

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

2023 ANNUAL REPORT

PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES

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PRESIDENT'S MESSAGE

2023 proved to be another prodigious year for the Phoenix Center. While we detail our many substantive accomplishments in the pages that follow, here is a quick “by the numbers” overview of our activities in 2023.

First, the Phoenix Center continued to author rigorous legal and economic research to help inform the policy debate. In 2023, the Phoenix Center released four (4) POLICY PAPERS, three (3) POLICY BULLETINS, and five (5) POLICY PERSPECTIVES. As always, our research may be downloaded free from our webpage and from the Social Science Research Network.

Second, we are pleased to report two of our papers were published in academic journals: *Regulatory Implications of Turning Internet Platforms into Common Carriers*, 76 FEDERAL COMMUNICATIONS LAW JOURNAL 1 (2023) (originally released as PHOENIX CENTER POLICY PAPER NO. 60) and *Pushing the Bounds of Judicial Deference: Some Thoughts on the FTC's New Unfair Methods of Competition Policy Statement*, 18 JOURNAL OF LAW, ECONOMICS AND POLICY 339 (2023) (originally released as PHOENIX CENTER POLICY BULLETIN NO. 63).

Third, we continued with our timely commentary on current events. In 2023, we published six (6) op-eds and essays in an assortment of outlets, including the YALE JOURNAL ON REGULATION and the FEDERALIST SOCIETY BLOG.

Fourth, Phoenix Center staff were invited to present our research at a variety of conferences this year, including the 45th Annual Pacific Telecommunications Council Conference in Hawaii, TPRC'51 and the Club For Growth Antitrust Conference in Sea Island, Georgia.

Fifth, 2023 again proved to be a very busy year for the Phoenix Center's amicus brief practice. Among other filings, the Phoenix Center filed two amicus briefs before the

United States Supreme Court. We also submitted our research in on-going proceedings before the Federal Trade Commission, the Federal Communications Commission and the National Telecommunications and Information Administration.

Sixth, our work was widely recognized on Capitol Hill. Among other examples, Senator John Thune sent a letter to Phoenix Center Chief Economist Dr. George S. Ford requesting comment about the implementation of the broadband provisions contained in the Infrastructure Investment and Jobs Act (IIJA). Dr. Ford also testified before the House of Representatives Committee on Energy and Commerce - Subcommittee on Oversight and Investigations, Hearing on “Closing the Digital Divide: Overseeing Federal Funds for Broadband Deployment.” Our work was also cited Senator Ted Cruz and House Energy and Commerce Committee Chair Cathy McMorris Rogers in a letter to the FCC's Inspector General

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 both the Telecom Practice Group and the Antitrust Practice Group of the Federalist Society. And both Phoenix Center Chief Economist Dr. George Ford and I continue to remain in the top 1% of authors downloaded on the Social Science Research Network.

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 2023. 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 2023, the Phoenix Center issued the following POLICY PAPERS:

- PHOENIX CENTER POLICY PAPER NO. 59, *Is Social Media Legislation Too Broad? An Empirical Analysis*, (July 2023).
- PHOENIX CENTER POLICY PAPER NO. 60, *Regulatory Implications of Turning Internet Platforms into Common Carriers* (September 2023).
- PHOENIX CENTER POLICY PAPER NO. 61, *Digital Discrimination Under Disparate Impact: A Legal and Economic Analysis*, (October 2023).
- PHOENIX CENTER POLICY PAPER NO. 62, *Investment in the Virtuous Circle: Theory and Empirics* (December 2023).

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 2023:

- PHOENIX CENTER POLICY BULLETIN NO. 63, *Pushing the Bounds of Judicial Deference: Some Thoughts on The FTC's New Unfair Methods of Competition Policy Statement* (January 2023).
- PHOENIX CENTER POLICY BULLETIN NO. 64, *Can Self-Preferencing by An Online Retailer Be Detected? A Monte Carlo Simulation* (June 2023).
- PHOENIX CENTER POLICY BULLETIN NO. 65, *Do Hart-Scott-Rodino Filing Requirements Need Reform?* (September 2023).

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 2023:

- PHOENIX CENTER POLICY PERSPECTIVE NO. 23-01, *An Agency in Crisis: Employee Satisfaction at the FTC Continues to Decline* (April 27, 2023).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 23-02, *New Car Prices Under Supply Constraints: Competition or Collusion?* (April 27, 2023).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 23-03, *Digital Discrimination and Broadband Subsidies: Which Matters?* (October 31, 2023).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 23-04, *Will Digital Discrimination Policies End Discount Plans for Low-Income Consumers?* (November 1, 2023).

PHOENIX CENTER PUBLICATIONS

- PHOENIX CENTER POLICY PERSPECTIVE NO. 23-05, *Assessing the Effects of Social Media Use on Youth Mental Health: An Examination of Selection Bias* (November 16, 2023).

ACADEMIC PUBLICATIONS

In 2023, the Phoenix Center's staff had the following papers published in academic journals:

- *Regulatory Implications of Turning Internet Platforms into Common Carriers*, 76 FEDERAL COMMUNICATIONS LAW JOURNAL 1 (2023) (originally published as PHOENIX CENTER POLICY PAPER No. 60).
- *Pushing the Bounds of Judicial Deference: Some Thoughts on the FTC's New Unfair Methods of Competition Policy Statement*, 18 JOURNAL OF LAW, ECONOMICS AND POLICY 339 (2023) (originally released as PHOENIX CENTER POLICY BULLETIN NO. 63).
- *Does High Market Concentration Contribute to Inflation?*, THE CENTER FOR GROWTH AND OPPORTUNITY AT UTAH STATE UNIVERSITY (March 9, 2023).

OP-EDS AND ESSAYS:

The Phoenix Center had the following op-eds and essays published in 2023:

- *Race and Reckoning Come to the Broadband Debate*, FEDERALIST SOCIETY BLOG (February 22, 2023).
- *What's to Blame for Inflation?*, REALCLEAR POLICY (March 23, 2023).
- *FTC v. Facebook: Does the Punishment Fit the Crime?*, FEDERALIST SOCIETY BLOG (May 17, 2023).

- *How Market Mechanisms Can Improve Government Use and Management of Spectrum*, NOTICE & COMMENT – YALE JOURNAL ON REGULATION (June 5, 2023).
- *Regulatory Humility or Regulatory Hubris at the Federal Trade Commission?*, TRUTH ON THE MARKET (September 19, 2023).
- *The FCC Returns to the Law and Economics Free Zone*, FEDERALIST SOCIETY BLOG (November 20, 2023).

AMICUS BRIEFS

In 2023, the Phoenix Center filed several amicus briefs where we believed our perspective would assist the reviewing court.

- The Phoenix Center acted as lead counsel for a brief by Public Interest Organizations as *Amici Curiae* before the Supreme Court of the United States in the case of *Northstar Wireless, LLC v. Federal Communications Commission* (filed February 21, 2023).
- The Phoenix Center filed an *amicus brief* before the Supreme Court of the United States in support of Petitioners in the case of *NetChoice, LLC, and the Computer & Communications Industry Association v. Ken Paxton, in his official capacity as the Attorney General of Texas* (filed December 7, 2023).
- The Phoenix Center filed an amicus brief in support of Dish Network Corporation's Opposed Motion for Relief From Judgment in the case of *United States of America v. Deutsche Telekom AG, et al.*, before the United States District Court for the District of Columbia (filed September 1, 2023).

CONTRIBUTING TO THE PUBLIC DIALECTIC

2023 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.

TESTIMONY AND CONGRESSIONAL INQUIRIES

- Senator John Thune sent a letter to Phoenix Center Chief Economist Dr. George S. Ford requesting comment about the implementation of the broadband provisions contained in the Infrastructure Investment and Jobs Act (IIJA).
- Phoenix Center Chief Economist Dr. George S. Ford testified before the House of Representatives Committee on Energy and Commerce - Subcommittee on Oversight and Investigations, Hearing on “Closing the Digital Divide: Overseeing Federal Funds for Broadband Deployment.”
- Phoenix Center President Lawrence Spiwak testified at a public hearing in Vineland, New Jersey regarding the potential construction of a new middle mile network and a new municipal government-owned broadband network.

COMMENTS

- Phoenix Center filed a response to the National Telecommunications and Information Administration’s request for comments on the development of a National Spectrum Strategy.
- The Phoenix Center filed comments with the Federal Trade Commission and the Department of Justice on proposed new Draft Merger Guidelines.
- The Phoenix Center filed comments in response to a joint Federal Trade Commission and Department of Justice

Notice of Proposed Rulemaking on the information reporting requirements for Hart-Scott-Rodino premerger filings.

- Phoenix Center filed an *Ex Parte* in Federal Communications Commission GN Docket No. 22-69, *In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination* to submit our relevant research into the record.
- The Phoenix Center filed comments in response to the National Telecommunications and Information Administration’s *Notice and Request for Comment* on its initiative to protect the mental health, safety and privacy of minors online.
- The Phoenix Center filed comments in response to the Federal Communications Commission’s *Notice of Proposed Rulemaking on Safeguarding and Securing the Open Internet*.

SIGNIFICANT CITATIONS BY POLICYMAKERS

- Rep. John Moolenaar entered PHOENIX CENTER POLICY PERSPECTIVE NO. 23-01, *An Agency in Crisis: Employee Satisfaction at the FTC Continues to Decline*, into the official record at House Appropriations Committee Budget Hearing - Fiscal Year 2024 Request for the Federal Trade Commission.
- Senator Ted Cruz and House Energy and Commerce Committee Chair Cathy McMorris Rogers cited PHOENIX CENTER POLICY PERSPECTIVE NO. 22-01, *EBB, Lifeline, and ACP: Some Guidance*, in a joint letter to the Federal Communications Commission’s Inspector General questioning requesting review of the agency’s management of taxpayer subsidies of broadband access for low-income Americans during the 2020-21 government-imposed lockdowns.

CONTRIBUTING TO THE PUBLIC DIALECTIC

- The Federal Communications Commission cited the Phoenix Center's research in *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, FCC 23-100, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, __ FCC Rcd. __ (rel. November 20, 2023)

CITATIONS IN THE ACADEMIC LITERATURE

In 2023, citations to Phoenix Center research could be found in academic journals such as ECONOMIC ANALYSIS AND POLICY, TELECOMMUNICATIONS POLICY, the JOURNAL OF TECHNOLOGY TRANSFER, the JOURNAL OF CORPORATE FINANCE, TELEMATICS AND INFORMATICS, the JOURNAL OF ECONOMICS, VILLANOVA LAW REVIEW, WASHINGTON AND LEE LAW REVIEW, the JOURNAL OF POLICY MODELING and the EUROPEAN JOURNAL OF LAW AND ECONOMICS.

CONFERENCES AND EVENTS

Phoenix Center staff were privileged to participate in a variety of conferences to present our research. For example:

- Phoenix Center Chief Economist Dr. George S. Ford presented his paper, *Digital Discrimination: Fiber Availability and Speeds by Race and Income*, at the 45th Annual Pacific Telecommunications Council Conference in Hawaii.
- Phoenix Center President Lawrence Spiwak presented his paper, *Regulatory Implications of Turning Internet Platforms into Common Carriers*, at TPRC'51.
- Phoenix Center President Lawrence Spiwak was invited to participate in a conference on antitrust hosted by the Club for Growth in Sea Island, Georgia.

- Phoenix Center President Lawrence Spiwak moderated a teleforum hosted by the Federalist Society entitled *Major Questions Doctrine and the Tech and Telecom Sectors After West Virginia v. EPA*.
- Phoenix Center President Lawrence Spiwak and Phoenix Center Chief Economist organized a teleforum hosted by the Federalist Society entitled *The Law and Economics of Net Neutrality*.

OTHER ACTIVITIES

- Phoenix Center President Lawrence Spiwak continued to serve as co-chair of Federal Communications Bar Association's committee to oversee the FEDERAL COMMUNICATIONS LAW JOURNAL.
- Phoenix Center President Lawrence Spiwak continued to serve on both the Telecommunications Practice and Antitrust Practice Executive Committees of the Federalist Society.
- Both Phoenix Center Chief Economist Dr. George Ford and Phoenix Center President Lawrence Spiwak continue to remain in the top 1% of authors downloaded on the Social Science Research Network.

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 the digital age.

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.

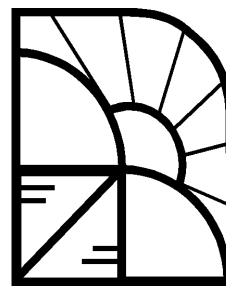
The Phoenix Center achieves this goal by providing an honest and credible voice in the public dialectic by supporting objective, solutions-based academic research to the forefront that is unencumbered by political hyperbole or agendas and is instead well grounded in fact, law and economic theory.

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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