

# PRESIDENT'S MESSAGE

2001 was a year of tremendous breakthroughs and achievements for the Phoenix Center.

Since the Phoenix Center's formation in 1998, the Phoenix Center has been operated to date on a *pro bono* basis thanks to the generous and passionate efforts of its members. However, in late 2000, due to its remarkable growth in international stature and staff, as well as its prodigious work product, the Phoenix Center decided to make a formal commitment to its activities and applied for, and received, its Section 501(c)(3) ruling from the Internal Revenue Service that it is a non-profit charitable organization. As such, 2001 was the first formal year of operations for the Phoenix Center, and what a year it was.

First, the Phoenix Center's staff has grown to 20 with the addition of two new Phoenix Center Adjunct Fellows.

Second, the Phoenix Center's work product in 2001 was again extremely prodigious:

- The Phoenix Center published four papers in its Policy Paper series;
- Phoenix Center Members continued to write numerous op-ed and newspaper commentaries for international media outlets; and
- Two Phoenix Center Members published a book entitled *THE TELECOMS TRADE WAR: THE UNITED STATES, THE EUROPEAN UNION AND THE WTO* (Hart Publishing 2001).

Third, the Phoenix Center sponsored its inaugural U.S. Telecoms Symposium, which was attended by two Members of the United States Congress and over 60 scholars, policymakers and senior industry executives.

Fourth, major media outlets such as CNN, REUTERS, THE UNITED PRESS INTERNATIONAL, the SAN FRANCISCO CHRONICLE and the WASHINGTON POST, in addition to major trade publications such as the WASHINGTON LEGAL TIMES, COMMUNICATIONS DAILY, COMMUNICATIONS WEEK INTERNATIONAL, WIRED NEWS, X-CHANGE MAGAZINE, PHONE+ MAGAZINE, and the AMERICAN GAS ASSOCIATION MAGAZINE quoted Phoenix Center Members as experts in their respective fields. In fact, the SAN FRANCISCO CHRONICLE recently reported that the "*Phoenix Center is a small but well connected pro-consumer public policy think tank*" that "*deserve[s] credit for providing the best proof yet*" for "*detail[ing] exactly why the 1996 Telecommunications ... Act didn't open up local markets as intended.*"



Fifth, Phoenix Center Members have continued to speak before government entities and industry symposia world wide.

Sixth, the Phoenix Center was named to the Congressional Internet Caucus Advisory Committee.

Finally, I am extremely pleased to report that the Phoenix Center's web page received nearly a half a million hits in 2001, thereby demonstrating that the Phoenix Center's web page has become an international reference resource of first resort for policymakers and scholars alike.

All in all, not too bad for our first full year of operation. As explained *infra*, we have a lot of exciting projects planned for 2002, and we look forward to your participation and support.

– Lawrence J. Spiwak  
January 7, 2002

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<i>In the News . . . . .</i>	3
<i>Web Page Traffic . . . . .</i>	4
TELECOMS TRADE WAR . . . . .	5
<i>U.S. Telecoms Symposium . . . . .</i>	6
<i>Friends of Telecoms Competition . . . . .</i>	7
<i>Duvall Public Service Award . . . . .</i>	8
<i>Policy Paper Series . . . . .</i>	9
<i>Research Topics for 2002 . . . . .</i>	10-11
<i>Mission Statement . . . . .</i>	12

## IN THE NEWS

In 2001, the world's media once again called upon Phoenix Center Members as experts relating to topics within their ken.

For example, Phoenix Center Members were quoted in such major media news outlets as the UNITED PRESS INTERNATIONAL, REUTERS, CNN and the WASHINGTON POST.

In fact, the SAN FRANCISCO CHRONICLE recently reported that the *“Phoenix Center is a small but well connected pro-consumer public policy think tank”* – led by Lawrence J. Spiwak who is a *“knowledgeable and shrewd insider”* – that *“deserve[s] credit for providing the best proof yet”* for *“detail[ing] exactly why the 1996 Telecommunications ... Act didn't open up local markets as intended.”*

Phoenix Center Members were also quoted as experts in 2001 by key trade publications such as the WASHINGTON LEGAL TIMES, PUBLIC UTILITIES FORTNIGHTLY, COMMUNICATIONS DAILY, COMMUNICATIONS WEEK INTERNATIONAL, WIRED NEWS, X-CHANGE MAGAZINE, PHONE+ MAGAZINE, and the AMERICAN GAS ASSOCIATION MAGAZINE.

Finally, Phoenix Center President Lawrence J. Spiwak continued to publish his internationally syndicated commentaries in UNITED PRESS INTERNATIONAL and COMMUNICATIONS WEEK INTERNATIONAL.



Phoenix Center Adjunct Fellow Mark Naftel appears on CNN International on 02 February 2001 to discuss THE TELECOMS TRADE WAR.

*The “Phoenix Center is a small but well connected pro-consumer public policy think tank” – led by Lawrence J. Spiwak who is a “knowledgeable and shrewd insider” – that “deserve[s] credit for providing the best proof yet” for “detail[ing] exactly why the 1996 Telecommunications ... Act didn't open up local markets as intended.”*

– SAN FRANCISCO CHRONICLE  
6 December 2001

# WEB PAGE TRAFFIC

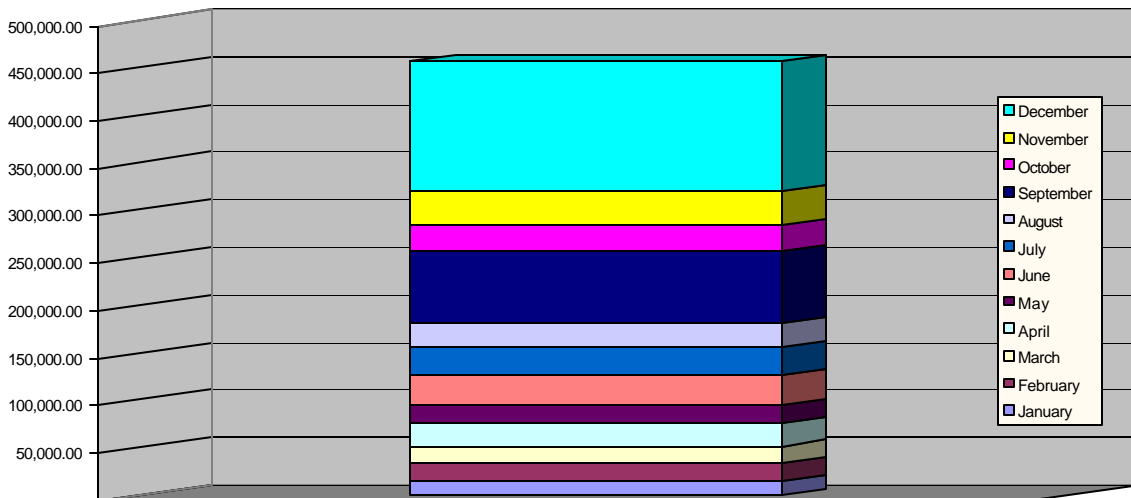
One of the major activities of the Phoenix Center to date has been to host the Phoenix Center's internationally renown web page (<http://www.phoenix-center.org>).

Not only is the Phoenix Center's web page a fertile "clearing house" of ideas, but visitors to this site may avail themselves of one of the largest sources of free research tools on the Internet, including Phoenix Center Policy Papers (*infra*), a significant collection of other scholarly works of interest in our "virtual library," a collection of op-ed pieces

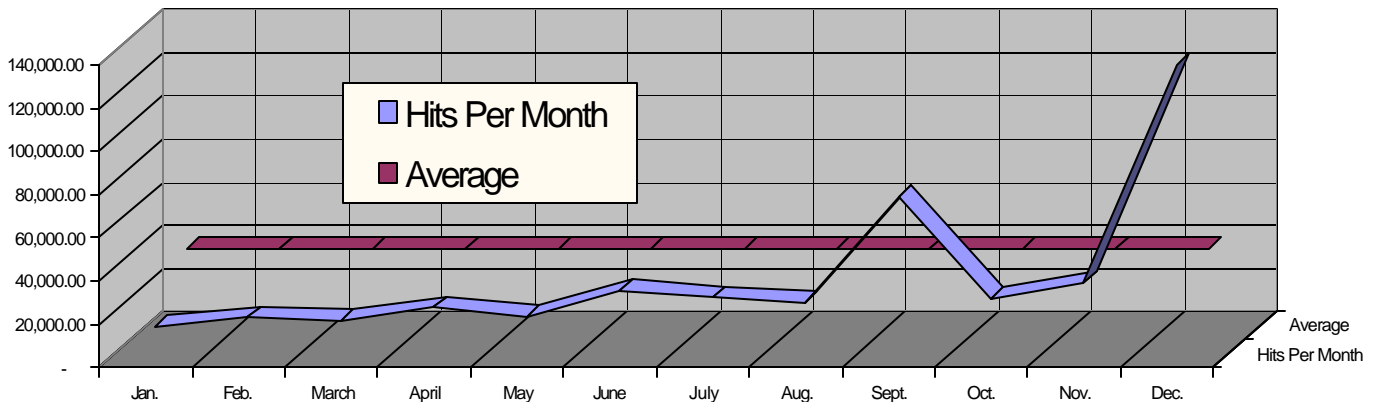
authored by Phoenix Center staff, and "hot links" to other Web sites that the Phoenix Center believes the public will find interesting and useful. In so doing, the Phoenix Center's web page has become an international reference resource of first resort for policymakers and scholars alike.

2001 was a year of incredible growth for the Phoenix Center's web page. As demonstrated below, the Phoenix Center's web page received nearly a half a million hits in 2001, and averaged over 38,000 hits per month.

**Total Hits 2001**



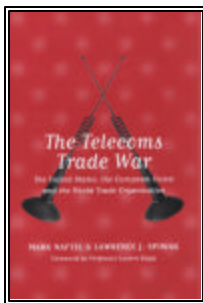
**2001 Web Hits By Month**



# THE TELECOMS TRADE WAR

In 2001, Phoenix Center Adjunct Fellow Mark Naftel and Phoenix Center President Lawrence J. Spiwak co-authored a book entitled: THE TELECOMS TRADE WAR: THE UNITED STATES, THE EUROPEAN UNION AND THE WTO (forward by Lucien Rapp, Hart 2001).

Already in its second printing, THE TELECOMS TRADE WAR is a multifaceted book from which readers may take away many valuable lessons.



On one hand, THE TELECOMS TRADE WAR is, first and foremost, a detailed hornbook of the major United States and European telecoms restructuring efforts post-WTO. In so doing, The Telecoms Trade War provides a useful roadmap to today's U.S., EU and WTO telecoms regulation.

Yet, on the other hand, THE TELECOMS TRADE WAR is much more than a mere hornbook, as it exposes the unacceptable regulatory cynicism that was so prevalent over the last several years. By both explaining the complex issues raised by telecoms restructuring and by providing various case studies and citations to public documents to illustrate their points, the authors show exactly why the telecoms market is having a financial meltdown today - *i.e.*, that, despite the political rhetoric, regulators on both sides of the Atlantic have eschewed innovative and indeed productive solutions to create a market structure conducive to long-term competitive rivalry. Instead, the authors demonstrate that current policies reveal a growing politicization of the process and concurrent regulatory cynicism towards the maximization of consumer welfare that will be difficult - if not outright impossible - to remove.

Interested readers may preview, read the reviews, and purchase a copy of the TELECOMS TRADE WAR on the Phoenix Center's web page at: <http://www.phoenix-center.org/telindex.html>.

COMMUNICATIONS WEEK INTERNATIONAL – *Contains “important lessons for ... how best to open up telecoms to competition.”*

Professor Steven S. Wildman, Director, Quello Center for Telecommunication Management & Law, Michigan State University – *“... a trenchant and penetrating analysis ... a refreshing counterpoint to much of current orthodoxy in telecommunications policy that deserves to be taken seriously.”*

Robert G. Berger, President and CEO, CityNet Telecommunications – *“... unique in its unabashed attempt to sift industry substance from industry hype, regardless of the consequences, and present as true a picture as possible of the state of competition in the local telecommunications marketplace today.”*

Richard Cawley, European Commission – *“A truly comprehensive piece of work ... No stone is left unturned and ... lays a clear articulation of the tension between promoting the public interest and satisfying the politicians and private stakeholders.”*

Bernard Amory, Partner, Jones Day, Brussels – *“... an essential guide ... towards understanding where the process currently stands and re-establishing the principal objectives that telecommunications regulation should be based upon.”*

COMMUNICATIONS BOOK QUARTERLY – *“... a great deal of useful information ... made more valuable within its comparative context” and therefore makes for “important reading.”*

TELECOM REFORM – *“... challenges the conventional wisdom with evidence and analysis that go substantially deeper than the mantra recitations that have come to dominate both policy analysis and academic research on liberalization.”*

Richard W. Oliver, Professor of Management, Vanderbilt University – *“A ‘must read’...”*

# PHOENIX CENTER U.S. TELECOMS SYMPOSIUM

On July 11, 2001, the Phoenix Center held its inaugural U.S. Telecoms Symposium in Washington, D.C. Rather than sponsor yet another event where various participants simply conduct “sales pitches” for their products or tout the “party line,” the Phoenix Center Symposium gathered some of the leading scholars and participants in the telecoms industry to debate vigorously the issues without the typical hyperbole. Given the success of the first event, plans are already under way for the Phoenix Center’s 2002 Symposium.

For example, at the 2001 Symposium, the Phoenix Center focused on the underlying legal and economic problems affecting the realization of the Digital Economy in the United States. In addition, the Phoenix Center took this opportunity to bestow its prestigious Jerry B. Duvall Award for Public Service, which goes to the policy-maker who – like its namesake – most demonstrates the political courage to break away from the conventional rhetoric and instead approaches the complex competitive issues raised by telecoms restructuring with the solemnity and analytical rigor they deserve, to Representative Chris Cannon (R-UT). In addition, we were honored that Representative Jerrold Nadler (D-NY) appeared personally to be recognized as part of the Phoenix Center’s 2001 Class of “Friend of Telecoms Competition.”

Indeed, over 60 senior telecommunications industry scholars and executives attended this year’s Phoenix Center U.S. Telecoms Symposium in order to hear from such leading telecoms players as: Dr. George Ford PhD (Adjunct Fellow Phoenix Center and Chief Economist, Z-Tel), Robert G. Berger (Phoenix Center Adjunct Fellow and

Chairman & Chief Executive Officer CityNet Telecommunications), Dr. Jerry Duvall PhD (Chief Economist Emeritus, Phoenix Center and Chief Economist, FCC Mass Media Bureau), Dr. Marius Schwartz, PhD (Georgetown University and former Economics Director of Enforcement at the Antitrust Division of the U.S. Department of Justice), Dan Gonzalez (Vice President, XO Communications), Tom Koutsky (Adjunct Fellow, Phoenix Center, and former Associate General Counsel, Covad), John Thorne (Deputy General Counsel, Verizon), Larry Clinton (USTA), Dr. Tom Hazlett PhD (AEI), Dr. Robert Crandall PhD (Brookings Institution), Phil Verveer (Partner, Willke Farr & Gallagher), Brian O’Connor (Phoenix Center Editorial Advisory Board Member and Vice President, VoiceStream), Dr. Doron Fertig PhD (Senior Economist, McKinsey & Co.) and Bob Atkinson (Executive Director, Columbia Institute of Tele-Information and former Deputy Chief, FCC Common Carrier Bureau).

Moreover, to ensure the widest dissemination of the Symposium’s proceedings as possible, the Phoenix Center placed videotapes of each panel on the Phoenix Center’s web page ([www.phoenix-center.org](http://www.phoenix-center.org)) for those interested parties around the world who were unable to attend the Symposium in person. Based upon our web tracking software, it is revealed that numerous people from around the globe have taken full advantage of this important resource.



# FRIENDS OF TELECOMS COMPETITION

AS noted above, one of the Phoenix Center’s primary missions is to increase the analytical rigor of public-policy decision-making. To this end, each year the Phoenix Center believes it important to recognize those public officials who contribute to this process.

One way the Phoenix Center recognizes policy-makers who seek to maximize consumer welfare is by citing a select bi-partisan group of legislators as “Friends of Telecoms Competition” in recognition of their legislative actions that contributed to the maximization of U.S. consumer welfare.

The Phoenix Center selected the 2001 class of “Friends of Telecoms Competition” based upon a confidential survey of the foremost players in the U.S. telecommunications industry, including leading people from academia, government and the private sector.

They are:



***Congressman Jerrold Nadler (D-8<sup>th</sup> NY)  
Addresses Phoenix Center  
2001 U.S. Telecoms Symposium***

<b>Republicans</b>	<b>Democrats</b>
Chairman James F. Sensenbrenner, (R-9 <sup>th</sup> WI) Hon. Steve Chabot (R-1 <sup>st</sup> ) Hon. Howard Coble (R-6 <sup>th</sup> NC) Hon. Darrell Issa (R-48 <sup>th</sup> CA) Hon. Ric Keller (R-8 <sup>th</sup> FL) Hon. Steve Largent (R-1 <sup>st</sup> OK) Hon. Chip Pickering (R-3 <sup>rd</sup> MS) Hon. Heather Wilson (R-1 <sup>st</sup> NM)	Hon. John Conyers (D-14 <sup>th</sup> MI) Hon. Bill Delahunt (D-10 <sup>th</sup> MA) Hon. Anna Eshoo (D-14 <sup>th</sup> CA) Hon. Zoe Lofgren (D-16 <sup>th</sup> CA) Hon. Bill Luther (D-6 <sup>th</sup> MN) Hon. Ed Markey (D-7 <sup>th</sup> MA) Hon. Jerrold Nadler (D-8 <sup>th</sup> NY)

# DUVALL PUBLIC SERVICE AWARD

Each year, the Phoenix Center recognizes policy-makers who seek to maximize consumer welfare through its prestigious Jerry B. Duvall Award for Public Service. The Duvall Award goes to the policy-maker who – like its namesake – most demonstrates the political courage to break away from the conventional rhetoric and instead approaches the complex competitive issues raised by telecoms restructuring with the solemnity and analytical rigor they deserve.

The Phoenix Center chose Representative Chris Cannon (R-UT) to be the 2001 recipient of the Duvall Award for having the political courage to introduce the American Broadband Competition Act of 2001 as a legislative alternative to the Internet Freedom and Broadband Deployment Act of 2001 (Tauzin-Dingell). A full text of Congressman Cannon's speech may be obtained at: <http://www.house.gov/cannon/cannon/issues/phoenix.html>.



**The Duvall Public Service Award**



**Congressman Chris Cannon (R-3rd UT) Addresses Phoenix Center 2001 U.S. Telecoms Symposium**

*“... when policy makers comprehend the benefits of increased broadband deployment for their constituents, they tend to eagerly embrace the most attractive platitudes that promise quick results. Rather than focus on the things Congress can do to make sure the right incentives exist in the law to encourage broadband deployment and competition, Members of Congress start giddily talking about ‘bridging the Digital Divide.’*

*I am leery whenever I hear colleagues using slogans like ‘the Digital Divide’ because not only is the substantive concept misleading but this sloganeering is often being used by entities like the Bell companies to advance their own agendas.*

*To the extent there is a ‘digital divide’ it is no different than when any new technology comes along - it always comes first to the urban and suburban areas then we see deployment into rural areas. It’s simple economics. Do I want to see broadband deployment in my rural district and see it happen faster? Absolutely. But I also realize that broadband is probably ahead of the game when you consider, for example, the ‘television divide’ 50 years ago or the ‘indoor plumbing divide’ of a 100 years ago.”*

*– Congressman Chris Cannon*

# 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. Once completed, these Policy Papers are posted promptly on the Phoenix Center's web page (<http://www.phoenix-center.org>).

The Phoenix Center published the following Policy Papers in 2001:

T. Randolph Beard, George S. Ford, Lawrence J. Spiwak, *Why ADCo? Why Now? An Economic Exploration into the Future Industry Structure for the "Last Mile" in Local Telecommunications Markets*, PHOENIX CENTER POLICY PAPER NO. 12 (November 2001).

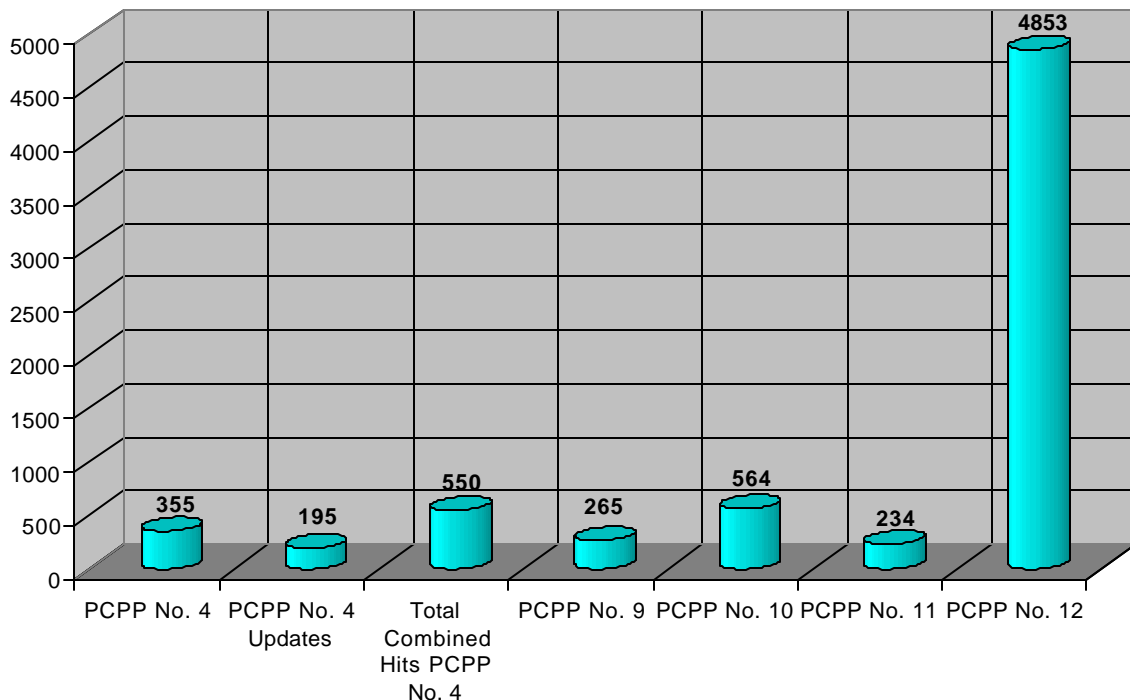
George S. Ford, *An Economic Analysis of the FCC's Notice of Inquiry on Flat Rate Charges in the Long Distance Industry*, PHOENIX CENTER POLICY PAPER NO. 11 (May 2001).

Jerry B. Duvall & George S. Ford, *Changing Industry Structure: The Economics of Entry and Price Competition*, PHOENIX CENTER POLICY PAPER NO. 10 (April 2001);

Lucien Rapp, *Dirty Dancing: System and Legal Practices with Regard to Rights-of-Way (RoWs) in a Sampling of European Union Member States – A Critical Study*, PHOENIX CENTER POLICY PAPER NO. 9 (April 2001).

In addition, with the 2001 energy crisis, the Phoenix Center updated its data from PHOENIX CENTER POLICY PAPER SERIES NO. 4: *You Say ISO, I Say Transco, Let's Call the Whole Thing Off: Why Current Electric Utility "Unbundling" Initiatives Work Without Fundamental Change*, (January 1999) by Lawrence J. Spiwak.

2001 Phoenix Center Policy Paper Hits



# RESEARCH TOPICS FOR 2002

## Phoenix Center Digital Economy Project: The “Convergence Fiasco”

Over the last several years, we have heard much about the promise of “convergence” and a “technological revolution” in the Digital Economy. As evidenced by the recent financial meltdown in the telecoms sector, however, the mere promise of technology is apparently insufficient, in and of itself, to overcome the fundamental economics of the industry.

Because the FCC is now undertaking its first triennial review of the successes and failures of the Telecommunications Act of 1996, the time is now ripe to explore exactly what effect technology has (if any) on the underlying economics of the Digital Economy. While there certainly are a lot of wonderful technologies being developed in the market – thus leading to some increased dynamic economic efficiencies for consumers – it is becoming evident that technology has not had such a dramatic effect on industry structure as politicians and pundits claim. For example, technological innovation in distribution technologies does not reduce advertising costs. Similarly, technical innovation does little to reduce construction and deployment costs for new facilities-based providers – *i.e.*, it costs just the same to lay fiber as it does to lay copper.

Accordingly, the Phoenix Center intends to focus the inquiry of several of its Policy Papers in 2002 to parallel those issues raised by the FCC’s triennial review and, in particular, to evaluate the true effect of technology on the economics of the telecommunications industry (the professed “Super-highway” of the Digital Economy). Among other topics, these papers may explore:

- How technology has affected the emerging market structure of the

telecommunications industry in the U.S. five years after the Telecommunications Act of 1996;

- With all of the promise of “convergence,” whether various distribution technologies are economic substitutes or complements – *i.e.*, does “convergence” really have contestable effect on dominant incumbent firms’ behavior?
- The role of the “public utility” in the new Millennium;
- What markets are “relevant” and which are not;
- How well and how poorly states have implemented the provisions of the Telecommunications Act of 1996;
- The pro’s and cons of structural separation, including case studies of previous structural separation attempts by government; and
- Given the above, what steps can we take to encourage deployment of competitive advanced broadband networks and new technologies to consumers (and, particularly, to schools and rural areas)?

*“Competition – like all other virtues – does not come easy. We have learned from history time and again that we cannot sacrifice long-term economic freedom and individual liberty at the short-term alter of the proverbial Golden Idol of the ‘benevolent monopolist.’ Instead, faith in economic theory and hard work is the only thing that is going to pull us through, for if we fail we have no one to blame but our own shortsightedness.”*

– Lawrence J. Spiwak  
*Commentary: A Crisis Of Conscience*  
UNITED PRESS INTERNATIONAL  
September 8, 2001

# RESEARCH TOPICS FOR 2002

## Phoenix Center Electric Utility Project: Transmission Policy for the New Millennium

Since its inception, Phoenix Center members have written extensively about the emerging structure of the electric utility industry.

In the Phoenix Center's seminal paper, PHOENIX CENTER POLICY PAPER NO. 4: *You Say ISO, I Say Transco, Let's Call the Whole Thing Off: Why Current Electric Utility "Unbundling" Initiatives Work Without Fundamental Change* (January 1999), Phoenix Center President Lawrence J. Spiwak predicted three years ago the imminent collapse of the U.S. electricity sector due to the U.S. Federal Energy Regulatory Commission's (FERC's) refusal to account for economic first principles in its flawed attempt to restructure the market. As a result, Spiwak showed that collapse of the national grid was inevitable because FERC's vision of a restructured electricity sector was simply an extremely inefficient way to organize the market.

To support this conclusion, PHOENIX CENTER POLICY PAPER NO. 4, issued in January 1999, showed that between 1994 (the beginning of FERC's restructuring efforts with Order No. 888) and year-end 1998, new planned transmission had been reduced by a shocking (46%).

In light of the California electric utility crisis of 2001, the Phoenix Center decided to update these figures using the exact same data source and methodology. Unfortunately, the new results were just as troubling as the old.

For example, the Phoenix Center found that:

- Despite the huge increase in demand over last seven years, new bulk transmission capacity over seven year

period has increased by only a paltry 0.05%;

- For three years, new planned transmission capacity dropped to nearly 50%; and
- Despite 30% spike in new planned transmission additions this year, planned new transmission additions are still down by one-third since 1994.

For 2002, the Phoenix Center intends to continue its important work in this area. In particular, given policy-makers' seemingly myopic desire to force the industry into a "Regional Transmission Organization" or "RTO", the Phoenix Center would like to examine the big unanswered public policy question: *what does a properly formed RTO look like exactly?*

Such an inquiry will require the examination of several related factors including, *inter alia*:

- Transmission pricing;
- Ownership structure;
- The number of firms required; and
- The relationship of the RTO to overall industry structure (generation and distribution).

*"Larry Spiwak, President of the Phoenix Center, was someone who predicted and analyzed the problems in California electricity deregulation long before they were widely recognized."*

- [www.galbithink.org](http://www.galbithink.org)

# MISSION STATEMENT

The Phoenix Center for Advanced Legal & Economic Public Policy Studies is an international, 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 regulated industries.

Founded in 1998, the Phoenix Center's mission is to maximize consumer welfare by promoting free markets, competition, and individual freedom and liberty.

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

Yet, what makes the Phoenix Center particularly unique among Washington, D.C. think-tanks is that many of the Phoenix Center's members have acted (and continue to act) as senior career staffers in government, rather than as political appointees. In so doing, the Phoenix Center's atypical public/private collegial environment provides fertile ground for scholars and government alike to dialogue and work towards developing real solutions for the complex problems facing the United States and the world today.

*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

## Long-Term Goals:

- (1) The Phoenix Center seeks to demonstrate that consumer welfare is best maximized by promoting free markets, competition, and individual freedom and liberty.
- (2) 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.
- (3) The Phoenix Center seeks to promote public confidence in the democratic process, their government's institutions and in the free enterprise system altogether.
- (4) 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.

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& ECONOMIC PUBLIC POLICY STUDIES**  
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