

COMMISSIONER SUSAN NESS**THE LAW OF UNINTENDED CONSEQUENCES
TWENTY YEARS LATER*

Ten years ago, in a longer law review article entitled, *The Law of Unintended Consequences*,¹ I took stock of the impact of the then-decade-old Telecommunications Act of 1996.² I posited that the Act was a transitional roadmap, largely resolving past battles between major industry players, but not the best navigation device for charting the long-term rules of the digital road. I concluded that the underlying goals of the Act—promote competition and deregulation in local telephony and video, link schools and libraries to the Internet, and relax broadcast ownership rules—largely were met, although they were sometimes achieved in ways not fully anticipated by Congress.

My observations ten years ago remain valid today.

Over the past twenty years, our robust broadband ecosystem, coupled with the FCC's light regulatory touch, produced the right conditions for explosive growth and innovation. Digital platforms, web services, connected devices, and mobile technology are changing the way we live and work. In the United States, companies enjoy the marketplace conditions needed to break new ground and to reach countless potential customers for broadband-enabled services (think Amazon, Facebook, Google, Twitter, Expedia, Netflix, Uber, etc.). Technology and ingenuity, together with low-cost capital and a risk-taking culture—not the 1996 Act—have been the main drivers of this progress.

Like many acts of Congress, the 1996 Act has also been plagued by jurisdictional battles. Two decades later the wisdom behind the ill-fated “Title VII” proposal is more apparent. A streamlined regulatory regime for broadband providers might have provided the FCC with a less litigious path³ to establish and enforce a practical, technology-neutral, light-touch, open Internet regime (not to mention freeing up two decades of FCBA attorney time for more productive debates).

As a result of the digital revolution, we are increasingly confronted by global policy challenges, such as cybersecurity, online privacy, and digital copyright protection. Stakeholders and governments working through these and other complex issues will need to be mindful that the slow-moving

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1. Susan Ness, *The Law of Unintended Consequences*, 58 FED. COMM. L.J. 531 (2006).

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

3. See, e.g., *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014); *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010); *U.S. Telecom Ass'n v. FCC*, 15-1086 (D.C. Cir. Apr. 13, 2015).

regulatory process does not always adapt well to the dizzying pace of technological change and disruptive new business models.

Finally, a noteworthy achievement back then seems even more remarkable today: the 1996 Telecom Act required the FCC to complete around 75 rulemakings, many with very tight deadlines. The Commission did so—each one on time and with unanimity.