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Press Release

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NEW PHOENIX CENTER ANALYSIS FINDS THAT FCC "RIGGED THE GAME" TO REGULATE BROADBAND UNDER SECTION 706

New Perspective Demonstrates that Even FCC's Own Financial Analysis Admits that "Universal Ubiquity" is Financially Unreasonable

WASHINGTON, D.C. - Over the past several years, the FCC under Chairman Julius Genachowski has argued that because broadband is not universally ubiquitous, the agency may use the "reasonable and timely" standard contained in Section 706 in the Communications Act as an independent source of legal authority to impose regulation over advanced services. In a new PERSPECTIVE released today, the Phoenix Center looks at the agency's own data and finds that there is a profound defect with the Commission's argument.

Specifically, the Phoenix Center demonstrates that Commission's own financial analysis—conducted as part of its *National Broadband Plan*—shows that the cost of ubiquitous availability via terrestrial means (i.e., wired and wireless) exceeds any plausible measure of the benefit. In fact, the agency's *National Broadband Plan* explicitly recognized that the cost of ubiquitous coverage of terrestrial broadband could not be justified, and recommended the use of "satellite broadband" as an alternative since it is ubiquitously available. Obviously, if the agency wanted to use Section 706 as the foundation for an aggressively regulatory agenda, then it needed to exclude satellite Internet service from the definition of broadband. Not surprisingly, the Commission did so. By ignoring its own evidence and by carefully defining broadband service, the FCC has successfully rigged the game to permit expansive broadband regulation under Section 706.

"By establishing ubiquitous availability as the standard for 'reasonable and timely', the Commission set a standard that, by its own calculations, will be impossible to satisfy" said study co-author and Phoenix Center President Lawrence J. Spiwak. "In so doing, the legal and factual predicates for much of the agency's aggressive regulatory agenda stand on shaky ground."

"For the Commission's analysis to fly, it must be reasonable to spend \$50,000 or more to deploy broadband to a single household that may or may not use the service," said study co-author and Phoenix Center Chief Economist Dr. George Ford. "No rational analysis would support that level of expense."

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A complete copy of the study, PHOENIX CENTER POLICY PERSPECTIVE NO. 12-04: *Justifying the Ends: Section 706 and the Regulation of Broadband*, may be downloaded free from the Phoenix Center's web page at: <http://www.phoenix-center.org/perspectives/Perspective12-04Final.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 telecommunications and high-tech industries.