2014 ANNUAL REPORT
2014 again proved to be another extremely productive year for the Phoenix Center, so much so that all of our many accomplishments and accolades cannot be summarized here.

As always, the Phoenix Center’s research in 2014 was prolific. To begin, the Phoenix Center issued nine (9) scholarly papers in 2014. We also published three (3) “mini” law reviews in BLOOMBERG BNA. We are also extremely proud to report that no less than seven (7) Phoenix Center papers were published, or accepted for publication, in academic journals.

We are also excited to report that both Phoenix Center Chief Economist Dr. George Ford and I both become official “contributors” to THE HILL this year. To this end, we authored nine (9) op-eds in 2014.

In 2014, the Phoenix Center also took steps to bolster our digital presence. For example, we authored nineteen (19) blogs on @LAWANDECONOMICS, the official blog of the Phoenix Center. As always, we took great pains to make @LAWANDECONOMICS as rigorous as the format permits, and we hope readers found these posts useful. We also again participated actively on Twitter with our handle @lawandeconomics, and we are pleased to report that we have over 2,100 followers.

Once again, our efforts have not gone unnoticed. For example, Phoenix Center Chief Economist Dr. George Ford remains in top 1% of authors downloaded on the Social Science Research Network, and I am not far behind in the top 1.5%. More importantly, the Phoenix Center’s webpage received over one million hits in 2014, and our @LAWANDECONOMICS blog page received nearly 5,000 hits.

But there is more: Not only was our work cited prolifically in both the press and in the academic literature in 2014, but our research was also sought out by policymakers. For example, our paper Market Mechanisms and the Efficient Use and Management of Scarce Spectrum Resources was cited by Institute for Defense Analysis as part of the White House Office of Science and Technology Policy’s spectrum review. Similarly, the Chairman and Ranking Member of the Senate Commerce Committee solicited our input on STELA reauthorization.

We also tried to contribute to the broader telecom community. To this end, I was again pleased to serve as the co-chair of Federal Communications Law Association’s committee to oversee the FEDERAL COMMUNICATIONS LAW JOURNAL.

Finally, in addition to being invited to participate in a variety of conferences across the country this year, the Phoenix Center also put on three fantastic programs of its own this year.

First, we held a “teleforum” entitled “Tariffing the Internet.”

Second, we held our Third Annual Rooftop Policy Roundtable Discussion, where we had an excellent set of interactive conversations about the bounds of the FCC’s jurisdiction over Broadband Service Providers with FCC Commissioner Michael O’Rielly and a panel of legal experts over drinks and cigars.

Finally, we held our Fourteenth Annual U.S. Telecoms Symposium to another standing-room only crowd. As always, we had leading policymakers and practitioners participate and the discussions were both informative and lively.

Once again, not a bad year…

— Lawrence J. Spiwak, President
The Phoenix Center continued to publish a prodigious amount of scholarly research in 2014. As always, all of the Phoenix Center’s research is available free on the Phoenix Center’s web page and on the Social Science Research Network.

PHOENIX CENTER POLICY BULLETIN SERIES

The Phoenix Center’s POLICY BULLETIN SERIES is designed to provide a forum for responding to breaking policy issues in a shorter period of time than our PHOENIX CENTER POLICY PAPER SERIES. The Phoenix Center published the following POLICY BULLETINS in 2014:

- Will Bidder Exclusion Rules Lead to Higher Auction Revenue? A Review of the Evidence, PHOENIX CENTER POLICY BULLETIN NO. 34 (April 2014);

- What Are the Bounds of the FCC’s Authority Over Broadband Service Providers? A Review of the Recent Case Law, PHOENIX CENTER POLICY BULLETIN NO. 35 (June 2014);

- Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service, PHOENIX CENTER POLICY BULLETIN NO. 36 (September 2014); and

- Section 10 Forbearance: Asking the Right Questions to Get the Right Answers, PHOENIX CENTER POLICY BULLETIN NO. 37 (November 2014).

PHOENIX CENTER POLICY PERSPECTIVES

The Phoenix Center’s POLICY PERSPECTIVES SERIES is designed to provide a forum for its individual members to express their personal views on current policy developments. The Phoenix Center published the following POLICY PERSPECTIVES in 2014:

- PHOENIX CENTER POLICY PERSPECTIVE NO. 14-01: Do Municipal Networks Offer More Attractive Service Offerings than Private Sector Providers? A Review and Expansion of the Evidence (January 27, 2014);


- PHOENIX CENTER POLICY PERSPECTIVE NO. 14-03: Should the Internet Tax Moratorium be Made Permanent? (June 2, 2014).


- PHOENIX CENTER POLICY PERSPECTIVE NO. 14-05: The Unpredictable FCC: Politicizing Communications Policy and its Threat to Broadband Investment (October 14, 2014).

- PHOENIX CENTER POLICY PERSPECTIVE NO. 14-06: Have We Got it All Wrong? Forecasting Mobile Data Use and Spectrum Exhaust (October 21, 2014).

- PHOENIX CENTER POLICY PERSPECTIVE NO. 14-07: Movie Leaks, Box Office Success and Child’s Play: Using an Online Game is No Way to Quantify the Effects of Piracy (October 28, 2014).

Academic Publications

In 2014, the Phoenix Center had no less than nine of its papers published, or accepted for publication, in academic journals:

- Market Mechanisms and the Efficient Use and Management of Scarce Spectrum
PHOENIX CENTER PUBLICATIONS

Resources, 66 FEDERAL COMMUNICATIONS LAW JOURNAL 263;

- Market Definition and the Economic Effects of Special Access Price Regulation, 22 COMM LAW CONSPECTUS 237;

- Internet Use and Depression Among Retired Older Adults in the United States: A Longitudinal Analysis, JOURNALS OF GERONTOLOGY, SERIES B: PSYCHOLOGICAL SCIENCES AND SOCIAL SCIENCES;

- Capital investment and Employment in the Information Sector, 38 TELECOMMUNICATIONS POLICY 371;

- Section 10 Forbearance: Asking the Right Questions to Get the Right Answers, 23 COMM LAW CONSPECTUS 126;

- Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service, forthcoming FEDERAL COMMUNICATIONS LAW JOURNAL; and

- What Are the Bounds of the FCC’s Authority Over Broadband Service Providers? A Review of the Recent Case Law, forthcoming JOURNAL OF INTERNET LAW.

“MINI” LAW REVIEWS PUBLISHED IN BLOOMBERG BNA

The Phoenix Center published the following “mini” law reviews with BLOOMBERG BNA in 2014:

- Understanding the Net Neutrality Debate: A Basic Legal Primer (July 23, 2014);

- FCC Has No Authority to Preempt State Municipal Broadband Laws (August 6, 2014); and

- The Unpredictable FCC: Politicizing Communications Policy and its Threat to Broadband Investment (October 30, 2014).

OP-EDS:

The Phoenix Center had the following op-eds published in 2014:

- Shared Spectrum is a Pipe Dream, THE HILL (February 06, 2014);

- Is the FCC Still Trying to Stifle Political Speech? THE HILL (February 24, 2014);

- Doing Nothing Is Not An Option to Stop On-Line Piracy, THE HILL (March 25, 2014);

- FCC Puts Funding for Public Safety Network and Debt Reduction in Jeopardy, THE HILL (April 24, 2014);

- Congressional Gridlock Threatens to Tax the Internet, THE HILL (June 05, 2014);

- Will Net Neutrality Politics Scuttle the FCC’s Upcoming Incentive Auction? THE HILL (September 3, 2014);

- Tariffing the Internet, THE HILL (September 11, 2014);

- Section 10 Forbearance Offers No Easy Path to “Title II Lite”, THE HILL (October 21, 2014);

- The “Clicktivist” In Chief, THE HILL (November 12, 2014); and

In 2014, we worked steadily at @LAWANDECONOMICS, the official blog of the Phoenix Center. As always, we took great pains to make @LAWANDECONOMICS as rigorous as the format permits, and we hope readers found these posts useful. In 2014, our @LAWANDECONOMICS blog page received nearly 5,000 hits.

In 2014, we authored 19 posts on a wide variety of topics. They are, in chronological order:

- The FCC Must Satisfy a High Legal Threshold if it Wants to Impose Bidder Exclusion Rules (January 16, 2014);
- What is Past is Prologue: Lessons to be Learned Before Any New #CommActUpdate (January 23, 2014);
- The SOPA Paradox (January 23, 2014);
- A Troubling New Legal Standard for Section 706 (January 23, 2014);
- In Response to Mark Cooper (January 31, 2014);
- NARUC Recap: Federalist Implications of Verizon v. FCC (February 20, 2014);
- Finally Moving from Words to Action on the IP Transition (February 28, 2014);
- A Quick Primer on the FCC’s “Public Interest” Merger Review Authority (March 13, 2014);
- Should the Government Allow Further Consolidation in the U.S. Mobile Market? (March 20, 2014);
- A Helluva Game of Chicken (May 1, 2014);
- The FCC Can’t Use Section 706 to Preempt State Laws Prohibiting Municipal Broadband (May 1, 2014);
- The Problems With Henry Waxman’s “Hybrid” Legal Theory (October 9, 2014);
- Tariffing the Internet: A Response to Harold Feld (October 9, 2014);
- An Epiphany at Free Press on Reclassification? (October 9, 2014);
- Title II Reclassification and the Price Regulation of Retail Broadband Services (October 30, 2014);
- Mr. Wheeler Agrees: It’s The “Termination Market” (November 5, 2014);
- Will the Virtuous Circle be Unbroken? (November 14, 2014);
- Tariffing the Internet: A Response to Harold Feld (Part Deux) (November 29, 2014); and
- 2014 Year in Review (December 19, 2014).

Senator Deb Fischer accepts the Phoenix Center’s 2014 Jerry B. Duvall Award
CONTRIBUTING TO THE PUBLIC DIAPLECTIC

2014 provided fertile soil for those interested in policy research. In this section, we highlight what we here at the Phoenix Center found to be the most interesting policy issues of 2014, and some examples of where we believe we added constructively to the debate.

Spectrum Availability and Allocation

While spectrum policy is always complex, the debate again boiled down to the fundamental questions: how do we free up more spectrum; and once we do, how do we allocate it?

For example, one of the early battles in 2014 was whether, and to what extent, the FCC should impose incumbent exclusion rules for the upcoming voluntary incentive auction for broadcast spectrum. Building on our work from 2013, we authored a paper entitled Will Bidder Exclusion Rules Lead to Higher Auction Revenue? A Review of the Evidence, where we conclusively showed that not only did AT&T’s and Verizon’s participation not deter smaller firms from entering into prior auctions, but AT&T’s participation substantially raised total auction proceeds above and beyond the effect of a typical bidder.

We also had a paper published in the Federal Communications Law Journal entitled Market Mechanisms and the Efficient Use and Management of Scarce Spectrum Resources (originally released as Phoenix Center Policy Paper No. 46), where we demonstrated that if the goal of spectrum use and management is economic efficiency, and because the government itself has repeatedly conceded that it uses and manages spectrum inefficiently, then policymakers should expand the private sector’s management of the nation’s scarce spectrum resources. We were pleased to see that our paper was cited by Institute for Defense Analyses as part of the White House Office of Science and Technology Policy’s spectrum review.

Along the same lines, another perennial policy issue is whether government should auction or force parties to share scarce spectrum resources. An example of how we weighed in on this topic can be found in an op-ed published in The Hill by Phoenix Center Chief Economist Dr. George Ford entitled: Shared Spectrum is a Pipe Dream. In this op-ed, George took on University of Pennsylvania Professor Kevin Werbach’s claim that the United States should abandon spectrum auctions in favor of a sharing regime. As George observed, “To adopt a blanket presumption of sharing for all new spectrum as Professor Werbach touts is simply inefficient and wasteful. Rather, the allocation decision should be made based on which licensing approach is expected to generate the greatest value for the spectrum being allocated.”

Finally, we addressed the argument in that “spectrum exhaust” is a myth. For example, in a study we released entitled Have We Got it All Wrong? Forecasting Mobile Data Use and Spectrum Exhaust, George took on one such claim by Aalok Mehta from the Office of Management and Budget and J. Armand Musey of Goldin Associates and found Mehta and Musey’s arguments severely wanting. Among other problems, George demonstrated that Mehta and Musey’s claim that demand forecasts over-estimate actual traffic largely misses the point. While Mehta and Musey are correct that there are always alternatives to procuring “more spectrum” as a way to offset capacity shortages, George pointed out that it is exactly these alternatives that policymakers are attempting to avoid—including, primarily, higher prices for
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mobile services. George also demonstrated that the FCC’s prediction of a spectrum shortage is unaffected by Mehta and Musey’s concerns—more spectrum is needed for commercial data services and soon.

Internet Taxes

One of the major legislative fights in 2014 was the effort to extend—or, ideally, make permanent—the Internet Tax Freedom Act (“ITFA”), which imposed a three-year moratorium on the imposition of (new) state and local taxes on Internet access. To examine the likely adverse effects of failing to extend the ITFA, George authored a study entitled Should the Internet Tax Moratorium be Made Permanent?, where he estimated that the levying of the typical state and local communications taxes on Internet connections will have a sizeable adverse effect on broadband adoption, likely erasing all reasonable estimates of the gains to Internet adoption from the billions of dollars spent to date on federal, state and private-sector programs. George also showed that failure to extend the ITFA could adversely impact how the United States is ranked by the OECD for broadband adoption—a meaningless yet oft-cited statistic. For fixed-line connections, George estimated that that a loss of 5 million connections would lower the U.S. one spot in the OECD’s rankings, and a loss of 13.5 million fixed lines would cause the U.S. to fall from a rank of 16 to 21. For wireless, a plausible loss of 30 million lines would result in a 10% drop in adoption and would move the U.S. from the 7th to the 9th spot in the OECD’s rankings of mobile broadband adoption. While Congress just extended the ITFA with the recent spending package, it did so for only through October 2015, so we fully expect to revisit this issue again next year.

Intellectual Property Protection

Building on our work in 2013, the Phoenix Center again wrote several papers which took on the argument that digital piracy of intellectual property is costless to society.

For example, in a paper entitled What is the Effect of File Sharing on the Creation of New Music? A Critical Review of “A Case Study of File Sharing and Music Output”, George took on the claims of Tulane University Law School Professor Glynn Lunney, Jr. that “file sharing has not reduced the creation of new original music” based on the correlation of music sales over time to the appearance of “new artists” appearing at the top of Billboard’s Hot 100 chart. After review, George found that that Dr. Lunney’s analysis suffers from defects so severe that the study is completely useless for guiding public policy.

Similarly, in a paper entitled MovieLeaks, Box Office Success and Child’s Play: Using an On-Line Game is No Way to Quantify the Effects of Piracy, George took on the claims of University of Kansas Professor Koleman Strumpf that that pre-release movie piracy has no effect on box office revenue. As George pointed out, however, because Professor Strumpf’s analysis relies on highly questionable data, Professor Strumpf’s final results are without credibility and of little policy relevance.

And in a paper entitled Free Markets, Monopolies, and Copyright, George took on those who argue that current copyright law confers a “monopoly” to artists and, as such, is antithetical to laissez-faire capitalism. To refute this claim, George reviewed the writings of the three “giants” of laissez-faire capitalism—economists Ludwig von Mises (mentor of Friedrich Hayek), Milton Friedman and philosopher Ayn Rand—and found that any claim that
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Copyright is inconsistent with laissez-faire capitalism and constitutes a “monopoly” is an exceedingly difficult position to defend. As George demonstrated, all three of these luminaries offer strong arguments for copyright in a free-market economy and reject the view that copyright is a monopoly in the modern use of the term. Not to be outdone, George also demonstrated that in addition to the “giants” of free market capitalism, economists, antitrust agencies and courts have concluded that a copyright conveys no more market power than does a deed to a house.

Finally, as we at the Phoenix Center not just “talk the talk” but also “walk the walk” when it comes both to the creation and protection of intellectual property, Phoenix Center President Larry Spiwak was honored to play a duet with Ed Rollins from the double-platinum recording band Collective Soul before a standing-room only crowd at the U.S. Chamber of Commerce’s 2nd Annual Global Intellectual Property Summit.

Municipal Broadband

In 2004, the United States Supreme Court in Nixon v. Missouri Municipal League ruled that the Federal Communications Commission may not use Section 253 of the Telecommunications Act to preempt state laws that restrict or prohibit municipal broadband deployment. Despite this defeat in Nixon, proponents of municipal broadband have spent the last decade trying to find an alternative legal theory of preemption and, with the D.C. Circuit’s recent ruling in Verizon v. FCC, believe they now may have finally found one—namely, the FCC’s authority in Section 706(a) of the Communications Act. Given the court’s ruling, FCC Chairman Tom Wheeler, a vocal proponent of municipal broadband, boldly stated last April that “I believe the

FCC has the power—and I intend to exercise that power—to preempt state laws that ban competition from community broadband.” Taking up Chairman Wheeler’s invitation, the municipal provider in Chattanooga, Tennessee recently filed a petition with the FCC urging the agency to use its authority under Section 706 to preempt a Tennessee state law which, it claims, prevents it from expanding beyond its existing franchise territory. The Commission then put out this petition on an expedited pleading cycle. In a “mini law review” for BLOOMBERG BNA entitled FCC Has No Authority to Preempt State Municipal Broadband Laws, Larry outlined the multiple legal infirmities with using Section 706, including, inter alia, the simple observation that nowhere in Section 706 does any derivation of the word “preemption” appear—only the word “forbearance”—and there is a big legal difference between the two concepts.

In addition to Larry’s legal analysis on this topic, in a study entitled Do Municipal Networks Offer More Attractive Service Offerings than Private Sector Providers? A Review and Expansion of the Evidence, George evaluated the claims by the New America Foundation and the Consumer Federation of America that municipal wireline broadband service providers offer much more attractive triple-play prices than do commercial broadband service providers. As George demonstrated, the alleged price differentials between the public and private sector are the direct and sole consequence of New America and Consumer Federation improperly comparing the prices of unlike bundles. After correcting for New America’s and Consumer Federation’s numerous factual and technical errors, George showed that, in actuality, municipal systems typically charge consumers substantially more than their private-sector
rivals for very similar triple-play offerings. George’s analysis also suggests that the competitive price for a fairly standard triple-play service is about $100 in the U.S., and the expansion of municipal provision of broadband service won’t alone alter that reality.

Benefits of Broadband

We also had two important papers published this year in leading academic journals about the benefits of broadband.

The first paper was entitled Use and Depression Among Retired Older Adults in the United States: A Longitudinal Analysis (originally released as PHOENIX CENTER POLICY PERSPECTIVE NO. 13-02) which was published in JOURNALS OF GERONTOLOGY, SERIES B: PSYCHOLOGICAL SCIENCES AND SOCIAL SCIENCES. In this paper, analyzing data from four waves (2002–2008) of the Health and Retirement Survey, George and his co-authors assessed whether depression among older Americans was affected by Internet use. The sample included 3,075 respondents observed over 4 waves of data, yielding a total of 12,300 observations. George found a positive contribution of Internet use to mental well-being of retired older adults in the United States, where Internet use reduced the probability of a depressive state by about 33%.

The second paper was entitled Capital investment and Employment in the Information Sector (originally released as PHOENIX CENTER POLICY BULLETIN NO. 25) which was published in TELECOMMUNICATIONS POLICY. In this paper, George—along with our very brilliant Fellows Professor Randy Beard and Professor Hyeongwoo Kim—estimated an “employment multiplier” from historical data and found that for each million dollars in expenditure, 10 information sector jobs are created and perhaps 24 new jobs per million dollars invested across the entire economy. Given that information sector jobs have substantially higher median earnings than the private sector average, the economic significance of changes in information sector employment are greater than the average employment effects.

Net Neutrality

Since the net neutrality debate started ten years ago, the Phoenix Center has authored the most comprehensive and rigorous research on the topic. Despite the rapid devolution of the debate in 2014 into sophistry and name calling, we rejected temptation to follow this trend and instead again chose to author the most substantive research on the topic. In particular, we would like to call your attention to three major papers on net neutrality we released this year (all of which have been accepted for academic publication).

The first paper is entitled What Are the Bounds of the FCC’s Authority Over Broadband Service Providers? A Review of the Recent Case Law. As the title implies, in this paper Larry reviewed three recent cases from the D.C. Circuit—Comcast v. FCC, Cellco Partnership v. FCC and Verizon v. FCC—to evaluate the current state of the law. After review, Larry showed that these cases clearly hold that the Federal Communications Commission has ample legal authority over Broadband Service Providers under the current legal regime and, as such, reclassification of broadband as a Title II telecommunications service is unwarranted. This paper will be published in the JOURNAL OF INTERNET LAW.

The second paper is entitled Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service. In this paper,
George and Larry looked at the plain terms of the FCC’s governing statute, current case law, and the Commission’s own precedent—and found the following: First, reclassification turns edge providers into “customers” of Broadband Service Providers and this new “carrier-to-customer” relationship (as opposed to a “carrier-to-carrier” relationship) would require all BSPs (i.e., telephone, cable and wireless broadband providers) to create, and then tariff, a termination service for Internet content under Section 203 of the Communications Act. Because a tariffed rate cannot be set arbitrarily, and since a service cannot be generally tariffed at a price of zero, reclassification would require all edge providers (not their carriers)—as customers of the BSP—to make direct payments to the BSP for termination services. Second, the Commission would be prohibited from using its authority under Section 10 of the Communications Act to forbear from such tariffing requirements because the agency has characterized Broadband Service Providers as “terminating monopolists” and in the presence of a terminating monopoly, competition (a key component of Section 10) cannot be used as a basis for forbearance. This paper will be published in the *FEDERAL COMMUNICATIONS LAW JOURNAL*.

The third paper is entitled *Section 10 Forbearance: Asking the Right Questions to Get the Right Answers*. In this paper, George and Larry showed how the FCC’s *Phoenix Forbearance Order* rejects the validity of forbearance in the presence of either monopoly or duopolistic competition. Given the Commission’s repeated finding that Broadband Service Providers are “terminating monopolists” as a justification for implementing Open Internet Rules, the Commission cannot reclassify broadband Internet access as a telecommunications service and then easily use its forbearance authority to create what is colloquially referred to as “Title II Lite.” In fact, George and Larry show that if the Commission classifies broadband as a common carrier Title II service, then the Commission’s stance on broadband competition—combined with the agency’s conclusions about duopolistic competition in the *Phoenix Forbearance Order*—could require, for the first time, the price regulation of all retail broadband connections. Given the above, George and Larry recommended that if the Commission wants to continue to use the notion of a “terminating monopoly” to justify Open Internet rules, then its cleanest legal option is to move forward under Section 706 as the D.C. Circuit in *Verizon v. FCC* instructed. This paper was presented and TPRC this year and was published as 23 *COMMLAW CONSPECTUS* 126.

In an effort to validate the accuracy of our conclusions, the Phoenix Center held a series of events with our peers to make sure we were on track. These events included a “Teleforum”, two panels at our Annual Symposium, and our Annual Rooftop Policy Roundtable. So far, despite a few attempts, nobody has demonstrated that we are wrong.

**The Improper Politicization of Broadband Policy**

While it would be naïve to think that politics do not play a significant role in what is supposed to be a dispassionate decision-making process on the merits and law at the Federal Communications Commission, when it comes to putting politics over substance of late, it unfortunately appears that we have hit a new nadir.

To illustrate this point, we released a detailed study entitled *The Unpredictable
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FCC: Politicizing Communications Policy and its Threat to Broadband Investment (which was subsequently published in BLOOMBERG BNA), where we detailed how over the last several years political pressure has led the Commission either to reverse, or threaten to reverse, the major bi-partisan deregulatory policies of the past two decades. As firms require long-term certainty that they will be able to earn a return on the significant sunk capital investments, the increasing risk that the FCC will change its mind to accommodate the shifting political winds casts a pall on broadband investment in the United States.

Larry also demonstrated in an op-ed entitled The “Clcivist” In Chief published in THE HILL how the White House isn’t helping in this regard. Indeed, rather than set forth a detailed proposal of how a “Title II Lite” regime might work, the President of the United States instead cynically chose to launch a formal “clcivist” campaign to pressure what is supposed to be an independent administrative agency bound by the precepts of both the Communications Act and the Administrative Procedures Act. And, as if this was not bad enough, Larry repeatedly demonstrated that the President possessed a startling ignorance of the basic facts at issue, leading Larry to observe that the President’s “talking points offer nothing new to the debate other than an endorsement of regulations his team plainly knows nothing about.”

Finally, in an op-ed published THE HILL entitled Is the FCC Still Trying to Stifle Political Speech?, Larry exposed the startling fact that buried deep in the FCC’s Staff Working Group Report on Process Reform, the agency was contemplating forcing anyone filing at the Commission to disclose whether they received any direct or indirect support “from industry.” According to the Report, implementation of such a rule will permit the agency to “evaluate the credibility of factual and policy arguments by knowing who is making them.” (Emphasis supplied.) Putting aside the problem that such a proposal runs in clear violation of Supreme Court precedent, what is particularly troubling is that we have a naked admission by the Commission that it does not intend to evaluate the merits of the arguments before it, but that the agency will assess the “credibility of … arguments” based on “who is making them” and, thus, the filer’s presumed “motives.”

Conclusion

As policy debates have become increasingly politicized over the years, we still believe (perhaps over-optimistically) that, in the end, substance matters. The policy choices we face are hard, and they should be treated with the respect and analytical rigor they deserve. Hopefully, the Phoenix Center has contributed positively towards restoring some of this analytical rigor.
CONFERENCES AND SYMPOSIUM

ROOFTOP POLICY ROUNDTABLE:

This June, the Phoenix Center held our Third Annual Rooftop Policy Roundtable Discussion where we facilitate a set of interactive conversations on the roof of the University Club to a standing-room only crowd over drinks and cigars. This year, we explored the bounds of the FCC’s jurisdiction over Broadband Service Providers. Not only were we honored with a keynote discussion with FCC Commissioner Michael O’Rielly, but we had an amazing discussion from an all-star legal panel including Sam Feder – Partner, Jenner and Block (and former FCC General Counsel); Matthew Berry – Chief of Staff, Office of Commissioner Pai (and former FCC General Counsel); Russ Hanser – Partner, Wilkinson Barker Knauer, LLP; and Robert Quinn – Senior Vice President, Federal Regulatory and Chief Privacy Officer, AT&T.

PHOENIX CENTER TELEFORUM

This October we held a teleforum to discuss our paper Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service. Joining us were long-time FCC lawyers Jeffrey Lanning – Vice President, CenturyLink; Tom Koutsky – Chief Policy Counsel, Connected Nation; and Thomas Navin – Partner, Wiley Rein and former Chief, FCC Wireline Competition Bureau.

PHOENIX CENTER ANNUAL TELECOMS SYMPOSIUM

On December 2, 2014, the Phoenix Center held its fourteenth Annual U.S. Telecoms Symposium to another standing-room crowd. The theme of this year’s Symposium was “Competition-Competition-Competition” or “Regulation-Regulation-Regulation”? and the discussions were both informative and lively.

As always, we began with our traditional “Economists Panel.” This year’s panel was comprised of Dr. Dorothy Robyn, former Commissioner of the Public Buildings Service (PBS) – U.S. General Services Administration and author of “Buildings and Bandwidth: Lessons for Spectrum Policy from Federal Property Management”; Dr. Tim Brennan, Chief Economist – Federal Communications Commission; and Dr. George Ford – Chief Economist, The Phoenix Center. The panel was moderated by Dr. Jerry Duvall, Senior Advisor to the Bureau Chief for Economic Analysis – International Bureau, Federal Communications Commission.

Our next panel was entitled “Hot Issues in Communications Law” and our panelists included Chris Wright, Partner - Harris, Wiltshire & Grannis LLP and former General Counsel – Federal Communications Commission; Bryan Tramont, Managing Partner – Wilkinson Barker Knauer, LLP and former Chief of Staff – Federal Communications Commission; Angela Giancarlo, Partner – Mayer Brown and former Chief of Staff – Commissioner Rob McDowell; and Sam Feder, Partner – Jenner & Block and Former General Counsel – Federal Communications Commission.

Our final panel was entitled “Policy Priorities for 2015” and we were joined by Nuala O’Connor, President – Center for Democracy and Technology; Senator John Sununu, Honorary Co-Chair – Broadband for America; Hon. Michael Powell, President and CEO – National Cable & Telecommunications Association and Former Chairman, Federal Communications Commission; and Congressman Rick Boucher, Honorary Co-Chair – Internet Innovation Alliance.

The Symposium ended with the presentation of the Phoenix Center’s Annual Jerry B. Duvall Public Service Award to Senator Deb Fischer (R-Nebraska). The Duvall Award does not seek to recognize the recipient’s personal politics; rather, the Duvall Award goes to the policymaker who most demonstrated the “political courage in, and contribution of analytical rigor to, the United States telecoms policy debate.” Given Senator Fischer’s recent efforts to bring a tech policy “reboot”, we could think of nobody who epitomized this standard more in 2014.
YEAR IN PICTURES
MISSION STATEMENT

The Phoenix Center for Advanced Legal & Economic Public Policy Studies is a non-profit 501(c)(3) educational and research organization that studies broad public-policy issues related to governance, social and economic conditions, with a particular emphasis on the law and economics of telecommunications and high-tech industries.

Founded in 1998, the Phoenix Center’s mission is to provide independent assessments of the economic and material implications of regulatory and economic policy in the U.S. and abroad.

The Phoenix Center achieves this goal by providing an honest and credible voice in the public dialectic by supporting objective, solutions-based academic research to the forefront that is unencumbered by political hyperbole or agendas and is instead well grounded in fact, law and economic theory.

Long-Term Goals:

(1) The Phoenix Center’s seeks to remind stakeholders that it is crucial to avoid political hyperbole and instead approach public policy with the analytical rigor and solemnity it deserves.

(2) The Phoenix Center seeks to promote public confidence in the democratic process, government’s institutions and in the free enterprise system.

(3) The Phoenix Center seeks to foster an environment where citizens can openly and vigorously debate today about what kind of a world they want to live in tomorrow.

The “ideal of democracy rests on the belief that the view which will direct government emerges from an independent and spontaneous process. It requires, therefore, the existence of a large sphere independent of majority control in which the opinions of the individuals are formed.”

— Friedrich von Hayek

PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES
5335 Wisconsin Avenue, NW, Suite 440
Washington, D.C. 20015
Tel: (+1) (202) 274-0235 ● Fax: (+1) (202) 318-4909
www.phoenix-center.org