

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Data Quality Act Complaint by Cynthia Franklin)
)

ORDER

Adopted: December 20, 2012

Released: December 21, 2012

By the Commission:

1. By this Order, we affirm the Office of Engineering and Technology (“OET”) denial¹ of a Data Quality Act (“DQA”) complaint filed by Cynthia Franklin,² and, for the reasons stated below, deny Ms. Franklin’s application for review of the OET action.³

2. Ms. Franklin submitted complaints regarding certain consumer documents that inform the public regarding the nature of FCC radiofrequency (“RF”) exposure rules and procedures and how they relate to cell phones. She particularly complained in each instance about the language used in the discussions of testing for exposure to RF radiation when the cell phones are held in positions other than against the head, contending that a complete and detailed description of such testing is necessary to prevent physical harm to consumers. OET denied each complaint and declined to modify the subject documents. Ms. Franklin seeks review of the denial of three of those complaints. In reviewing the subject documents and Ms. Franklin’s complaints, we observe, as did OET, that the documents at issue are fact sheets intended to disseminate information to average consumers who may not have the particular technical expertise or knowledge regarding electrical engineering, RF propagation or science, RF emissions characteristics, research practices, or how the FCC regulates portable devices to interpret more clinical or detailed scientific information. The purpose of these documents is to explain in easy-to-understand terms the regulatory rules and policies adopted in response to notice-and-comment rulemakings.⁴ While including detailed discussions of technical or procedural information in this forum might provide a more precise articulation of the subtleties of the information presented, such an approach would reduce the utility of the information to the intended users. Moreover, while Ms. Franklin focuses on certain words and phrases that she contends are erroneous or misleading, we find that the full statements in which these words and phrases appear in context are generally accurate and not misleading,

¹ Letter from Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission to Cynthia Franklin, Environmental Health Trust (October 31, 2011) (Denial).

² FCC Data Quality Act Challenge, Complaint filed by Cynthia Franklin, Environmental Health Trust (July 12, 2011) (Complaint).

³ Appeal of FCC Determination Letter of 31 October 2011 [sic], (rec. Nov. 28, 2011) (Application for Review).

⁴ In its 1996 Report and Order and its 1997 Second Memorandum Opinion and Order in ET Docket 93-62, the Commission, among other matters, established rules and guidelines for evaluating the environmental effects of radiofrequency radiation. *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, ET Docket 93-62, 11 FCC Rcd 15123 (1996); *Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(C)(7)(B)(V) of the Communications Act of 1934, Second Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket 97-192, 12 FCC Rcd 13494 (1997).

and that the purported errors do not “have a clear and substantial impact on ... important private sector decisions.”⁵ Accordingly, under the FCC Information Quality Guidelines, the purportedly erroneous information would not qualify as “influential, scientific, financial, or statistical information” whose dissemination deviates from the quality standards established by the Commission under the DQA.⁶

3. For these and the other reasons discussed below, we deny the application for review and affirm OET's action.

I. BACKGROUND

4. The Data Quality Act allows interested parties to bring concerns regarding the quality⁷ of information disseminated to the public to the attention of the respective federal agencies disseminating such information. The OMB Guidelines provide guidance to agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated. In the guidelines, OMB defines “quality” as the encompassing term, of which “utility,” “objectivity,” and “integrity” are the constituents.⁸ “Utility” refers to the usefulness of the information to the intended users. “Objectivity” focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. “Integrity” refers to security—the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. OMB modeled the definitions of “information,” “government information,” “information dissemination product,” and “dissemination” on the longstanding definitions of those terms in OMB Circular A-130, but tailored them to fit into the context of these guidelines.

5. The FCC Information Quality Guidelines define the policy and procedures for reviewing and substantiating the quality of information before it is disseminated to the public, as well as administrative mechanisms allowing persons to seek and obtain, where appropriate, correction of information disseminated that does not comply with the Data Quality Act.⁹ The FCC Guidelines substantially follow the provisions of the OMB Guidelines, interpreting many key statutory terms, such as “information,” “disseminate,” “quality,” “objectivity,” utility,” and “integrity.” As directed in the OMB Guidelines, the FCC Guidelines establish a complaint process by which interested parties may file initial complaints with the Bureau or Office wherein the information dissemination product originates.¹⁰ Under the FCC Guidelines, the Bureau or Office handling the initial complaint will respond in a manner appropriate to the nature and extent of the complaint. Persons who do not agree with the initial decision are afforded the opportunity to seek administrative review of that decision by directing an Application for Review to the Commission.

6. On July 12, 2011, Cynthia Franklin filed the underlying DQA complaint alleging various

⁵ See *Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Pursuant to Section 515 of Public Law No. 105-554*, Appendix A, 17 FCC Rcd 19890, 19895 (2002), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-277A1.pdf. (FCC Guidelines).

⁶ *Id.*

⁷ *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 66 FR 49718 (Sept. 28, 2001) (interim final guidelines), and 67 FR 369 (Jan. 3, 2002) (final guidelines), corrected, 67 FR 5365 (Feb. 5, 2002), reprinted correcting errors, 67 FR 8452, 8453-54, 8459-60 (Feb. 22, 2002) (collectively referred to as “OMB Guidelines”).

⁸ See OMB Guidelines, 67 FR at 8453-54, 8459-60.

⁹ See FCC Guidelines, *supra*.

¹⁰ See OMB Guidelines, 67 FR at 8458-59, *see also* FCC Guidelines, 17 FCC Rcd at 19898.

violations of the DQA in four consumer documents disseminated by the FCC that inform the public regarding the nature of radiofrequency (RF) exposure from wireless devices.¹¹ Ms. Franklin's complaints were all related to the words used in explanations of how cell phones are tested for use when not held against the head for talking (*i.e.*, in the "body-worn" position). OET reviewed and denied the complaints in a letter to Ms. Franklin on October 31, 2011.¹² OET explained that the four fact sheets disseminated information to consumers, who have no particular technical expertise or knowledge regarding RF exposure or how the FCC regulates portable devices. OET explained that including highly detailed discussions of technical or procedural information, such as specifics related to procedures offered as options to industry for evaluation of equipment for compliance with the RF exposure rules or the scientific details of the science underlying these rules, would reduce the utility of the information to the intended users. Moreover, the documents explain in easy-to-understand terms the rules and policies adopted in response to notice-and-comment rulemakings.

7. On November 28, 2011, Ms. Franklin filed the instant application for review of the OET action with respect to three arguments of her complaint. Generally, she reasserts claims directed at three of the FCC consumer documents arguing that the documents should be corrected to state that cell phones are not tested for RF exposure during use in direct contact with the body, and therefore they should not be used in such a manner.¹³

8. Each of the complaints that Ms. Franklin continues to press in her application for review have to do with representations regarding testing for phones when used in a body-worn position. In general support of her application for review, Ms. Franklin contends that cell phone manufacturers are "well aware" that common consumer "usage" today involves the placement of the cell phone directly against the body and that they explicitly market cell phones for "use" against the body, and that they acknowledge in the "warnings" in their user manuals that wearing phones on the body might present a risk of serious harm. She concludes that, given these facts, it is essential that the information disseminated by the FCC accurately say that cell phones are not tested for RF exposure when used "directly" against the body and hence should not be so used. She asserts that such factual accuracy is required by the DQA. Ms. Franklin also asserts that independent scientific study proves that cell phone use "against the body" can exceed the allowed Specific Absorption Rate (SAR) exposure limit by two to seven times, although she avers that such study is not necessary to support her application for review, "given the regulatory framework."

9. In conjunction with the determinations below, we note that the U.S. Government Accountability Office has recently issued a report entitled *Exposure and Testing Requirement for Mobile Phones Should Be Reassessed* ("Report").¹⁴ In response to that Report, the Commission's Office of Engineering and Technology noted that "...we believe our current standards are appropriate and protect the public against the possible harmful effects of RF exposure. However, we appreciate that it has been many years since the Commission conducted a formal review of the current standard."¹⁵ It goes on to observe that the Commission is considering opening a proceeding in the near future to consider, among other things, the issues and recommendations in the Report.¹⁶ If the Commission was to determine, after

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¹³ Appeal of FCC Determination Letter of 31 October 2011 [sic], (rec. Nov. 28, 2011) (Application for Review).

¹⁴ GAO-12-771, released August 7, 2012. (Available at <http://gao.gov/products/GAO-12-771>.)

¹⁵ Letter from Julius Knapp to Mr. Mark Goldstein, Director, Physical Infrastructure Issues, U.S. Government Accountability Office, at 1, included as Appendix III of the Report.

¹⁶ *Id.*, at 1, 2.

thorough review of the information and arguments provided in the proceeding, that changes in its guidelines or procedures are warranted, it would make appropriate revisions to the related information provided to the public. Ms. Franklin is welcome, of course, to address any substantive concerns with our rules in the rulemaking proceeding. In the interim, the information provided on our website is appropriate.

I. DECISION

Complaint 1: “The FCC guide *Specific Absorption Rate (SAR) for Cell Phones: What it Means for You* inaccurately tells consumers that cell phones are tested against the body and next to the body.”

10. We agree with OET that the text that is the subject of this complaint is consistent with the requirements of the DQA and FCC Guidelines, and we affirm OET’s denial of the Complaint with respect to this information dissemination product.

11. In summary, Ms. Franklin asserts that the FCC guide at issue here does not accurately describe how cell phones are tested for possible RF exposure, and so could encourage cell phone users to use their phones too close to their bodies in an unsafe manner. Ms. Franklin first quotes from a passage in the section entitled “*SAR Testing*,” which states that cell phones are tested “against the dummy head and body” and “next to the head and body.” Ms. Franklin then contends that these statements violate the DQA because they are not objective and not useful, in that they do not explain with precision that cell phones are positioned 1.5 to 2.5 cm from the body when they are tested for the body-worn position, and thus it is “plainly inaccurate for ‘data’ to assert that they are tested against or next to the body.” She continues, asserting that the public will be led to believe that phones are tested for use in pockets, brassieres and other body-worn configurations lacking a separation distance, and thus people will be encouraged to use the phones without a separation distance, to their physical detriment. Ms. Franklin next quotes from a passage in the section entitled “*What SAR Shows*,” which states that “FCC approval means that the device will never exceed the maximum levels of consumer of RF exposure permitted by federal guidelines,” contending that this statement, too, is neither objective nor useful and will consequently encourage consumers to use cell phones in a physically harmful manner by carrying them in pockets or brassieres.

12. Ms. Franklin’s concerns, however, misconstrue the purpose of the document at issue, which is not to provide advice on how best to hold and use a cell phone, or to allow consumers to critique the sufficiency of testing methods, but rather to explain why a single reported maximum SAR value is an insufficient basis for comparing the likely RF exposure from individual cell phone models. Indeed, the guide emphasizes that SAR testing “does not indicate the amount of RF exposure consumers experience during normal use of the device.” And while Ms. Franklin asserts that the guide will encourage consumers to carry cell phones against their bodies, the only statement in the guide about how to carry a phone is quite to the contrary, noting that “the most effective means to reduce [RF] exposure are to hold the cell phone away from the head or body and to use a speakerphone or hands-free accessory.” Accordingly, we disagree that the Guide when read in its entirety would be likely to promote unsafe cell phone use.

13. In sum, we agree with OET’s assessment that Ms. Franklin’s complaint regarding this website does not warrant action. The purpose of the guide was not to explain the testing process with sufficient precision to allow each reader to evaluate whether testing is adequate, nor was it to explain how to use, or not use, a cell phone. Moreover, as observed by OET with respect to *What SAR Shows: What it means to you*, the level of detail Ms. Franklin sought is inconsistent with the intent of issuing a straightforward, consumer-friendly document simply explaining the significance of reported SAR values.

Complaint 2: “The FCC Office of Engineering and Technology’s consumer website *Radio Frequency Safety* inaccurately states that cell phones are required to meet safety requirements against the body, and therefore are compliant with the safety limit when used against the body.”

14. We agree with OET that OET’s *Radio Frequency Safety* website materials are consistent with the requirements of the DQA and FCC Guidelines, and we accordingly affirm OET’s denial of the Complaint with respect to this information dissemination product.

15. In this complaint, Ms. Franklin refers to the answer to one of the FAQs (frequently asked questions) on the OET website devoted to RF safety. We first note that under the FCC Information Quality Guidelines derived from the DQA, FAQs are classified as “non-scientific/non-statistical general, procedural or organizational information,”¹⁷ and that such information is excluded from the category of information whose dissemination is subject to the DQA quality guidelines.¹⁸ While Ms. Franklin objects that this exclusion in the FCC’s Information Quality Guidelines is inconsistent with the DQA and OMB’s definition of information covered by the DQA, OMB specifically gave agencies latitude in implementing the DQA’s provisions and OMB’s guidelines.

16. While this FAQ accordingly is not contestable, we observe that even were we to consider this complaint, it would fail. Ms. Franklin here refers to the answer to the FAQ regarding hands-free earpieces and accessories that claim to shield the head from RF radiation. She specifically objects to the passage referring to ear piece use: “Even so, mobile phones marketed in the U.S. are required to meet safety limit requirements regardless of whether they are used against the head or against the body. So, either configuration should result in compliance with the safety limit.” Again, she contends that cell phones are tested for body-worn compliance when positioned 1.5 to 2.5 cm from the body. Ms. Franklin further asserts that there is no documentation to support the assertion that phones marketed in the U.S. are tested when used “against the body,” or that use against the body “should result in compliance with the safety limit” – apparently taking “against the body” to mean directly in contact with the skin. She concludes that this violates the “utility” requirement of the DQA by encouraging consumers to use cell phones contrary to the way they are tested, to the warnings in user’s manuals, and to our regulations regarding SAR limits.

17. As is the case with her first complaint, in full context we do not expect that a reader of the FAQ would take the answer as an instruction or guidance on how a phone should be used without a headset. Rather, the passage is explaining the effects of using a headset when talking on the phone, not dispensing advice on exactly how close to the body a phone should be to duplicate the “use against the body” description of the SARS testing protocols. Thus, the thrust of the answer is that while RF is absorbed into the body while using a headset, such absorption does not occur at the location of the head where the higher SARS readings have been found to be well within safety limits. Moreover, the phrase in question – “use against the body” – is not referring to direct contact between a phone in use and the skin; the earlier part of the text makes this clear, stating: “[I]f the phone is *mounted* against the waist or other part of the body during use, then that part of the body will absorb RF energy.” (emphasis added). As observed by OET, this indicates that some form of apparatus is used to hold the device. Therefore, we do not expect that the text would commonly be read to suggest that all wireless devices will be compliant with the SAR standards if used without any appropriate apparatus to mount the device against the body. Moreover, the sentence does not in any way suggest that it supersedes any information on appropriate use of the devices provided in the instructions that come with the device. Ms. Franklin’s attempt to portray this basic FAQ as influential and actionable data demonstrates the propriety of the FCC’s determination

¹⁷ FCC Guidelines, 17 FCC Rcd at 19896.

¹⁸ *Id.* at 19895.

to exclude FAQs from consideration under its Information Quality Guidelines, as they do not purport to be “influential scientific, financial or statistical information” whose dissemination would have a “clear and substantial impact on important public policies or important private sector decisions.”¹⁹

Complaint 3: “The FCC Guide *Wireless Devices and Health Concerns* used to contain, and misleadingly dropped, a warning that *consumers not use cell phones on belts or in pockets.*”

18. We agree with OET that the material referenced in the complaint in *Wireless Devices and Health Concerns* is consistent with the requirements of the DQA and FCC Guidelines, and we affirm OET’s denial of the Complaint with respect to this information dissemination product.

19. In this complaint, Ms. Franklin refers to a paragraph titled “Some Measures to Reduce Your RF Exposure” in a section of this guide called “What You Can Do.” She complains that the advice “Keep wireless devices away from your body when they are on, mainly by not attaching them to belts or carrying them in pockets” was deleted from the prior version of the paragraph and no longer appears. She contends that deleting the sentence violates the DQA’s objectivity requirement for unbiased completeness. She contends that the Commission must explicitly advise consumers not to use cell phones on belt clips or in pockets.

20. As OET correctly pointed out, the FCC does not endorse and has never endorsed the specific recommendations for reducing exposure offered in this section because they are beyond those necessary to achieve compliance with our exposure limits and thus are not known to increase safety. The subject information is included only to provide information for those consumers who wish to take additional precautionary steps to further reduce exposure, and it assumes appropriate cell phone use consistent with manufacturers’ information and instructions. As OET further observed, the specific language at issue was replaced by more appropriate language that addresses more universally the relation between the absorption of RF energy and separation from the source: “...wireless devices only emit RF energy when you are using them, and the closer the device is to you, the more energy you will absorb.”

21. Accordingly, IT IS ORDERED that, pursuant to section 515(a) of the Treasury and Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 (2000), and section 4(i), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and the FCC Information Quality Guidelines, this APPLICATION FOR REVIEW IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁹ See FCC Guidelines, 17 FCC Red at 19895.