

PHOENIX FOR ADVANCED
LEGAL & ECONOMIC
C E N T E R PUBLIC POLICY STUDIES
www.phoenix-center.org

2010 ANNUAL REPORT

PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES

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PRESIDENT'S MESSAGE

2010 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, in 2010, the Phoenix Center published three POLICY PAPERS, two POLICY BULLETINS and eight POLICY PERSPECTIVES. We are also proud to report that no less than twelve of our papers were published, or accepted for publication, in a variety of leading academic journals. In addition, I was delighted to write an essay on Article III for a wonderful project called "Constituting America" which encourages everyone to read and learn about the Constitution and the Federalist Papers. Along the same line, I was selected to be a co-chair of the FEDERAL COMMUNICATIONS LAW JOURNAL committee by the Federal Communications Bar Association.

The Phoenix Center also again had a large media presence in 2010. Phoenix Center staff authored op-eds in various national media outlets such as the FORBES.COM and CNET. In addition, Phoenix Center staff appeared on several national radio shows to discuss our research, and we were cited prolifically in the national and international press as well as in the blogosphere.

We also held two phenomenal events this year.

The first event we held was a workshop to discuss PHOENIX CENTER POLICY PAPER NO. 40, *The Broadband Credibility Gap*. Featuring several former FCC officials (including the General Counsel, Deputy General Counsel and Chief of Staff) present at the time the Commission affirmatively declined not to classify advanced services as a common carrier service under Title II of the Communications Act, the panelists discussed

the merits of FCC's Chairman Julius Genachowski's proposed "Third Way" approach to broadband regulation. In addition, we were honored that FCC Commissioner Robert McDowell was able to join us to offer his thoughts on this important issue. As an added bonus, as a direct result of this workshop, the *Broadband Credibility Gap* was accepted for publication in the winter issue of COMMLAW CONSPECTUS.

We are also pleased to report that 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 from academia, industry and senior officials from the White House, the Federal Trade Commission and the Federal Communications Commission, we were delighted to bestow upon FCC Commissioner Meredith Attwell Baker 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 2010. For example, Phoenix Center Chief Economist George Ford continued to be in the top 1% of authors downloaded on the Social Science Research Network, while I remained in the top 2% of authors downloaded. The General Accountability Office also cited to our *Broadband Adoption Index*. Finally, Phoenix Center research was cited extensively by the Federal Communications Commission in their *National Broadband Plan* and in the 14th *CMRS Competition Report*. The FCC also took the highly unusual step of dedicating a lengthy post on their official blog about PHOENIX CENTER POLICY BULLETIN NO. 25, *Jobs, Jobs, Jobs: Communications Policy and Employment Effects in the Information Sector*.

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 2010. 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 2010, the Phoenix Center issued the following POLICY PAPERS:

- PHOENIX CENTER POLICY PAPER NO. 39, *Internet Use and Job Search* (January 2010);
- PHOENIX CENTER POLICY PAPER NO. 40, *The Broadband Credibility Gap* (June 2010); and
- PHOENIX CENTER POLICY PAPER NO. 41, *Wobbling Back to the Fire: Economic Efficiency and the Creation of a Retail Market for Set-Top Boxes* (December 2010).

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 2010:

- PHOENIX CENTER POLICY BULLETIN NO. 24, *Evaluating Broadband Stimulus and the National Broadband Plan: Establishing Expectations for Broadband Rankings* (March 2010); and
- PHOENIX CENTER POLICY BULLETIN NO. 25, *Jobs, Jobs, Jobs: Communications Policy*

and Employment Effects in the Information Sector (October 2010).

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 2010:

- PHOENIX CENTER PERSPECTIVE NO. 10-01, *Internet Use and Job Search: More Evidence* (January 2010);
- PHOENIX CENTER PERSPECTIVE NO. 10-02, *Sabotaging Content Competition: Do Proposed Net Neutrality Regulations Promote Exclusion?* (March 2010);
- PHOENIX CENTER PERSPECTIVE NO. 10-03, *Non-Discrimination or Just Non-Sense: A Law and Economics Review of the FCC's New Net Neutrality Principle* (March 2010);
- PHOENIX CENTER PERSPECTIVE NO. 10-04, *Substantial Profits in the Broadband Ecosystem: A Look at the Evidence* (April 2010);
- PHOENIX CENTER PERSPECTIVE NO. 10-05, *Fabricating a Broadband Crisis? More Evidence on the Misleading Inferences from OECD Rankings* (July 2010);
- PHOENIX CENTER PERSPECTIVE NO. 10-06, *Be Careful What You Ask For (Redux): A Comment on the New America Foundation's Mobile Price Metrics* (November 2010);
- PHOENIX CENTER PERSPECTIVE NO. 10-07, *Endogenous Sunk Costs, Quality Competition and Welfare: A Technical Note* (December 2010); and
- PHOENIX CENTER PERSPECTIVE NO. 10-08, *The Impossible Dream: Forbearance After the Phoenix Order* (DECEMBER 2010).

CONTRIBUTING TO THE PUBLIC DIALECTIC

In 2010, Phoenix Center scholars again continued to make numerous contributions to the public dialectic in a wide variety of forums.

WEB TRAFFIC:

On average, the Phoenix Center's web page received approximately 1,200 hits a day in 2010.

SIGNIFICANT APPOINTMENTS AND TESTIMONY:

- 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 Dr. George Ford continues to serve on Connect Alabama by direct appointment of the Governor;
- Phoenix Center Chief Economist Dr. George Ford invited to participate in broadband researcher workshop sponsored by National Telecommunications and Information Administration; and
- Phoenix Center President Lawrence J. Spiwak appointed co-chair of FEDERAL COMMUNICATIONS LAW JOURNAL committee of the Federal Communications Bar Association.

ACADEMIC PUBLICATIONS

In 2010, the Phoenix Center had no less than twelve of its papers published, or accepted for publication, in leading academic journals:

- *A Valley of Death in the Innovation Sequence: An Economic Investigation*, 18 RESEARCH EVALUATION 343-356 (2009);

- *The Broadband Adoption Index: Improving Measurements and Comparisons of Broadband Deployment and Adoption*, 62 FEDERAL COMMUNICATIONS LAW JOURNAL 343 (2010);
- *Quantifying the Cost of Substandard Patents: Some Preliminary Evidence*, 12 YALE JOURNAL ON LAW & TECHNOLOGY 240 (2010);
- *Separating Politics from Policy in FCC Merger Reviews: A Basic Legal Primer of the "Public Interest" Standard*, 18 COMMLAW CONSPECTUS 329 (2010);
- *Tort Liability For Software Developers: A Law & Economics Perspective*, 27 JOHN MARSHALL JOURNAL OF COMPUTER AND INFORMATION LAW 199 (2010);
- *The Pricing of Pole Attachments: Implications and Recommendations*, 9 REVIEW OF NETWORK ECONOMICS 3 (2010);
- *Broadband Credibility Gap*, forthcoming COMMLAW CONSPECTUS (2010);
- *An Investigation into the Relationship of Retail Gas prices on Oil Company Profitability*, forthcoming APPLIED ECONOMICS (2011);
- *The Need for Better Analysis of High Capacity Services*, forthcoming JOHN MARSHALL JOURNAL OF COMPUTER AND INFORMATION LAW (2011);
- *Broadband Efficiency Index*, forthcoming INTERNATIONAL ECONOMIC JOURNAL (2011);
- *Expanding the Digital Divide: Network Management Regulations and the Size of Providers*, forthcoming JOURNAL OF APPLIED ECONOMY (2011); and
- *Broadband Expectations and the Convergence of Ranks*, forthcoming TELECOMMUNICATIONS POLICY (2011).

OP-EDS:

- *Bright Lines, Big Problems*, FORBES.COM;
- *The FCC's Disingenuous "Third Way" on Broadband*, CNET.

SPEECHES AND CONFERENCE PARTICIPATION

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

- Pike and Fisher Broadband Policy Summit;
- ITIF Debate on Broadband Rankings;
- Broadband Breakfast Club debate on Net Neutrality;
- Texas Policy Institute conference on Net Neutrality.

OTHER CONTRIBUTIONS:

- Lawrence J. Spiwak authored an essay on Article III (Federal Judiciary) for a wonderful project called "Constituting America" which encourages everyone to read and learn about the Constitution and the Federalist Papers.

SIGNIFICANT CITATIONS IN THE LITERATURE

- The Phoenix Center was also prolifically cited in the academic literature in 2010. According to Westlaw, the Phoenix Center's research was cited to at least ten times in various academic journals.

SIGNIFICANT CITATIONS BY POLICYMAKERS

As always, policymakers continued to rely heavily on Phoenix Center research in 2010. By way of example:

- Congresswoman Doris Matsui cites PHOENIX CENTER POLICY PAPER NO. 39, *Internet Use and Job Search*.
- Federal Communication Commission's 14th CMRS Report cites both PHOENIX CENTER POLICY PAPER NO. 21, *Competition After Unbundling: Entry, Industry Structure*

and Convergence, and Congressional Testimony of Phoenix Center Chief Economist George S. Ford *passim*;

- FCC's *National Broadband Plan* cites to both PHOENIX CENTER POLICY PAPER NO. 34, *The Pricing of Pole Attachments: Implications and Recommendations* and the Phoenix Center's report prepared for the United States Department of Commerce entitled: *A Valley of Death in the Innovation Sequence: An Economic Investigation*;
- FCC cites to PHOENIX CENTER POLICY PAPER NO. 19, *The Positive Effects of Unbundling on Broadband Deployment in the Phoenix Forbearance Order*;
- Finally, we note that the FCC also took the highly unusual step of dedicating a lengthy post on their official blog about PHOENIX CENTER POLICY BULLETIN NO. 25, *Jobs, Jobs, Jobs: Communications Policy and Employment Effects in the Information Sector*.

PHOENIX CENTER WORKSHOP ON THE "Broadband Credibility Gap"

In July 2010, the Phoenix Center held a workshop to discuss PHOENIX CENTER POLICY PAPER NO. 40, *The Broadband Credibility Gap*. Featuring several former FCC officials (including the General Counsel, Deputy General Counsel and Chief of Staff) present at the time the Commission affirmatively declined not to classify advanced services as a common carrier service under Title II of the Communications Act, the panelists discussed the merits of FCC's Chairman Julius Genachowski's proposed "Third Way" approach to broadband regulation. In addition, we were honored that FCC Commissioner Robert McDowell was able to join us to offer his thoughts on this important issue. As an added bonus, and as a direct result of this workshop, the *Broadband Credibility Gap* was accepted for publication in the winter 2010 issue of COMMLAW CONSPPECTUS.

IN THE NEWS...

In 2010, the Phoenix Center's work and staff were cited prolifically by major news and trade media outlets around the world, including:

- ASSOCIATED PRESS
- AMERICAN BAR ASSOCIATION JOURNAL
- BIG GOVERNMENT
- BROADCAST ENGINEERING
- BROADBAND CENSUS
- BROADCASTING AND CABLE
- CITIZEN-TIMES
- CNBC
- COMPUTER WORLD
- COMMUNICATIONS DAILY
- COMMUNICATIONS AND STRATEGIES (IDATE)
- CONGRESS DAILY
- CONNECTED PLANET
- CONSUMER ELECTRONICS DAILY
- EUCLID INFOTECH
- ENTERPRISE NETWORKING
- FIERCE CABLE
- FORBES
- FOX NEWS (editorial by Steve Forbes)
- THE HILL
- HUDSON REPORTER
- IEEE SPECTRUM
- IP CARRIER
- MULTICHANNEL NEWS
- NATIONAL JOURNAL
- NETWORK WORLD
- NEW YORK TIMES
- NORTH JERSEY.COM
- NATIONAL PUBLIC RADIO
- PC WORLD
- POLITICO
- RAPID TV NEWS
- SATELLITE WEEK
- TECH DAILY DOSE
- TELECOM A.M.
- TELECOMMUNICATIONS REPORTS
- TR DAILY
- U.S. FEDERAL NEWS
- U.S. NEWS AND WORLD REPORT
- VON NEWS
- WASHINGTON INTERNET DAILY
- WASHINGTON TELECOM NEWSWIRE
- WEBPRONEWS
- WIRELESS WEEK

RADIO:

- AMERICA'S MORNING NEWS
- NATIONAL PUBLIC RADIO (KPPC LOS ANGELES)

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

On December 2, 2010, nearly 100 people from government, academia, industry and the media joined the Phoenix Center for its 10th Annual U.S. Telecoms Symposium at the University Club in Washington, D.C. This year's Symposium theme was *Promoting Investment, Innovation and Jobs* and the discussions were both substantive and lively.

The Symposium kicked off with the traditional "Economists' Panel." This year, the Economists' Panel included Dr. Tim Brennan, Professor of Economics—University of Maryland, Baltimore Campus; Dr. Jonathan Baker, Chief Economist—Federal Communications Commission; Dr. Joe Farrell, Chief Economist—Federal Trade 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.

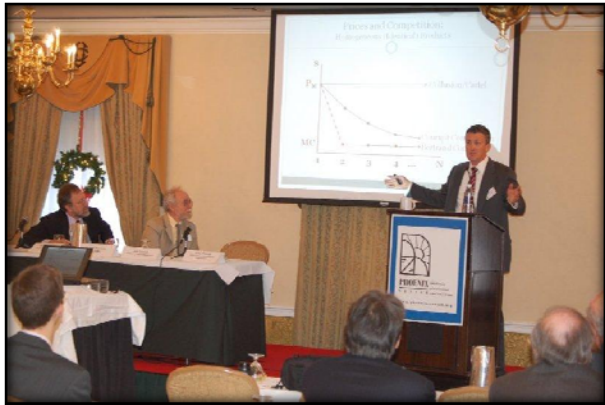
After the Economists' Panel, we were extremely privileged to welcome Blair Levin, the former Executive Director of the FCC's National Broadband Plan as the keynote speaker of the Symposium.

The second panel was entitled "Promoting Innovation, Investment, and Jobs." Panelists included Dr. Paul de Sa, Chief, Office of Strategic Planning and Policy Analysis—Federal Communications Commission; Dr. Michael Mandel, Visible Economy, LLC and Wharton Mack Center for Technological Innovation; Phil Weiser, Senior Advisor for Technology and Innovation—The White House; and Michael Rollins, Managing Director—Citi Investment Research & Analysis.

The Symposium ended with the presentation of the Phoenix Center's Annual Jerry B. Duvall Public Service Award to Federal Communications Commission Commissioner Meredith Attwell Baker. 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 Commissioner Baker's long track record of promoting sound and principled policymaking, we can think of nobody who epitomized this standard more in 2010.



YEAR IN PICTURES



RESEARCH INTERESTS FOR 2011

2011 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 and focus of the debate at the time.

SPECTRUM POLICY:

By all accounts, there is a looming “spectrum crisis.” However, while there is broad consensus to make more spectrum available, the more difficult and politically sensitive question is who gets the new spectrum? In 2011, 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. Building on prior research, the Phoenix Center intends to contribute actively in this debate.

BENEFITS OF BROADBAND:

The Phoenix Center has, in the past, issued several papers on the benefits of broadband. These papers include examinations of how Internet use reduces depression in the elderly,

and how internet use reduces “discouragement” for unemployed Americans. We intend to continue with such research in 2011.

NETWORK NEUTRALITY:

Although the Federal Communications Commission issued “Open Internet” rules at the end of 2010, these rules do not mark the end of the debate. In 2011, we intend to scrutinize the FCC’s rules with a critical eye, as well as to monitor and contribute to the debate as it evolves.

ALLVID:

As part of the *National Broadband Plan*, the Federal Communications Commission announced plans to initiate a proceeding to mandate new technology, known as “AllVid”, to further the Commission’s statutory responsibilities under Section 629 of the Communications Act. Building on prior research, the Phoenix Center expects to analyze the costs and benefits of the proposed rules (expected February-March 2011).

EVALUATION OF BROADBAND STIMULUS

As part of the American Reinvestment Act and Recovery Act, Congress allocated approximately \$7.2 billion for broadband infrastructure and adoption programs. In 2011, the preliminary data will start to become available, and we intend to utilize such data to measure the effectiveness of the program.

RETHINKING BROADBAND REGULATION

In 2010, we authored a paper exposing the numerous analytical flaws in the FCC’s new “market power” test used to determine whether forbearance is warranted under Section 10 of the Communications Act. Given the profound defects in the FCC’s approach, it is clear that a new paradigm to analyze when regulation is appropriate is certainly due.

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.

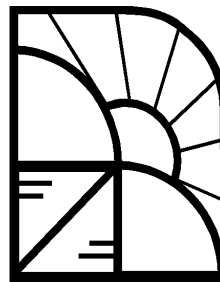
The Phoenix Center achieves this goal by providing an honest and credible new voice in the public dialectic by supporting objective, solutions-based academic research to the forefront that is unencumbered by political hyperbole or agendas and is instead well grounded in fact, law and economic theory.

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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