

Union Calendar No. 251

113TH CONGRESS
2^D SESSION

H. R. 3675

[Report No. 113-338]

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 9, 2013

Mr. WALDEN (for himself and Mr. KINZINGER of Illinois) introduced the following bill; which was referred to the Committee on Energy and Commerce

JANUARY 31, 2014

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on December 9, 2013]

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.

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 2013”.*

6 **SEC. 2. FCC PROCESS REFORM.**

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

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

11 *“(a) INITIAL RULEMAKING AND INQUIRY.—*

12 *“(1) RULEMAKING.—Not later than 1 year after*
13 *the date of the enactment of the Federal Communica-*
14 *tions Commission Process Reform Act of 2013, the*
15 *Commission shall complete a rulemaking proceeding*
16 *and adopt procedural changes to its rules to maxi-*
17 *mize opportunities for public participation and effi-*
18 *cient decisionmaking.*

19 *“(2) REQUIREMENTS FOR RULEMAKING.—The*
20 *rules adopted under paragraph (1) shall—*

21 *“(A) set minimum comment periods for*
22 *comment and reply comment, subject to a deter-*
23 *mination by the Commission that good cause ex-*
24 *ists for departing from such minimum comment*
25 *periods, for—*

1 “(i) significant regulatory actions, as
2 defined in Executive Order 12866; and

3 “(ii) all other rulemaking proceedings;

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

7 “(C) establish policies regarding treatment
8 of comments, ex parte communications, and data
9 or reports (including statistical reports and re-
10 ports to Congress) submitted after the comment
11 period to ensure that the public has adequate no-
12 tice of and opportunity to respond to such sub-
13 missions before the Commission relies on such
14 submissions in any order, decision, report, or ac-
15 tion;

16 “(D) establish procedures for publishing the
17 status of open rulemaking proceedings and pro-
18 posed orders, decisions, reports, or actions on cir-
19 culation for review by the Commissioners, in-
20 cluding which Commissioners have not cast a
21 vote on an order, decision, report, or action that
22 has been on circulation for more than 60 days;

23 “(E) establish deadlines (relative to the date
24 of filing) for—

1 “(i) in the case of a petition for a de-
2 claratory ruling under section 1.2 of title
3 47, Code of Federal Regulations, issuing a
4 public notice of such petition;

5 “(ii) in the case of a petition for rule-
6 making under section 1.401 of such title,
7 issuing a public notice of such petition; and

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

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

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

22 “(H) require notices of proposed rulemaking
23 and orders adopting a rule or amending an ex-
24 isting rule that—

1 “(i) create (or propose to create) a pro-
2 gram activity to contain performance meas-
3 ures for evaluating the effectiveness of the
4 program activity; and

5 “(ii) substantially change (or propose
6 to substantially change) a program activity
7 to contain—

8 “(I) performance measures for
9 evaluating the effectiveness of the pro-
10 gram activity as changed (or proposed
11 to be changed); or

12 “(II) a finding that existing per-
13 formance measures will effectively
14 evaluate the program activity as
15 changed (or proposed to be changed).

16 “(3) INQUIRY.—Not later than 1 year after the
17 date of the enactment of the Federal Communications
18 Commission Process Reform Act of 2013, the Commis-
19 sion shall complete an inquiry to seek public comment
20 on whether and how the Commission should—

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

1 “(B) establish procedures for informing all
2 Commissioners of a reasonable number of options
3 available to the Commission for resolving a peti-
4 tion, complaint, application, rulemaking, or
5 other proceeding;

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

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

20 “(E) establish deadlines (relative to the date
21 of filing) for disposition of applications for a li-
22 cense under section 1.913 of title 47, Code of
23 Federal Regulations;

24 “(F) assign resources needed in order to
25 meet the deadlines described in subparagraph

1 *(E), including whether the Commission’s ability*
2 *to meet such deadlines would be enhanced by as-*
3 *sessing a fee from applicants for such a license;*
4 *and*

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

9 *“(4) DATA FOR PERFORMANCE MEASURES.—The*
10 *Commission shall develop a performance measure or*
11 *proposed performance measure required by this sub-*
12 *section to rely, where possible, on data already col-*
13 *lected by the Commission.*

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

21 *“(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—*

22 *“(1) IN GENERAL.—Notwithstanding section*
23 *552b of title 5, United States Code, a bipartisan ma-*
24 *jority of Commissioners may hold a meeting that is*
25 *closed to the public to discuss official business 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 is
4 a Commissioner, an employee of the Commission,
5 a member of a joint board or conference estab-
6 lished under section 410, or a person on the staff
7 of such a joint board or conference or of a mem-
8 ber of such a joint board or conference; and

9 “(C) an attorney from the Office of General
10 Counsel of the Commission is present at such
11 meeting.

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

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

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

23 “(3) *PRESERVATION OF OPEN MEETINGS RE-*
24 *QUIREMENTS FOR AGENCY ACTION.*—Nothing in this
25 subsection shall limit the applicability of section 552b

1 *of title 5, United States Code, with respect to a meet-*
2 *ing of Commissioners other than that described in*
3 *paragraph (1).*

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

7 “(1) *detailed information regarding—*

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

10 “(B) *the appropriations for the Commission*
11 *for such fiscal year; and*

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

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

17 “(e) *FEDERAL REGISTER PUBLICATION.—*

18 “(1) *IN GENERAL.—In the case of any document*
19 *adopted by the Commission that the Commission is*
20 *required, under any provision of law, to publish in*
21 *the Federal Register, the Commission shall, not later*
22 *than the date described in paragraph (2), complete all*
23 *Commission actions necessary for such document to be*
24 *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 be*
6 *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 that*
10 *does not specify that the form of publication is publi-*
11 *cation in the Federal Register, the Commission may*
12 *comply with such deadline by publishing the docu-*
13 *ment in another form. Such other form of publication*
14 *does not relieve the Commission of any Federal Reg-*
15 *ister publication requirement applicable to such docu-*
16 *ment, including the requirement of paragraph (1).*

17 “(f) *CONSUMER COMPLAINT DATABASE.*—

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

22 “(A) *facilitates easy use by consumers; and*

23 “(B) *to the extent practicable, is sortable*
24 *and accessible by—*

1 “(i) the date of the filing of the com-
2 plaint;

3 “(ii) the topic of the complaint;

4 “(iii) the party complained of; and

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

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

12 “(g) *FORM OF PUBLICATION.*—

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

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

23 “(A) *information the publication of which*
24 *would be detrimental to national security, home-*

1 *land security, law enforcement, or public safety;*
2 *or*

3 *“(B) information that is proprietary or*
4 *confidential.*

5 *“(h) TRANSPARENCY RELATING TO PERFORMANCE IN*
6 *MEETING FOIA REQUIREMENTS.—The Commission shall*
7 *take additional steps to inform the public about its perform-*
8 *ance and efficiency in meeting the disclosure and other re-*
9 *quirements of section 552 of title 5, United States Code*
10 *(commonly referred to as the Freedom of Information Act),*
11 *including by doing the following:*

12 *“(1) Publishing on the Commission’s website the*
13 *Commission’s logs for tracking, responding to, and*
14 *managing requests submitted under such section, in-*
15 *cluding the Commission’s fee estimates, fee categories,*
16 *and fee request determinations.*

17 *“(2) Releasing to the public all decisions made*
18 *by the Commission (including decisions made by the*
19 *Commission’s Bureaus and Offices) granting or deny-*
20 *ing requests filed under such section, including any*
21 *such decisions pertaining to the estimate and applica-*
22 *tion of fees assessed under such section.*

23 *“(3) Publishing on the Commission’s website*
24 *electronic copies of documents released under such sec-*
25 *tion.*

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

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

21 “(j) *ANNUAL SCORECARD REPORTS.—*

22 “(1) *IN GENERAL.—For the 1-year period begin-*
23 *ning on January 1st of each year, the Commission*
24 *shall prepare a report on the performance of the Com-*
25 *mission in conducting its proceedings and meeting*

1 *the deadlines established under subsection (a)(2)(E)*
2 *and the guidelines established under subsection*
3 *(a)(2)(F).*

4 “(2) *CONTENTS.*—*Each report required by para-*
5 *graph (1) shall contain detailed statistics on such*
6 *performance, including, with respect to each Bureau*
7 *of the Commission—*

8 “(A) *with respect to each type of filing spec-*
9 *ified in subsection (a)(2)(E) or (a)(2)(F)—*

10 “(i) *the number of filings that were*
11 *pending on the last day of the period cov-*
12 *ered by such report;*

13 “(ii) *the number of filings described in*
14 *clause (i) for which each applicable deadline*
15 *or guideline established under such sub-*
16 *section was not met and the average length*
17 *of time such filings have been pending; and*

18 “(iii) *for filings that were resolved dur-*
19 *ing such period, the average time between*
20 *initiation and resolution and the percentage*
21 *for which each applicable deadline or guide-*
22 *line established under such subsection was*
23 *met;*

24 “(B) *with respect to proceedings before an*
25 *administrative law judge—*

1 “(i) the number of such proceedings
2 completed during such period; and

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

5 “(C) the number of independent studies or
6 analyses published by the Commission during
7 such period.

8 “(3) PUBLICATION AND SUBMISSION.—The Com-
9 mission shall publish and submit to the Committee on
10 Energy and Commerce of the House of Representa-
11 tives and the Committee on Commerce, Science, and
12 Transportation of the Senate each report required by
13 paragraph (1) not later than the date that is 30 days
14 after the last day of the period covered by such report.

15 “(k) DEFINITIONS.—In this section:

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

19 “(2) BIPARTISAN MAJORITY.—The term ‘bipar-
20 tisan majority’ means, when used with respect to a
21 group of Commissioners, that such group—

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

24 “(B) includes, for each political party of
25 which any Commissioner is a member, at least

1 1 Commissioner who is a member of such polit-
2 ical party, and, if any Commissioner has no po-
3 litical party affiliation, at least one unaffiliated
4 Commissioner.

5 “(3) *PERFORMANCE MEASURE.*—The term ‘per-
6 formance measure’ means an objective and quantifi-
7 able outcome measure or output measure (as such
8 terms are defined in section 1115 of title 31, United
9 States Code).

10 “(4) *PROGRAM ACTIVITY.*—The term ‘program
11 activity’ has the meaning given such term in section
12 1115 of title 31, United States Code, except that such
13 term also includes any annual collection or distribu-
14 tion or related series of collections or distributions by
15 the Commission of an amount that is greater than or
16 equal to \$100,000,000.

17 “(5) *OTHER DEFINITIONS.*—The terms ‘agency
18 action’, ‘ex parte communication’, and ‘rule’ have the
19 meanings given such terms in section 551 of title 5,
20 United States Code.”.

21 (b) *EFFECTIVE DATES AND IMPLEMENTING RULES.*—

22 (1) *EFFECTIVE DATES.*—

23 (A) *NONPUBLIC COLLABORATIVE DISCUS-*
24 *SIONS.*—Subsection (c) of section 13 of the Com-
25 munications Act of 1934, as added by subsection

1 (a), shall apply beginning on the first date on
2 which all of the procedural changes to the rules
3 of the Federal Communications Commission re-
4 quired by subsection (a)(1) of such section have
5 taken effect.

6 (B) *SCHEDULES AND REPORTS.*—Sub-
7 sections (i) and (j) of such section 13 shall apply
8 with respect to 2014 and any year thereafter.

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

14 **SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COM-**
15 **PLAINTS IN QUARTERLY REPORT.**

16 *In compiling its quarterly report with respect to infor-*
17 *mal consumer inquiries and complaints, the Federal Com-*
18 *munications Commission may not categorize an inquiry or*
19 *complaint with respect to section 227 of the Communica-*
20 *tions Act of 1934 (47 U.S.C. 227) as being a wireline in-*
21 *quiry or complaint or a wireless inquiry or complaint un-*
22 *less the party whose conduct is the subject of the inquiry*
23 *or complaint is a wireline carrier or a wireless carrier, re-*
24 *spectively.*

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

2 *Nothing in this Act or the amendments made by this*
3 *Act shall relieve the Federal Communications Commission*
4 *from any obligations under title 5, United States Code, ex-*
5 *cept where otherwise expressly provided.*

6 **SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNI-**
7 **VERSAL SERVICE PROGRAM.**

8 *(a) IN GENERAL.—Section 254 of the Communications*
9 *Act of 1934 (47 U.S.C. 254) is amended by adding at the*
10 *end the following:*

11 *“(m) APPLICATION OF ANTIDEFICIENCY ACT.—Section*
12 *1341 and subchapter II of chapter 15 of title 31, United*
13 *States Code, do not apply—*

14 *“(1) to any amount collected or received as Fed-*
15 *eral universal service contributions required by this*
16 *section, including any interest earned on such con-*
17 *tributions; or*

18 *“(2) to the expenditure or obligation of amounts*
19 *attributable to such contributions for universal service*
20 *support programs established pursuant to this sec-*
21 *tion.”.*

22 *(b) REPEAL OF TEMPORARY PROVISION.—Title III of*
23 *Public Law 108–494 (118 Stat. 3997) is repealed.*

Amend the title so as to read: “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.”.

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