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Press Release

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New Phoenix Center Study Makes the Case to Sunset Regulation of Set-Top Boxes

Analysis Provides Economic, Legal and Evidentiary Arguments to Show How Section 629 has Outlived its Usefulness

WASHINGTON, D.C. — The Federal Communications Commission's effort to implement Section 629 of the Telecommunications Act by way of the CableCard has proven to be a billion dollar policy dud. In today's rapidly evolving and increasingly competitive video marketplace, the potential benefits from converter box regulation are even more dubious than in the past, but the implementation costs remain as high as ever. Given the dynamics of the video business and the simple fact that a retail market for set-top boxes is inefficient, successful implementation of technological mandates, such as the new "AllVid" paradigm proposed in the FCC's *National Broadband Plan* and subsequent *Notice of Inquiry*, seem futile. Recognizing these facts, in a new study released today, *Outliving its Usefulness: A Law and Economics Argument for Sunset of Section 629,* the Phoenix Center outlines sound legal, economic and evidentiary arguments to support a sunset of Section 629 under the relevant statutory provisions.

The Phoenix Center begins by outlining the parameters of Section 629, showing that the ability to invoke the sunset provisions will hinge on how the Commission defines "fully competitive." Given that Congress never provides a definition of "fully competitive," the Center proposes a definition that is economically sound, suitable to the industry, and relevant for evaluating the removal of regulation. In particular, the Phoenix Center recommends the use of an "effectively competitive" or "workably competitive" standard, which considers both industry performance and the efficacy of remedial action. Using this analytical foundation, the Center finds that there is a plausible legal and evidentiary case for sunset.

"The benefits from a successful implementation of Section 629 are murky at best, but we know the costs of such regulatory interventions are enormous," said study co-author and Phoenix Center President Lawrence J. Spiwak. "If the Obama Administration is truly serious about removing regulations whose costs exceed the benefits, then it's time to sunset Section 629."

"Economic logic indicates that a retail market for set-top boxes is inefficient. As a result, when the Commission first attempted to implement Section 629 with CableCard in a relatively stable environment, it faced an uphill battle and the agency lost on all fronts," says study co-author and Phoenix Center Chief Economist Dr. George Ford. "In the technologically dynamic and

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increasingly competitive video market that exists today, the effort to implement AllVid is hopeless. Section 629 is now fifteen years old and has outlived its usefulness. Perhaps expecting such a result, Congress provided the FCC a clear path to set the regulation aside. The agency should take it."

The complete copy of the study, PHOENIX CENTER POLICY BULLETIN NO. 29: *Outliving its Usefulness: A Law and Economics Argument for Sunset of Section 629,* may be downloaded free from the Phoenix Center's web page at: http://www.phoenix-center.org/PolicyBulletin/PCPB29Final.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.