even give relief upon reconsideration. Instead the Petition must be denied.

[7] In its Petition for Reconsideration, AAJ states: “*The National Cancer Institute has stated that although studies have not demonstrated that RF energy from cell phone definitely causes cancer...*” By its own admission, AAJ concludes that there is insufficient scientific and medical data to warrant the reconsideration it seeks. Moreover, AAJ did not make its evidence available to the Commission during the proceedings-in-chief, therefore, the Commission's ability to consider AAJ's Petition, if at all, is limited to that stated in Section 1.429(b) of the Commission's rules and regulations. Given that the Commission may only grant AAJ's Petition based on facts or circumstances unknown to the Petitioner or under changing circumstances since the Order, assessing the 'evidence' accompanying AAJ's Petition, we discover that much of this is a restatement of facts and arguments previously relied upon by the Commission before, in, and since its Order and the FDA has not stopped regulating the pinna as anything other than an extremity; once again, therefore, AAJ has failed to state a claim upon which relief may be granted upon reconsideration. Instead the Petition must be denied.

[8] In its Petition for Reconsideration and accompanying exhibits, AAJ suggests medical evidence concludes a higher risk of cancer is posed from the use of cellular telephone mobile

devices. Notwithstanding that the AAJ itself admits the inconclusivity of any such evidence, having reviewed the 'evidence,' the undersigned cannot find that these studies ruled out intervening causation (i.e., genetic predisposition, environmental factors other than RF radiation, secondary effects of other medical conditions/treatments, age as causation, etc.); accordingly, these exhibits could not even be used to establish a well-grounded medical claim much less justify a regulatory reversal. At best, AAJ is suggesting the Petition for Reconsideration be granted on the basis of unrelated conjectures for which greater study has been asked for the last decade and a half, and in spite of that span of time, has produced nothing conclusive, reliable, or valid associating exposure to RF emissions to any acute or chronic disease process or disability aside from tissue heating.

[9] In its Petition for Reconsideration, in spite of a lack of reliable, quantifiable, valid, and/or conclusive longitudinal studies in children, AAJ exhorts the Commission to consider the longitudinal effects of RF emissions upon children on mere speculation that children are somehow more vulnerable to those emissions to the development of disease or disability than adults. The undersigned has been licensed to operate high power radio transmitters with 100% duty cycles in narrow bandwidths (i.e., transmitters with high spectral outputs and densities) since the age of twelve (12) years old – that is, since October 23, 1981 – and, to date, in spite of numerous health examinations associated with the military, flying aircraft, and otherwise, no medical professional has ever found a nexus between my lifetime exposure to high RF fields to any disease or disability; therefore, the AAJ's conjecture, while well-intended, flies in the face of more than a century's medically-compatible coexistence between humankind and radio-frequency transmitters. Furthermore, and likely because the FDA has ruled them safe, AAJ is not telling the Commission in its Petition that somehow MRI medical evaluation devices which have RF emissions from 4 to 32 kiloWatts in the UHF spectrum are somehow dangerous to humans or human children such that those devices are contraindicated for children. For these reasons, and those readily apparent therefrom, the Commission should deny AAJ's Petition for Reconsideration as specious.

[10] Having injected nothing new into the subject-matter debate for which it seeks reconsideration, for want of standing, for want of jurisdiction in the Commission, and for failure to state anything for which the Commission might offer relief upon consideration, the undersigned

respectfully suggests the Commission deny AAJ's Petition for Reconsideration with prejudice to its refiling as well as any Petitions for Reconsideration from similarly situated parties along the same lines of reasoning.

WHEREFORE, the foregoing considered, the undersigned respectfully requests the Commission deny the Petition for Reconsideration of AAJ, and any other related Petitions for Reconsideration by similarly situated persons, with prejudice to their refiling in any form.

Respectfully submitted,

July 1, 2013

A handwritten signature in black ink, appearing to read 'J. Whedee', with a stylized flourish at the end.

JAMES EDWIN WHEDEE, M.Ed., M.P.A.
5816 NE Buttonwood Tree Lane
Gladstone, Missouri 64119-2236
816.694.5913
jamesewhedbee@yahoo.com