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## DC Circ. Appears Skeptical Of FCC Wireless Antenna Rules

By **Kelcee Griffis**

Law360 (December 7, 2021, 6:22 PM EST) -- A D.C. Circuit panel on Tuesday questioned whether the Federal Communications Commission made too drastic a policy change when it allowed commercial wireless internet antennas in residential areas, with Judge Patricia Millett questioning how the agency will track any health effects caused by ever-expanding exposure to wireless transmissions.

During livestreamed oral arguments in a lawsuit claiming that invisible radiation from the added antennas will sicken people, Judge Millett tried to pin down the amount of commercial-grade wireless equipment that will be deployed in neighborhoods as a result of the FCC's lifting of a rule that allowed the antennas to be installed only for the primary use of the on-site resident.

"You had numbers about the exploding demand for this. It seemed to me that the FCC itself anticipated that this was going to produce substantial proliferation for these antennas," she told FCC attorney Bill Scher. "Tenfold? Twentyfold? How much more are you anticipating? Lots? Lots and lots?"

Scher told the three-judge panel that expanded wireless service was indeed the point of the rule change, but said the FCC did not anticipate that the commercial transmissions would result in harmful levels of wireless radiation.

Judge Millett seemed unconvinced that the rule change was merely a tweak, asserting that removing the restriction that an antenna be "primarily be used for customer service on that area [is] a different formulation."

The underlying **lawsuit**, filed in February by the nonprofit group Children's Health Defense, challenges an FCC rule adjustment that allows fixed-wireless providers to install point-to-point antennas on private property and, for the first time, allows carrier-grade base station antenna installations to extend home internet service in an area. The rule changes are expected to let companies such as wireless provider Starry Internet serve more than 1 million new homes in the next year.

The Children's Health Defense, chaired by Robert F. Kennedy Jr. and known for promoting vaccine skepticism and campaigning against the fluoridation of drinking water, alleges that increased wireless emissions in residential areas will exacerbate health ailments spurred by invisible radio waves. Scott McCollough, arguing on behalf of the Children's Health Defense as well as several individuals, said neighbors would struggle to keep up with the influx of commercial-grade wireless antennas near their homes and would learn of a new installation only when they start to experience health problems.

"As a consequence, people will not know when one of these is about to show up ... nor is there any ability to find where they are in order to ensure that their emissions, even under the new rule, are FCC compliant," McCollough said. "The petitioners here, the only way they will know is when their children begin to get sick."

Judge Gregory G. Katsas asked the FCC's lawyers about the distance that the signals from the new wireless hubs would reach into neighborhoods.

"What do we know about the likely strength of these antennas?" he asked Scher. "Your friend on the other side makes at least a plausible argument that when you move from an antenna that's primarily receiving for use on site by the building owner to antennae that are primarily transmitting

[commercially and are] incidentally used for local use, the new antennas will likely be much stronger."

Scher responded that signals used in point-to-point and point-to-multipoint wireless technology typically cannot travel long distances and necessitate a dense network of antennas to carry the signal.

He said the FCC expected the rule change to mostly foster new antennas that would have otherwise been covered under the original over-the-air reception devices rules, which have been around since 1996 and are generally meant to ensure that municipalities and community associations do not prevent people from installing antennas to receive video programming. Now that people widely use the internet to stream entertainment, he said it was logical to enable more robust broadband deployment through the rules.

Judges Patricia A. Millett, Gregory G. Katsas and A. Raymond Randolph sat on the panel for the D.C. Circuit.

The petitioners are represented by W. Scott McCollough of McCollough Law Firm PC and Robert F. Kennedy Jr.

The FCC is represented in-house by William J. Scher, Jacob M. Lewis and P. Michele Ellison.

The case is Children's Health Defense et al. v. FCC et al., case number 21-1075, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Editing by Karin Roberts.