

JAMES L. CASSERLY*

It was an honor and a privilege to participate in the herculean effort needed to implement the Telecommunications Act of 1996,¹ and I will be forever grateful to Commissioner Susan Ness for giving me that opportunity. The Act required dozens of rulemakings, and established tight timetables, but the entire agency rose to the challenge and implemented the Act as faithfully as possible. Key factors in the success of this effort were the Commissioners' wisdom, humility, and willingness to compromise, the Bureau and Office staffs' experience, professionalism, and collegiality, the active and (usually) constructive participation of a wide range of stakeholders, and—something I only came to appreciate with hindsight—the strong oversight provided by engaged congressional overseers.

But the biggest successes of the Act came not from new regulations that Congress instructed the agency to promulgate but from new freedoms the Act created. Telephone companies were allowed to provide video services,² opening the door for new competition to cable and satellite providers (though it took a decade before this opportunity was aggressively pursued). Cable companies were freed from the yoke of rate regulation,³ restoring their ability to maintain and upgrade their networks and enabling them to carry a multitude of new channels and to develop new services. Broadcasters were freed from certain ownership limitations and given greater assurance of license renewals, and a pathway for transmission of digital, high-definition signals was opened.⁴ And Congress established a national policy “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”⁵

Inevitably, then, telephone, cable, and broadcast services are vastly better today than they were twenty years ago, but these gains are trifling compared to the explosive growth of the Internet. We should not forget that only a small percentage of Americans used the Internet in 1996 and that those who did typically did so using dial-up access that allowed only 14, 28, or at most 56 thousand bits per second—and there were proposals to focus on “integrated services digital networks” that would increase speeds to 128 or perhaps 256 kbps. Fortunately, cable company innovators didn't listen, and

* James Casserly is of counsel at Willkie Farr & Gallagher LLP. Formerly, he was Senior Legal Advisor to Commissioner Susan Ness from 1994-1999.

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

3. See 47 U.S.C. § 543(c)(4) (2012).

4. See, e.g., 47 U.S.C. §§ 309(k), 336 (2012) (respectively prescribing broadcast station renewal procedures and permitting licensing of advanced television services); Telecommunications Act, § 202(a)-(f) (directing FCC to modify its broadcast-ownership rules contained in 47 C.F.R. §§ 73.658(g), 73.3555, 76.501).

5. 47 U.S.C. § 230(b)(2) (2012).

they plowed ahead with a risky bet on cable modem technology, which in turn drove telcos to deploy digital subscriber line technology, which paved the way for wireless and satellite broadband—all of which now allow consumers to communicate at many millions of bits per second. I firmly believe that this progress would have come much more slowly were it not for the Commission's steadfast determination, in 1998 and 1999, to follow the guidance that Congress had given and resist the entreaties of those who demanded regulation of Internet service providers. The benefits of this "hands-off" approach have surpassed all expectations, and the predicted harms proved to be illusory. Chairman Kennard and his colleagues deserve enormous credit for recognizing the imperative of creating an environment conducive to investment, and Chairman Powell likewise should be honored for carrying that policy forward.