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I was a new telecommunications lawyer at the FCC when the 1996 Act[1] was passed. Within the Commission, people greeted the event with two distinct reactions. In public, they revered the far-sighted magnificence of this landmark legislation. In private, they began puzzling over the details and became more and more confused. For example, no one could tell exactly what role Congress wanted the Commission (as opposed to the states) to play in the pricing of network elements and interconnection. This was a glaringly obvious question, so why was it so hard to discern Congress's answer from the text of this highly detailed law?

The 1996 Act and its interpretive conundrums followed me when I left the FCC later in the year to join the Solicitor General's office. There I prepared briefs explaining to the Supreme Court why the FCC was right to read the 1996 Act as it did. I spent many long hours staring hard at the cryptic turns of phrase in Sections 251 and 252.[2] What I found was uncanny. For almost every major dispute, Congress had given each side almost equivalent statutory ammunition. An oblique phrase in one corner of the statute would balance a seemingly contradictory phrase in another. The Supreme Court noticed this too, calling the 1996 Act "a model of ambiguity or indeed even self-contradiction."[3]

This self-contradiction may have been no accident. The legislative enterprise often requires compromise. Sometimes compromise takes the form of a clearly articulated middle-ground solution. But sometimes, as in the 1996 Act, legislators compromise by enacting statutory ambiguity. Such ambiguity consigns important policy issues to years of legal uncertainty and punts their ultimate resolution to agencies and courts. But ambiguity also comes with a political benefit: each legislator can tell disparate constituencies that he or she had their best interests in mind and can blame someone else for any contrary interpretation that wins out.

Of course, Congress faces acute political challenges whenever it enacts major legislation with high commercial stakes. In the telecommunications sector, however, Congress also faces the equally difficult challenge of seeing around the technological bend. The 1996 Act was passed mainly to increase competition among circuit-switched providers of landline telephone services. Congress acknowledged the Internet but did not clearly foresee the broadband revolution and thus had little to say about broadband Internet access (fixed or mobile). By the time I rejoined the FCC

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1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).
2. 47 U.S.C. §§ 251, 252 (2012).
3. AT & T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 397 (1999).

in 2000, that statutory omission had become painfully clear, as stakeholders began arguing about whether and how the FCC should regulate broadband Internet access. Sixteen years later, that dispute has only intensified.

All this said, it would be unfair to criticize Congress too harshly for politically expedient compromises and lapses of technological foresight. Arguably, the 1996 Act was among the better legislative packages Congress could have been expected to pass in the mid-1990s, given the political constraints and widespread technological assumptions. For example, by centralizing various policy issues at the national level, the 1996 Act enabled the FCC (eventually) to rationalize an increasingly chaotic intercarrier compensation regime and bring universal service support into the modern era. Congress also wisely gave the Commission forbearance authority to undo statutory mandates that outlive their usefulness.

If and when Congress considers new telecommunications legislation of comparable scope, it should draw two main lessons from the 1996 Act and its aftermath. First, as with the forbearance provision, Congress should continue legislating on the premise that competition, when effective, promotes consumer welfare more effectively than traditional regulation can and that policymakers should retain broad discretion to deregulate as appropriate.

Second, because this is a field characterized by unpredictable technological flux, Congress should enact mainly high-level principles and leave most of the details for the Commission and the marketplace to address as industry conditions evolve. There will always be room to question and litigate the wisdom of the FCC's regulatory choices. Ideally, however, that litigation should concern whether those choices make economic and technological sense in today's marketplace, not whether they comport with obscure statutory phrases written many years ago with different regulatory problems in mind.