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If one dug into the annals of the House of Representatives in search of how the Telecommunications Act of 1996¹ came to pass, you would find buried under many layers of forgotten bills and unread hearing transcripts the first evidence of what evolved into parts of the 1996 Act in early 1984, shortly after the Bell System was broken up. The question arises of how long did it take to pass the 1996 Act, and the honest answer is twelve years and scores of bills and compromise drafts, thousands of hours of hearings, and generations of Members and staff. That long slog served a purpose, however, for it became increasingly clear to all stakeholders at the start of the 1990s that major statutory changes were needed in order to let key players get into new lines of business, and that those new entrants would benefit consumers by promoting competition and innovation.

Today many companies try to claim the mantle of “disrupter,” but they are only the latest incarnation of that concept. Because that is exactly what we were discussing in the early 1990s: how to encourage new entrants to *disrupt* the monopoly cable companies (monopolist by law in most of the country); to *disrupt* the monopoly local telephone company (same); to *disrupt* the cozy cellphone duopoly (by FCC design); and to *disrupt* the weakly competitive long distance industry (a legacy of AT&T’s long-standing *de facto* monopoly). What is remarkable is that those discussions turned into action, and it all happened fairly quickly.

➤ In October 1992, Congress passed the 1992 Cable Act;² though that vote went down in history as the only to override President George H.W. Bush’s veto, what is forgotten is that the bill had broad bipartisan support including from the Republican leadership in the Commerce Committees and floor leadership. That bill can be credited as giving birth to the DBS industry and to the disruptive force that DISH and DIRECTV and their corporate antecedents have brought to the monopoly cable companies.

➤ In August 1993, Congress passed the 1993 Omnibus Budget Act,³ which directed the NTIA to free up 200 MHz of spectrum for next-generation cellular (“Personal Communications Service”), and for the FCC to use auctions to quickly assign the spectrum. That marked

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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. Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (codified as amended at 47 U.S.C. §§ 521-555).

3. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (codified as amended at 47 U.S.C. §§ 921-927).

a radical change: Congress was taking spectrum away from government users and designating it for private use; the FCC was directed to take valuable beachfront spectrum away from microwave users and reallocate to PCS; and instead of this process taking years of comparative hearings, Congress mandated it would be done in several months with spectrum auctions. A look at the history books suggests that the vote was partisan (no Republican voted for the 1993 Act). But that is misleading: building on the bipartisan nature of communications policy in the House Commerce Committee, every page of the spectrum bill was negotiated with Ranking Member Jack Fields and his staff, even though the majority staff knew no Republican would support the bill. That was the proud tradition in the Committee then, it endured right through the 1996 Act, and (thankfully, from my perspective) it exists today.

- In 1994, these same staff and policymakers also passed the Communications Assistance for Law Enforcement Act (CALEA).⁴ Perhaps not the proudest accomplishment of that time frame, but still it represented major legislation that was passed on a bipartisan basis in less than twenty-four months.

One bill from that time that did not become law during this two-year flurry of legislating, but did set the stage for a transformative law, was the Telecommunications Act of 1994. (That is not a typo.) In the course of House Subcommittee Chairman Ed Markey and Ranking Member Jack Fields working together in 1992, on cable legislation; in 1993, on spectrum legislation; and in early 1994, on CALEA, it became increasingly clear to them that comprehensive legislation was needed. As a result, they worked collaboratively, along with full Commerce Committee Chair John Dingell and Judiciary Committee Chair Jack Brooks, to construct comprehensive legislation that would remove the local telephone company monopoly, set up a process to allow the Bell companies into the long distance and manufacturing businesses, remove obstacles to allow the cable companies to enter the telephone business, eliminate legal barriers keeping local telephone companies out of the cable business, and create mandates and incentives for local telephone companies to promote deployment of “ISDN,” or Integrated Services Digital Network—at the time, that was the only technology available to allow for (relatively) high speed information services. The Telecommunications Act of 1994 (Markey-Fields)⁵ and Antitrust and Communications Reform Act of 1994 (Dingell-Brooks)⁶ were passed in June 1994 by overwhelming bipartisan votes: 423-4 and 423-5.

4. Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified at 47 U.S.C. §§ 1001-1010).

5. H.R. 3636, 103d Cong. (1994).

6. H.R. 3626, 103d Cong. (1994).

So why do we not celebrate the Telecommunications Act of 1994? Because when those bills went to the Senate in mid-1994, Minority Leader Dole put a hold on them since he was (rightly) convinced that Congress was about to flip to Republican control and he would revise the bills more to the Republicans liking. And that is what happened. The core of the 1994 Act can be found in the 1996 Act—parts, such as Section 254⁷ on universal service, were copied almost intact. Other provisions were flipped from a tilt one way to a tilt the other way, but that is the nature of bipartisan compromise. And many more parts were added, including all the provisions affecting broadcast ownership as well as many other provisions that were added on when it appeared to all the broad range of communications stakeholders that the Telecommunications Act presented a once-a-generation opportunity. So the new chairmen, who took over the telecommunications committees in 1995-1996, had confidence they could pass comprehensive legislation; because so many important bills had been passed in the previous three years, the bipartisan legislating muscles were well trained. And that's what they did.

7. 47 U.S.C. § 254 (2012).