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**FCC, Broadband and Fallacy of Government ‘Competition’:
Municipal Operations Would Have an Unfair Advantage
Over Private Enterprise**

by

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The Federal Communications Commission has been much in the news recently – and deservedly so – owing to its ill-conceived "Critical Information Needs" study. Thankfully, after a public outcry, FCC Chairman Tom Wheeler recently canceled this study.

Before it was jettisoned, this project would have had the FCC assessing ways in which broadcasters and newspapers make decisions about what issues of public importance to cover and to what extent.

By design, the study necessarily would have allowed the agency to intrude into matters of journalistic endeavor at the core of the media's exercise of editorial judgment. This, of course, is offensive to the First Amendment.

Let's hope the now-canceled study, which calls to mind the Fairness Doctrine abandoned a quarter-century ago, is not revived.

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Still, the fact that the study was conceived at all indicates that the agency's current leadership, in important respects, is still under the influence of an outdated pro-regulatory mindset that is no longer appropriate in today's age of media abundance and competitive alternatives.

Take this current example: In mid-January, a federal appeals court in Washington tossed out, as beyond the agency's statutory authority, the FCC's "Net neutrality" mandates regulating the practices of broadband Internet-service providers such as Verizon or the cable operators.

In the wake of this setback, on Feb. 19, Mr. Wheeler issued a statement outlining his proposals for what the agency should do next.

A couple of the proposals may be reasonable, such as enforcing a transparency rule that requires broadband providers to disclose practices that affect subscribers' service. Others are quite problematic, including an ill-conceived idea nurtured by an activist regulatory mindset.

Under the heading "Enhance Competition," Mr. Wheeler says he wants the FCC to focus on "legal restrictions for the ability of cities and towns to offer broadband services to consumers in their communities."

What he means by this is he wants the commission to consider pre-empting bans that have been adopted by about 20 states that prohibit cities within those states from constructing and operating communications networks.

This is a bad idea. To suggest that getting governments into the communications business is somehow enhancing "competition" reminds me of one of my favorite quotes from Abraham Lincoln.

In April 1864, in his "Address at a Sanitary Fair," Lincoln said: "We all declare for liberty; but in using the same word, we do not all mean the same thing."

If Mr. Wheeler thinks the way to enhance "competition" is to encourage government-run communications networks, then his use of the word is quite different from mine.

While there are significant legal problems with Mr. Wheeler's proposal, it is more important to explain why encouraging proliferation of Solyndra-like government-run communications networks is not a proper way to "enhance competition." Indeed, this approach thwarts competition.

Government systems pose inherent conflicts of interest with private-sector companies attempting to compete by investing tens of millions of dollars in building out new broadband networks.

Government networks generally are subsidized directly by the taxpayers or are backed by government bonds carrying below-market interest rates. They are granted special privileges, such as favored rights-of-way treatment, which are unavailable to their private-sector competitors.

Of course, they are excused from running the bureaucratic gantlet of permitting and licensing processes through which private firms must pass.

There have been many examples across the country of high-profile local government communications networks going belly up or losing money, with taxpayers and government bondholders often left holding the bag.

These troubled systems can be found in places that range from Burlington, Vt., to Provo, Utah, with many in between. Of course, these financial flops inevitably affect the government's ability to deliver other services, from providing police and fire protection to repairing potholes, which actually are within its traditional bailiwick and presumed competence.

It's no wonder, then, that so many states have adopted bans to prohibit their localities – which, after all, are solely creatures of the state – from competing with private-sector companies providing broadband services in the same locales.

The wonder is that the FCC chairman would suggest that the way to enhance "competition" in the broadband marketplace is for the agency affirmatively to act to encourage governments to compete with private-sector companies.

The proper way to encourage competition is to remove existing, costly regulations that no longer are necessary in today's competitive communications environment and to refrain from adopting or threatening to adopt new ones.

Mr. Wheeler's decision to keep "on the table" the threat of imposing the panoply of traditional public utility-style regulation on private-sector broadband providers is improper.

To paraphrase Lincoln, while Mr. Wheeler and I may both declare we are for enhancing "competition," in using the same word, we do not mean the same thing.

* Randolph J. May is President of the Free State Foundation, an independent, nonpartisan free market-oriented think tank located in Rockville, Maryland. *FCC, Broadband and Fallacy of Government 'Competition': Municipal Operations Would Have an Unfair Advantage Over Private Enterprise*, appeared in *The Washington Times* on March 7, 2014.