CHAIRMAN MICHAEL K. POWELL*

YES OR NO

When I was FCC Chairman I frequently testified before Senator John McCain's Commerce Committee. The Senator always began with a pointed question to me: "Was the 1996 Telecommunications Act a success, yes or no?" He wanted me to say no, given that he voted against the Act. I always answered emphatically, "Yes."

The Act,[1] to my mind, had a single compelling virtue. It rejected the longstanding view that communications services were natural monopolies and, as such, there should be a single, heavily regulated provider in each sector. Instead, the 1996 Act placed its faith in markets and lighter regulation as a way of unleashing competitive forces that would lead to increased innovation and better consumer outcomes. This single organizing principle provided a guiding light toward resolving issues, whether looking backward or looking forward. It was a blueprint for untangling the legacy of classic telecommunications regulation by allowing local companies to finally enter long distance markets (and vice versa).[2] It also invigorated competition by aligning incentives and removing restrictions for cable companies to enter telephone markets, telephone companies to enter video markets, and opening pathways for new companies to enter.[3] As regulatory success goes, this one was exceptional.

Looking forward, the amended Communications Act[4] was also a lodestar for addressing the emerging world of the Internet. Congress declared: "It is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal and State regulation."[5] This directed regulators to resist the temptation to treat the Internet as a mere improvement of the telephone system and to avoid the reflexive instinct to regulate it as such. My office door was visited by untold numbers of Internet entrepreneurs asking anxious questions as to whether instant messaging, or Skype, or Vonage, or interactive gaming were regulated telecommunications services. Statutory words are rarely crystal clear when applied to emerging services. But the overarching principles of the statute gave direction to interpret this ambiguity in a manner consistent with the goal of not saddling the Internet with

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* Michael K. Powell served as a Commissioner of the FCC from 1997 to 2001 and as Chairman of the FCC from 2001 to 2005. Today, he is President and CEO of the National Cable & Telecommunications Association.

1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 118 (codified as amended in scattered sections of 47 U.S.C.).

2. *See* 47 U.S.C. §§ 251, 271 (2012).

3. *See* Telecommunications Act, § 202(i) (amending cable and telephone company cross-ownership restrictions contained in 47 U.S.C. § 533(a)).

4. Communications Act of 1934, Pub. L. 73-416, 48 Stat. 1064 (codified as amended in 47 U.S.C.).

5. 47 U.S.C. § 230(b)(2) (2012).

burdensome regulations. The bet was that by not doing so, the Internet would grow and reach Americans more quickly. And, by making the Internet more ubiquitous, give sustenance to the budding industry just starting to squeak on the west coast. Again, the results were stupendous. The Internet has deployed faster than any technology in history and many of those squeaks heard in the Valley now roar with global ferocity.

Sadly, the exceptional bipartisan consensus that gave birth to the 1996 Act and its liberating regulatory framework is breaking down. Now, the ambiguity of the Act—only getting worse with time—is being used to resurrect a muscular regulatory model that places renewed (and unfounded) faith in regulators to manage the Internet. The trends are ominous and cause me to rethink how I would answer Senator McCain today. I confess, I am wavering.