

114TH CONGRESS
1ST SESSION

S. 421

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Mr. HELLER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Communica-
5 tions Commission Process Reform Act of 2015”.

1 **SEC. 2. FCC PROCESS REFORM.**

2 (a) IN GENERAL.—Title I of the Communications Act
3 of 1934 (47 U.S.C. 151 et seq.) is amended by adding
4 at the end the following:

5 **“SEC. 13. TRANSPARENCY AND EFFICIENCY.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) AMENDMENT.—The term ‘amendment’ in-
8 cludes, when used with respect to an existing rule,
9 the deletion of the rule.

10 “(2) APPLICATION FOR REVIEW.—The term
11 ‘application for review’ means an application for re-
12 view filed under section 1.115 of title 47, Code of
13 Federal Regulations, or any successor thereto.

14 “(3) BIPARTISAN MAJORITY.—The term ‘bipar-
15 tisan majority’ means, when used with respect to a
16 group of Commissioners, that the group—

17 “(A) is a group of 3 or more Commis-
18 sioners; and

19 “(B) includes—

20 “(i) for each political party of which
21 any Commissioner is a member, not less
22 than 1 Commissioner who is a member of
23 the political party; and

24 “(ii) if any Commissioner has no po-
25 litical party affiliation, not less than 1 un-
26 affiliated Commissioner.

1 “(4) PERFORMANCE MEASURE.—The term ‘per-
2 formance measure’ means an objective and quantifi-
3 able outcome measure or output measure (as those
4 defined in section 1115 of title 31, United States
5 Code).

6 “(5) ECONOMICALLY SIGNIFICANT IMPACT.—
7 The term ‘economically significant impact’ means an
8 effect on the economy of \$100,000,000 or more an-
9 nually or a material adverse effect on the economy,
10 a sector of the economy, productivity, competition,
11 jobs, the environment, public health or safety, or
12 State, local, or tribal governments or communities.

13 “(6) PETITION FOR DECLARATORY RULING.—
14 The term ‘petition for declaratory ruling’ means a
15 petition for declaratory ruling filed under section 1.2
16 of title 47, Code of Federal Regulations, or any suc-
17 cessor thereto.

18 “(7) PETITION FOR RECONSIDERATION.—The
19 term ‘petition for reconsideration’ means a petition
20 for reconsideration filed under section 1.106 or
21 1.429 of title 47, Code of Federal Regulations, or
22 any successor thereto.

23 “(8) PETITION FOR RULEMAKING.—The term
24 ‘petition for rulemaking’ means a petition for rule-

1 making filed under section 1.401 of title 47, Code of
2 Federal Regulations, or any successor thereto.

3 “(9) PROGRAM ACTIVITY.—The term ‘program
4 activity’—

5 “(A) has the meaning given the term in
6 section 1115 of title 31, United States Code;
7 and

8 “(B) includes any annual collection or dis-
9 tribution or related series of collections or dis-
10 tributions by the Commission of an amount not
11 less than \$100,000,000.

12 “(10) OTHER DEFINITIONS.—The terms ‘adju-
13 dication’, ‘agency action’, ‘ex parte communication’,
14 ‘rule’, and ‘rulemaking’ have the meanings given the
15 terms in section 551 of title 5, United States Code.

16 “(b) INITIAL RULEMAKING AND INQUIRY.—

17 “(1) RULEMAKING.—Not later than 1 year
18 after the date of enactment of the Federal Commu-
19 nications Commission Process Reform Act of 2015,
20 the Commission shall complete a rulemaking pro-
21 ceeding and adopt procedural changes to the rules of
22 the Commission to maximize opportunities for public
23 participation and efficient decision making.

24 “(2) REQUIREMENTS FOR RULEMAKING.—The
25 rules adopted under paragraph (1) shall—

1 “(A) set minimum comment periods for
2 comment and reply comment, subject to a de-
3 termination by the Commission that good cause
4 exists for departing from the minimum com-
5 ment periods, for—

6 “(i) significant regulatory actions, as
7 defined in Executive Order 12866 (5
8 U.S.C. 601 note; relating to regulatory
9 planning and review);

10 “(ii) all other rulemaking proceedings;

11 and

12 “(iii) petitions for forbearance filed
13 under section 10(c) of the Communications
14 Act of 1934 (47 U.S.C. 160(c));

15 “(B) establish policies concerning the sub-
16 mission of extensive new comments, data, or re-
17 ports towards the end of a comment period;

18 “(C) establish policies regarding treatment
19 of comments, ex parte communications, and
20 data or reports (including statistical reports
21 and reports to Congress) submitted after a
22 comment period to ensure that the public has
23 adequate notice of and opportunity to respond
24 to the submissions before the Commission relies

1 on the submissions in any order, decision, re-
2 port, or action;

3 “(D) establish procedures for publishing
4 the status of open rulemaking proceedings and
5 proposed orders, decisions, reports, or actions
6 on circulation for review by the Commissioners,
7 including which Commissioners have not cast a
8 vote on an order, decision, report, or action that
9 has been on circulation for more than 60 days;

10 “(E) establish guidelines (relative to the
11 date of filing) for issuing a public notice of—

12 “(i) a petition for declaratory ruling;

13 “(ii) a petition for rulemaking;

14 “(iii) a petition for reconsideration; or

15 “(iv) an application for review;

16 “(F) require each notice of proposed rule-
17 making to include the specific language of the
18 proposed rule or the proposed amendment of an
19 existing rule;

20 “(G) require each petition filed with the
21 Commission to be—

22 “(i) put out for public notice, subject
23 to the minimum comment and reply com-
24 ment periods established under subpara-
25 graph (A); or

1 “(ii) disposed of pursuant to an order
2 of dismissal;

3 “(H) require each new notice of proposed
4 rulemaking or order adopting a rule or amend-
5 ing an existing rule that creates (or proposes to
6 create) a program activity to contain perform-
7 ance measures for evaluating the effectiveness
8 of the program activity;

9 “(I) require each notice of proposed rule-
10 making or order adopting a rule or amending
11 an existing rule that substantially changes (or
12 proposes to substantially change) a program ac-
13 tivity to contain—

14 “(i) performance measures for evalu-
15 ating the effectiveness of the program ac-
16 tivity as changed (or proposed to be
17 changed); or

18 “(ii) a finding that existing perform-
19 ance measures will effectively evaluate the
20 program activity as changed (or proposed
21 to be changed);

22 “(J) require each notice of proposed rule-
23 making to include—

24 “(i) an identification of a notice of in-
25 quiry, a prior notice of proposed rule-

1 making, or a notice on a petition for rule-
2 making, issued by the Commission during
3 the 3-year period preceding the date on
4 which the notice of proposed rulemaking
5 concerned is issued and of which such no-
6 tice is a logical outgrowth;

7 “(ii) an order of a court reviewing ac-
8 tion by the Commission or otherwise di-
9 recting the Commission to act that the
10 court issued during the 3-year period pre-
11 ceding the date on which the notice of pro-
12 posed rulemaking concerned is issued and
13 in response to which such notice is being
14 issued; or

15 “(iii) a finding (together with a brief
16 statement of reasons therefor)—

17 “(I) that the proposed rule or the
18 proposed amendment of an existing
19 rule will not impose additional bur-
20 dens on industry or consumers; and

21 “(II) for good cause, that a no-
22 tice of inquiry is impracticable, unnec-
23 essary, or contrary to the public inter-
24 est;

1 “(K) require each notice of proposed rule-
2 making or order adopting a rule or amending
3 an existing rule that may have an economically
4 significant impact, to contain—

5 “(i) an identification and analysis of
6 the specific market failure, actual con-
7 sumer harm, burden of existing regulation,
8 or failure of public institutions that war-
9 rants the adoption or amendment; and

10 “(ii) a reasoned determination that
11 the benefits of the adoption or amendment
12 justify the costs (recognizing that some
13 benefits and costs are difficult to quan-
14 tify), taking into account alternative forms
15 of regulation and the need to tailor regula-
16 tion to impose the least burden on society,
17 consistent with obtaining regulatory objec-
18 tives;

19 “(L) establish procedures under which a
20 Commissioner, with respect to an order, deci-
21 sion, report, or action of a bureau or office of
22 the Commission, may require the entire Com-
23 mission to vote on whether to—

24 “(i) affirm, modify, or set aside the
25 order, decision, report, or action; or

1 “(ii) order a rehearing upon the order,
2 decision, report, or action in accordance
3 with section 405; and

4 “(M) establish procedures for publishing
5 the language of a rule or amendment of an ex-
6 isting rule for a period of not fewer than 21
7 days before the date on which a vote on the rule
8 or amendment to an existing rule begins.

9 “(3) INQUIRY.—Not later than 1 year after the
10 date of enactment of the Federal Communications
11 Commission Process Reform Act of 2015, the Com-
12 mission shall complete an inquiry to seek public
13 comment on whether and how the Commission
14 should—

15 “(A) establish procedures for informing all
16 Commissioners of a reasonable number of op-
17 tions available to the Commission for resolving
18 a petition, complaint, application, rulemaking,
19 or other proceeding;

20 “(B) establish procedures for ensuring that
21 all Commissioners have adequate time, prior to
22 being required to decide a petition, complaint,
23 application, rulemaking, or other proceeding
24 (including at a meeting held under section
25 5(d)), to review the proposed Commission deci-

1 sion document, including the specific language
2 of any proposed rule or any proposed amend-
3 ment of an existing rule;

4 “(C) establish deadlines (relative to the
5 date of filing) for disposition of applications for
6 a license under section 1.913 of title 47, Code
7 of Federal Regulations;

8 “(D) assign resources needed to meet the
9 deadlines described in subparagraph (C), in-
10 cluding whether the ability of the Commission
11 to meet those deadlines would be enhanced by
12 assessing a fee from applicants for a license de-
13 scribed in subparagraph (C); and

14 “(E) publish each order, decision, report,
15 or action not later than 30 days after the date
16 of the adoption of the order, decision, report, or
17 action.

18 “(4) DATA FOR PERFORMANCE MEASURES.—
19 The Commission shall develop a performance meas-
20 ure or proposed performance measure required
21 under this subsection to rely, where possible, on data
22 already collected by the Commission.

23 “(c) PERIODIC REVIEW.—On the date that is 5 years
24 after the completion of the rulemaking proceeding under
25 subsection (b)(1), and every 5 years thereafter, the Com-

1 mission shall initiate a new rulemaking proceeding to con-
2 tinue to consider any procedural changes to the rules of
3 the Commission that may be in the public interest to maxi-
4 mize opportunities for public participation and efficient
5 decisionmaking.

6 “(d) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

7 “(1) IN GENERAL.—Notwithstanding section
8 552b of title 5, United States Code, a bipartisan
9 majority of Commissioners may hold a meeting that
10 is closed to the public to discuss official business
11 if—

12 “(A) a vote or any other agency action is
13 not taken at the meeting;

14 “(B) each person present at the meeting is
15 a Commissioner, an employee of the Commis-
16 sion, a member of a joint board or conference
17 established under section 410, or a person on
18 the staff of such a joint board or conference or
19 of a member of such a joint board or con-
20 ference; and

21 “(C) an attorney from the Office of Gen-
22 eral Counsel of the Commission is present at
23 the meeting.

24 “(2) DISCLOSURE OF NONPUBLIC COLLABO-
25 RATIVE DISCUSSIONS.—Not later than 2 business

1 days after the conclusion of a meeting held under
 2 paragraph (1), the Commission shall publish a dis-
 3 closure of the meeting, including—

4 “(A) a list of the persons who attended the
 5 meeting; and

6 “(B) a summary of the matters discussed
 7 at the meeting, except for any matters that the
 8 Commission determines may be withheld under
 9 section 552b(e) of title 5, United States Code.

10 “(3) PRESERVATION OF OPEN MEETINGS RE-
 11 QUIREMENTS FOR AGENCY ACTION.—Nothing in this
 12 subsection shall limit the applicability of section
 13 552b of title 5, United States Code, with respect to
 14 a meeting of Commissioners other than that de-
 15 scribed in paragraph (1).

16 “(e) ACCESS TO CERTAIN INFORMATION ON COMMIS-
 17 SION’S WEBSITE.—The Commission shall provide direct
 18 access from the homepage of the website of the Commis-
 19 sion to—

20 “(1) detailed information regarding—

21 “(A) the budget of the Commission for the
 22 current fiscal year;

23 “(B) the appropriations for the Commis-
 24 sion for the current fiscal year; and

1 “(C) the total number of full-time equiva-
2 lent employees of the Commission; and

3 “(2) the performance plan most recently made
4 available by the Commission under section 1115(b)
5 of title 31, United States Code.

6 “(f) FEDERAL REGISTER PUBLICATION.—

7 “(1) IN GENERAL.—In the case of any docu-
8 ment adopted by the Commission that the Commis-
9 sion is required, under any provision of law, to pub-
10 lish in the Federal Register, the Commission shall,
11 not later than the date described in paragraph (2),
12 complete all Commission actions necessary for the
13 document to be so published.

14 “(2) DATE DESCRIBED.—The date described in
15 this paragraph is the earlier of—

16 “(A) the date that is 60 days after the
17 date of the release of the document described in
18 paragraph (1); or

19 “(B) the date by which the actions de-
20 scribed in paragraph (1) must be completed to
21 comply with any deadline under any other pro-
22 vision of law.

23 “(3) NO EFFECT ON DEADLINES FOR PUBLICA-
24 TION IN OTHER FORM.—

1 “(A) IN GENERAL.—In the case of a dead-
2 line that does not specify that the form of pub-
3 lication is publication in the Federal Register,
4 the Commission may comply with the deadline
5 by publishing the document in another form.

6 “(B) APPLICABILITY OF FEDERAL REG-
7 ISTER PUBLICATION REQUIREMENTS.—Publica-
8 tion of a document in another form as described
9 in subparagraph (A) shall not relieve the Com-
10 mission of any Federal Register publication re-
11 quirement applicable to the document, including
12 the requirement under paragraph (1).

13 “(g) FORM OF PUBLICATION.—

14 “(1) IN GENERAL.—In complying with a re-
15 quirement under this section to publish a document,
16 the Commission shall publish the document on the
17 website of the Commission, in addition to publishing
18 the document in any other form that the Commis-
19 sion is required to use or is permitted to and chooses
20 to use.

21 “(2) EXCEPTION.—The Commission shall by
22 rule establish procedures for redacting documents
23 required to be published under this section so that
24 the published versions of the documents do not con-
25 tain—

1 “(A) information the publication of which
2 would be detrimental to national security,
3 homeland security, law enforcement, or public
4 safety; or

5 “(B) information that is proprietary or
6 confidential.

7 “(h) TRANSPARENCY RELATING TO PERFORMANCE
8 IN MEETING FOIA REQUIREMENTS.—The Commission
9 shall take additional steps to inform the public about the
10 performance and efficiency of the Commission in meeting
11 the disclosure and other requirements under section 552
12 of title 5, United States Code (commonly referred to as
13 the ‘Freedom of Information Act’), including by—

14 “(1) publishing on the website of the Commis-
15 sion the logs used by the Commission for tracking,
16 responding to, and managing requests submitted
17 under such section, including the Commission’s fee
18 estimates, fee categories, and fee request determina-
19 tions;

20 “(2) releasing to the public all decisions made
21 by the Commission (including decisions made by the
22 Bureaus and Offices of the Commission) granting or
23 denying requests filed under such section, including
24 any such decisions pertaining to the estimate and
25 application of fees assessed under such section;

1 “(3) publishing on the website of the Commis-
2 sion electronic copies of documents released under
3 such section; and

4 “(4) presenting, in the annual budget estimates
5 of the Commission submitted to Congress and the
6 annual performance and financial reports of the
7 Commission, information about the handling by the
8 Commission of requests under such section, includ-
9 ing—

10 “(A) the number of requests under such
11 section the Commission received during the
12 most recent fiscal year;

13 “(B) the number of requests described in
14 subparagraph (A) granted and denied;

15 “(C) a comparison of the processing of re-
16 quests described in subparagraph (A) by the
17 Commission during a period of not less than
18 the 3 preceding fiscal years; and

19 “(D) a comparison of the results of the
20 Commission in processing requests described in
21 subparagraph (A) with the most recent average
22 for the United States Government as published
23 on www.foia.gov.

24 “(i) PROMPT RELEASE OF STATISTICAL REPORTS
25 AND REPORTS TO CONGRESS.—Not later than January 15

1 of each year, the Commission shall identify, catalog, and
2 publish an anticipated release schedule for all statistical
3 reports and reports to Congress that are regularly or
4 intermittently released by the Commission and will be re-
5 leased during the year.

6 “(j) ANNUAL SCORE CARD REPORTS.—

7 “(1) IN GENERAL.—For the 1-year period be-
8 ginning on January 1 of each year, the Commission
9 shall prepare a report on the performance of the
10 Commission in conducting proceedings and meeting
11 the guidelines established under subsection
12 (b)(2)(E).

13 “(2) CONTENTS.—Each report required under
14 paragraph (1) shall contain detailed statistics on the
15 performance of the Commission as described in
16 paragraph (1), including, with respect to each bu-
17 reau or office of the Commission—

18 “(A) with respect to each type of filing
19 specified in subsection (b)(2)(E)—

20 “(i) the number of filings that were
21 pending on the last day of the period cov-
22 ered by the report;

23 “(ii) the number of filings described
24 in clause (i) for which each applicable
25 deadline or guideline established under

1 such subsection was not met and the aver-
2 age length of time those filings have been
3 pending; and

4 “(iii) for filings that were resolved
5 during the period covered by the report,
6 the average time between initiation and
7 resolution and the percentage for which
8 each applicable deadline or guideline estab-
9 lished under such subsection was met;

10 “(B) with respect to proceedings before an
11 administrative law judge—

12 “(i) the number of proceedings com-
13 pleted during the period covered by the re-
14 port; and

15 “(ii) the number of proceedings pend-
16 ing on the last day of the period covered
17 by the report; and

18 “(C) the number of independent studies or
19 analyses published by the Commission during
20 the period covered by the report.

21 “(3) PUBLICATION AND SUBMISSION.—The
22 Commission shall publish and submit to the Com-
23 mittee on Energy and Commerce of the House of
24 Representatives and the Committee on Commerce
25 Science, and Transportation of the Senate each re-

1 port required under paragraph (1) not later than the
2 date that is 30 days after the last day of the period
3 covered by the report.”.

4 (b) EFFECTIVE DATES AND IMPLEMENTING
5 RULES.—

6 (1) EFFECTIVE DATES.—

7 (A) NONPUBLIC COLLABORATIVE DISCUS-
8 SIONS.—Subsection (d) of section 13 of the
9 Communications Act of 1934, as added by sub-
10 section (a), shall apply beginning on the first
11 date on which all of the procedural changes to
12 the rules of the Federal Communications Com-
13 mission required under subsection (b)(1) of
14 such section have taken effect.

15 (B) SCHEDULES AND REPORTS.—Sub-
16 sections (j) and (k) of section 13 of the Com-
17 munications Act of 1934, as added by sub-
18 section (a), shall apply with respect to 2015
19 and any year thereafter.

20 (2) RULES.—Except as otherwise provided in
21 section 13 of the Communications Act of 1934, as
22 added by subsection (a), the Federal Communica-
23 tions Commission shall promulgate any rules nec-
24 essary to carry out such section not later than 1
25 year after the date of enactment of this Act.

1 **SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COM-**
2 **PLAINTS IN QUARTERLY REPORT.**

3 In compiling its quarterly report with respect to in-
4 formal consumer inquiries and complaints, the Federal
5 Communications Commission may not categorize an in-
6 quiry or complaint with respect to section 227 of the Com-
7 munications Act of 1934 (47 U.S.C. 227) as being a
8 wireline inquiry or complaint or a wireless inquiry or com-
9 plaint unless the party whose conduct is the subject of
10 the inquiry or complaint is a wireline carrier or a wireless
11 carrier, respectively.

12 **SEC. 4. EFFECT ON OTHER LAWS.**

13 Nothing in this Act or the amendments made by this
14 Act shall relieve the Federal Communications Commission
15 from any obligations under title 5, United States Code,
16 except where otherwise expressly provided.

17 **SEC. 5. PROVISION OF EMERGENCY WEATHER INFORMA-**
18 **TION; COMMUNICATIONS OF FIRST RESPOND-**
19 **ERS.**

20 Nothing in this Act or the amendments made by this
21 Act shall be construed to impede the Federal Communica-
22 tions Commission from acting in times of emergency to
23 ensure the availability of efficient and effective commu-
24 nications systems—

25 (1) to alert the public to imminent dangerous
26 weather conditions; or

1 (2) for State and local first responders.

○