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The Telecommunications Act of 1996[1] provided two important, and very different, mechanisms for increasing competition in wireline telecommunications markets. First, it removed barriers to entry, such as the legal prohibitions and obstacles (such as access to right-of-way) that were essential to new entrants.[2] In the same category, I also include the Act's imposition of very basic market rules, such as interconnection obligations that were a necessary foundation to introducing competition in previously monopolized markets.[3] Second, the Act enabled a regulation-intensive path to competition, whereby incumbents were required to offer unbundled network elements ("UNEs") at regulated rates.[4] I believe the first mechanism was a great success and the second a great failure. As the success is relatively obvious, let me focus on the failure.

The concept behind the "regulation-intensive" UNE approach was that certain elements, or components, of the local exchange network were much more difficult for entrants to duplicate than others. This was generally attributed to large economies of scale in the subscriber loop plant. The reasoning went that the only way that the entrants could succeed was by gradually building their own network, and in the interim, they would "lease" the monopoly components of the network still controlled by the incumbents. So much for theory—in practice the new entrants competed successfully only when they leased the entire local network of the incumbents (the so-called UNE platform), and this strategy was yanked out from under the entrants after extended legal and regulatory wrangling. The largest new entrants in the local market at that time, namely the long distance companies, were unable to find another strategy to compete against the incumbents and eventually faded away, in some cases by merging with the Regional Bell Companies.

The moral of the story is that policymakers must *keep it simple*. Detailed regulation of conduct, i.e. the transactions between a firm with significant market power and its fringe competitors, does not work. *It is not simple*. My own experience as the Chief Economist of MCI, which was a major player in this process, has left me convinced that regulation is too blunt a tool, and is subject to too time-consuming and too costly a legal process, to improve on the functioning of a market that will otherwise function reasonably well, especially if the market is technologically complex and changing at a rapid pace. I think this is mostly due to the asymmetry in

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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(b)(4) (2012).
3. *See* 47 U.S.C. § 251(c)(2).
4. *See* 47 U.S.C. § 251(c)(3).

information between the players and the regulators, and the formality of the procedures that govern regulation in the United States.

The role of government in these industries, even where there is a significant potential for monopolistic behavior, should be limited to basic structural controls and simple market rules. An example of basic structural controls would be the denial of mergers with significant competitive overlap (as opposed to merger approval with complex regulatory conditions attached). An example of simple market rules would be requirements on dominant providers to interconnect with horizontal competitors. The FCC did a good job developing and monitoring the rules that governed traffic exchange between incumbent and entering local telephone companies.

Have regulators learned this lesson? Obviously not, as the FCC reclassification decision proves. The FCC is once again leaping into the thicket of highly-detailed conduct regulation, albeit with the fig leaf of forbearance covering up the return of old-fashioned conduct regulation.