

115TH CONGRESS  
1ST SESSION

# H. R. 290

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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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2017

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

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## 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 2017”.

1 **SEC. 2. FEDERAL COMMUNICATIONS COMMISSION PROC-**  
2 **ESS REFORM.**

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

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

7 “(a) INITIAL RULEMAKING AND INQUIRY.—

8 “(1) RULEMAKING.—Not later than 1 year  
9 after the date of the enactment of this section, the  
10 Commission shall complete a rulemaking proceeding  
11 and adopt procedural changes to its rules to maxi-  
12 mize opportunities for public participation and effi-  
13 cient decisionmaking.

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

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

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

23 “(ii) all other rulemaking proceedings;

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

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

10           “(D) establish procedures for, not later  
11 than 14 days after the end of each quarter of  
12 a calendar year (or more frequently, as the  
13 Commission considers appropriate), publishing  
14 on the Internet website of the Commission and  
15 submitting to Congress a report that contains—

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

23           “(ii) for the petitions, applications,  
24 complaints, and other requests for action  
25 by the Commission that were pending at

1 the Commission on the last day of such  
2 quarter (or more frequent period, as the  
3 case may be)—

4 “(I) the number of such requests,  
5 broken down by the bureau primarily  
6 responsible for action and, for each  
7 bureau, the type of request (such as a  
8 petition, application, or complaint);  
9 and

10 “(II) information regarding the  
11 amount of time for which such re-  
12 quests have been pending, broken  
13 down as described in subclause (I);  
14 and

15 “(iii) a list of the congressional inves-  
16 tigation of the Commission that were  
17 pending on the last day of such quarter (or  
18 more frequent period, as the case may be)  
19 and the cost of such investigations, individ-  
20 ually and in the aggregate;

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

23 “(i) in the case of a petition for a de-  
24 claratory ruling under section 1.2 of title

1                   47, Code of Federal Regulations, issuing a  
2                   public notice of such petition;

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

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

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

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

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

24                  “(i) create (or propose to create) a  
25                  program activity to contain performance

1 measures for evaluating the effectiveness of  
2 the program activity; and

3 “(ii) substantially change (or propose  
4 to substantially change) a program activity  
5 to contain—

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

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

14 “(3) INQUIRY.—Not later than 1 year after the  
15 date of the enactment of this section, the Commis-  
16 sion shall complete an inquiry to seek public com-  
17 ment on whether and how the Commission 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) except as otherwise provided in sec-  
4 tion 4(p), publish each order, decision, report,  
5 or action not later than 30 days after the date  
6 of the adoption of such order, decision, report,  
7 or action.

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

13 “(5) GAO AUDIT.—Not less frequently than  
14 every 6 months, the Comptroller General of the  
15 United States shall audit the cost estimates provided  
16 by the Commission under paragraph (2)(D)(iii) dur-  
17 ing the preceding 6-month period.

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

25 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—



1           “(1) IN GENERAL.—Notwithstanding section  
2           552b of title 5, United States Code, a bipartisan  
3           majority of Commissioners may hold a meeting that  
4           is closed to the public to discuss official business  
5           if—

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

8                   “(B) each person present at such meeting  
9                   is a Commissioner, an employee of the Commis-  
10                  sion, a member of a joint board or conference  
11                  established under section 410, or a person on  
12                  the staff of such a joint board or conference or  
13                  of a member of such a joint board or con-  
14                  ference; and

15                  “(C) an attorney from the Office of Gen-  
16                  eral Counsel of the Commission is present at  
17                  such meeting.

18           “(2) DISCLOSURE OF NONPUBLIC COLLABO-  
19           RATIVE DISCUSSIONS.—Not later than 2 business  
20           days after the conclusion of a meeting held under  
21           paragraph (1), the Commission shall publish a dis-  
22           closure of such meeting, including—

23                   “(A) a list of the persons who attended  
24                   such meeting; and

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

5           “(3) PRESERVATION OF OPEN MEETINGS RE-  
6           QUIREMENTS FOR AGENCY ACTION.—Nothing in this  
7           subsection shall limit the applicability of section  
8           552b of title 5, United States Code, with respect to  
9           a meeting of Commissioners other than that de-  
10          scribed in paragraph (1).

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

14                 “(1) detailed information regarding—

15                         “(A) the budget of the Commission for the  
16                         current fiscal year;

17                         “(B) the appropriations for the Commis-  
18                         sion for such fiscal year; and

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

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

1       “(e) INTERNET PUBLICATION OF CERTAIN FCC  
2 POLICIES AND PROCEDURES.—The chairman of the Com-  
3 mission shall—

4           “(1) publish on the Internet website of the  
5 Commission any policies or procedures of the Com-  
6 mission that—

7           “(A) are established by the chairman; and

8           “(B) relate to the functioning of the Com-  
9 mission or the handling of the agenda of the  
10 Commission; and

11          “(2) update such publication not later than 48  
12 hours after the chairman makes changes to any such  
13 policies or procedures.

14       “(f) FEDERAL REGISTER PUBLICATION.—

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

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

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

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

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

14          “(g) CONSUMER COMPLAINT DATABASE.—

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

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

21                         “(B) to the extent practicable, is sortable  
22                         and accessible by—

23                                 “(i) the date of the filing of the com-  
24                                 plaint;

25                                 “(ii) the topic of the complaint;

1 “(iii) the party complained of; and

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

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

9 “(h) FORM OF PUBLICATION.—

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

16 “(2) EXCEPTION.—The Commission shall by  
17 rule establish procedures for redacting documents  
18 required to be published by this section so that the  
19 published versions of such documents do not con-  
20 tain—

21 “(A) information the publication of which  
22 would be detrimental to national security,  
23 homeland security, law enforcement, or public  
24 safety; or

1                   “(B) information that is proprietary or  
2                   confidential.

3                   “(i) TRANSPARENCY RELATING TO PERFORMANCE IN  
4 MEETING FOIA REQUIREMENTS.—The Commission shall  
5 take additional steps to inform the public about its per-  
6 formance and efficiency in meeting the disclosure and  
7 other requirements of section 552 of title 5, United States  
8 Code (commonly referred to as the Freedom of Informa-  
9 tion Act), including by doing the following:

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

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

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

24                   “(4) Presenting information about the Commis-  
25 sion’s handling of requests under such section in the

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

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

19 “(k) ANNUAL SCORECARD REPORTS.—

20 “(1) IN GENERAL.—For the 1-year period be-  
21 ginning on January 1st of each year, the Commis-  
22 sion shall prepare a report on the performance of  
23 the Commission in conducting its proceedings and  
24 meeting the deadlines established under subsection

1 (a)(2)(E) and the guidelines established under sub-  
2 section (a)(2)(F).

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

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

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

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

18 “(iii) for filings that were resolved  
19 during such period, the average time be-  
20 tween initiation and resolution and the  
21 percentage for which each applicable dead-  
22 line or guideline established under such  
23 subsection was 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  
9                   Commission shall publish and submit to the Com-  
10                  mittee on Energy and Commerce of the House of  
11                  Representatives and the Committee on Commerce,  
12                  Science, and Transportation of the Senate each re-  
13                  port required by paragraph (1) not later than the  
14                  date that is 30 days after the last day of the period  
15                  covered by such report.

16                  “(1) DEFINITIONS.—In this section:

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

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

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

1           “(B) includes, for each political party of  
2           which any Commissioner is a member, at least  
3           one Commissioner who is a member of such po-  
4           litical party, and, if any Commissioner has no  
5           political party affiliation, at least one unaffili-  
6           ated Commissioner.

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

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

19          “(5) OTHER DEFINITIONS.—The terms ‘agency  
20          action’, ‘ex parte communication’, and ‘rule’ have  
21          the meanings given such terms in section 551 of title  
22          5, United States Code.”.

23          (b) EFFECTIVE DATES AND IMPLEMENTING  
24          RULES.—

25                 (1) EFFECTIVE DATES.—

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

9           (B) REPORT RELEASE SCHEDULES.—Sub-  
10          section (j) of such section 13 shall apply with  
11          respect to 2018 and any year thereafter.

12          (C) ANNUAL SCORECARD REPORTS.—Sub-  
13          section (k) of such section 13 shall apply with  
14          respect to 2017 and any year thereafter.

15          (D) INTERNET PUBLICATION OF CERTAIN  
16          FCC POLICIES AND PROCEDURES.—Subsection  
17          (e) of such section 13 shall apply beginning on  
18          the date that is 30 days after the date of the  
19          enactment of this Act.

20          (2) RULES.—Except as otherwise provided in  
21          such section 13, the Federal Communications Com-  
22          mission shall promulgate any rules necessary to  
23          carry out such section not later than 1 year after  
24          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.

17 **SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNI-**  
18 **VERSAL SERVICE PROGRAM.**

19 Section 302 of Public Law 108–494 (118 Stat. 3998)  
20 is amended by striking “December 31, 2017” each place  
21 it appears and inserting “December 31, 2021”.

22 **SEC. 6. REPORT ON IMPROVING SMALL BUSINESS PARTICI-**  
23 **PATION IN FCC PROCEEDINGS.**

24 Not later than 1 year after the date of the enactment  
25 of this Act, the Federal Communications Commission, in

1 consultation with the Administrator of the Small Business  
2 Administration, shall submit to Congress a report on—

3 (1) actions that the Commission will take to im-  
4 prove the participation of small businesses in the  
5 proceedings of the Commission; and

6 (2) recommendations for any legislation that  
7 the Commission considers appropriate to improve  
8 such participation.

9 **SEC. 7. TIMELY AVAILABILITY OF ITEMS ADOPTED BY VOTE**  
10 **OF THE COMMISSION.**

11 (a) AMENDMENT.—Section 4 of the Communications  
12 Act of 1934 (47 U.S.C. 154) is amended by adding at  
13 the end the following:

14 “(p) In the case of any item that is adopted by vote  
15 of the Commission, the Commission shall publish on the  
16 Internet website of the Commission the text of such item  
17 not later than 24 hours after the Secretary of the Commis-  
18 sion has received dissenting statements from all Commis-  
19 sioners wishing to submit such a statement with respect  
20 to such item.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply with respect to an item that is  
23 adopted after the date that is 30 days after the date of  
24 the enactment of this Act.

○