

**PHOENIX** FOR ADVANCED  
LEGAL & ECONOMIC  
C E N T E R PUBLIC POLICY STUDIES  
[www.phoenix-center.org](http://www.phoenix-center.org)

## 2009 ANNUAL REPORT

**PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES**

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# PRESIDENT'S MESSAGE

2009 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 published work was prodigious. For example, the Phoenix Center published four POLICY PAPERS, one POLICY BULLETIN and five POLICY PERSPECTIVES. We are also proud to report that no less than six of our papers were published, or accepted for publication, in a variety of academic journals.

While our research covered a wide variety of issues, we are particularly proud of two pieces of research in 2009.

The first piece was the *Broadband Adoption Index*, sponsored by the Governments of Portugal and Brasil. We were honored that Phoenix Center Chief Economist George Ford was invited to present this research before the OECD's Expert Workshop on Mobile Broadband Adoption in Lisbon. We also presented a full copy of the paper at a major event at the National Press Club featuring a keynote address from FCC Commissioner Robert McDowell.

The second paper was entitled *Internet Use and Depression Among the Elderly* by Phoenix Center Chief Economist Dr. George Ford and Visiting Scholar Sherry G. Ford. In this paper, Drs. Ford made a significant contribution to the literature by performing what we believe to be the first empiric study which shows that Internet use by the elderly can reduce depression by approximately twenty percent (20%). This paper was presented both at the prestigious Telecommunications Policy Research Conference and at a Phoenix Center Sponsored event where attended by some of the leading members of the elderly policy community.

The Phoenix Center also had a large media presence in 2009. Phoenix Center staff authored six op-eds in various national media outlets such as the WASHINGTON TIMES, FOX FORUM, FORBES.COM and THE HILL. Phoenix Center staff also did several local and national radio appearances to discuss our research, and we were cited prolifically in the national and international press as well as in the blogosphere.

The Phoenix Center's Annual U.S. Telecoms Symposium was also another phenomenal success. In addition to presenting panels comprised of some of the leading experts in the industry, we were honored to have FCC Commissioner Meredith Attwell Baker deliver the keynote address. Moreover, we were delighted to bestow upon Congressman G.K. Butterfield (NC-1<sup>st</sup>) the Phoenix Center's prestigious annual Jerry B. Duvall Public Service Award.

The Phoenix Center's research also continued to make a significant contribution to the dialectic in 2009. Indeed, Phoenix Center staff presented our research before such diverse bodies as the United States Congress, the Federal Communications Commission, the National Telecommunications and Information Agency, the General Accountability Office and the New York City Council.

Finally, it was with a heavy heart that we said goodbye to Phoenix Center co-founder and Resident Scholar Thomas M. Koutsky, who left to take a senior position with the FCC to work on the National Broadband Plan. However, we were pleased that two of our Adjunct Fellows, Professors Randy Beard and Michael Stern, took up a more permanent role and became Senior Scholars with the Phoenix Center.

Once again, not a bad year...

— Lawrence J. Spiwak, President

# PHOENIX CENTER PUBLICATIONS

The Phoenix Center continued to publish a prodigious amount of scholarly research in 2009. 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 PAPER SERIES

The Phoenix Center's POLICY PAPER SERIES seeks to provide an in-depth analysis of the current regulatory and political paradigms, as well as to provide constructive and well-reasoned solutions to the problems of the day. In 2009, the Phoenix Center issued the following POLICY PAPERS:

- *The Need for Better Analysis of High Capacity Services*, PHOENIX CENTER POLICY PAPER NO. 35 (June 2009).
- *The Broadband Adoption Index: Improving Measurements and Comparisons of Broadband Deployment and Adoption*, PHOENIX CENTER POLICY PAPER NO. 36 (July 2009) and forthcoming, FEDERAL COMMUNICATIONS LAW JOURNAL (Spring 2010).
- *Market Definition and the Economic Effects of Special Access Price Regulation*, PHOENIX CENTER POLICY PAPER NO. 37 (October 2009).
- *Internet Use and Depression Among the Elderly*, PHOENIX CENTER POLICY PAPER NO. 38 (October 2009).

## 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 BULLETIN in 2009:

- *Expanding the Digital Divide: Network Management Regulations and the Size of Providers*, PHOENIX CENTER POLICY BULLETIN NO. 23 (October 2009).

## 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 2009:

- PHOENIX CENTER PERSPECTIVES NO. 09-01: *Normalizing Broadband Connections* (May 12, 2009).
- PHOENIX CENTER PERSPECTIVES NO. 09-02: *Econometric Analysis of Broadband Subscriptions: A Note on Specification* (May 12, 2009).
- PHOENIX CENTER PERSPECTIVES NO. 09-03: *Be Careful What You Ask For: A Comment on the OECD's Mobile Price Metrics* (September 16, 2009).
- PHOENIX CENTER PERSPECTIVES NO. 09-04: *Finding the Bottom: A Review of Free Press's Analysis of Network Neutrality and Investment* (October 29, 2009).
- PHOENIX CENTER PERSPECTIVES NO. 09-05: *Whoops! Berkman Study Shows "Open Access" Reduces Broadband Consumption* (November 12, 2009).

## OTHER PUBLICATIONS:

- PHOENIX CENTER RESEARCH MEMORANDUM: *Applicability of Phoenix Center Research to the FCC's National Broadband Plan Notice of Inquiry* (GN Docket No. 09-51) (June 2, 2009).

# CONTRIBUTING TO THE PUBLIC DIALECTIC

In 2009, Phoenix Center scholars again continued to make numerous contributions to the public dialectic in a wide variety of forums.

## SIGNIFICANT APPOINTMENTS AND GRANTS:

- Governments of Portugal and Brasil sponsored the development of the *Broadband Adoption Index* for presentation before the OECD Expert Workshop on Mobile Broadband Adoption in Lisbon;
- Phoenix Center Chief Economist Dr. George Ford remains in top 1% of authors downloaded on the Social Science Network and Phoenix Center President Lawrence J. Spiwak remains in top 2% of authors downloaded on the Social Science Research Network;
- Phoenix Center Chief Economist continues to serve on Connect Alabama by direct appointment of the Governor; and.
- Phoenix Center Co-Founder and Resident Scholar Thomas M. Koutsky hired as Special Counsel, Infrastructure Task Force, FCC Omnibus Broadband Plan.

## TESTIMONY

In 2009, Phoenix Center staff was called upon by several different bodies to testify and present our research, including:

- Phoenix Center Chief Economist George testifies before the House Energy & Commerce Committee on *An Examination of Competition in the Wireless Industry*.
- Phoenix Center Chief Economist Dr. George Ford participates in FCC Staff Workshop on *Broadband Deployment to Unserved/Underserved Areas* as part of the National Broadband Plan process;

- Phoenix Center Chief Economist George Ford participates in NTIA Workshop on *Broadband Data Transparency*; and
- Phoenix Center President Lawrence J. Spiwak testifies before New York City Council on *Establishing Strong Network Neutrality Principles in Order to Protect the Internet*.

## ACADEMIC PUBLICATIONS

In 2009, the Phoenix Center had six of its papers published, or accepted for publication, in such noted academic journals as:

- *A Policy And Economic Exploration of Wireless Carterfone Regulation*, 25 SANTA CLARA COMPUTER & HIGH TECH. L.J. 647 (2009);
- *Network Neutrality and Foreclosing Market Exchange*, 1 INT. J. MANAGEMENT AND NETWORK ECONOMICS 160 (2009);
- *Valley of Death in the Innovation Sequence*, AMERICAN JOURNAL OF EVALUATION (Forthcoming Winter 2010);
- *Separating Politics from Policy in FCC Merger Reviews: A Basic Legal Primer of the "Public Interest" Standard*, COMMLAW CONSPECTUS (Forthcoming Spring 2010);
- *The Broadband Adoption Index: Improving Measurements and Comparisons of Broadband Deployment and Adoption*, FEDERAL COMMUNICATIONS LAW JOURNAL (Forthcoming Spring 2010).
- *Tort Liability for Software Developers: A Law & Economics Perspective*, JOHN MARSHALL JOURNAL OF COMPUTER AND INFORMATION LAW (Forthcoming Spring 2010).

## SPEECHES AND CONFERENCE PARTICIPATION

Once again, Phoenix Center staff was asked to present our research at a variety of forums, including:

- 36th Annual Public Utility Research Center Conference;
- New Mexico State University Institute for Public Utilities Santa Fe Conference for State Regulators;
- Federal Communications Bar Association Seminar - *Dial N for Numbering: Understanding the Role of Numbers and Numbering Policy in Modern Communications*;
- Federal Communications Bar Association Seminar - *Spectrum Dynamics in the 21st Century: The Link Between Sound Spectrum Policy and America's Place in the Global Economy*;
- Pike & Fischer Broadband Policy Summit;
- Montana Telephone Association Annual Conference;
- Michigan State University's "Camp NARUC";
- Telecommunications Policy Research Conference;
- Columbia University's CITI "State of Telecom" Conference;
- Federal Communications Bar Association Conference on the FCC's National Broadband Plan;
- World Information Technology and Services Alliance (WITSA) Global Public Policy Summit in Bermuda.

## PHOENIX CENTER BRIEFINGS AND WORKSHOPS:

The Phoenix Center also put on several briefings and workshops to present our research to various policy makers. These briefings included:

- A briefing at the National Press Club to entitled: *Understanding Broadband Metrics: The Broadband Adoption Index* featuring a keynote from FCC Commissioner Robert McDowell and a discussion of research by Dr. Michael Katz - University of California, Berkeley (and former FCC Chief Economist); Carlos Rodriguez - Telefonica Internacional USA, Inc. and Charles Goldfarb - Congressional Research Service.
- A briefing at the University Club on *Internet Use and Depression Among the Elderly* featuring Alixe McNeill - Vice President, Program Development, National Council on Aging; Leigh Purvis - *Technical & Policy Research Analyst*, AARP Public Policy Institute Daniel Wilson - *Executive Director of Policy and Program Development*, National Caucus and Center on Black Aged; Anthony K. Sudler - *President & Chief Executive Officer*, Alzheimer's Association (National Capital Area Chapter); John Alger - *Director of Operations*, SeniorNet; and Janice Branham - *Director of Communications and Technology*, The OASIS Institute.

## OP-EDS AND LETTERS TO THE EDITOR:

- *Broadcasting Diversity*, WASHINGTON TIMES;
- *Is YOUR Broadband Access About to Go Bye Bye?* FOX FORUM;
- *Fixing The U.S. Broadband Problem*, FORBES.COM;
- *This Probe Could Hit a Dead Zone*, WASHINGTON TIMES;
- *OECD Research Faulty: U.S. Rates for Mobile Use Not Really Higher*, WASHINGTON TIMES;
- Letter to the Editor: *Wireless firms' Business Practices Spur Innovation*, THE HILL.

# IN THE NEWS...

In 2009, the Phoenix Center's work and staff were cited prolifically by major news and trade media outlets around the world, including:

- ASSOCIATED PRESS
- BROADBAND CENSUS.CM
- BRIEBART.COM
- BROADCASTING & CABLE
- CABLEFAX DAILY
- CNBC
- COMMUNICATIONS DAILY
- COMSDAILY (AUSTRALIA)
- CONGRESS DAILY
- EARTHTIMES
- EDUCAISE
- ETHIOPIAN REVIEW
- EXECUTIVE LEADERS RADIO
- FINANCIAL NEWS NETWORK TELEVISION (CANADA)
- FOX NEWS
- GOVERNMENT TECHNOLOGY
- INTERNET NEWS
- INVESTORS' BUSINESS DAILY
- IP BROADBAND
- IP BUSINESS NEWS
- IP NETWORK POLICY REPORT
- IP CARRIER
- KRES RADIO (MISSOURI)
- LARS LARSON NATIONAL RADIO SHOW
- MARKETWATCH
- MEDICAL NEWS TODAY
- MULTICHANNEL NEWS
- OREGON STATESMAN JOURNAL
- REUTERS
- SAN FRANCISCO EXAMINER
- SATELLITE WEEK
- SEATTLE TIMES
- SENIOR JOURNAL
- SUN HERALD
- TALK NEWS SERVICE RADIO
- TELECOMMUNICATIONS REPORTS
- THE HILL
- THE MODESTO BEE
- TMC.NET
- TR DAILY
- WASHINGTON INTERNET DAILY
- WASHINGTON TIMES
- XCHANGE MAGAZINE
- XOMMSDAY (AUSTRALIA)



# ANNUAL U.S. TELECOMS SYMPOSIUM AND JERRY B. DUVALL PUBLIC SERVICE AWARD

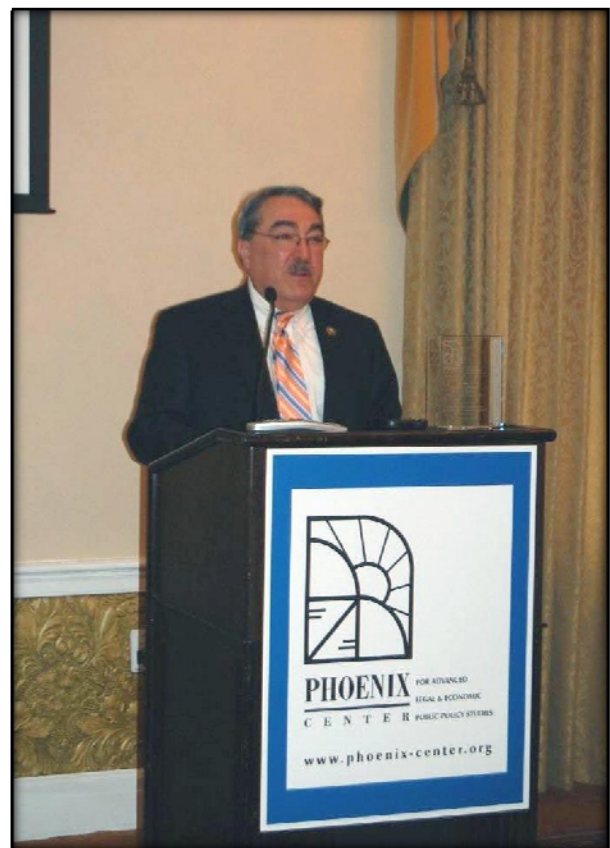
On December 3, 2009, nearly 100 people from government, academia, industry and the media joined the Phoenix Center for its Annual U.S. Telecoms Symposium at the University Club in Washington, D.C. This year's Symposium theme was *Driving Policy Through a "Fact-Based and Data-Driven Process"* and the discussions were both substantive and lively.

The Symposium kicked off with the traditional "Economists' Panel." This year, the Economists' Panel included Dr. Robert Willig, Professor of Economics - Princeton University; Dr. Marius Schwartz, Professor of Economics - Georgetown University; Dr. Jonathan Baker, Chief Economist - Federal Communications Commission; and Dr. George Ford, Chief Economist - The Phoenix Center. As always, the panel was moderated by Dr. Jerry Duvall, Honorary Phoenix Center Chief Economist Emeritus and current FCC International Bureau Chief Economist.

After the Economists' Panel, we were extremely privileged to welcome FCC Commissioner Meredith Attwell Baker as the keynote speaker of the Symposium. Commissioner Baker used this opportunity to set forth her views on *A Spectrum Management Framework*.

The second panel was entitled *Does Congestion Matter?* and was comprised of the leading technologists that run the most sophisticated networks in the world. Panelists included Dr. Edward Amoroso, Chief Security Officer - AT&T; Jason Livingood, Executive Director of Internet Systems Engineering - Comcast; Mark Wegleitner, Senior Vice President, Technology - Verizon; and Dr. Rob Curtis, Deployment Director - FCC Omnibus Broadband Initiative.

The Symposium ended with the presentation of the Phoenix Center's Annual Jerry B. Duvall Public Service Award to Congressman G.K. Butterfield (NC-1<sup>st</sup>) and Majority Chief Deputy Whip. 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 Congressman Butterfield's track record of promoting broadband investment and universal coverage for all and his principled stand on making sure the FCC balances the cost and benefits of potential network neutrality regulations, we can think of nobody who epitomized this standard more in 2009.



# YEAR IN PICTURES



# RESEARCH INTERESTS FOR 2010

2010 promises to bring a wide variety of complex broadband and technology policy challenges. In our continuing spirit of contributing positively to the dialectic, the Phoenix Center has a series of research projects underway designed to educate the public and policymakers on the impact of broadband and technology policy. As always, our research agenda is flexible, thus allowing us to adapt quickly depending on the tenor of the debate at the time.

## ADOPTION AND IMPLEMENTATION OF THE FCC'S "NATIONAL BROADBAND PLAN"

As part of the American Recovery and Reinvestment Act, the Federal Communications Commission ("FCC") in February 2010 will issue a far-reaching "National Broadband Plan" that will set forth various proposals to ensure all Americans with ubiquitous and affordable broadband. This National Broadband Plan will no doubt touch on almost every issue related to broadband policy, and implementation will be complex and time consuming. While it is impossible to know exactly what will be contained in the end report, at minimum, we expect the debate to focus on the following important topics:

### *Spectrum Caps:*

With the potential of a looming "spectrum crisis," we intend to study the complex issue of spectrum caps and the policy consequences of the trade-off between the desire for new entrants in the market against the potential efficiency gains from allowing existing players to acquire additional spectrum. Given the presence of spillover effects and the high fixed and sunk costs associated with the industry, our preliminary results indicate that few firms with more spectrum may be socially optimal.

### *Special Access:*

The FCC has highlighted access to backhaul and special access lines, particularly in rural

areas, as a potential focal point of the National Broadband Plan. As to be expected, some argue that these prices are "too high", while others contend that prices reflect competitive levels. To help answer this important question, the Phoenix Center is contemplating a study to examine whether prices increases occurred during or post- price cap regulation. If our results indicate the former, then the validity of continuing price cap regulation for Special Access services remains very much in question.

### *Benefits of Broadband:*

The Phoenix Center has shown that issues of broadband adoption do not lie with a supply-side problem, but rather with demographic factors. Continuing with this research, we intend to study in 2010 how Internet use will aid in keeping unemployed workers from becoming "discouraged" and remain in the potential labor pool.

### *International Broadband Rankings*

How we measure the success of the National Broadband Plan is important. To this end, the Phoenix Center may conduct a study that would show where the United States would rank if existing trends continue, *ceteris paribus*, and where the United States should rank if the policy recommendations contained in the National Broadband Plan prove successful.

## NETWORK NEUTRALITY

The network neutrality debate has many manifestations, creating a vast field of potential research topics. We believe that every form of regulation should pass through a consumer and social welfare cost/benefit analysis. Building on prior Phoenix Center research, we intend to focus on the following three areas of the debate: (a) pricing of services; (b) the effect of net neutrality regulation on private investment; and (c) the effect of network neutrality regulation on innovation.

# 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 maximize consumer welfare by promoting free markets, competition, and individual freedom and liberty.

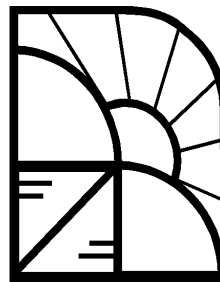
The Phoenix Center achieves this goal by providing an honest and credible new voice in the public dialectic by supporting objective, solutions-based academic research to the forefront that is unencumbered by political hyperbole or agendas and is instead well grounded in fact, law and economic theory.

## Long-Term Goals:

- (1) The Phoenix Center seeks to demonstrate that consumer welfare is best enhanced by promoting free markets, competition, and individual freedom and liberty.
- (2) 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.
- (3) The Phoenix Center seeks to promote public confidence in the democratic process, government's institutions and in the free enterprise system.
- (4) 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



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