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# Alsup Orders Apple To Produce FCC iPhone Communications

By [Hannah Albarazi](#)

Law360, San Francisco (July 16, 2020, 5:16 PM EDT) -- U.S. District Judge William Alsup on Thursday ordered [Apple](#) to hand over its [Federal Communications Commission](#) correspondence to consumers who allege iPhones emit dangerous levels of radiation, after asking Apple during a hearing if it was "afraid" the public would be "horrified" at the information.

Following Thursday's hearing, Judge Alsup said he would hold off on ruling on Apple Inc.'s motion for summary judgment and ordered the company to produce within seven days all communications between Apple and the FCC related to iPhone certifications, as well as all communications regarding an investigation by the Chicago Tribune into iPhone radiation levels.

Judge Alsup zeroed in during the hearing on why the tech behemoth had refused to turn over communications that the proposed class of consumers sought in discovery and questioned the assertions that the litigation is disruptive.

"Why would it be disruptive for the public to know what statements and representations Apple itself made to the FCC? Are you afraid that the public would be horrified to see those statements?" Judge Alsup asked Apple's attorney. "I don't understand why you're hiding them."

Apple attorney Christina Guerola Sarchio of [Dechert LLP](#) told Judge Alsup, "Your honor, it's not a question of hiding it."

Sarchio acknowledged that Apple hadn't turned over its communications and information exchanges with the FCC, but said the consumers don't need information about how Apple or the FCC tested iPhones because "all that is preempted."

The FCC certified the iPhones and investigated allegations of a violation of its standard but found that those allegations had no merit, Sarchio told the judge during the hearing, asserting that the consumers are not permitted to second-guess the FCC's certification process.

Any claims that the FCC certification regime is ineffective are not for the court to hear, Sarchio told Judge Alsup.

The consumers, however, say their claims that Apple's iPhones don't meet current RF emission standards [are not barred](#) by federal law since the FCC executes emissions standards under a federal act that carries no implied preemption authority for the agency.

The FCC's radiofrequency emissions standards were enacted under the National Environmental Policy Act of 1969, which does not have provisions that conflict with the class's claims, the consumers say. This sets it apart from the Telecommunications Act of 1961, which authorizes the FCC to preempt certain state and local legal requirements under certain circumstances.

Apple has argued that the consumers' claims should be tossed because the [FCC asserted in a statement of interest](#) filed in the case that the phones comply with federal emission limits. The commission also said the plaintiffs' claims that Apple was required to provide additional consumer disclosures conflicted with a commission determination that existing disclosure requirements adequately informed the American public.

The consumers argue that the Telecommunications Act's preemption authority is not the appropriate statute to apply in this case. Even if the court decides the TCA is appropriate to apply here, however, the consumers claim the FCC cannot imply preemption here either, as the TCA explicitly requires the FCC to seek public comment before imposing preemption and did not do so in regard to measurements of the phones' emissions.

During Thursday's hearing, the consumers' attorney, Jessica H. Meeder of [Fegan Scott LLC](#), told Judge Alsup that Apple has thrown a wrench in discovery by refusing to turn over documents providing insight into why third-party testing results of iPhone radiation emissions differ from the FCC's testing results.

In addition to producing its FCC communications, Apple should also have produced during discovery its correspondence with the CDC, with French authorities regarding their testing and with the Chicago Tribune, which also had emissions tests done on iPhones by third parties, Meeder told the judge.

But Apple argued during the hearing that the consumers don't need any of that information because the FCC has made clear that FCC-certified iPhones are safe.

Apple's attorney said the claims against it must be dismissed, either for lack of jurisdiction or on preemption grounds.

In his order Thursday, Judge Alsup clarified what he meant by "all communications."

"All communications between Apple and the FCC includes communications between any lawyer or representative of Apple and the FCC. The court is tentatively of the view that all such communications with the public agency should themselves be public and not subject to a protective order but will not rule out the possibility that some of the materials may be subject to attorney's-eyes-only designations," Judge Alsup wrote in his order.

Representatives for parties did not immediately respond to requests for comment Thursday.

The proposed class is represented by Elizabeth A. Fegan and Jessica H. Meeder of Fegan Scott LLC and Jennie Lee Anderson of [Andrus Anderson LLP](#).

Apple is represented by Jonathan S. Tam, Amisha Rajni Patel and Christina Guerola Sarchio of Dechert LLP.

The case is Cohen et al. v. Apple Inc. et al., case number [3:19-cv-05322](#), in the [U.S. District Court for the Northern District of California](#).

--Editing by Orlando Lorenzo.

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