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FSF Academic Scholar Faults FCC's Internet Regulation Proposal

Dennis Weisman Says Case for Broadband Regulation Not Made

ROCKVILLE, MD – In the sixteenth [paper](#) in this year's series of [Perspectives from FSF Scholars](#), Dennis Weisman, a member of the Free State Foundation's Board of Academic Advisors and Professor of Economics at Kansas State University, questions whether FCC Chairman Julius Genachowski's "Third Way" proposal is more like Goldilocks or the Big Bad Wolf. In the end, he concludes "this may well be a distinction without a difference because, in this instance, even Goldilocks would appear to have some very big teeth!" Professor Weisman's critical analysis of Chairman Genachowski's proposal is grounded in the principle that: "In a market economy, the policy default is not economic regulation, but rather reliance upon the market for providing the requisite competitive discipline. Regulatory intervention is warranted only in the case of a non-transitory market failure and then only when the expected benefits of regulation exceed the costs." In his *Perspectives* paper, [The "Third Way" for Broadband Regulation: Goldilocks or the Big Bad Wolf?](#), Professor Weisman concludes: "In the case of broadband regulation, neither of these two preconditions has been met."

With the FCC scheduled to consider Chairman Genachowski's "Third Way" proposal on June 17, Professor Weisman's paper provides a policy framework that establishes the conditions for evaluating the proposal. Measured against this framework, the proposal to reclassify Internet providers as common carriers fails to pass muster. In addition to the conclusions offered above, Professor Weisman offers the following important observations:

"The case for economic regulation of broadband markets is weak at best. The Commission can point to, at most, two cases where things went awry — *Madison River* and *Comcast*. *Madison River* was resolved with dispatch; and in the case of *Comcast*, the supposed cover-up was arguably worse than the alleged crime. There is no offense in reasonable network management practices designed to prevent congestion and maintain service quality. But subscribers have a right to expect full transparency with respect to how and when these practices are administered. Still, there was no evidence that Comcast engaged in these practices to disadvantage rivals. In other words, these two cases are little more than hiccups in a technologically-dynamic marketplace. It strains credulity to suggest that they somehow constitute evidence of a systemic and non-transitory market failure justifying regulatory intervention. They do not. If

anything, these two cases substantiate the argument for reliance on a type of *regulatory contestability* in which the mere threat of regulatory action is sufficient to impose the requisite discipline. Whether for good or ill, the politically-charged nature of the entire net neutrality debate, at least at present, ensures that broadband providers will treat this as a credible threat."

"The evidence in support of the exercise of undue market power in broadband markets would appear similarly lacking. In research recently conducted by Professor Tom Hazlett and myself, we found no evidence that the major incumbent telecommunications carriers or the cable companies were earning supra-normal returns that might be suggestive of market power."

"The call for non-discrimination rules is itself a non-trivial expansion of regulatory control. There are at least two problems that must be addressed. First, the FCC does not clearly differentiate between price discrimination and what is merely access-tiering, or setting different prices for different levels of service quality. Second, even in the case of actual price discrimination, there is no credible basis for treating such practices as presumptively welfare-diminishing. There is now increasing recognition in the economics literature that not only are such practices consistent with competitive market behavior, but that competitive markets may actually force firms to adopt discriminatory rate structures for their own survival."

Dennis Weisman is Professor of Economics at Kansas State University. He is an editor of the *Review of Network Economics*, and he serves as a member of FSF's Board of Academic Advisors.

In releasing the paper, Randolph May, the Free State Foundation's President, said: "This *Perspectives* paper by Dennis Weisman couldn't be more timely. I hope the FCC Commissioners give it the serious consideration it deserves before they commit themselves to actions that are likely to harm the overall economy and consumers.

A PDF version of the *Perspectives* is [here](#).

The Free State Foundation is an independent nonpartisan, Section 501(c)(3), free market-oriented think tank.

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