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The 1996 Telecommunications Act [1] has often been criticized, including by the Supreme Court, for its lack of clarity. Yet, the Act adopted a balanced approach to communications regulation that is both relevant and, properly understood, a model for the future.

While the Act encouraged facilities-based competition, it also recognized that interconnection, unbundling and resale were necessary "raw materials" that could allow facilities-based competition to develop. [2] Building competitive, stand-alone networks from scratch could only be done in stages, and access to the incumbents' networks (at fair prices) was necessary to provide nascent competitors the stepping stones to deploying their own competitive networks.

While the Federal Communications Commission (FCC) properly focused on opening markets to new technologies and established a solid framework to expand universal service, its TELRIC pricing and UNE-P[3] decisions tilted the balance created by Congress. These decisions treated the incumbents as natural monopolies, rather than as participants in a newly competitive market. They fueled unrealistically high expectations of competitive players, which contributed to the Dot-Com bust of 2000-2002, and a political dynamic that reverberated against competition. The FCC then over-corrected, withdrawing competitors' access to fiber,[4] the most essential stepping stone, notwithstanding the Act's explicit directive that unbundling should be technologically-neutral. A more careful and consistent approach from the beginning would have worked more slowly but more effectively.

The universal service provisions were not contrary to these pro-competitive goals. Rather, the Act continued the movement begun with the FCC's access charge regime established after the AT&T divestiture to identify and make the previously implicit subsidies more explicit and rational. Subsidies for rural areas, schools and libraries, rural health and lifeline are making progress in part because they are subject to healthy debate in the public arena.

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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. *See* 47 U.S.C. § 251 (2012).

3. *See* Implementation of the Local Competition Provisions in the Telecomms. Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, para. 672 (1996).

4. Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853, para. 86 (2005).

While broadband was in its infancy at the time, the Act presaged the future by encouraging "advanced" services in both the universal service provisions of Section 254[5] and in Section 706.[6] At the staff level, we debated long and hard how to reconcile the Modification of Final Judgment (MFJ)[7] and FCC definitions of telecommunications ("basic") and information services ("enhanced"), but ultimately concluded that the FCC's Computer II[8] and III[9] definitions, even though flawed and overlapping, would allow the FCC the flexibility needed to respond to future change.

The fact that all parties can point to portions of the statutory language in their favor is a reflection of the Act's balance, not its inconsistency. Democrats agreed to the hortatory, deregulatory preamble sought by Republicans in exchange for the more meaningful regulatory provisions embedded in Title II and Section 706,[10] which directed the FCC to open new markets to competition. The balance we needed to secure votes from both sides of the aisle was also the right policy. We sought to foster entrepreneurship and new entrants while also encouraging incumbents to invest in new markets, such as long distance, wireless and video. In so doing, the Telecom Act of 1996 created an environment that fostered technological innovation and economic growth and established a foundation for the broadband ecosystem that is thriving today.

5. 47 U.S.C. § 254 (2012).

6. 47 U.S.C. § 1302 (2012).

7. United States v. AT & T, 552 F. Supp. 131, 189-90 (D.D.C. 1982), *consent decree terminated sub nom*., *United States v*. *W*. *Elec*. *Co*., No. 82-0192, 1996 WL 255904 (D.D.C. 1996) (terminating consent decree *nunc pro tanc*, as of Telecommunications Act's February 8, 1996, effective date).

8. Amendment of Section 64.702 of the Comm'ns Rules & Regulations (Second Computer Inquiry), *Final Decision*, 77 FCC 2d 384 (1980).

9. Amendment of Section 64.702 of the Comm'ns Rules & Regulations (Third Computer Inquiry), *Report and Order*, 104 FCC 2d 958 (1986).

10. 47 U.S.C. § 1302.