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

NOVEMBER 2, 2011

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

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.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Federal Communications Commission Process Reform Act of 2011”.

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 adding at the end the following new section:
“SEC. 13. TRANSPARENCY AND EFFICIENCY.

“(a) Rulemaking Requirements.—

“(1) Requirements for notices of proposed rulemaking.—The Commission may not issue a notice of proposed rulemaking unless the Commission provides for a period of not less than 30 days for the submission of comments and an additional period of not less than 30 days for the submission of reply comments on such notice and the Commission includes in such notice the following:

“(A) Either—

“(i) an identification of—

“(I) a notice of inquiry, a prior notice of proposed rulemaking, or a notice on a petition for rulemaking issued by the Commission during the 3-year period preceding the issuance of the notice of proposed rulemaking concerned and of which such notice is a logical outgrowth; or

“(II) an order of a court reviewing action by the Commission or otherwise directing the Commission to act that was issued by the court during the 3-year period preceding the issuance of the notice of proposed
rulemaking concerned and in response to which such notice is being issued; or

“(ii) a finding (together with a brief statement of reasons therefor)—

“(I) that the proposed rule or the proposed amendment of an existing rule will not impose additional burdens on industry or consumers; or

“(II) for good cause, that a notice of inquiry is impracticable, unnecessary, or contrary to the public interest.

“(B) The specific language of the proposed rule or the proposed amendment of an existing rule.

“(C) In the case of a proposal to create a program activity, proposed performance measures for evaluating the effectiveness of the program activity.

“(D) In the case of a proposal to substantially change a program activity—

“(i) proposed performance measures for evaluating the effectiveness of the pro-
gram activity as proposed to be changed; or

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

“(2) REQUIREMENTS FOR RULES.—Except as provided in the 3rd sentence of section 553(b) of title 5, United States Code, the Commission may not adopt or amend a rule unless—

“(A) the specific language of the adopted rule or the amendment of an existing rule is a logical outgrowth of the specific language of a proposed rule or a proposed amendment of an existing rule included in a notice of proposed rulemaking, as described in subparagraph (B) of paragraph (1);

“(B) such notice of proposed rulemaking—

“(i) was issued in compliance with such paragraph and during the 3-year period preceding the adoption of the rule or the amendment of an existing rule; and

“(ii) is identified in the order making the adoption or amendment;
“(C) in the case of the adoption of a rule or the amendment of an existing rule that may have an economically significant impact, the order contains—

“(i) an identification and analysis of the specific market failure, actual consumer harm, burden of existing regulation, or failure of public institutions that warrants the adoption or amendment; and

“(ii) a reasoned determination that the benefits of the adopted rule or the amendment of an existing rule justify its costs (recognizing that some benefits and costs are difficult to quantify), taking into account alternative forms of regulation and the need to tailor regulation to impose the least burden on society, consistent with obtaining regulatory objectives;

“(D) in the case of the adoption of a rule or the amendment of an existing rule that creates a program activity, the order contains performance measures for evaluating the effectiveness of the program activity; and

“(E) in the case of the adoption of a rule or the amendment of an existing rule that sub-
stantially changes a program activity, the order contains—

“(i) performance measures for evaluating the effectiveness of the program activity as changed; or

“(ii) a finding that existing performance measures will effectively evaluate the program activity as changed.

“(3) 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) ADEQUATE DELIBERATION BY COMMISSIONERS.—The Commission shall by rule establish procedures for—

“(1) informing all Commissioners of the options available to the Commission for resolving a petition, complaint, application, rulemaking, or other proceeding;

“(2) 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 de-
cision document, including the specific language of any proposed rule or any proposed amendment of an existing rule; and

“(3) 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.

“(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 established under section 410, or a person on the staff of such a joint board; 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) INITIATION OF ITEMS BY BIPARTISAN MAJORITY.—The Commission shall by rule establish procedures for allowing a bipartisan majority of Commissioners to—

“(1) direct Commission staff to draft an order, decision, report, or action for review by the Commission;

“(2) require Commission approval of an order, decision, report, or action with respect to a function of the Commission delegated under section 5(e)(1); and
“(3) place an order, decision, report, or action
on the agenda of an open meeting.

“(e) Public Review of Certain Reports and Ex
Parte Communications.—

“(1) In general.—Except as provided in para-
graph (2), the Commission may not rely, in any
order, decision, report, or action, on—

“(A) a statistical report or report to Con-
gress, unless the Commission has published and
made such report available for comment for not
less than a 30-day period prior to the adoption
of such order, decision, report, or action; or

“(B) an ex parte communication or any fil-
ing with the Commission, unless the public has
been afforded adequate notice of and oppor-
tunity to respond to such communication or fil-
ing, in accordance with procedures to be estab-
lished by the Commission by rule.

“(2) Exception.—Paragraph (1) does not
apply when the Commission for good cause finds
(and incorporates the finding and a brief statement
of reasons therefor in the order, decision, report, or
action) that publication or availability of a report
under subparagraph (A) of such paragraph or notice
of and opportunity to respond to an ex parte com-
munication under subparagraph (B) of such para-
graph are impracticable, unnecessary, or contrary to
the public interest.

“(f) Publication of Status of Certain Pro-
ceedings and Items.—The Commission shall by rule es-
tablish procedures for publishing the status of all open
rulemaking proceedings and all proposed orders, decisions,
reports, or actions on circulation for review by the Com-
missioners, 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.

“(g) Deadlines for Action.—The Commission
shall by rule establish deadlines for any Commission order,
decision, report, or action for each of the various cat-
egories of petitions, applications, complaints, and other fil-
ings seeking Commission action, including filings seeking
action through authority delegated under section 5(c)(1).

“(h) Prompt Release of Certain Reports and
Decision Documents.—

“(1) Statistical reports and reports to
Congress.—

“(A) Release schedule.—Not later
than January 15th of each year, the Commis-
sion shall identify, catalog, and publish an an-
ticipated release schedule for all statistical re-
ports and reports to Congress that are regularly
or intermittently released by the Commission
and will be released during such year.

“(B) Publication deadlines.—The
Commission shall publish each report identified
in a schedule published under subparagraph (A)
not later than the date indicated in such sched-
ule for the anticipated release of such report.

“(2) Decision documents.—The Commission
shall publish each order, decision, report, or action
not later than 7 days after the date of the adoption
of such order, decision, report, or action.

“(3) Effect if deadlines not met.—

“(A) Notification of Congress.—If the
Commission fails to publish an order, decision,
report, or action by a deadline described in
paragraph (1)(B) or (2), the Commission shall,
not later than 7 days after such deadline and
every 14 days thereafter until the publication of
the order, decision, report, or action, notify by
letter the chairpersons and ranking members of
the Committee on Energy and Commerce of the
House of Representatives and the Committee
on Commerce, Science, and Transportation of
the Senate. Such letter shall identify such
order, decision, report, or action, specify the
deadline, and describe the reason for the delay.
The Commission shall publish such letter.

“(B) NO IMPACT ON EFFECTIVENESS.—
The failure of the Commission to publish an
order, decision, report, or action by a deadline
described in paragraph (1)(B) or (2) shall not
render such order, decision, report, or action in-
effective when published.

“(i) BIANNUAL SCORECARD REPORTS.—

“(1) IN GENERAL.—For the 6-month period be-
ginning on January 1st of each year and the 6-
month period beginning on July 1st of each year,
the Commission shall prepare a report on the per-
formance of the Commission in conducting its pro-
ceedings and meeting the deadlines established
under subsections (g), (h)(1)(B), and (h)(2).

“(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) in the case of performance in meeting
the deadlines established under subsection (g),
with respect to each category established under
such subsection—
“(i) the number of petitions, applications, complaints, and other filings seeking Commission action that were pending on the last day of the period covered by such report;

“(ii) the number of filings described in clause (i) that were not resolved by the deadlines established under such subsection and the average length of time such filings have been pending; and

“(iii) for petitions, applications, complaints, and other filings seeking Commission action that were resolved during such period, the average time between initiation and resolution and the percentage resolved by the deadlines established under such subsection;

“(B) in the case of 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.

“(j) Transaction Review Standards.—

“(1) In General.—The Commission shall condition its approval of a transfer of lines, a transfer of licenses, or any other transaction under section 214, 309, or 310 or any other provision of this Act only if—

“(A) the imposed condition is narrowly tailored to remedy a harm that arises as a direct result of the specific transfer or specific transaction that this Act empowers the Commission to review; and

“(B) the Commission could impose a similar requirement under the authority of a specific provision of law other than a provision em-
powering the Commission to review a transfer
of lines, a transfer of licenses, or other trans-
action.

“(2) EXCLUSIONS.—In reviewing a transfer of
lines, a transfer of licenses, or any other transaction
under section 214, 309, or 310 or any other provi-
son of this Act, the Commission may not consider
a voluntary commitment of a party to such transfer
or transaction unless the Commission could adopt
that voluntary commitment as a condition under
paragraph (1).

“(k) FORM OF PUBLICATION.—

“(1) IN GENERAL.—In complying with a re-
quirement 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 con-
tain—

“(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.

“(l) 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) ECONOMICALLY SIGNIFICANT IMPACT.—The term ‘economically significant impact’ means an effect on the economy of $100,000,000 or more annually or a material adverse effect on the economy, a sector of the economy, productivity, competition,
jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

“(4) 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).

“(5) 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.

“(6) 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 DATE AND IMPLEMENTING RULES.—

(1) EFFECTIVE DATE.—

(A) IN GENERAL.—The requirements of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply beginning on the date that is 6 months after the date of the enactment of this Act.
(B) Prior Notices of Proposed Rulemaking.—If the Commission identifies under paragraph (2)(B)(ii) of subsection (a) of such section 13 a notice of proposed rulemaking issued prior to the date of the enactment of this Act—

(i) such notice shall be deemed to have complied with paragraph (1) of such subsection; and

(ii) if such notice did not contain the specific language of a proposed rule or a proposed amendment of an existing rule, paragraph (2)(A) of such subsection shall be satisfied if the adopted rule or the amendment of an existing rule is a logical outgrowth of such notice.

(C) Schedules and Reports.—Notwithstanding subparagraph (A), subsections (h)(1) and (i) of such section shall apply with respect to 2013 and any year thereafter.

(2) Rules.—The Federal Communications Commission shall promulgate the rules necessary to carry out such section not later than 1 year after the date of the enactment of this Act.
(3) PROCEDURES FOR ADOPTING RULES.—Notwithstanding paragraph (1)(A), in promulgating rules to carry out such section, the Federal Communications Commission shall comply with the requirements of subsections (a) and (h)(2) of such section.

SEC. 3. EFFECT ON OTHER LAWS.

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