

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

2020 ANNUAL REPORT

PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES

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PRESIDENT'S MESSAGE

As we all unfortunately know, 2020 was a year like none other. Despite the challenges all of us had to face, the Phoenix Center's work in 2020 was again prodigious. While we detail our many substantive accomplishments in the pages that follow, here is a quick "by the numbers" overview of our activities in 2020.

First, the Phoenix Center continued to author rigorous legal and economic research to help inform the policy debate. This Phoenix Center research included seven POLICY PERSPECTIVES, two POLICY BULLETINS and one POLICY PAPER. As always, our research may be downloaded free from our webpage and from the Social Science Research Network.

Second, given the rigor of our work, we are proud to report that not only did we have seven (7) papers published in academic journals this year, but we also had another paper accepted for publication that will be released over the coming months.

Third, we published eight op-eds in an assortment of media outlets in 2020.

Fourth, given the COVID pandemic, we were unfortunately unable to hold our traditional events: our Rooftop Policy Roundtable and our Annual U.S. Telecoms Symposium. Still, Phoenix Center staff participated in a dozen different teleconferences to present our research.

Fifth, 2020 proved to be a very busy year for the Phoenix Center's amicus brief practice. This year I authored three amicus briefs in a wide variety of jurisdictions: The first case was in the Court of Appeals for the Fourth District of Texas at San Antonio in support of Appellants involving the validity of a jury verdict worth nearly \$1 billion; the second case was an amicus brief in support of Petitioners in the United States District Court for the Eastern District of California over the

legality of California's Net Neutrality law; and the final case was before the Supreme Court of the United States in support of Petitioners over the appropriate judicial standard of review for the FCC's media ownership rules.

We very much appreciate that folks again found our work informative. For example, our research received a multitude of citations both by government agencies and in the academic literature in 2020. We were also frequently cited by the press. And Phoenix Center Chief Economist Dr. George Ford continues to remain in the top 1% of authors downloaded on the Social Science Research Network, while I was not too far behind in the top 1.2%.

Finally, we at the Phoenix Center continued our efforts to contribute to the larger policy community in the hope of raising the level of the debate. Among other activities, I continued to serve as a co-chair of FEDERAL COMMUNICATIONS LAW JOURNAL Committee and administer its peer review process for the Federal Communications Bar Association. I also continued to serve as a member of the Executive Committee for the Federalist Society's Telecom Practice Group. Moreover, based on a detailed complaint from Phoenix Center Chief Economist Dr. George Ford, TELECOMMUNICATIONS POLICY—a peer-reviewed academic journal—issued an editor's note regarding a paper claiming Net Neutrality did not affect investment, describing the results of that paper as "spurious." George was also invited to participate in the National Science Foundation's Broadband Research Workshops and submitted a paper for discussion.

All things considered, not a bad year...

— Lawrence J. Spiwak, President

PHOENIX CENTER PUBLICATIONS

The Phoenix Center continued to publish a prodigious amount of scholarly research in 2020. As always, 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 2020, the Phoenix Center issued the following POLICY PAPER:

- PHOENIX CENTER POLICY PAPER NO. 56, *Bridging the Digital Divide: What Has Not Worked But What Just Might* (June 2020).

PHOENIX CENTER POLICY BULLETIN SERIES

The Phoenix Center's POLICY BULLETIN SERIES is designed to provide a forum for responding to discrete policy issues in a shorter format than our PHOENIX CENTER POLICY PAPER SERIES. The Phoenix Center published the following POLICY BULLETINS in 2020:

- PHOENIX CENTER POLICY BULLETIN NO. 48, *"Relevance" and "Price" as Determinants of Internet Non-Adoption: A Review of the Evidence* (April 2020).
- PHOENIX CENTER POLICY BULLETIN NO. 49, *COVID-19 and Broadband Speeds: A Multi-Country Analysis* (May 2020).

PHOENIX CENTER POLICY PERSPECTIVES

The Phoenix Center's POLICY PERSPECTIVES SERIES is designed to provide a forum for its individual staff members to express their views on current policy developments. The

Phoenix Center published the following POLICY PERSPECTIVES in 2020:

- PHOENIX CENTER POLICY PERSPECTIVE NO. 20-01, *Could Acceleration Payments Increase Funding for Broadband? A Review of the FCC's C-Band Plan* (February 18, 2020).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 20-02, *Stepping Back onto the Escalator: Answering the D.C. Circuit's Remand of the Pole Attachment Question* (April 13, 2020).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 20-03, *Is France a Broadband Nirvana? A Look at the Data* (June 18, 2020).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 20-04, *Trends in Lifeline Reform: A Look at the Evidence, Not the Politics* (July 1, 2020).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 20-05, *Subsidizing Broadband: Price, Relevance, and the Digital Divide* (July 7, 2020).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 20-06, *The Open Technology Institute's Cost of Connectivity 2020 Report: A Critical Review* (July 20, 2020).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 20-07, *Are Broadband Prices Declining? A Look at the FCC's Price Survey Data* (October 26, 2020).

@LAWANDECONOMICS, THE OFFICIAL BLOG OF THE PHOENIX CENTER.

Started in 2012, the Phoenix Center's @LAWANDECONOMICS blog provides a useful and immediate outlet for our scholars to comment on the issues of the day. In 2020, the Phoenix Center released the following blog:

PHOENIX CENTER PUBLICATIONS

- *In Delay there is No Plenty: Economic Impacts of the FCC's C-Band Plan* (June 16, 2020).

ACADEMIC PUBLICATIONS

In 2020, the Phoenix Center's staff had eight (8) papers published, or accepted for publication, in academic journals:

- *The Law and Economics of Municipal Broadband*, 73 FEDERAL COMMUNICATIONS LAW JOURNAL 1 (2020).
- *The Preemption Predicament Over Broadband Internet Access Services*, 21 FEDERALIST SOCIETY REVIEW 32 (2020).
- *Ensuring Due Process at the Surface Transportation Board*, 21 FEDERALIST SOCIETY REVIEW 136 (2020).
- *Interference, Sunk Investment, and the Repurposing of Radio Spectrum*, INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW (2020) (originally released as PHOENIX CENTER POLICY BULLETIN NO. 40).
- *Subsidies and Substitution: An Empirical Study of the Lifeline Program*, 45 TELECOMMUNICATIONS POLICY (2021) (originally released as PHOENIX CENTER POLICY PAPER NO. 55).
- *Confusing Relevance and Price: Interpreting and Improving Surveys on Internet Non-Adoption*, 45 TELECOMMUNICATIONS POLICY (2021) (originally released as PHOENIX CENTER POLICY PERSPECTIVE NO. 20-25).
- *Promotional Effects and the Determination of Royalty Rates for Music*, 31 JOURNAL OF MEDIA ECONOMICS 27 (published on 23 April 2020) (originally released as

PHOENIX CENTER POLICY BULLETIN NO. 39).

- *Spatial Competition in Automobile Retailing*, APPLIED ECONOMICS (forthcoming).

OP-EDS:

The Phoenix Center had the following op-eds published in 2020:

- *Alabama and the Critical Importance of Small Cells*, AL.COM (January 13, 2020)
- *The Critical Importance of Small Cells*, AUBURN VILLAGER (February 6, 2020).
- *It's Time to Resolve the 2014 AWS-3 Auction Designated Entity Dispute*, FEDERALIST SOCIETY BLOG (June 1, 2020).
- *Getting Broadband Subsidies Right This Time*, FEDERALIST SOCIETY BLOG (June 8, 2020)
- *INSIGHT: FCC Must Move Quickly on 12 GHz Mid-Band Spectrum for 5G Goals*, BLOOMBERG LAW (July 30, 2020).
- *Net Neutrality Should Not Live on Through Asymmetrical Merger Commitments*, FEDERALIST SOCIETY BLOG (August 13, 2020).
- *Problems with Government-Sponsored Broadband Expansion*, BLOOMBERG LAW (September 25, 2020).
- *The House Staff Antitrust Report Will Negatively Affect More Than the Tech Industry*, FEDERALIST SOCIETY BLOG (November 6, 2020).

PHOENIX CENTER PUBLICATIONS

GOVERNMENT CITATIONS

We very much appreciate that policymakers found our research useful in 2020. Examples of government orders that cited the Phoenix Center's work include:

- *In the Matter of Expanding Flexible Use of the 3.7 To 4.2 GHz Band*, FCC 20-22, REPORT AND ORDER AND ORDER OF PROPOSED MODIFICATION, __ FCC Rcd. __ (rel. March 3, 2020).
- *Section 512 of Title 17: A Report of the Register of Copyrights*, UNITED STATES COPYRIGHT OFFICE (May 2020).
- *In the Matter of Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, FCC 20-67, REPORT AND ORDER, ORDER OF PROPOSED MODIFICATION, AND ORDERS, __ FCC Rcd. __ (rel. May 14, 2020).
- *In the Matter of Restoring Internet Freedom Bridging the Digital Divide for Low-Income Consumers Lifeline and Link-Up Reform and Modernization*, FCC 20-151, ORDER ON REMAND __ FCC Rcd. __ (rel. October 29, 2020) (Statement of Chairman Ajit Pai).
- *In the Matter of Communications Marketplace Report*, FCC 20-188, 2020 COMMUNICATIONS MARKETPLACE REPORT, __ FCC Rcd. __ (rel. December 31, 2020).

LAW & ECONOMICS; the JOURNAL OF LEGAL ASPECTS OF SPORT; the FEDERAL COMMUNICATIONS LAW JOURNAL; the CHICAGO-KENT LAW REVIEW; the WISCONSIN LAW REVIEW, the INTERNATIONAL JOURNAL OF MEDIA MANAGEMENT, the CALIFORNIA LAW REVIEW; the ANNALS OF REGIONAL SCIENCE; INFORMATION ECONOMICS & POLICY; TECHNOVATION; ECOLOGICAL ECONOMICS; AGING AND MENTAL HEALTH; the JOURNAL OF GERONTOLOGY; the EUROPEAN JOURNAL OF AGING; EUROPEAN SOCIETIES; ELECTRONICS; and the INTERNATIONAL REGIONAL SCIENCE REVIEW.

CITATIONS IN THE ACADEMIC LITERATURE

The Phoenix Center also very much appreciates that our work was cited by other scholars in the academic literature. In 2020, citations to Phoenix Center research could be found in leading journals such as the WAKE FOREST JOURNAL OF BUSINESS AND INTELLECTUAL PROPERTY LAW; FUTURE INTERNET, the JOURNAL OF COMPETITION

CONTRIBUTING TO THE PUBLIC DIALECTIC

2020 provided fertile soil for those interested in policy research. In this section, we highlight some (but not all) of our assorted activities and where we believe we added constructively to the debate.

Amicus Briefs

In 2020, the Phoenix Center had an active amicus brief practice. In particular,

- The Phoenix Center filed an Amicus Brief before the Court of Appeals for the Fourth District of Texas at San Antonio in Support of Appellants in *Title Source, Inc., v. HouseCanary Analytics, Inc. f/k/a Canary Analytics, Inc.* (filed February 5, 2020).
- Phoenix Center President Larry Spiwak served as lead counsel for the Brief Amicus Curiae of Communications Law Scholars in support of Plaintiffs' motions for preliminary injunction in *The United States of America v. The State of California, et al.* in the United States District Court for the Eastern District of California (filed August 19, 2020).
- The Phoenix Center filed an Amicus Brief before the Supreme Court of the United States in support of Petitioners on Writ of Certiorari in *Federal Communications Commission, et al. v. Prometheus Radio Project, et al.* (filed November 23, 2020).

All of these amicus briefs may be downloaded from the Phoenix Center's webpage.

Speaking Engagements

With the COVID lockdowns, unfortunately there were no opportunities for in-person events in 2020. Still, as necessity is the

mother of invention, Phoenix Center staff were nonetheless able to participate in a variety of virtual conferences and teleforums to present our research. For example:

- Phoenix Center Chief Economist Dr. George Ford was invited to participate in the National Science Foundation's Broadband Research Workshops and submitted a paper for discussion (November 2020).
- Phoenix Center Larry Spiwak participated in a teleforum hosted by the Federalist Society entitled "Legal and Policy Issues of the Administration's 5G Agenda" (March 27, 2020).
- Both Larry and George participated in a teleforum organized by the Federalist Society entitled "The Restoring Internet Freedom Order on Remand: Next Steps for the Federal Communications Commission" (May 11, 2020).
- George participated in an event organized by R Street entitled "Bridging the Digital Divide: How to Promote Broadband Adoption During the Pandemic and Beyond" (July 20, 2020).
- George participated in an event organized by Americans for Tax Reform entitled "Negative Impacts of Municipal Broadband & What to Do Instead" (July 24, 2020).
- George participated in an event organized by ACT|The App Association entitled "Mapping Solutions to the Digital and Telehealth Divides" (August 14, 2020).
- George and Larry participated in a podcast hosted by the High-Tech Forum

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entitled: “Still Random After All These Years” (September 2, 2020).

- George and Larry participated in a teleforum organized by the Federalist Society entitled “The Law and Economics of Municipal Broadband” (September 17, 2020).
- George and Larry participated in a teleforum organized by the Federalist Society entitled “The Staggers Act Turns Forty: Lessons Learned from Railroad Regulation” (October 14, 2020).
- Larry participated in a Continuing Legal Education conference organized by the Federal Communications Bar Association entitled “State Net Neutrality Laws: What They Are, and Will They Survive?” (October 29, 2020).
- George and Larry participated in the American Enterprise Institute’s “Explain to Shane” Podcast to discuss municipal broadband (November 17, 2020).
- George and Larry participated in a teleforum organized by the Federalist Society entitled “Should the Federal Government Be in the 5G Business?” (October 21, 2020).
- Larry participated in an event organized by R Street entitled “Government Owned Networks: How Not to Promote Broadband Investment” (December 9, 2020).

Other Activities

- Phoenix Center President Larry Spiwak continued to serve as co-chair of Federal Communications Bar Association’s

committee to oversee the FEDERAL COMMUNICATIONS LAW JOURNAL.

- Phoenix Center President Larry Spiwak continued to serve on the Executive Committee of Federalist Society’s Telecom Practice Committee.
- Based on a detailed complaint from Phoenix Center Chief Economist Dr. George Ford, TELECOMMUNICATIONS POLICY—a peer-reviewed academic journal—issued an editor’s note regarding a paper claiming Net Neutrality did not affect investment, describing the results of that paper as “spurious.”
- Finally, Phoenix Center Chief Economist Dr. George Ford continues to remain in the top 1% of authors downloaded on the Social Science Research Network, while Phoenix Center President Larry Spiwak was not too far behind in the top 1.2%.

Conclusion

As policy debates have become increasingly politicized over the years, we still believe (perhaps over-optimistically) that, in the end, substance matters. The policy choices we face are hard, and they should be treated with the respect and analytical rigor they deserve. Hopefully, the Phoenix Center has contributed positively towards restoring some of this analytical rigor to the dialectic.

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.

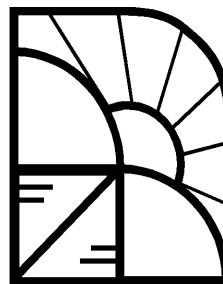
The Phoenix Center achieves this goal by providing an honest and credible voice in the public dialectic by supporting objective, solutions-based academic research to the forefront that is unencumbered by political hyperbole or agendas and is instead well grounded in fact, law and economic theory.

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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