Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
Preserving the Open Internet	)	GN Docket No. 09-191
	)	
Framework for Broadband Internet Service	)	GN Docket No. 10-127

COMMENTS OF THE DIGITAL POLICY INSTITUTE AND SUBMISSION OF PHOENIX CENTER REPORT ON FCC AUTHORITY OVER BROADBAND SERVICE PROVIDERS

Here the Digital Policy Institute ("DPI")[1] submits brief comments in the above-captioned proceedings. DPI believes that, as the Federal Communications Commission ("FCC") evaluates its legal and regulatory options in these proceedings, it is essential that the agency take steps that are based on sound economic theory and analysis. Moreover, we believe that any FCC action in these proceedings must be limited to that for which it plausibly has the authority to take, as well as the policy basis to pursue.

Whatever regulatory road the Commission elects to travel, there is a high probability that any new policy will be subject to judicial review. To survive such a review, the Commission's rules must be shown to further an important, substantial government interest. Moreover, any restrictions imposed should be no greater than necessary to further that government interest.

To help ensure that FCC action in these proceedings is based on the latest, most relevant and in-depth analysis, DPI wishes to enter into the record of these proceedings some insightful new research from Lawrence J. Spiwak, writing for the Phoenix Center for Advanced Legal & Economic Public Policy Studies. This research, dated June 2014, is titled "Phoenix Center Policy Bulletin No. 35: WHAT ARE THE BOUNDS OF THE FCC'S AUTHORITY OVER BROADBAND SERVICE PROVIDERS? – A REVIEW OF THE RECENT CASE LAW." This report, being submitted along with these DPI Comments, explains why reclassifying broadband Internet

[11] DPI is an independent digital communications research and policy organization established in 2004.

service providers from a Title I "information service" to a Title II "telecommunications service" subject to traditional common carrier regulation is unnecessary and extreme.

In undertaking this analysis, Spiwak reviewed, *inter alia*, a variety of federal appeals court decisions, federal statutory laws and elements of legislative history to evaluate the current state of the law. His assessment is that the FCC has ample legal authority over broadband Internet service under the current legal and regulatory regime. As such, he concludes, reclassification of broadband Internet access as a Title II telecommunications service is unwarranted.

Moreover, Mr. Spiwak offers several suggestions on how the Commission should use its authority, such as avoiding broad regulatory mandates and, instead, dealing with policy problems and disputes on a case-by-case basis.

DPI appreciates the opportunity to offer its broad, initial views and to enter the Phoenix Center study into the record of these proceedings. DPI intends to participate more fully through reply comments in the Commission's net neutrality proceeding and in other related proceedings exploring the range of legal and regulatory alternatives available to the agency.

Respectfully submitted,

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