

112TH CONGRESS  
1ST SESSION

# H. R. 3309

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

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## 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

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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.

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 2011”.

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 adding  
9 at the end the following new section:

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

2 “(a) RULEMAKING REQUIREMENTS.—

3 “(1) REQUIREMENTS FOR NOTICES OF PRO-  
4 POSED RULEMAKING.—The Commission may not  
5 issue a notice of proposed rulemaking unless the  
6 Commission provides for a period of not less than 30  
7 days for the submission of comments and an addi-  
8 tional period of not less than 30 days for the sub-  
9 mission of reply comments on such notice and the  
10 Commission includes in such notice the following:

11 “(A) Either—

12 “(i) an identification of—

13 “(I) a notice of inquiry, a prior  
14 notice of proposed rulemaking, or a  
15 notice on a petition for rulemaking  
16 issued by the Commission during the  
17 3-year period preceding the issuance  
18 of the notice of proposed rulemaking  
19 concerned and of which such notice is  
20 a logical outgrowth; or

21 “(II) an order of a court review-  
22 ing action by the Commission or oth-  
23 erwise directing the Commission to  
24 act that was issued by the court dur-  
25 ing the 3-year period preceding the  
26 issuance of the notice of proposed

1 rulemaking concerned and in response  
2 to which such notice is being issued;  
3 or

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

6 “(I) that the proposed rule or the  
7 proposed amendment of an existing  
8 rule will not impose additional bur-  
9 dens on industry or consumers; or

10 “(II) for good cause, that a no-  
11 tice of inquiry is impracticable, unnec-  
12 essary, or contrary to the public inter-  
13 est.

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

17 “(C) In the case of a proposal to create a  
18 program activity, proposed performance meas-  
19 ures for evaluating the effectiveness of the pro-  
20 gram activity.

21 “(D) In the case of a proposal to substan-  
22 tially change a program activity—

23 “(i) proposed performance measures  
24 for evaluating the effectiveness of the pro-

1           gram activity as proposed to be changed;  
2           or

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

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

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

18           “(B) such notice of proposed rulemaking—

19           “(i) was issued in compliance with  
20           such paragraph and during the 3-year pe-  
21           riod preceding the adoption of the rule or  
22           the amendment of an existing rule; and

23           “(ii) is identified in the order making  
24           the adoption or amendment;

1           “(C) in the case of the adoption of a rule  
2 or the amendment of an existing rule that may  
3 have an economically significant impact, the  
4 order contains—

5           “(i) an identification and analysis of  
6 the specific market failure, actual con-  
7 sumer harm, burden of existing regulation,  
8 or failure of public institutions that war-  
9 rants the adoption or amendment; and

10           “(ii) a reasoned determination that  
11 the benefits of the adopted rule or the  
12 amendment of an existing rule justify its  
13 costs (recognizing that some benefits and  
14 costs are difficult to quantify), taking into  
15 account alternative forms of regulation and  
16 the need to tailor regulation to impose the  
17 least burden on society, consistent with ob-  
18 taining regulatory objectives;

19           “(D) in the case of the adoption of a rule  
20 or the amendment of an existing rule that cre-  
21 ates a program activity, the order contains per-  
22 formance measures for evaluating the effective-  
23 ness of the program activity; and

24           “(E) in the case of the adoption of a rule  
25 or the amendment of an existing rule that sub-

1           stantially changes a program activity, the order  
2           contains—

3                   “(i) performance measures for evalu-  
4                   ating the effectiveness of the program ac-  
5                   tivity as changed; or

6                   “(ii) a finding that existing perform-  
7                   ance measures will effectively evaluate the  
8                   program activity as changed.

9           “(3) DATA FOR PERFORMANCE MEASURES.—

10           The Commission shall develop a performance meas-  
11           ure or proposed performance measure required by  
12           this subsection to rely, where possible, on data al-  
13           ready collected by the Commission.

14           “(b) ADEQUATE DELIBERATION BY COMMIS-  
15           SIONERS.—The Commission shall by rule establish proce-  
16           dures for—

17                   “(1) informing all Commissioners of the options  
18                   available to the Commission for resolving a petition,  
19                   complaint, application, rulemaking, or other pro-  
20                   ceeding;

21                   “(2) ensuring that all Commissioners have ade-  
22                   quate time, prior to being required to decide a peti-  
23                   tion, complaint, application, rulemaking, or other  
24                   proceeding (including at a meeting held pursuant to  
25                   section 5(d)), to review the proposed Commission de-

1 cision document, including the specific language of  
2 any proposed rule or any proposed amendment of an  
3 existing rule; and

4 “(3) publishing the text of agenda items to be  
5 voted on at an open meeting in advance of such  
6 meeting so that the public has the opportunity to  
7 read the text before a vote is taken.

8 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

9 “(1) IN GENERAL.—Notwithstanding section  
10 552b of title 5, United States Code, a bipartisan  
11 majority of Commissioners may hold a meeting that  
12 is closed to the public to discuss official business  
13 if—

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

16 “(B) each person present at such meeting  
17 is a Commissioner, an employee of the Commis-  
18 sion, a member of a joint board established  
19 under section 410, or a person on the staff of  
20 such a joint board; and

21 “(C) an attorney from the Office of Gen-  
22 eral Counsel of the Commission is present at  
23 such meeting.

24 “(2) DISCLOSURE OF NONPUBLIC COLLABO-  
25 RATIVE DISCUSSIONS.—Not later than 2 business

1 days after the conclusion of a meeting held under  
2 paragraph (1), the Commission shall publish a dis-  
3 closure of such meeting, including—

4 “(A) a list of the persons who attended  
5 such meeting; and

6 “(B) a summary of the matters discussed  
7 at such meeting, except for such matters as the  
8 Commission determines may be withheld under  
9 section 552b(e) of title 5, United States Code.

10 “(3) PRESERVATION OF OPEN MEETINGS RE-  
11 QUIREMENTS FOR AGENCY ACTION.—Nothing in this  
12 subsection shall limit the applicability of section  
13 552b of title 5, United States Code, with respect to  
14 a meeting of Commissioners other than that de-  
15 scribed in paragraph (1).

16 “(d) INITIATION OF ITEMS BY BIPARTISAN MAJOR-  
17 ITY.—The Commission shall by rule establish procedures  
18 for allowing a bipartisan majority of Commissioners to—

19 “(1) direct Commission staff to draft an order,  
20 decision, report, or action for review by the Commis-  
21 sion;

22 “(2) require Commission approval of an order,  
23 decision, report, or action with respect to a function  
24 of the Commission delegated under section 5(c)(1);  
25 and



1           “(3) place an order, decision, report, or action  
2           on the agenda of an open meeting.

3           “(e) PUBLIC REVIEW OF CERTAIN REPORTS AND EX  
4 PARTE COMMUNICATIONS.—

5           “(1) IN GENERAL.—Except as provided in para-  
6           graph (2), the Commission may not rely, in any  
7           order, decision, report, or action, on—

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

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

19           “(2) EXCEPTION.—Paragraph (1) does not  
20           apply when the Commission for good cause finds  
21           (and incorporates the finding and a brief statement  
22           of reasons therefor in the order, decision, report, or  
23           action) that publication or availability of a report  
24           under subparagraph (A) of such paragraph or notice  
25           of and opportunity to respond to an ex parte com-

1       munication under subparagraph (B) of such para-  
2       graph are impracticable, unnecessary, or contrary to  
3       the public interest.

4       “(f) PUBLICATION OF STATUS OF CERTAIN PRO-  
5       CEEDINGS AND ITEMS.—The Commission shall by rule es-  
6       tablish procedures for publishing the status of all open  
7       rulemaking proceedings and all proposed orders, decisions,  
8       reports, or actions on circulation for review by the Com-  
9       missioners, including which Commissioners have not cast  
10      a vote on an order, decision, report, or action that has  
11      been on circulation for more than 60 days.

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

18      “(h) PROMPT RELEASE OF CERTAIN REPORTS AND  
19      DECISION DOCUMENTS.—

20             “(1) STATISTICAL REPORTS AND REPORTS TO  
21      CONGRESS.—

22             “(A) RELEASE SCHEDULE.—Not later  
23             than January 15th of each year, the Commis-  
24             sion shall identify, catalog, and publish an an-  
25             ticipated release schedule for all statistical re-

1 ports and reports to Congress that are regularly  
2 or intermittently released by the Commission  
3 and will be released during such year.

4 “(B) PUBLICATION DEADLINES.—The  
5 Commission shall publish each report identified  
6 in a schedule published under subparagraph (A)  
7 not later than the date indicated in such sched-  
8 ular for the anticipated release of such report.

9 “(2) DECISION DOCUMENTS.—The Commission  
10 shall publish each order, decision, report, or action  
11 not later than 7 days after the date of the adoption  
12 of such order, decision, report, or action.

13 “(3) EFFECT IF DEADLINES NOT MET.—

14 “(A) NOTIFICATION OF CONGRESS.—If the  
15 Commission fails to publish an order, decision,  
16 report, or action by a deadline described in  
17 paragraph (1)(B) or (2), the Commission shall,  
18 not later than 7 days after such deadline and  
19 every 14 days thereafter until the publication of  
20 the order, decision, report, or action, notify by  
21 letter the chairpersons and ranking members of  
22 the Committee on Energy and Commerce of the  
23 House of Representatives and the Committee  
24 on Commerce, Science, and Transportation of  
25 the Senate. Such letter shall identify such

1 order, decision, report, or action, specify the  
2 deadline, and describe the reason for the delay.  
3 The Commission shall publish such letter.

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

10 “(i) BIENNIAL SCORECARD REPORTS.—

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

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

22 “(A) in the case of performance in meeting  
23 the deadlines established under subsection (g),  
24 with respect to each category established under  
25 such subsection—

1           “(i) the number of petitions, applica-  
2           tions, complaints, and other filings seeking  
3           Commission action that were pending on  
4           the last day of the period covered by such  
5           report;

6           “(ii) the number of filings described  
7           in clause (i) that were not resolved by the  
8           deadlines established under such sub-  
9           section and the average length of time  
10          such filings have been pending; and

11          “(iii) for petitions, applications, com-  
12          plaints, and other filings seeking Commis-  
13          sion action that were resolved during such  
14          period, the average time between initiation  
15          and resolution and the percentage resolved  
16          by the deadlines established under such  
17          subsection;

18          “(B) in the case of proceedings before an  
19          administrative law judge—

20                 “(i) the number of such proceedings  
21                 completed during such period; and

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

1           “(C) the number of independent studies or  
2 analyses published by the Commission during  
3 such period.

4           “(3) PUBLICATION AND SUBMISSION.—The  
5 Commission shall publish and submit to the Com-  
6 mittee on Energy and Commerce of the House of  
7 Representatives and the Committee on Commerce,  
8 Science, and Transportation of the Senate each re-  
9 port required by paragraph (1) not later than the  
10 date that is 30 days after the last day of the period  
11 covered by such report.

12           “(j) TRANSACTION REVIEW STANDARDS.—

13           “(1) IN GENERAL.—The Commission shall con-  
14 dition its approval of a transfer of lines, a transfer  
15 of licenses, or any other transaction under section  
16 214, 309, or 310 or any other provision of this Act  
17 only if—

18           “(A) the imposed condition is narrowly tai-  
19 lored to remedy a harm that arises as a direct  
20 result of the specific transfer or specific trans-  
21 action that this Act empowers the Commission  
22 to review; and

23           “(B) the Commission could impose a simi-  
24 lar requirement under the authority of a spe-  
25 cific provision of law other than a provision em-

1           powering the Commission to review a transfer  
2           of lines, a transfer of licenses, or other trans-  
3           action.

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

12          “(k) 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  
18                 use or is permitted to and chooses to use.

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

24                         “(A) information the publication of which  
25                         would be detrimental to national security,

1 homeland security, law enforcement, or public  
2 safety; or

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

5 “(1) DEFINITIONS.—In this section:

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

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

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

14 “(B) includes, for each political party of  
15 which any Commissioner is a member, at least  
16 1 Commissioner who is a member of such polit-  
17 ical party, and, if any Commissioner has no po-  
18 litical party affiliation, at least one unaffiliated  
19 Commissioner.

20 “(3) ECONOMICALLY SIGNIFICANT IMPACT.—  
21 The term ‘economically significant impact’ means an  
22 effect on the economy of \$100,000,000 or more an-  
23 nually or a material adverse effect on the economy,  
24 a sector of the economy, productivity, competition,



1 jobs, the environment, public health or safety, or  
2 State, local, or tribal governments or communities.

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

8 “(5) PROGRAM ACTIVITY.—The term ‘program  
9 activity’ has the meaning given such term in section  
10 1115 of title 31, United States Code, except that  
11 such term also includes any annual collection or dis-  
12 tribution or related series of collections or distribu-  
13 tions by the Commission of an amount that is great-  
14 er than or equal to \$100,000,000.

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

19 (b) EFFECTIVE DATE AND IMPLEMENTING RULES.—

20 (1) EFFECTIVE DATE.—

21 (A) IN GENERAL.—The requirements of  
22 section 13 of the Communications Act of 1934,  
23 as added by subsection (a), shall apply begin-  
24 ning on the date that is 6 months after the date  
25 of the enactment of this Act.

1 (B) PRIOR NOTICES OF PROPOSED RULE-  
2 MAKING.—If the Commission identifies under  
3 paragraph (2)(B)(ii) of subsection (a) of such  
4 section 13 a notice of proposed rulemaking  
5 issued prior to the date of the enactment of this  
6 Act—

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

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

17 (C) SCHEDULES AND REPORTS.—Notwith-  
18 standing subparagraph (A), subsections (h)(1)  
19 and (i) of such section shall apply with respect  
20 to 2013 and any year thereafter.

21 (2) RULES.—The Federal Communications  
22 Commission shall promulgate the rules necessary to  
23 carry out such section not later than 1 year after  
24 the date of the enactment of this Act.

1           (3) PROCEDURES FOR ADOPTING RULES.—Not-  
2       withstanding paragraph (1)(A), in promulgating  
3       rules to carry out such section, the Federal Commu-  
4       nications Commission shall comply with the require-  
5       ments of subsections (a) and (h)(2) of such section.

6 **SEC. 3. EFFECT ON OTHER LAWS.**

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

○