Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

OPPOSITION TO PETITION FOR RECONSIDERATION

I. INTRODUCTION AND STATEMENT OF INTEREST

The Telecommunications Industry Association ("TIA")[1] respectfully opposes the Petition for Reconsideration filed by the American Association for Justice ("AAJ")[2]–in reality the American Trial Lawyers Association–with the Federal Communications Commission ("Commission") in the above-captioned proceeding.[3] As the leading trade association for the

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[1] TIA is a Washington, DC-based trade association representing approximately 500 global information and communications technology ("ICT") manufacturers, vendors, and suppliers. TIA represents the global ICT industry through standards development, advocacy, business opportunities, market intelligence and networking. TIA's member companies manufacture or supply the products and services used in global communications across all technology platforms. Since 1924, TIA has been enhancing the business environment for broadband, mobile wireless, information technology, networks, cable, satellite and unified communications. Members' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the military, the environment and entertainment. TIA is accredited by the American National Standards Institute ("ANSI"). TIA represents its members on the full range of public policy issues affecting the ICT industry and forges consensus on industry standards. Please see TIA's 2013 Policy Playbook, which provides an overview of the ICT market, technologies and policies that drive innovation and investment. *See* http://www.tiaonline.org/policy/tia-2013-playbook.

[2] Petition for Reconsideration of the American Association for Justice, ET Docket No. 03-137 (filed Jul. 1, 2013) ("Petition").

[3] Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies, Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields, *First Report & Order, Further Notice of Proposed Rulemaking, Notice of Inquiry*, ET Docket Nos. 13-84, 03-137, (rel. Mar. 29, 2013) ("R&O").

information and communications technology ("ICT") manufacturer, vendor, and supplier industry, TIA members manufacture Wi-Fi, 3G, 4G, P25 intentional transmitters (small cell) and radios, and non-radio products such as routers and switches, as well as cable set-top boxes. As a result, TIA membership consists of the manufacturers and vendors of the wide array of RF-emitting equipment directly affected by the Commission's decisions in the R&O. Below, we address the procedural and substantive sufficiency of the Petition and strongly urge the Commission to deny the Petition on either or both grounds.

II. DISCUSSION

A. AAJ'S PETITION IS PROCEDURALLY INSUFFICIENT

First, we urge the Commission to critically examine the Petition for its adherence to procedural rules.[4] Specifically, AAJ has not put forward its justification for why it considers itself a "person of interest" eligible to petition the Commission in this matter.[5] Furthermore, even if the Commission finds that AAJ is an eligible "person of interest," unless certain conditions are met, arguments or facts not previously raised cannot be argued on reconsideration;[6] AAJ does not address to justify how the arguments raised in its petition meet this standard.

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[4] *See* 47 CFR § 1.429.

[5] *See* 47 CFR 1.429(a).

[6] 47 CFR 1.429(b)(1)-(3), setting forth that "A petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only under the following circumstances:

> (1) The facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;
>
> (2) The facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or

Further, as we discuss below, AAJ makes numerous factual arguments that are without merit and without the required explanations as to why they were not offered previously.[7] Elsewhere in the item, the Commission has already made clear in this docket that vague or unsupported assertions will receive less weight and be less persuasive than the more specific and supported statements,[8] and we urge the same approach here.

For these reasons we urge the Commission to dismiss the Petition on procedural grounds.

B. THE AAJ PETITION APPLIES AN IMPROPER STANDARD OF REVIEW TO THE COMMISSION'S ACTION IN THE REPORT AND ORDER

In its Petition, AAJ alleges that the Commission lacks the adequate authority to promulgate its Order based on *Chamber of Commerce v. Securities and Exchange Commission*,[9] using the "consideration of cost" analysis. AAJ states that "the ready availability of scientific studies and the potentially devastating public health risks associated with the FCC Order" cause the Commission to fail this test.[10] TIA asserts that the "consideration of costs" test applied by AAJ is completely inappropriate in this proceeding. This test is conducted under the Investment

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(3) The Commission determines that consideration of the facts or arguments relied on is required in the public interest."

7 *See* 47 CFR § 1.429(b).

8 *See, e.g.*, NOI at 209.

9 *Chamber of Commerce v. Securities and Exchange Commission*, 412 F .3d 133 (D.C. Cir. 2005).

10 Petition at 4.

Company Act of 1940,[11] which exists to regulate funds that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the public.

TIA notes that it believes the Commission to be acting properly under its authority per the Administrative Procedure Act[12] ("APA") in this matter, which is fully and clearly explained in the R&O, and which TIA endorses and supports. AAJ improperly applies the "consideration of cost" analysis to the Commission's actions, and in addition bizarrely does not mention the APA in the Petition at all. We strongly urge the Commission to reject the AAJ's improper application of the incorrect standard for review and to dismiss the Petition.

C. THE COMMISSION'S RELIANCE ON THE IEEE ADEQUATELY JUSTIFIES ITS PINNA CLASSIFICATION

In alleging the insufficiency of the highly-regarded IEEE scientific study at issue[13] – while ignoring the fact that the Food and Drug Administration ("FDA") concurs with the IEEE[14] – the AAJ ignores the numerous studies cited in the R&O, and resorts to a single assertion from the World Health Organization ("WHO") which has been explicitly noted as demonstrating no

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[11] 15 U.S.C. §§ 80a-1.

[12] *See* 5 U.S.C. 706(2)(A).

[13] *See* Institute of Electrical and Electronics Engineers, Inc., *IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz*, IEEE Std 95.1-2005, copyright 2006 by the Institute of Electrical and Electronics Engineers, Inc. (IEEE), New York, New York 10016-5997.

[14] *See* U.S. Food and Drug Administration, *No Evidence Linking Cell Phone Use to Risk of Brain Tumors*, http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm212273.htm (stating that "available scientific evidence—including World Health Organization (WHO) findings released May 17, 2010—shows no increased health risk due to [RF energy]."

increased health risk by the FDA.[15] In addition, the conclusion of the study which AAJ appends to the Petition states in fact weakens its arguments:

> "…in this large prospective study we found no increase in the risk of glioma or meningioma, consistent with findings from the only other prospective study. We did find an increase in the risk of acoustic neuroma among those who had used mobile phones for 5 years or longer; but risk for acoustic neuroma in long-term mobile phone users was not significantly increased when our results were combined with those from the only other published prospective study."[16]

These fail to overcome the existing international reverence for the unbiased and science-based body of work the IEEE is known for and that the Commission and other governmental authorities commonly rely upon.

TIA believes that the Commission's R&O puts forward its reasoning and the science justifying it in a very straightforward manner that we find acceptable. The Commission clearly explains the background and varied reactions to its initial proposal to alter the classification of the pinna, and the science that informed its conclusion, including that "the IEEE's expert consideration of recent research has alleviated the concerns raised about the pinna,"[17] and that this specification "has no practical effect on human exposure."[18] Finally, the Commission notes that it is aware of the broader issues implicated and that it will continue to work with the federal Radiofrequency Interagency Work Group on the topic moving forward, and notes that

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[15] *See* http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm212273.htm.

[16] Benson VS, Pirie K, Schüz J, et al. Mobile phone use and risk of brain neoplasms and other cancers: Prospective study. *International Journal of Epidemiology 2013*; First published online: May 8, 2013. doi: 10.1093/ije/dyt072.

[17] R&O at ¶ 49.

[18] *See* R&O at FN 91.

its decisions moving forward will be informed by its docket under the Notice of Inquiry portion of the same item.[19]

D. AAJ GROSSLY MISCHARACTERIZES THE NATURE OF THE IEEE AND OPEN, VOLUNTARY, CONSENSUS-BASED STANDARDIZATION EFFORTS WRIT LARGE

In its Petition, AAJ claims that the IEEE is a body of "insiders,"[20] again with no credible evidence. While we defer to the IEEE to refute this attack on its ANSI accredited process, there is a dangerous and inaccurate principle which AAJ espouses which implicates standard development organizations writ large. TIA, like the IEEE, is open to participation by any stakeholder and this, in our case, is an essential requirement of any American National Standards Institute accreditation. TIA, like the IEEE, develops open, voluntary, and consensus-based standards which provide large societal benefits by reflecting the agreements of *all* interested stakeholders. The baseless allegation that the ANSI process, which the Commission and several other governmental entities participated in the development and approval of the pinnae amendment and C95.1-2005 standard, and rely on for technical expertise, is somehow corrupt and rife with insiders, without any explanation or factual basis, is at best naïve and clearly intended to demonize ANSI and the standards setting process generally. We therefore urge the Commission to explicitly refute this unfounded claim by AAJ, and to reinforce is well-established policy of promoting the use of open, voluntary, and consensus-based standards and best practices.

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[19] *See* R&O at ¶ 50.

[20] *See, e.g.*, Petition at 5.

III. CONCLUSION

Based on the above we strongly encourage the Commission to reject the Petition as both procedurally and substantively insufficient.

Respectfully submitted,

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