COMMISSIONER MICHAEL O'RIELLY*

I will be forever grateful for the opportunity to work on the Telecommunications Act of 1996,[1] albeit as a very junior staffer. That legislative experience laid a solid foundation for the rest of my congressional career and eventually helped lead to my current position.

Generally, I believe that it is extremely helpful when Congress speaks on a particular issue, especially those that are communications-related, because it clarifies what is expected of regulators and industry participants. Appropriately, Congress should be complimented for enacting the 1996 Act, since it was the first comprehensive overhaul of the statute in over 60 years. And many of its fundamental principles still hold true, especially the idea that competition and free markets should reign over monopolies and regulation.

But in many regards, as can be the case with ambitious legislative efforts, the Act was a melding of different themes and compromises. Certain central provisions that seemed paramount at the time were somewhat backwards-looking and perhaps, in retrospect, naive. For instance, responding to the judicial breakup of AT&T[2] by opening the then-existing long distance market in exchange for local switched access voice competition.[3] The relevance of those markets quickly faded, but some of those provisions have taken on an unforeseen life of their own. Equally important, the adoption of general and vague statutory language in order to reach consensus has enabled many practitioners and the Commission to abuse such provisions for unrelated, unintended or ulterior purposes.

It is important to note that, at the same time the Act was being implemented, the unregulated tech economy rushed ahead, making many statutory provisions and assumptions obsolete, and leaving the Commission in the dust or even on the sidelines. While certainly there were discussions regarding the nascent Internet during the Act's formation, no one could have envisioned the colossal role it would eventually assume in the communications regulatory environment or Americans' daily lives. Since then, the disruptive effect of the Internet has blurred the lines between telecommunications, media and technology industries, and the Commission seems intent on dangerously flexing its regulatory muscle to impose legacy rules on modern technology to avoid being made irrelevant in the future.

---

* Commissioner Michael O'Rielly is currently serving his second term as a Commissioner of the FCC. In 1996, he was a Telecommunications Policy Analyst for the House Committee on Energy and Commerce.

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* United States v. AT & T, 552 F. Supp. 131 (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).

3. 47 U.S.C. §§ 251, 271 (2012).

My central lessons from the 1996 Act experience add up to this advice for my friends on Capitol Hill: be specific, include sunset provisions where appropriate to keep new technologies free from old rules and bargains that have nothing to do with them, and be forward-looking. There used to be greater trust between the Congress and the Commission with regards to executing the provisions of a law. That no longer holds, and it is all-important that Congress write exactly what it wants and does not want from the Commission. Do not leave it up to chance. At the same time, spending a majority of energy on the hot topics of the moment, like imaginary net neutrality problems, prevents real focus on shaping the law for decades to come, rather than on the past.