Judicial Conference of the United States

Chairs of the Advisory Committee on Bankruptcy Rules (Hon. Dennis Dow), Court Administration and Case Management (Hon. Audrey Fleissig), Information Technology (Hon. Thomas Hardiman), Budget (Hon. John Lungstrum) and the Judicial Branch (Hon. Rodney Sippel)

% Administrative Office of the United States Courts One Columbus Circle NE Washington, D.C., 20544

Re: Misconceptions about costs of the OCA

Dear Judge Dow, Judge Flessig, Judge Hardiman, Judge Lungstrum and Chief Judge Sippel:

Among the signatories below are former government technologists and experts in IT and legal tech, and we write to dispel some of the misconceptions about the costs of creating and maintaining a unified, modernized case management and electronic case filing system (CM/ECF) that would also serve as the interface through which members of the public access court filings for free (i.e., "free PACER"). As you're aware, these projects are requirements of the Open Courts Act (H.R. 8235), a bipartisan bill that passed the House Judiciary Committee unanimously in September.

We are confident that under no circumstance would building and implementing the new system described in the OCA cost \$2 billion or even several hundred million dollars. We estimate the cost to be in the \$10–\$20 million range over 36 months to build and then \$3–\$5 million annually to continue to develop and maintain. Per the OCA, costs to build the new system would be recuperated by fees paid by large commercial users, and costs to develop and maintain it would be recuperated by usage fees paid by federal agencies, who are among the top users currently. What's more, since a new CM/ECF and PACER system would not be as costly as some have imagined, litigants need not fear that filing fees would double or triple, as has been suggested.

Our experience tells us that executing custom software is always incremental — an operational expense instead of a capital one. The new system will be rolled out step by step and will be built around the existing one so as not to create any disruptions.

In other words, this project should not be perceived as a one-off behemoth that is contracted out on Day 0 and then put into use on Day 1,095. Instead, the judiciary will pay a vendor to build something that gradually gets better, and when it is good enough, it will be deployed for end users. After that, the vendor will keep on working, and the system will keep getting better. Whenever the judiciary believes the project to be completely done, then it will stop paying the vendor, and the vendor will go away.

Though it may sound daunting to transform diffuse case management architecture into a single interface that is searchable and free to the public, we know this to be an achievable task. Because the new system would be required under OCA to be developed according to best practices for government IT projects, costs will be far lower than the tens of millions of dollars per year the judiciary currently spends on CM/ECF and PACER. We are confident that 18F — the General Service Administration's digital consultancy group, which has a track record of modernizing government software in a timely and cost-effective manner — would help a vendor implement the new system and see to it that costs are contained and timelines are adhered to. What's more, 18F recommends spending no more than \$10 million on an IT contract, so there is a built-in backstop should the implementation described above encounter any systemic challenges.

Based on our deep experience in data management and government IT work, we believe the OCA creates a path to a modern CM/ECF and a free document retrieval system that will benefit judges, litigants and taxpayers alike. With costs to store and retrieve data having dropped 99.9% since PACER's 1998 debut1, the judiciary can and should keep up, especially since the solution will cost taxpayers a fraction of what the judiciary currently pays to maintain the status quo.

We hope you consider these points as you speak with your colleagues and members of Congress about ways to improve the judiciary's unnecessarily complicated, costly and diffuse case management system.

Sincerely,

John Bergmayer Legal Director Public Knowledge

Meredith Filak Rose Senior Policy Counsel Public Knowledge

Waldo Jaquith Director State Software Collaborative

Michael Lissner Executive Director Free Law Project

Corynne McSherry Legal Director Electronic Frontier Foundation