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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Communications Commission Process Reform Act of 2014''.

SEC. 2. FCC PROCESS REFORM.

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

''SEC. 13. TRANSPARENCY AND EFFICIENCY.

''(a) INITIAL RULEMAKING AND INQUIRY.—

''(1) RULEMAKING.—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2014, the Commission shall complete a rulemaking proceeding and adopt procedural changes to its rules to maximize opportunities for public participation and efficient decisionmaking.

''(2) REQUIREMENTS FOR RULEMAKING.—The rules adopted under paragraph (1) shall—

''(A) set minimum comment periods for comment and reply comment, subject to a determination by the Commission that good cause exists for departing from such minimum comment periods, for—

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

''(ii) all other rulemaking proceedings;

"(B) establish policies concerning the submission of extensive new comments, data, or reports towards the end of the comment period;

"(C) establish policies regarding treatment of comments, ex parte communications, and data or reports (including statistical reports and reports to Congress) submitted after the comment period to ensure that the public has adequate notice of and opportunity to respond to such submissions before the Commission relies on such submissions in any order, decision, report, or action;

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

"(E) establish deadlines (relative to the date of filing) for—

"(i) in the case of a petition for a declaratory ruling under section 1.2 of title 47, Code of Federal Regulations, issuing a public notice of such petition;

"(ii) in the case of a petition for rulemaking under section 1.401 of such title, issuing a public notice of such petition; and

"(iii) in the case of a petition for reconsideration under section 1.106 or 1.429 of such title or an application for review under section 1.115 of such title, issuing a public notice of a decision on the petition or application by the Commission or under delegated authority (as the case may be);

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

"(G) establish procedures for the inclusion of the specific language of the proposed rule or the proposed amendment of an existing rule in a notice of proposed rulemaking; and

"(H) require notices of proposed rulemaking and orders adopting a rule or amending an existing rule that—

"(i) create (or propose to create) a program activity to contain performance measures for evaluating the effectiveness of the program activity; and

"(ii) substantially change (or propose to substantially change) a program activity to contain—

"(I) performance measures for evaluating the effectiveness of the program activity as changed (or proposed to be changed); or

"(II) a finding that existing performance measures will effectively evaluate the program activity as changed (or proposed to be changed).

"(3) INQUIRY.—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2014, the Commission shall complete an inquiry to seek public comment on whether and how the Commission should—

"(A) establish procedures for allowing a bipartisan majority of Commissioners to place an order, decision, report, or action on the agenda of an open meeting;

"(B) establish procedures for informing all Commissioners of a reasonable number of options available to the Commission for resolving

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

"(C) establish procedures for ensuring that all Commissioners have adequate time, prior to being required to decide a petition, complaint, application, rulemaking, or other proceeding (including at a meeting held pursuant to section 5(d)), to review the proposed Commission decision document, including the specific language of any proposed rule or any proposed amendment of an existing rule;

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

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

"(F) assign resources needed in order to meet the deadlines described in subparagraph (E), including whether the Commission's ability to meet such deadlines would be enhanced by

assessing a fee from applicants for such a license; and

"(G) publish each order, decision, report, or action not later than 30 days after the date of the adoption of such order, decision, report, or action.

"(4) DATA FOR PERFORMANCE MEASURES.—The Commission shall develop a performance measure or proposed performance measure required by this subsection to rely, where possible, on data already collected by the Commission.

"(b) PERIODIC REVIEW.—On the date that is 5 years after the completion of the rulemaking proceeding under subsection (a)(1), and every 5 years thereafter, the Commission shall initiate a new rulemaking proceeding to continue to consider such procedural changes to its rules as may be in the public interest to maximize opportunities for public participation and efficient decisionmaking.

"(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

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

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

"(B) each person present at such meeting is a Commissioner, an employee of the Commission, a member of a joint board or conference established under section 410, or a person on the staff of such a joint board or conference or of a member of such a joint board or conference; and

"(C) an attorney from the Office of General Counsel of the Commission is present at such meeting.

"(2) DISCLOSURE OF NONPUBLIC COLLABORATIVE DISCUSSIONS.—Not later than 2 business days after the conclusion of a meeting held under paragraph (1), the Commission shall publish a disclosure of such meeting, including—

"(A) a list of the persons who attended such meeting; and

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

"(3) PRESERVATION OF OPEN MEETINGS REQUIREMENTS FOR AGENCY ACTION.—Nothing in this

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

"(d) ACCESS TO CERTAIN INFORMATION ON COMMISSION'S WEBSITE.—The Commission shall provide direct access from the homepage of its website to—

"(1) detailed information regarding—

"(A) the budget of the Commission for the current fiscal year;

"(B) the appropriations for the Commission for such fiscal year; and

"(C) the total number of full-time equivalent employees of the Commission; and

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

"(e) FEDERAL REGISTER PUBLICATION.—

"(1) IN GENERAL.—In the case of any document adopted by the Commission that the Commission is required, under any provision of law, to publish in the Federal Register, the Commission shall, not later than the date described in paragraph (2), complete all Commission actions necessary for such document to be so published.

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

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

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

"(3) NO EFFECT ON DEADLINES FOR PUBLICATION IN OTHER FORM.—In the case of a deadline that does not specify that the form of publication is publication in the Federal Register, the Commission may comply with such deadline by publishing the document in another form. Such other form of publication does not relieve the Commission of any Federal Register publication requirement applicable to such document, including the requirement of paragraph (1).

"(f) CONSUMER COMPLAINT DATABASE.—

"(1) IN GENERAL.—In evaluating and processing consumer complaints, the Commission shall present information about such complaints in a publicly available, searchable database on its website that—

"(A) facilitates easy use by consumers; and

"(B) to the extent practicable, is sortable and accessible by—

"(i) the date of the filing of the complaint;

"(ii) the topic of the complaint;

"(iii) the party complained of; and

"(iv) other elements that the Commission considers in the public interest.

"(2) DUPLICATIVE COMPLAINTS.—In the case of multiple complaints arising from the same alleged misconduct, the Commission shall be required to include only information concerning one such complaint in the database described in paragraph (1).

"(g) FORM OF PUBLICATION.—

"(1) IN GENERAL.—In complying with a requirement of this section to publish a document, the Commission shall publish such document on its website, in addition to publishing such document in any other form that the Commission is required to use or is permitted to and chooses to use.

"(2) EXCEPTION.—The Commission shall by rule establish procedures for redacting documents required to be published by this section so that the published versions of such documents do not contain—

"(A) information the publication of which would be detrimental to national security, homeland security, law enforcement, or public safety; or

"(B) information that is proprietary or confidential.

"(h) TRANSPARENCY RELATING TO PERFORMANCE IN MEETING FOIA REQUIREMENTS.—The Commission shall take additional steps to inform the public about its performance and efficiency in meeting the disclosure and other requirements of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), including by doing the following:

"(1) Publishing on the Commission's website the Commission's logs for tracking, responding to, and managing requests submitted under such section, including the Commission's fee estimates, fee categories, and fee request determinations.

"(2) Releasing to the public all decisions made by the Commission (including decisions made by the Commission's Bureaus and Offices) granting or denying requests filed under such section, including any such decisions pertaining to the estimate and application of fees assessed under such section.

"(3) Publishing on the Commission's website electronic copies of documents released under such section.

"(4) Presenting information about the Commission's handling of requests under such section in the Commission's annual budget estimates submitted to Congress and the Commission's annual performance and financial reports. Such information shall include the number of requests under such section the Commission received in the most recent fiscal year, the number of such requests granted and denied, a comparison of the Commission's processing of such requests over at least the previous 3 fiscal years, and a comparison of the Commission's results with the most recent average for the United States Government as published on www.foia.gov.

"(i) PROMPT RELEASE OF STATISTICAL REPORTS AND REPORTS TO CONGRESS.—Not later than January 15th of each year, the Commission shall identify, catalog, and publish an anticipated release schedule for all statistical reports and reports to Congress that are regularly or intermittently released by the Commission and will be released during such year.

"(j) ANNUAL SCORECARD REPORTS.—

"(1) IN GENERAL.—For the 1-year period beginning on January 1st of each year, the Commission shall prepare a report on the performance of the Commission in conducting its proceedings and meeting the deadlines established under subsection (a)(2)(E) and the guidelines established under subsection (a)(2)(F).

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

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

"(i) the number of filings that were pending on the last day of the period covered by such report;

"(ii) the number of filings described in clause (i) for which each applicable deadline or guideline established under such subsection was not met and the average length of time such filings have been pending; and

"(iii) for filings that were resolved during such period, the average time between initiation and resolution and the

percentage for which each applicable deadline or guideline established under such subsection was met;

"(B) with respect to proceedings before an administrative law judge—

"(i) the number of such proceedings completed during such period; and

"(ii) the number of such proceedings pending on the last day of such period; and

"(C) the number of independent studies or analyses published by the Commission during such period.

"(3) PUBLICATION AND SUBMISSION.—The Commission shall publish and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate each report required by paragraph (1) not later than the date that is 30 days after the last day of the period covered by such report.

"(k) DEFINITIONS.—In this section:

"(1) AMENDMENT.—The term 'amendment' includes, when used with respect to an existing rule, the deletion of such rule.

"(2) BIPARTISAN MAJORITY.—The term 'bipartisan majority' means, when used with respect to a group of Commissioners, that such group—

"(A) is a group of 3 or more Commissioners; and

"(B) includes, for each political party of which any Commissioner is a member, at least 1 Commissioner who is a member of such political party, and, if any Commissioner has no political party affiliation, at least one unaffiliated Commissioner.

"(3) PERFORMANCE MEASURE.—The term 'performance measure' means an objective and quantifiable outcome measure or output measure (as such terms are defined in section 1115 of title 31, United States Code).

"(4) PROGRAM ACTIVITY.—The term 'program activity' has the meaning given such term in section 1115 of title 31, United States Code, except that such term also includes any annual collection or distribution or related series of collections or distributions by the Commission of an amount that is greater than or equal to $100,000,000.

"(5) OTHER DEFINITIONS.—The terms 'agency action', 'ex parte communication', and 'rule' have

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

(b) EFFECTIVE DATES AND IMPLEMENTING RULES.—

(1) EFFECTIVE DATES.—

(A) NONPUBLIC COLLABORATIVE DISCUSSIONS.—Subsection (c) of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply beginning on the first date on which all of the procedural changes to the rules of the Federal Communications Commission required by subsection (a)(1) of such section have taken effect.

(B) SCHEDULES AND REPORTS.—Subsections (i) and (j) of such section 13 shall apply with respect to 2014 and any year thereafter.

(2) RULES.—Except as otherwise provided in such section 13, the Federal Communications Commission shall promulgate any rules necessary to carry out such section not later than 1 year after the date of the enactment of this Act.

SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COMPLAINTS IN QUARTERLY REPORT.

In compiling its quarterly report with respect to informal consumer inquiries and complaints, the Federal Communications Commission may not categorize an inquiry or complaint with respect to section 227 of the Communications Act of 1934 (47 U.S.C. 227) as being a wireline inquiry or complaint or a wireless inquiry or complaint unless the party whose conduct is the subject of the inquiry or complaint is a wireline carrier or a wireless carrier, respectively.

SEC. 4. EFFECT ON OTHER LAWS.

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

SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNIVERSAL SERVICE PROGRAM.

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

Passed the House of Representatives March 11, 2014.

Attest: KAREN L. HAAS,

Clerk.