



CITIZENS AND PROFESSIONALS FOR THE RESPONSIBLE USE OF ELECTROMAGNETIC RADIATION (EMR)

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EARLY HISTORY OF THE EMR NETWORK

The EMR Network was founded as a direct result of the passage of the Telecommunications Act of 1996 (TCA) in the United States. It is an educational organization working at the federal level to challenge the "thermal model" of harm from radiofrequency (RF -which includes microwave) radiation upon which the US exposure guidelines are based. The EMR Network is also working to reverse the TCA's unconstitutional preemption of state and local authority to consider RF environmental effects in land use hearings.

A key provision of the TCA preempts state and local governments from basing decisions regarding where to site personal wireless services facilities (base stations for mobile phones, pagers, wireless internet, etc.) on the environmental effects of the RF radiation this technology requires in order to operate. Municipal bodies and citizens across the country view this as a violation of the 10th Amendment, i.e., the separation of powers between the federal and state governments.

In August 1997, the Federal Communications Commission (FCC), as required by language in the TCA, issued revised guidelines for human exposure to RF radiation. Along with the new guidelines, the FCC proposed a rule that would remove all local zoning authority to site personal wireless facilities as well as high-definition digital television (HDTV) broadcast facilities.

In response, state and local government officials, county and municipal associations, and individual citizens from across the country filed comment with the FCC in opposition to this further erosion of the long-held authority of local government to determine land use policy. Some members of Congress also responded and voiced their opposition to these proposed rules.

In September 1997, citizens from 12 states jointly filed suit in the U.S. Court of Appeals for the 2nd Circuit challenging the FCC's authority to set the RF exposure guidelines and challenging the constitutionality of the TCA on 1st, 5th and 10th Amendment grounds. Several of the citizens who were parties in this action later became the founders of The EMR Network.

Throughout 1998 more and more communities across the U.S. became aware of the TCA as zoning applications were filed for the siting of wireless facilities. Citizens and local officials alike objected to the effect of the TCA to silence discussion on the potential RF radiation health effects on those living near wireless base stations.

In March 1998, Senator James Jeffords(VT-R) hosted a visit of FCC Chairman William Kennard to Vermont. In the course of an afternoon "Town Meeting" where the public addressed questions to Chairman Kennard asking if the FCC planned to implement the full preemption of local and state siting authority for wireless facilities, Chairman Kennard stated that the proposed total preemption rule would not be put in place.

In September 1998, Senators Leahy(VT-D) and Jeffords along with Senators Hutchison(TX-R), Feingold(WI-D), Moseley-Braun(IL-D), Moyihan(NY-D), Gregg(NH-R), Sarbanes(MD-D), Cleland(GA-D), and Dodd(CT-D), introduced a bill to repeal the limitations to state and local zoning authority in the TCA. Congressman Sanders introduced a companion bill in the House with cosponsors DeFazio(OR-D) and Shays(CT-R).

In November 1998 citizens from Vermont, New Hampshire, Massachusetts, Connecticut, Maryland, Illinois, Colorado, California and Washington met in Vermont to form a national organization to address the democracy and public health issues brought on by the TCA. The name **The EMR Network** was chosen. The EMR Network Mission and Purpose Statements are available on our home page at: www.emrnetwork.org

Staff from Leahy's and Jeffords' offices attended the meeting at which The EMR Network was founded. They asked that The EMR Network work with them to draft language for a new bill to revise the Telecom Act in the next session of Congress. The language proposed the removal of the preemption of state and local authority to consider the environmental effects of RF radiation in making siting decisions, held providers responsible for the truthfulness of the testimony they give in siting hearings, and requested \$10 million to research the effects of long-term exposure to low levels of RF radiation.

In March 1999, in Washington D.C., at a Congressional staff briefing hosted by Leahy, Jeffords and Sanders, The EMR Network presented, "Wireless Telecommunications: Impacts at the Local Level." The scientific debate about RF bioeffects was laid out by B. Blake Levitt, author of *Electromagnetic Fields*. Problems with the U.S. regulatory scheme for RF radiation protection was also presented in detail by David Fichtenberg who originated the 2nd Circuit suit. Attorney for the suit James Hobson outlined the constitutional conflicts inherent in the TCA. Oral arguments in the suit were heard at the U.S. Court of Appeals for the 2nd Circuit in April 1999.

In August and September 1999, the new revision bills were introduced in the Senate and in the House. The bills failed to make it out of committee.

In February 2000, the 2nd Circuit Court of Appeals decided in favor of the FCC. The EMR Network became a member of the legal advisory group which took an appeal of this decision to the U.S. Supreme Court in September, 2000. The appeal was represented *pro bono* by attorney Whitney North Seymour of New York City. The Writ for Certiorari is available at: <http://www.emrnetwork.org/litigation/litigation.htm>

Five *amici curiae* briefs representing 2.5 million citizens from 15 states were filed in support of the Supreme Court appeal. Senators Leahy and Jeffords and Congressman Sanders filed one of the briefs and were joined by Congressman Tancredo(CO-R), 68 Vermont towns, state legislators and elected municipal officers from California, Colorado, Connecticut and New York, and municipal organizations from Vermont and Colorado. In January 2001, the Supreme Court denied hearing

the case. The briefs are available at:
<http://www.emrnetwork.org/litigation/litigation.htm>

On July 12, 2001, at the U.S. Capitol, the Vermont Congressional Delegation along with Congressman Tancredo of Colorado hosted a second Congressional staff briefing on new bills for this session of Congress. Again the EMR Network organized the presentation. Dr. Theodore Litovitz Ph.D., RF researcher and Professor Emeritus of Physics from Catholic University in Washington D.C. discussed the debate in the research community over biological effects from non-thermal levels of RF radiation. Gerard Lederer, Esq., who for 5 years was General Counsel to the U.S. Conference of Mayors, spoke on the 10th Amendment conflict - that there is no federal agency with complete responsibility for exposure of the public to RF radiation while state and local governments have been preempted from basing their siting decisions on RF radiation effects. Seventy-five people attended the briefing, a significant number by D.C. standards. Details of the legislation are available at:
<http://www.emrnetwork.org/action/action.htm>

On September 25, 2001, The EMR Network filed a Petition at the FCC requesting that the FCC issue a Notice of Inquiry designed to gather information and opinion on the need to revise the regulations in Parts 1 and 2 of the FCC's Rules concerning the environmental effects of RF radiation. Since the Supreme Court denied hearing the 2nd Circuit Appeal, the continuation of the challenge has to be carried out at the federal agency level. The Petition documents are available at:
<http://www.emrnetwork.org/position/position.htm>

Senators Leahy and Jeffords and Congressmen Sanders and Tancredo wrote letters to the FCC supporting the Petition to open a Notice Of Inquiry.

On December 11, 2001, an FCC staff-level dismissal was handed down by Acting Chief of the Office of Engineering and Technology Bruce Franca. The EMR Network appealed that dismissal to the FCC Commissioners on January 10, 2002. Those documents are available at: <http://www.emrnetwork.org/position/position.htm>

In November, 2001, the EMR Network posted on its web site a draft of a proposal to relax the RF exposure standards originating from the Risk Assessment Work Group of the Institute of Electrical and Electronics Engineers (IEEE). The draft had been the subject of several print news reports beginning in September 2001. The FCC exposure guidelines are based on the IEEE standards. The IEEE threatened legal action if its request to remove the draft was not honored. On the advice of counsel that no copyright infringement had occurred, the posting has remained. See the 11/28/01 posting at: <http://www.emrnetwork.org/news/news.htm>
