

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL VETERANS LEGAL
SERVICES PROGRAM, NATIONAL
CONSUMER LAW CENTER, and
ALLIANCE FOR JUSTICE, for themselves
and all others similarly situated,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Case No. 16-745 (ESH)

PLAINTIFFS' REPLY TO DEFENDANT'S NEW SUPPLEMENTAL AUTHORITY

At oral argument, the government referred to a case not cited in its briefs. Its latest filing reveals that the case is in fact *Rural Cellular Association v. FCC*, 685 F.3d 1083 (D.C. Cir. 2012), which rejected a constitutional challenge to an FCC requirement that certain carriers pay for a broadband-access program. The carriers argued that Congress hadn't clearly given the FCC authority to recover costs that did not "inur[e] directly to [their] benefit." But the court found "no failure of inurement" because "the carriers' contributions ... support[ed] a program to subsidize broadband Internet access from which *those carriers will particularly benefit.*" *Id.* at 1091.

Here, by contrast, the question is whether one group of people—those who wish to obtain records via PACER—must pay fees to fund *other services for other people*, services from which they will *not* "particularly benefit." And here, by contrast, the question is whether to enforce a statute that Congress enacted precisely to stop the Judiciary from charging fees that are more than necessary to fund the particular service to the user. Once again, the AO ignores the key statutory language: that "[a]ll fees ... collected" for services listed in the prescribed "schedule of fees" shall be collected "*as a charge for services rendered*" to the user, "*to reimburse expenses incurred in providing these services,*" and then "only to the extent necessary" to do so. 28 U.S.C. § 1913 note.

Respectfully submitted,

/s/ Deepak Gupta

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March 29, 2018

*Counsel for Plaintiffs National Veterans Legal Services
Program, National Consumer Law Center, Alliance for
Justice, and the Class*

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2018, I electronically filed this document through this Court's CM/ECF system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Deepak Gupta

Deepak Gupta