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Press Release

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FCC's Proposed "Non-Discrimination" Standard Deliberately Ignores Economic Literature and Communications Law Jurisprudence

Lacking Firm Analytical Footing, FCC's Non-Discrimination Rule Likely to Have Significant Unintended Effects on Consumer Welfare

WASHINGTON, D.C. – The Federal Communications Commission's recently proposed "non-discrimination" principle is incompatible with established definitions of discrimination in the economics literature and communications jurisprudence according to a new law and economic analysis released by the Phoenix Center today. As a result, the analysis, *Non-Discrimination or Just Non-Sense: A Law and Economics Review of the FCC's New Net Neutrality Principle* by Phoenix Center Chief Economist Dr. George Ford and Phoenix Center President Lawrence J. Spiwak, warns that the Commission's "flawed standard is likely to create numerous unintended consequences that are antithetical to economic welfare and the stated goals of the Commission in promulgating the rules in the first instance."

Under the FCC's proposed new non-discrimination rule, "a broadband Internet access service provider may not charge a content, application, or service provider for enhanced or prioritized access to the subscribers of the broadband Internet access service provider." As Ford and Spiwak explain, however, "standard and prioritized/enhanced [broadband] services are different services, and a different price for different services is not discrimination under any meaningful standard." Stated another way, argue the authors, the "FCC has concluded that it is discriminatory if a gallon of water has a different price than a gallon of milk."

"Even under the best designed, analytically consistent regulations, there can be costly unintended consequences. When regulations are fabricated from whole cloth, however, the risk is likely to be much higher, since the impacts of such regulations have not been contemplated theoretically or measured empirically", says study co-author Dr. George Ford, the Phoenix Center's Chief Economist. "For example, the FCC's proposed rule will likely block efficient voluntary transactions and block quality improvements. When that happens, consumers and content providers lose. Eventually, it will be the content sector pleading for the elimination of this rule."

"The intent of our analysis is neither to challenge the FCC's jurisdiction to protect an 'Open Internet' nor the broader idea that the FCC should establish clear rules in the first instance",

~ more ~

according to Phoenix Center President Lawrence J. Spiwak. "Instead, we merely seek to point out the patent analytical flaws in the FCC's current proposed approach so as to avoid heartache later on down the road."

A full copy of PHOENIX CENTER POLICY PERSPECTIVE NO. 10-03: *Non-Discrimination or Just Non-Sense: A Law and Economics Review of the FCC's New Net Neutrality Principle* may be downloaded free from the Phoenix Center's web page at: http://www.phoenix-center.org/perspectives/Perspective10-03Final.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.

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