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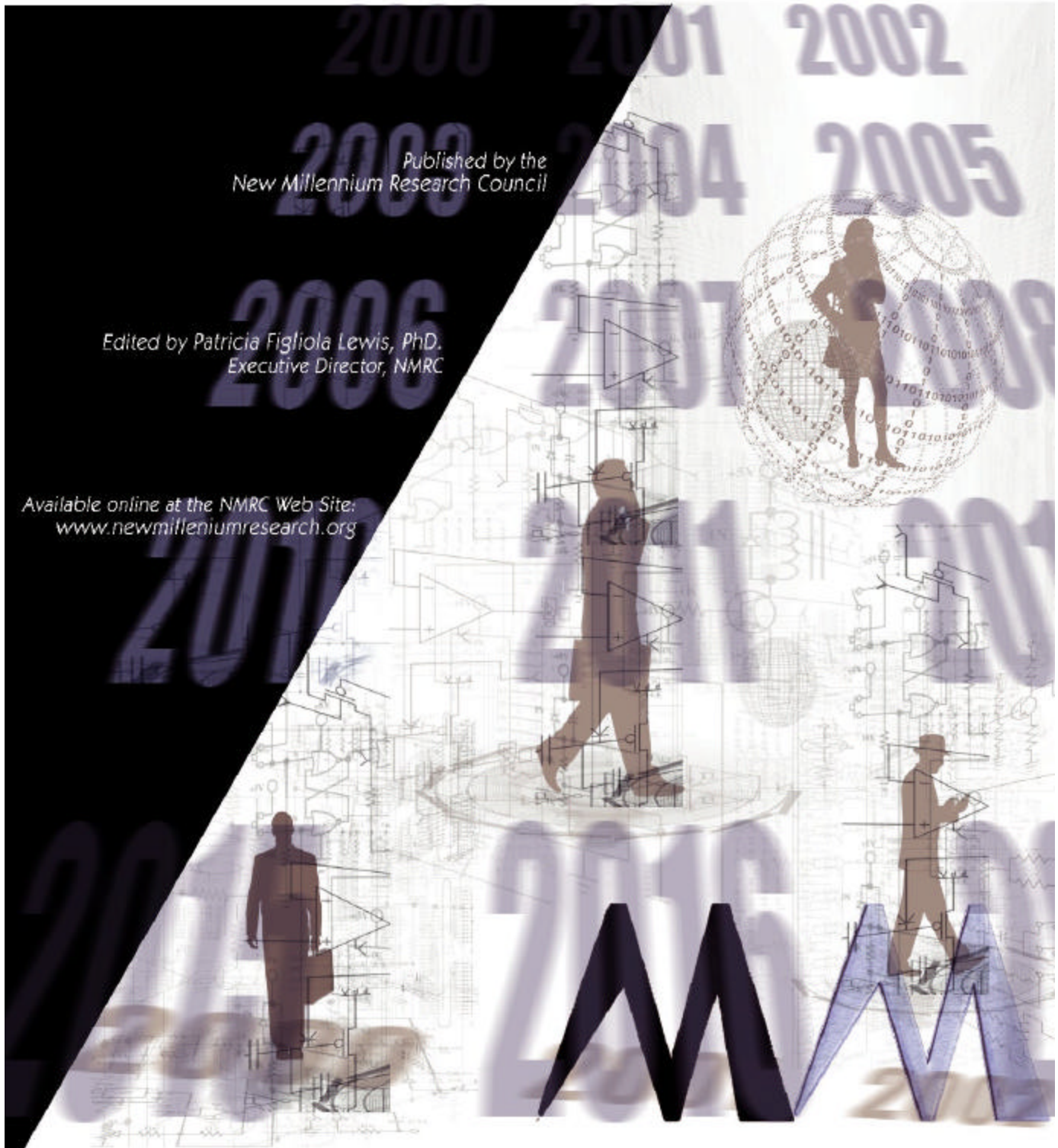
## the New Millennium Research Council

*Reflections on the Fifth Anniversary of the Telecommunications Act of 1996*

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Edited by Patricia Figliola Lewis, PhD,  
Executive Director, NMRC

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## **About the New Millennium Research Council**

The New Millennium Research Council (NMRC) is a non-profit research organization based in Washington, DC. Its mission is to foster policy research focused on developing workable, real-world solutions to the issues facing policy makers, primarily in the fields of telecommunications and technology.

The Council consists of independent academics and researchers who are experts in their fields. The research agenda is managed by the Research Board of Directors, which is in formation. Current members include Karen Buller, Dr. Barbara O'Connor, and Dr. Jorge Schement.

The NMRC is an independent project of Issue Dynamics, Inc. (IDI), a consumer and public affairs consulting firm that specializes in developing win-win solutions to complex policy issues.

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*About the Authors*

## **Introduction: Common Themes 5 Years Out**

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The 1996 Telecommunications Act was supposed to deregulate the industry and usher in a new era of competitive services for consumers nationwide. Five years later, the Act gets mixed reviews. This collection of essays captures a wide range of perspectives on the Act – what has worked, what has failed, and what Congress and the FCC could have done better.

Overall, the authors, while applauding the efforts to compromise amongst competing industry factions in crafting the Act, do not believe that Congress “got it right” in very many places. They offer contradictory views on why this is the case. Some authors believed that the Act stifled the FCC’s ability to loosen the reins when appropriate through micromanagement; others believe that Congress left so many loopholes in the Act that the FCC was able to run counter to congressional intent.

A few supporters of the first view – that Congress micromanaged the FCC – cited the 14-point checklist as an example of Congress’ micromanaging the FCC. The checklist, instead of providing positive guidance, eliminated the possibility for flexibility as market forces changed. Supporters of the second view – that the FCC overstepped congressional intent – cited many different examples in support of that view, for instance, the “failure” of the FCC to employ Section 706 to grant more broadband relief.

In addition to those overarching views on the Act, there were a number of other common themes running through the essays.

Many of the authors, in a variety of ways, took Congress to task for trying to predict the future – both as to how technology would develop as well as which services consumers would want. This mistake had the effect of rendering the Act technologically obsolete almost from the beginning. Notable failures, according to the authors, were open video systems and a nearly complete failure to recognize the future impact of the Internet.

One of the most significant failures in this regard, however, was Congress’ assessment that it could foster local competition with a promise to the Bells that they would be able to offer long distance service. While that “carrot” may have been appropriate in 1995 while the Act was being debated, it certainly is no longer. If anything, it seems to be the large long distance companies that need further enticement to offer local services, as local competition has grown most rapidly in those states where the Bells have been allowed to provide long distance. So, it should be no surprise that a number of contributors suggested that it is time to end the long distance prohibition on the Bells.

Another theme was that investment has been the greatest in those market segments where there is the least regulation. More than one author cited cable deregulation and the proliferation of cellular and personal communications services as two of the most significant successes in the wake of the Telecom Act. Investment has stalled, however, in market segments that remain heavily regulated. For example, unbundling as a regulatory tool to foster competition was judged a failure by a few

authors. Instead, facilities-based competition has proven to be a large success and should be encouraged. Why? Because the free market entry facilitated by unbundling is destructive of investment incentives. Only those companies that are building their infrastructure remain healthy after the 2000 industry shakeout. Put another way by one of the authors, “we cannot regulate our way to competition, innovation, and low prices”.

Finally, most of the authors expressed in some way their belief that like services should be regulated – or not regulated – alike. In other words, it is time to regulate services (if appropriate), not service providers. A few even ventured into recommending how this could best be done. Section 706 was cited by three authors as the most appropriate tool to achieve this goal. Another suggested requiring automatic sunset of regulations unless they are affirmatively renewed. Others believe that Congress needs to reassess the Act and make changes where necessary.

The authors take different paths in reaching their conclusions, but the majority of them, to varying degrees, ultimately credit the Act with some significant policy successes. Further, they believe that the Act was an important “first step” that has yielded progress towards achieving competitive markets and providing consumers with a greater choice of services. Ultimately, however, the authors agree that more needs to be done – that the framework laid out in the Act and developed over the past 5 years needs to be updated to accommodate rapidly changing technologies and consumer expectations.

Consideration of the discussion and recommendations in these essays would be a positive first step for the new Bush Administration, the Congress, and the FCC towards further deregulation and competition in the telecommunications industry.

## About the Authors

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Bob Atkinson is the Executive Director of the Columbia Institute for Tele-Information. Prior to joining CITI, Mr. Atkinson was the Deputy Chief of the FCC's Common Carrier Bureau. He also worked for 14 years at Teleport Communications Group (TCG), the nation's first competitive local exchange carrier (CLEC), ultimately as Senior Vice President for Legal, Regulatory & External Affairs. When AT&T acquired TCG in July 1998, Mr. Atkinson was Vice President and Chief Regulatory Officer of AT&T Local Services until he joined the FCC. During his tenure with TCG, Mr. Atkinson played a leading role in most of the key regulatory and public policy decisions that introduced competition to the local telephone markets and shaped the CLEC industry. Mr. Atkinson graduated from University of Virginia in 1972 with a Bachelor of Art degree in Government and Foreign Affairs. He later received a law degree from Georgetown University Law Center (evening program) in 1979. While at Georgetown, Mr. Atkinson was a member of the Georgetown Law Journal.

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