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

REPLY COMMENTS OF THE DIGITAL POLICY INSTITUTE AND SUBMISSION OF PHOENIX CENTER RESEARCH

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

To help ensure that the record in these proceedings includes the most relevant and in-depth analysis, DPI wishes to enter into the record several important research and analysis works from the Phoenix Center for Advanced Legal & Economic Public Policy Studies. Copies of several of these documents are also being submitted in pdf form, along with these DPI reply comments. Two other relevant Phoenix works are referred to, below, and for which only hypertext links are provided.

In his June 2014, *What Are the Bounds of the FCC's Authority Over Broadband Service Providers? A Review of the Recent Case Law*, Lawrence J. Spiwak explains that the FCC

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

currently possesses ample authority over Broadband Service Providers (BSPs) under the existing legal regime to promote an Open Internet. As such, he contends that reclassifying broadband services under Title II regulations is unnecessary. He also suggests that if the FCC were to pursue reclassification, it may result in a host of negative externalities.

In their September 2014, work titled *Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service*, George S. Ford and Lawrence J. Spiwak find that reclassification would force all "edge" providers to pay a positive, tariffed rate to every BSP for terminating access; and in the presence of a "terminating monopoly," the FCC won't be able to forbear and create some sort of "Title II Lite."

In their 2009, work *Network Neutrality and Foreclosing Market Exchange: A Transaction Cost Analysis*, T. Randolph Beard, George S. Ford, Thomas M. Koutsky, and Lawrence J. Spiwak analyze the effects of net neutrality proposals that seek to foreclose or severely limit market transactions. This research – clearly relevant today – finds that rules which prohibit efficient commercial transactions between content and broadband service providers could be bad for all participants – consumers would pay higher prices, the profits of the broadband service provider would decline, and the sales of internet content providers would also decline.

Finally, the Commission should remain aware that imposing stringent rules on mobile broadband providers could jeopardize the upcoming voluntary spectrum incentive auction. As explained in the Ford September 3, 2014, article *Will Net Neutrality Politics Scuttle the FCC's Upcoming Incentive Auction?* in *The Hill*, and as supported in his earlier work with Koutsky and Spiwak titled *Using Auction Results to Forecast the Impact of Wireless Carterfone Regulation*

on Wireless Networks, imposing excessive regulation on mobile providers may result in severely lower auction prices and risk broadcaster participation.

DPI appreciates the opportunity to offer its overall perspective on the issues addressed in the above-captioned proceedings and to enter the Phoenix Center's research into the record of these proceedings.

Respectfully submitted,

/s/ *Barry D. Umansky*
Barry D. Umansky, J.D.
Chief Policy Counsel and Senior Fellow

Digital Policy Institute
Ball State University
Muncie, Indiana 47306
(765) 717-4928

September 15, 2014