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## Press Release

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### TITLE II RECLASSIFICATION WILL FORCE BROADBAND SERVICE PROVIDERS TO CHARGE EDGE PROVIDERS FOR TERMINATING ACCESS

#### *In the Face of a "Terminating Monopoly" the FCC Cannot Forbear From Tariffing Requirement*

WASHINGTON, D.C. – As the Federal Communications Commission works its way through formulating a new set of legally-sustainable “Open Internet” rules, the agency is coming under intense political pressure to reclassify broadband Internet access as a common carrier telecommunications service under Title II of the Communications Act. Doing so, it is argued, is the only way to provide the agency with sufficient legal authority to prevent Broadband Service Providers (“BSPs”) from engaging in anticompetitive conduct. However, almost no attention has been directed at the fine details of how reclassification will be implemented. A new study released by the Phoenix Center today entitled *Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service* demonstrates that the end result of reclassification would radically change the economic fabric of the Internet.

In particular, the Phoenix Center shows—pursuant to the plain terms of the FCC’s governing statute, current case law, and the Commission’s own precedent—that reclassification turns edge providers into “customers” of Broadband Service Providers. 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.

The Phoenix Center also shows—again pursuant to the plain text of the Communications Act, recent case law, and the FCC’s own precedent—that 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.” In the presence of a terminating monopoly, competition (a key component of Section 10) cannot be used as a basis for forbearance of a tariffed “terminating service,” which is the exact the service the “Open Internet” rules are supposed to be all about. Accordingly, given the Commission’s consistent finding that all Broadband Service Providers are “terminating monopolists” (i.e., each BSP is “dominant” for terminating access to their customers), the agency has boxed itself in for mandatory tariffing under Title II.

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"Reclassification is mostly promoted by people with no idea about what Title II formally entails," says Phoenix Center Chief Economist and study co-author Dr. George S. Ford. "Make no mistake: reclassification will likely require tariffed termination for all edge providers, and these new fees for terminating access will radically change the way the Internet operates as we know it. Whether that's 'good' or 'bad' I leave for others to judge."

"The FCC has boxed itself in by describing Broadband Service Providers as a 'terminating monopoly'," says Phoenix Center President and study co-author Lawrence J. Spiwak. "Proponents of reclassification cannot have their cake and eat it too—the presence of a 'terminating monopoly' prohibits the agency from using its forbearance authority under Section 10 to implement some sort of 'Title II Lite'."

A full copy of the paper, PHOENIX CENTER POLICY BULLETIN NO. 36: *Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service*, may be downloaded free from the Phoenix Center's web page at: <http://www.phoenix-center.org/PolicyBulletin/PCPB36Final.pdf>.

*The Phoenix Center is a non-profit 501(c)(3) organization that studies broad public-policy issues related to governance, social and economic conditions, with a particular emphasis on the law and economics of the digital age.*