

113TH CONGRESS
2D SESSION

H. R. 3675

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2014

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Communica-
3 tions Commission Process Reform Act of 2014”.

4 **SEC. 2. FCC PROCESS REFORM.**

5 (a) IN GENERAL.—Title I of the Communications Act
6 of 1934 (47 U.S.C. 151 et seq.) is amended by inserting
7 after section 12 the following new section:

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

9 “(a) INITIAL RULEMAKING AND INQUIRY.—

10 “(1) RULEMAKING.—Not later than 1 year
11 after the date of the enactment of the Federal Com-
12 munications Commission Process Reform Act of
13 2014, the Commission shall complete a rulemaking
14 proceeding and adopt procedural changes to its rules
15 to maximize opportunities for public participation
16 and efficient decisionmaking.

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

19 “(A) set minimum comment periods for
20 comment and reply comment, subject to a de-
21 termination by the Commission that good cause
22 exists for departing from such minimum com-
23 ment periods, for—

24 “(i) significant regulatory actions, as
25 defined in Executive Order No. 12866; and

26 “(ii) all other rulemaking proceedings;

1 “(B) establish policies concerning the sub-
2 mission of extensive new comments, data, or re-
3 ports towards the end of the comment period;

4 “(C) establish policies regarding treatment
5 of comments, ex parte communications, and
6 data or reports (including statistical reports
7 and reports to Congress) submitted after the
8 comment period to ensure that the public has
9 adequate notice of and opportunity to respond
10 to such submissions before the Commission re-
11 lies on such submissions in any order, decision,
12 report, or action;

13 “(D) establish procedures for publishing
14 the status of open rulemaking proceedings and
15 proposed orders, decisions, reports, or actions
16 on circulation for review by the Commissioners,
17 including which Commissioners have not cast a
18 vote on an order, decision, report, or action that
19 has been on circulation for more than 60 days;

20 “(E) establish deadlines (relative to the
21 date of filing) for—

22 “(i) in the case of a petition for a de-
23 claratory ruling under section 1.2 of title
24 47, Code of Federal Regulations, issuing a
25 public notice of such petition;

1 “(ii) in the case of a petition for rule-
2 making under section 1.401 of such title,
3 issuing a public notice of such petition;
4 and

5 “(iii) in the case of a petition for re-
6 consideration under section 1.106 or 1.429
7 of such title or an application for review
8 under section 1.115 of such title, issuing a
9 public notice of a decision on the petition
10 or application by the Commission or under
11 delegated authority (as the case may be);

12 “(F) establish guidelines (relative to the
13 date of filing) for the disposition of petitions
14 filed under section 1.2 of such title;

15 “(G) establish procedures for the inclusion
16 of the specific language of the proposed rule or
17 the proposed amendment of an existing rule in
18 a notice of proposed rulemaking; and

19 “(H) require notices of proposed rule-
20 making and orders adopting a rule or amending
21 an existing rule that—

22 “(i) create (or propose to create) a
23 program activity to contain performance
24 measures for evaluating the effectiveness of
25 the program activity; and

1 “(ii) substantially change (or propose
2 to substantially change) a program activity
3 to contain—

4 “(I) performance measures for
5 evaluating the effectiveness of the pro-
6 gram activity as changed (or proposed
7 to be changed); or

8 “(II) a finding that existing per-
9 formance measures will effectively
10 evaluate the program activity as
11 changed (or proposed to be changed).

12 “(3) INQUIRY.—Not later than 1 year after the
13 date of the enactment of the Federal Communica-
14 tions Commission Process Reform Act of 2014, the
15 Commission shall complete an inquiry to seek public
16 comment on whether and how the Commission
17 should—

18 “(A) establish procedures for allowing a bi-
19 partisan majority of Commissioners to place an
20 order, decision, report, or action on the agenda
21 of an open meeting;

22 “(B) establish procedures for informing all
23 Commissioners of a reasonable number of op-
24 tions available to the Commission for resolving

1 a petition, complaint, application, rulemaking,
2 or other proceeding;

3 “(C) establish procedures for ensuring that
4 all Commissioners have adequate time, prior to
5 being required to decide a petition, complaint,
6 application, rulemaking, or other proceeding
7 (including at a meeting held pursuant to section
8 5(d)), to review the proposed Commission deci-
9 sion document, including the specific language
10 of any proposed rule or any proposed amend-
11 ment of an existing rule;

12 “(D) establish procedures for publishing
13 the text of agenda items to be voted on at an
14 open meeting in advance of such meeting so
15 that the public has the opportunity to read the
16 text before a vote is taken;

17 “(E) establish deadlines (relative to the
18 date of filing) for disposition of applications for
19 a license under section 1.913 of title 47, Code
20 of Federal Regulations;

21 “(F) assign resources needed in order to
22 meet the deadlines described in subparagraph
23 (E), including whether the Commission’s ability
24 to meet such deadlines would be enhanced by

1 assessing a fee from applicants for such a li-
2 cense; and

3 “(G) publish each order, decision, report,
4 or action not later than 30 days after the date
5 of the adoption of such order, decision, report,
6 or action.

7 “(4) DATA FOR PERFORMANCE MEASURES.—
8 The Commission shall develop a performance meas-
9 ure or proposed performance measure required by
10 this subsection to rely, where possible, on data al-
11 ready collected by the Commission.

12 “(b) PERIODIC REVIEW.—On the date that is 5 years
13 after the completion of the rulemaking proceeding under
14 subsection (a)(1), and every 5 years thereafter, the Com-
15 mission shall initiate a new rulemaking proceeding to con-
16 tinue to consider such procedural changes to its rules as
17 may be in the public interest to maximize opportunities
18 for public participation and efficient decisionmaking.

19 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

20 “(1) IN GENERAL.—Notwithstanding section
21 552b of title 5, United States Code, a bipartisan
22 majority of Commissioners may hold a meeting that
23 is closed to the public to discuss official business
24 if—

1 “(A) a vote or any other agency action is
2 not taken at such meeting;

3 “(B) each person present at such meeting
4 is a Commissioner, an employee of the Commis-
5 sion, a member of a joint board or conference
6 established under section 410, or a person on
7 the staff of such a joint board or conference or
8 of a member of such a joint board or con-
9 ference; and

10 “(C) an attorney from the Office of Gen-
11 eral Counsel of the Commission is present at
12 such meeting.

13 “(2) DISCLOSURE OF NONPUBLIC COLLABO-
14 RATIVE DISCUSSIONS.—Not later than 2 business
15 days after the conclusion of a meeting held under
16 paragraph (1), the Commission shall publish a dis-
17 closure of such meeting, including—

18 “(A) a list of the persons who attended
19 such meeting; and

20 “(B) a summary of the matters discussed
21 at such meeting, except for such matters as the
22 Commission determines may be withheld under
23 section 552b(c) of title 5, United States Code.

24 “(3) PRESERVATION OF OPEN MEETINGS RE-
25 QUIREMENTS FOR AGENCY ACTION.—Nothing in this

1 subsection shall limit the applicability of section
2 552b of title 5, United States Code, with respect to
3 a meeting of Commissioners other than that de-
4 scribed in paragraph (1).

5 “(d) ACCESS TO CERTAIN INFORMATION ON COMMIS-
6 SION’S WEBSITE.—The Commission shall provide direct
7 access from the homepage of its website to—

8 “(1) detailed information regarding—

9 “(A) the budget of the Commission for the
10 current fiscal year;

11 “(B) the appropriations for the Commis-
12 sion for such fiscal year; and

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

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

18 “(e) FEDERAL REGISTER PUBLICATION.—

19 “(1) IN GENERAL.—In the case of any docu-
20 ment adopted by the Commission that the Commis-
21 sion is required, under any provision of law, to pub-
22 lish in the Federal Register, the Commission shall,
23 not later than the date described in paragraph (2),
24 complete all Commission actions necessary for such
25 document to be so published.

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

3 “(A) the day that is 45 days after the date
4 of the release of the document; or

5 “(B) the day by which such actions must
6 be completed to comply with any deadline under
7 any other provision of law.

8 “(3) NO EFFECT ON DEADLINES FOR PUBLICA-
9 TION IN OTHER FORM.—In the case of a deadline
10 that does not specify that the form of publication is
11 publication in the Federal Register, the Commission
12 may comply with such deadline by publishing the
13 document in another form. Such other form of publi-
14 cation does not relieve the Commission of any Fed-
15 eral Register publication requirement applicable to
16 such document, including the requirement of para-
17 graph (1).

18 “(f) CONSUMER COMPLAINT DATABASE.—

19 “(1) IN GENERAL.—In evaluating and proc-
20 essing consumer complaints, the Commission shall
21 present information about such complaints in a pub-
22 licly available, searchable database on its website
23 that—

24 “(A) facilitates easy use by consumers; and

1 “(B) to the extent practicable, is sortable
2 and accessible by—

3 “(i) the date of the filing of the com-
4 plaint;

5 “(ii) the topic of the complaint;

6 “(iii) the party complained of; and

7 “(iv) other elements that the Commis-
8 sion considers in the public interest.

9 “(2) DUPLICATIVE COMPLAINTS.—In the case
10 of multiple complaints arising from the same alleged
11 misconduct, the Commission shall be required to in-
12 clude only information concerning one such com-
13 plaint in the database described in paragraph (1).

14 “(g) FORM OF PUBLICATION.—

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

21 “(2) EXCEPTION.—The Commission shall by
22 rule establish procedures for redacting documents
23 required to be published by this section so that the
24 published versions of such 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 its
10 performance and efficiency in meeting the disclosure and
11 other requirements of section 552 of title 5, United States
12 Code (commonly referred to as the Freedom of Informa-
13 tion Act), including by doing the following:

14 “(1) Publishing on the Commission’s website
15 the Commission’s logs for tracking, responding to,
16 and managing requests submitted under such sec-
17 tion, including the Commission’s fee estimates, fee
18 categories, and fee request determinations.

19 “(2) Releasing to the public all decisions made
20 by the Commission (including decisions made by the
21 Commission’s Bureaus and Offices) granting or de-
22 nying requests filed under such section, including
23 any such decisions pertaining to the estimate and
24 application of fees assessed under such section.

1 “(3) Publishing on the Commission’s website
2 electronic copies of documents released under such
3 section.

4 “(4) Presenting information about the Commis-
5 sion’s handling of requests under such section in the
6 Commission’s annual budget estimates submitted to
7 Congress and the Commission’s annual performance
8 and financial reports. Such information shall include
9 the number of requests under such section the Com-
10 mission received in the most recent fiscal year, the
11 number of such requests granted and denied, a com-
12 parison of the Commission’s processing of such re-
13 quests over at least the previous 3 fiscal years, and
14 a comparison of the Commission’s results with the
15 most recent average for the United States Govern-
16 ment as published on www.foia.gov.

17 “(i) PROMPT RELEASE OF STATISTICAL REPORTS
18 AND REPORTS TO CONGRESS.—Not later than January
19 15th of each year, the Commission shall identify, catalog,
20 and publish an anticipated release schedule for all statis-
21 tical reports and reports to Congress that are regularly
22 or intermittently released by the Commission and will be
23 released during such year.

24 “(j) ANNUAL SCORECARD REPORTS.—

1 “(1) IN GENERAL.—For the 1-year period be-
2 ginning on January 1st of each year, the Commis-
3 sion shall prepare a report on the performance of
4 the Commission in conducting its proceedings and
5 meeting the deadlines established under subsection
6 (a)(2)(E) and the guidelines established under sub-
7 section (a)(2)(F).

8 “(2) CONTENTS.—Each report required by
9 paragraph (1) shall contain detailed statistics on
10 such performance, including, with respect to each
11 Bureau of the Commission—

12 “(A) with respect to each type of filing
13 specified in subsection (a)(2)(E) or (a)(2)(F)—

14 “(i) the number of filings that were
15 pending on the last day of the period cov-
16 ered by such report;

17 “(ii) the number of filings described
18 in clause (i) for which each applicable
19 deadline or guideline established under
20 such subsection was not met and the aver-
21 age length of time such filings have been
22 pending; and

23 “(iii) for filings that were resolved
24 during such period, the average time be-
25 tween initiation and resolution and the

1 percentage for which each applicable dead-
2 line or guideline established under such
3 subsection was met;

4 “(B) with respect to proceedings before an
5 administrative law judge—

6 “(i) the number of such proceedings
7 completed during such period; and

8 “(ii) the number of such proceedings
9 pending on the last day of such period; and

10 “(C) the number of independent studies or
11 analyses published by the Commission during
12 such period.

13 “(3) PUBLICATION AND SUBMISSION.—The
14 Commission shall publish and submit to the Com-
15 mittee on Energy and Commerce of the House of
16 Representatives and the Committee on Commerce,
17 Science, and Transportation of the Senate each re-
18 port required by paragraph (1) not later than the
19 date that is 30 days after the last day of the period
20 covered by such report.

21 “(k) DEFINITIONS.—In this section:

22 “(1) AMENDMENT.—The term ‘amendment’ in-
23 cludes, when used with respect to an existing rule,
24 the deletion of such rule.

1 “(2) BIPARTISAN MAJORITY.—The term ‘bipar-

2 tisan majority’ means, when used with respect to a

3 group of Commissioners, that such group—

4 “(A) is a group of 3 or more Commis-

5 sioners; and

6 “(B) includes, for each political party of

7 which any Commissioner is a member, at least

8 1 Commissioner who is a member of such polit-

9 ical party, and, if any Commissioner has no po-

10 litical party affiliation, at least one unaffiliated

11 Commissioner.

12 “(3) PERFORMANCE MEASURE.—The term ‘per-

13 formance measure’ means an objective and quantifi-

14 able outcome measure or output measure (as such

15 terms are defined in section 1115 of title 31, United

16 States Code).

17 “(4) PROGRAM ACTIVITY.—The term ‘program

18 activity’ has the meaning given such term in section

19 1115 of title 31, United States Code, except that

20 such term also includes any annual collection or dis-

21 tribution or related series of collections or distribu-

22 tions by the Commission of an amount that is great-

23 er than or equal to \$100,000,000.

24 “(5) OTHER DEFINITIONS.—The terms ‘agency

25 action’, ‘ex parte communication’, and ‘rule’ have

1 the meanings given such terms in section 551 of title
2 5, United States Code.”.

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

5 (1) EFFECTIVE DATES.—

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

14 (B) SCHEDULES AND REPORTS.—Sub-
15 sections (i) and (j) of such section 13 shall
16 apply with respect to 2014 and any year there-
17 after.

18 (2) RULES.—Except as otherwise provided in
19 such section 13, the Federal Communications Com-
20 mission shall promulgate any rules necessary to
21 carry out such section not later than 1 year after
22 the date of the 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.

1 **SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNI-**
2 **VERSAL SERVICE PROGRAM.**

3 Section 302 of Public Law 108–494 (118 Stat. 3998)
4 is amended by striking “December 31, 2015” each place
5 it appears and inserting “December 31, 2020”.

Passed the House of Representatives March 11,
2014.

Attest:

KAREN L. HAAS,
Clerk.