

New research by law professor analyzes efficacy of the FCC's current rules

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University of Miami Law Professor Lili Levi has recently authored a research paper titled "A 'Pay or Play' Experiment to Improve Children's Educational Television."

Levi's article addresses both the constitutionality and the efficacy of the FCC's current rules that effectively require broadcasters to air three hours per week of what the Commission defines as "core" children's educational programming. It argues that, even though the current rules would probably pass muster under the First Amendment, they should nevertheless be substantially revised. Empirical studies describe mixed results, with broadcasters claiming to have complied with the rules despite airing substantial amounts of educationally insufficient programming. This is predictable, according to Levi, because of the economic and other factors that push broadcasters toward minimal compliance.

The working paper thus advises a turn away from programming mandates. It proposes a "pay or play" approach that allows broadcasters to pay a yearly fee to a fund that would support high-quality public television children's programming, to air such programming themselves, or to choose a combination of the two. The paper recognizes that a "pay or play" model would have to limit both broadcaster game-playing and [FCC](#) content-intrusiveness in order to make the public better off than under the current rules.

While the paper makes specific suggestions on how to reduce

broadcaster misuse, it ultimately calls for a ventilation of various alternative "pay or play" models in a public rulemaking proceeding. Such an inquiry would not only reveal the comparative costs and benefits of the various options, but might even result in a negotiated compromise pursuant to which children would have access to more high-quality educational television on broadcast television. As time lapses, the efficacy of the chosen model could be assessed by comparing the resulting programming to what was aired under the more traditional regulatory approach of the past decade.

More information: The research is being published by the *Federal Communications Law Journal* in its Spring 2010 issue, and is available now on SSRN at papers.ssrn.com/sol3/papers.cfm?abstract_id=1464826 .

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