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Press Release

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NEW PHOENIX CENTER ECONOMIC ANALYSIS SHOWS FEDERAL COMMUNICATIONS COMMISSION HAS FAILED TO PROVIDE ADEQUATE JUSTIFICATION FOR BDS RATE REGULATION

FCC Believes Rate Regulation Is Appropriate because the Price is “Too Damn High”

WASHINGTON, D.C. – In May 2016, the Federal Communications Commission (“FCC”) issued a *Further Notice of Proposed Rulemaking* in which it outlined a “new path forward” for imposing price regulation on high-capacity telecommunications circuits sold to businesses and other telecommunications providers. These services have historically been referred to as Special Access Services, but now the Commission prefers the label Business Data Services (“BDS”), a broader classification that includes not only Special Access services but also unregulated high-capacity Ethernet services. In its *BDS NPRM*, the Commission outlines a two-step procedure for determining if it will apply rate regulation: As a first step, the Commission proposes to determine “whether market power exist[s]” for BDS and where. If the Commission determines that market power exists, then the Agency proposes to apply a price-cap “style” regime to the prices of BDS. The problem, however, is that nowhere does the Commission define its concept of “market power.”

In a new POLICY PAPER released today entitled *How (and How Not) to Measure Market Power Over Business Data Services*, Phoenix Center Chief Economist Dr. George S. Ford attempts to fill that gap by constructing a policy-relevant definition of market power for BDS. Dr. Ford then considers whether the Commission’s analysis is capable of identifying the presence of or quantifying the magnitude of market power for BDS. As Dr. Ford demonstrates, it is not. As Dr. Ford points out, the analysis of the Agency’s economic expert, Professor Marc Rysman, is unsupported by basic economics and good econometrics, and is thus incapable of providing any meaningful evidence regarding the presence or absence of market power.

“Once more, the Commission’s effort to understand market power in BDS is for naught and the Agency again reveals its poor grasp of telecommunications economics,” said study author Phoenix Center Chief Economist Dr. George Ford. “Any regulatory action on BDS at this point can be based on nothing more than the self-serving arguments of BDS buyers that, in the words of perennial political candidate Jimmy McMillan, the price is ‘too damn high.’”

A full copy of Dr. Ford’s analysis, PHOENIX CENTER POLICY PAPER NO. 50, *How (and How Not) to Measure Market Power Over Business Data Services*, may be downloaded free from the Phoenix Center’s web page at: <http://www.phoenix-center.org/pcpp/PCPP50Final.pdf>.

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