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**NCLA Amicus Brief Calls on Fifth Circuit to End FCC’s Unlawful Control over Universal Service Fund**

*Consumers’ Research, et al. v. Federal Communications Commission, United States of America*

**Washington, DC (August 7, 2023)** – The Federal Communications Commission (FCC) administers the Universal Service Fund (USF), which provides telecommunications services to rural and impoverished areas of the United States as well as to schools, libraries, and healthcare providers. However, in the Telecommunications Act of 1996, Congress wrote an “evolving” and open-ended statute, leaving FCC to set its own policies and extract money from Americans to fund the USF. Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Consumers’ Research v. FCC*, urging an *en banc* U.S. Court of Appeals for the Fifth Circuit to overturn this illegitimate arrangement, whereby Congress surrendered its exclusive constitutional power to tax and spend.

Through the Telecommunications Act, Congress authorized FCC to define and fund “universal” telecommunications and information services on an “evolving” basis “consistent with the public interest, convenience, and necessity” and in line with policies FCC itself could adopt. This vague standard does not provide an adequate “intelligible principle” to limit FCC’s delegation of legislative power under the Constitution’s Vesting Clause. As a result, FCC has been exercising practically unlimited legislative and budgetary power in the USF context that Article I of the Constitution reserves for Congress alone.

A Fifth Circuit panel wrongly upheld the statute. Citing the same court’s May 2022 *Jarkesy v. SEC* [ruling](#), the panel said the “nondelegation doctrine applies where Congress has provided ‘no guidance whatsoever.’” This misinterpretation of the decision in *Jarkesy*, another case for which NCLA filed a successful *amicus* [brief](#), would render the “intelligible principle” standard effectively meaningless.

*Consumers’ Research v. FCC* presents an opportunity to rein in serious Administrative State power abuses, a core part of NCLA’s mission. Specifically, the Fifth Circuit should decide that Congress may not divest its legislative responsibility over core constitutional powers assigned to it, like the powers to tax and to appropriate funds.

**NCLA released the following statements:**

“The Constitution is clear when it says that the taxing and spending power is vested in Congress. Here, Congress gave the FCC a blank check with no rules—abdicating its power to bureaucrats who are accountable to no one. The Court should go back to first principles and declare the statute a constitutional atrocity.”

— **Kaitlyn Schiraldi, Staff Attorney, NCLA**

“The Telecommunications Act of 1996 empowers FCC to define the scope of its mission, to determine the policies that are to be advanced, and to charge hundreds of millions of consumers to pay for it all. This is agency authority run amok. As a result, consumers are paying approximately \$10 billion per year for FCC pet projects. Such broad and vague delegations cut out Congress and leave the American public at the mercy of power-hungry agencies.”

— **Zhonette Brown, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

## ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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