

TR Daily - Current Issue, EHT Blasts FCC Timing in Disclosing Cellphone RF Exposure Test Results, (Apr. 23, 2024)

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The Environmental Health Trust (EHT) has blasted the fact that the FCC did not make public until last fall that tests it conducted on cellphones manufactured by four companies exceeded the agency's radio frequency (RF) exposure limits. The Commission informed EHT of the test results in response to a Freedom of Information Act (FoIA) request.

The FCC tested devices manufactured by Apple, Inc., BLU Products, Inc., Motorola Mobility LLC, and Samsung Electronics Co. Ltd. in 2019 after a *Chicago Tribune* story said that several popular models it had tested exceeded the FCC's specific absorption rate (SAR) standard.

The FCC said in a report released in 2019 that the RF emissions of all of the models mentioned in the newspaper's story fell within the SAR limits during its lab testing ([TR Daily, Dec. 19, 2019](#)).

"All sample cell phones tested by the FCC Laboratory, both grantee-provided and FCC-purchased samples, produced maximum 1-g average SAR values less than the 1.6 W/kg limit specified in the FCC rules," according to the FCC report. "Therefore, all tested sample devices comply with the FCC RF radiation exposure general population/uncontrolled limits for peak spatial-average SAR of 1.6 W/kg, averaged over any 1 gram of tissue as specified in 47 CFR § 2.1093(d)(2), and these tests did not produce evidence of violations of any FCC rules regarding maximum RF exposure levels."

However, the nine-page FCC report did not mention the specific separation distances used in the tests.

A Sept. 29, 2023, letter from the FCC's Office of Managing Director responding to EHT's FoIA request said, "We did not have access to the actual phones tested by the test lab used by the *Chicago Tribune*. The FCC Lab, therefore, obtained the same makes and models of these phones (where available), both from suppliers and on the open market. We tested the devices manufactured by Apple, BLU Products, Motorola, and Samsung at a 5mm separation distance, consistent with our published guidance. These tests were conducted consistent with the FCC Lab normal practices and the RF exposure compliance report for each phone that is publicly available in the application for certification in the Equipment Authorization System. These devices all complied with the FCC limits for RF exposure, limits that have a significant safety margin. With this letter, we release the test results.

"Separately, and only for purposes of comparison with the *Chicago Tribune* results, the FCC Lab tested the devices with a separation distance at which the *Chicago Tribune* tested its devices, i.e., at 2 mm separation distance," the agency said. "We observed that at a 2 mm separation distance, the FCC RF exposure limits were exceeded, and found that the *Chicago Tribune* results at the 2 mm separation distance were even higher than what we observed. With this letter, we release our 2 mm separation distance test results with the caveat that the 2 mm separation distance test results are inconsistent with FCC practice, and are misleading because they reflect extreme conditions. Notwithstanding the foregoing, given that the RF exposure limit includes a significant safety margin, none of the results suggest there is any RF safety issue with the devices tested."

The letter continued, "We also stress that cell phones operate under the control of the wireless networks to which they are connected. We believe that the *Chicago Tribune* tests did not use the appropriate wireless network control codes to set the phone in the proper modes for operation for the U.S. This may have disabled the various sensors or caused the network simulator to not control the phone's transmitters properly for operation in the U.S.

"With that explanation, in response to your FOIA requests, out of the 18 documents located, we are releasing 11 records in full with no redactions. We are withholding the remaining seven records in full under FOIA Exemption 5. Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in

the civil discovery context. Exemption 5 encompasses a deliberative process privilege intended to ‘prevent injury to the quality of agency decisions.’ To fall within the scope of this privilege the agency records must be both pre-decisional and deliberative. Pre-decisional records must have been ‘prepared in order to assist an agency decision maker in arriving at his decision,’” the letter added.

EHT said that it has appealed the decision not to release seven of the records but said it has not heard back yet from the Commission on its appeal.

EHT also noted that the FCC has not taken action in response to a 2021 ruling by the U.S. Court of Appeals for the District of Columbia that remanded to the agency a case involving challenges to the agency’s RF standards rules, ordering the agency “to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer” ([TR Daily, Aug. 13, 2021](#)).

“The FCC and FDA did not reveal these cell phone tests during the court case, and have yet to respond to the court-ordered remand, which is a matter of grave concern,” Kent Chamberlin, EHT’s incoming president, said in a news release.

“Why did the FCC perform these tests and then decide to not release the results to the public while it was conducting a rule-making on this very subject? Why did the FCC refuse to release all the records on this issue?” asked Theodora Scarato, EHT’s vice president-policy and education.

“It is outrageous that the U.S. allows phones to be tested with whatever separation distance the companies want,” she added. “Phones should be tested the way they are used. Children and adults use and carry phones pressed to their body for hours every day. We need a strong oversight and compliance program, including post-market RF emission and health effect surveillance. It is time for a new approach to cell phone testing, one that reflects the way people use phones today.”

EHT decided to release the documents it received under its FoIA request now because there has not been action on its appeal or the court remand, Joe Sandri, EHT’s general counsel, vice president-regulatory affairs, and a board member, told *TR Daily*.

An **FCC** spokesperson declined to comment today. —Paul Kirby, paul.kirby@wolterskluwer.com

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