

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

2012 ANNUAL REPORT

PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES

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PRESIDENT'S MESSAGE

2012 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 2012 was both prolific and influential. To begin, the Phoenix Center issued eight (8) scholarly papers in 2012. We are also extremely proud to report that no less than six (6) Phoenix Center papers were published, or accepted for publication, in academic journals.

In 2012, the Phoenix Center also took steps to bolster our digital presence. For example, we started @lawandeconomics, the official blog of the Phoenix Center, and authored 44 posts this year. We took great pains to make @lawandeconomics as rigorous as the format permits, and we hope readers found these posts useful. We also started to participate actively on Twitter, again with our handle @lawandeconomics (we have over 2,000 followers).

We are pleased to report that 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 750,000 hits in 2012, and our @lawandeconomics blog page received over 4,000 hits.

But there is more: Not only was our work cited prolifically in both the press and in the academic literature in 2012, but we were once again cited extensively by policymakers. In 2012, citations ranged from multiple footnotes in the FCC's landmark *Universal Service Reform Order* to having the U.S. Department of Commerce

tweet about our paper showing that on-line theft of intellectual property is not costless.

We also participated in a wide variety of conferences and Symposia across the country. Moreover, the Phoenix Center was retained by the Government of Peru, under the auspices of USAID, to travel to Lima to give a series of lectures to their telecom regulator OSIPTEL.

The Phoenix Center also put on three fantastic programs this year. We began with inaugurating our Rooftop Policy Roundtable Discussion, where we had an excellent set of interactive conversations to a standing-room only crowd with Congressman Lee Terry and a panel of experts about current policy issues in the broadband ecosystem over drinks and cigars. (Perhaps the best compliment we received was when someone told us that not only does the Phoenix Center do the most rigorous work in the broadband space, but we are also the most fun to hang out with.)

We also broke out our Annual Symposium into two discrete pieces: Part I focused on the impact of the presidential election on broadband policy; while Part II focused on emerging issues in broadband policy for 2012. As always, we had leading policymakers and practitioners participate, and the discussions were excellent.

But perhaps the accomplishment in 2012 we are most proud of is that my peers in the Federal Communications Bar Association bestowed upon me the FCBA's Distinguished Service Award for my work to raise the quality and reputation of the FEDERAL COMMUNICATIONS LAW JOURNAL.

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 2012. 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 2012, the Phoenix Center issued the following POLICY PAPERS:

- PHOENIX CENTER POLICY PAPER NO. 43: *Wireless Competition Under Spectrum Exhaust* (February 2012);
- PHOENIX CENTER POLICY PAPER NO. 44: *Taxation by Condition: Spectrum Repurposing at the FCC and the Prolonging of Spectrum Exhaust* (September 2012).

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 2012:

- PHOENIX CENTER POLICY BULLETIN NO. 32, *Social Well-Being and IP Theft: A Dynamic Economic Analysis* (March 2012).

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 2012:

- PHOENIX CENTER POLICY PERSPECTIVE NO. 12-01: *Regulatory Expenditures, Economic*

Growth and Jobs: A Reply to Comments (April 24, 2012);

- PHOENIX CENTER POLICY PERSPECTIVE NO. 12-02: *A Most Egregious Act? The Impact on Consumers of Usage-Based Pricing* (May 23, 2012);
- PHOENIX CENTER POLICY PERSPECTIVE NO. 12-03: *Approximating the Distribution of Broadband Usage from Publicly-Available Data* (May 31, 2012);
- PHOENIX CENTER POLICY PERSPECTIVE NO. 12-04: *Justifying the Ends: Section 706 and the Regulation of Broadband* (August 13, 2011);
- PHOENIX CENTER POLICY PERSPECTIVE NO. 12-05: *What is the Effect of Regulation on Broadband Investment? Regulatory Certainty and the Expectation of Returns* (September 19, 2011);

Academic Publications

In 2012, the Phoenix Center had no less than six of its papers published, or accepted for publication, in academic journals:

- *The Need for Better Analysis of High Capacity Services*, 28 JOHN MARSHAL JOURNAL OF COMPUTER AND INFORMATION LAW 343;
- *Internet Use and Depression Among the Elderly*, 28 COMPUTERS IN HUMAN BEHAVIOR 496;
- *Theft and Welfare in General Equilibrium: A Theoretical Note*, 2 THEORETICAL ECONOMIC LETTERS 470;
- *Wireless Competition Under Spectrum Exhaust*, forthcoming FEDERAL COMMUNICATIONS LAW JOURNAL;
- *How the FCC "Rigs the Game" for Broadband Regulation Under Section 706*, forthcoming JOURNAL OF INTERNET LAW; and
- *Wobbling Back to the Fire*, forthcoming COMMLAW CONSPECTUS.

CONTRIBUTING TO THE PUBLIC DIALECTIC

In 2012, Phoenix Center scholars again continued to make numerous contributions to the public dialectic in a wide variety of forums.

WEB TRAFFIC:

In 2012, the Phoenix Center's webpage (www.phoenix-center.org) received over 750,000 hits, averaging almost 70,000 hits a month.

NEW PHOENIX CENTER BLOG:

In 2012, the Phoenix Center started @lawandeconomics, the official blog of the Phoenix Center, and authored 44 posts this year. We took great pains to make @lawandeconomics as rigorous as the format permits, and we hope readers found these posts useful. In 2012, our @lawandeconomics blog received over 4,000 hits.

TWITTER PRESENCE:

The Phoenix Center also started to participate actively on Twitter in 2012, again with our handle @lawandeconomics. The Phoenix Center currently has over 2,000 followers.

SIGNIFICANT ACHIEVEMENTS:

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 1.5% of authors downloaded on the Social Science Research Network.

SIGNIFICANT APPOINTMENTS:

- Phoenix Center Chief Economist Dr. George Ford continues to serve on Connect Alabama by direct appointment of the Governor; and
- Phoenix Center President Lawrence J. Spiwak continued to serve as co-chair of FEDERAL COMMUNICATIONS LAW

JOURNAL committee of the Federal Communications Bar Association.

AWARDS:

Phoenix Center President Lawrence J. Spiwak presented by his peers with the Federal Communications Bar Association's Distinguished Service Award.

OP-EDS:

- *If You Ask Me: How the FCC "Rigs the Game" for Broadband Regulation Under Section 706* COMMUNICATIONS TECHNOLOGY (August 27, 2012).

[T]he Phoenix Center has established itself as a leading voice in the national dialogue about telecommunications policy. When I think of the Phoenix Center, one thing comes to mind: rigorous economic analysis. Your research is not driven by the political trends of the moment. Nor do you succumb to the temptation, all too common in Washington, to engage in over-the-top rhetoric. Instead, your approach is more akin to that of Dragnet's Jack Webb, who would famously ask for "just the facts, ma'am." This strategy doesn't necessarily make you popular all of the time. But it does something far more important: It makes you credible.

— FCC Commissioner Ajit Pai

SPEECHES AND CONFERENCE PARTICIPATION

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

- California Foundation on Energy and the Environment's Roundtable Conference on Information & Communications Technology (ICT), Napa Valley;

CONTRIBUTING TO THE PUBLIC DIALECTIC

- A Federal Communications Bar Association continuing legal education panel on broadband adoption;
- A panel sponsored by the New America Foundation entitled *Fair Play? The State of Competition in the Business Broadband Marketplace*; and
- The American Legislative Exchange Council's (ALEC) States and Nations Policy Summit.

SIGNIFICANT CITATIONS BY POLICYMAKERS

As always, policymakers continued to rely heavily on Phoenix Center research in 2012. By way of example:

- *In The Matter Of Lifeline and Link Up Reform And Modernization*, FCC 12-11, 27 F.C.C.R. 6656, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (rel. February 6, 2012) at n. 1074, 1075;
- Remarks of the Honorable Robert M. McDowell, Commissioner Federal Communications Commission before the Associazione EGO and PuntoIT, Italian Parliament Aula Dei Gruppi Parlamentari Rome, Italy (June 28, 2012);
- Representative Marsha Blackburn cites PHOENIX CENTER POLICY BULLETIN NO. 28 in a speech to the U.S Chamber of Commerce;
- The U.S. Department of Commerce tweeted PHOENIX CENTER POLICY BULLETIN NO. 32, which demonstrates that on-line IP theft is not costless.

SIGNIFICANT PRESS HITS AND APPEARANCES:

As always, media coverage of the Phoenix Center's research in 2012 was extensive and diverse. These hits ranged from traditional trade press outlets such as COMMUNICATIONS DAILY, TELECOMMUNICATIONS REPORTS,

MULTICHANNEL NEWS and GIGAOM, but to both national outlets such as THE HILL, POLITICO and the Neil Larson Radio Show as well as international outlets such as CCTVnews (Chinese National Television).

INTERNATIONAL ACTIVITIES:

In 2012, the Phoenix Center—under the auspices of the United States Agency for International Development (USAID)—was retained by the Peruvian telecoms regulator OSIPTEL to author a paper on the U.S. unbundling experience. In addition, we were privileged to take an amazing trip to Peru where we held two days of workshops with OSIPTEL to discuss the paper as well as other topics such as net neutrality, the FCC's *National Broadband Plan* experience, and the need for good government principles such as transparency and procedural due process.

In conducting this project, we were once again reminded that while language and individual political nuances among various countries may differ, the fundamental economics—and concurrent complex policy issues—facing telecom regulators remain universal. That is, how do we get more broadband deployed when it isn't necessarily profitable to do so? Our hosts at OSIPTEL were both gracious and attentive, and we thank them for a wonderful experience.



@LAWANDECONOMICS

As noted in the previous section, in 2012 the Phoenix Center started @lawandeconomics, the official blog of the Phoenix Center. As also noted, we took great pains to make @lawandeconomics as rigorous as the format permits, and we hope readers found these posts useful. In 2012, our @lawandeconomics blog page received over 4,000 hits.

For our inaugural year, we authored 44 posts on a wide variety of topics. While space constraints prevent us from listing all of our posts in our Annual Report, we did want to highlight the top posts for 2012 (in descending order of hits):

- *Professor Susan Crawford and the Looming Cable Monopoly* (November 16, 2012);
- *What is the Effect of the Mobile Internet on the Economy?* (January 27, 2012);
- *Wireless Competition Under Spectrum Exhaust (CliffsNotes Edition)* (February 8, 2012);
- *Data Roaming, Spectrum Auctions, and the Widening of the Broadband Credibility Gap* (January 31, 2012);
- *What is the Effect of Regulation on Investment?* (May 8, 2012);
- *It's Time to Start the Conversation on the IP Transition* (November 14, 2012);
- *How the Retransmission Fight May Affect MVPD Industry Structure* (July 21, 2012);
- *The Curious Case of the FCC's Spectrum Screen NPRM* (October 9, 2012);
- *Susan Crawford and the Economics of the Wireless Industry* (August 20, 2012);
- *The Effect of Spectrum Exhaust on Mobile Market Structure and Performance* (February 2, 2012);
- *I Can "C" (Block) Clearly Now About Spectrum Auctions* (February 15, 2012);
- *Are Spectrum Caps Back?* (February 28, 2012);
- *Thoughts About Today's Oversight Hearing on the FCC's Budget and Spending* (February 16, 2012);
- *More Evidence on the Failure of Government "Stimulus"* (March 13, 2012);
- *Some Thoughts on the FCC's New Interoperability NPRM* (March 28, 2012);
- *Julius Genachowski's Speech at CTIA* (May 22, 2012);
- *Some Thoughts on this Week's FCC Oversight Hearing* (July 13, 2012);
- *Julius Genachowski's Speech at CES Part 2* (January 18, 2012);
- *What the United States Can Learn From OFCOM's Olympic Spectrum Plan* (July 27, 2012);
- *When in Doubt, Regulate* (June 6, 2012);
- *Why GigaOM has it Wrong on the Comcast/Verizon Spectrum Deal* (January 24, 2012);
- *Economic Theory in Action: The FCC's Assault on the Mobile Broadband Consumer* (November 30, 2012);
- *When the CLECs Jumped the Shark* (December 10, 2012);
- *Senator Kohl, Wireless Economics and the "Public Interest" Standard* (May 31, 2012);
- *How the FCC "Rigs the Game" for Broadband Regulation Under Section 706* (August 23, 2012).

CONFERENCES AND SYMPOSIA

INAUGURAL ROOFTOP POLICY ROUNDTABLE:

This summer, the Phoenix Center held its inaugural Rooftop Policy Roundtable Discussion. Rather than hold yet another conference with laborious PowerPoint presentations, we thought the policy debate would be better served with some frank discussion in an informal environment. To this end, we established our Rooftop Policy Roundtable Discussion, where we had an excellent set of interactive conversations on the roof of the University Club to a standing-room only crowd with Congressman Lee Terry and a panel of experts about current policy issues in the broadband ecosystem over drinks and cigars. (Perhaps the best compliment we received was when someone told us that not only does the Phoenix Center do the most rigorous work in the broadband space, but we are also the most fun to hang out with.)

PHOENIX CENTER ANNUAL TELECOMS SYMPOSIUM PART I:

Given the presidential election and the World Conference on International Telecommunications (WCIT), we decided to split our Annual U.S. Telecoms Symposium into two parts in 2012.

In Part I, we focused on the impact of the election on U.S. broadband policy. Part I began with a keynote address by FCC Commissioner Ajit Pai. After which, we had a panel discussion with two of the most seasoned Washington observers in the business: Former White House Press Secretary Mike McCurry and Rich Galen, former senior advisor to Newt Gingrich. We then wrapped up Part I with a panel discussion of industry experts including Kathy Brown, Senior Vice President, Public Policy Development & Corporate Responsibility—Verizon; James W. Cicconi, Senior Executive Vice President—AT&T Services, Inc.; and Jeffrey Silva, Senior Policy Director Telecommunications, Media, Technology—Medley Global Advisors, L.L.C.

PHOENIX CENTER ANNUAL TELECOMS SYMPOSIUM PART II:

In Part II, we focused on emerging issues in U.S. broadband policy. To start things off, we were privileged to have Representative Marsha Blackburn, the incoming Vice Chair of the House Energy and Commerce Committee, deliver the keynote address. After which, we moved into our traditional “Economists’ Panel.” This year, the Economists’ Panel included Dr. Tim Brennan, Professor of Economics—UMBC; Dr. Hal Singer from Navigant Economics; and Phoenix Center Chief Economist Dr. George Ford, Chief Economist. As always, the panel was moderated by Dr. Jerry Duvall, Honorary Phoenix Center Chief Economist Emeritus and current FCC International Bureau Chief Economist.

Our final panel, entitled “*A View From the Trenches*”—*FCC Regulatory Priorities in 2013*, was comprised of seasoned FCC experts such as Blair Levin, Former Director, Federal Communications Commission National Broadband Plan; Chris Guttman-McCabe, Vice President, Regulatory Affairs—CTIA; Rick Chessen, Senior Vice President, Law & Regulatory Policy—NCTA and Bob Quinn, Senior Vice-President, Federal Regulatory and Chief Privacy Officer—AT&T.

The Symposium ended with the presentation of the Phoenix Center’s Annual Jerry B. Duvall Public Service Award to FCC Commissioner Robert McDowell. 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 McDowell’s efforts over the years to highlight the need to perform stringent cost/benefit analyses before government intervenes in the market, we could think of nobody who epitomized this standard more in 2012.

RESEARCH INTERESTS FOR 2013

2013 promises to bring a wide variety of complex broadband and technology policy challenges. 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. Some examples of potential research areas are highlighted below.

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 2013, we intend to continue 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. We also we expect to examine the design and implementation of the voluntary incentive auctions for unused broadcast spectrum mandated by the Middle Class Tax Relief and Job Creation Act of 2012. Finally, we intend to conduct research on the best mechanisms to make unused and underutilized government spectrum available for commercial use.

USAGE-BASED PRICING

With the advent of the FCC’s *Open Internet Order*, Broadband Service Providers are increasingly turning to usage-based pricing to manage congestion on their networks. In 2013, the Phoenix Center intends to continue its research on the welfare effects of such pricing practices.

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 2013.

IP TRANSITION AND RETHINKING BROADBAND REGULATION GENERALLY:

One of the most significant regulatory challenges facing broadband policymakers is how to develop a regulatory paradigm to facilitate the transition from legacy “switched” telephone networks to modern IP-based networks. This is an exceedingly complicated task, and runs the full gamut of issues from special access regulation to interconnection to universal service support mechanisms. As a result, we expect to dedicate a significant portion of our research agenda in 2013 to this complex and important topic.

NETWORK NEUTRALITY

Sometime in 2013, the D.C. Circuit Court of Appeals is expected to rule on the legitimacy of the FCC’s *Open Internet Rules*. Regardless of the way the court rules, this decision will significantly impact both broadband policy and politics for years to come.

GOVERNMENT AND THE MARKET ECONOMY PROJECT:

In our earlier research, we considered the influence of government spending on private sector employment. During periods of economic sluggishness, we found no effect, though we confirmed statistically a strong effect on jobs from private investment. We are looking now for additional evidence on these effects, studying the influence of fiscal stimulus on consumer sentiment, an established leading indicator. Many experts feel that sentiment must rise to initiate a recovery, so we believe that study on this topic is valuable to the public dialectic.

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.

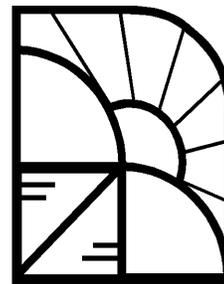
The Phoenix Center achieves this goal by providing an honest and credible voice in the public dialectic by supporting objective, solutions-based academic research to the forefront that is unencumbered by political hyperbole or agendas and is instead well grounded in fact, law and economic theory.

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



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