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

MARCH 19, 2012

Additional sponsors: Mr. BARTON of Texas, Mr. TERRY, Mr. BASS of New Hampshire, Mrs. BLACKBURN, Mr. SCALISE, Mr. LATTA, Mr. KLINE, and Mr. STEARNS

MARCH 19, 2012

Reported with an amendment, 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 italic]

[For text of introduced bill, see copy of bill as introduced on November 2, 2011]
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 Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Communica-
tions Commission Process Reform Act of 2012”.

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) RULEMAKING REQUIREMENTS.—

“(1) REQUIREMENTS FOR NOTICES OF PROPOSED
RULEMAKING.—The Commission may not issue a no-
tice 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 com-
ments 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 no-
tice on a petition for rulemaking
issued by the Commission during the
3-year period preceding the issuance of
the notice of proposed rulemaking con-
cerned and of which such notice is a
logical outgrowth; or

“(II) an order of a court review-
ing action by the Commission or other-
wise 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 con-
cerned 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 bur-
dens on industry or consumers; or

“(II) for good cause, that a notice
of inquiry is impracticable, unneces-
sary, 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 program 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 substantially 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 a reasonable number of options available to the Commission
for resolving a petition, complaint, application, rule-making, 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 decision 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 sec-
tion 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 COLLABO-
RATIVE DISCUSSIONS.—Not later than 2 business
days after the conclusion of a meeting held under para-
graph (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 RE-
QUIREMENTS FOR AGENCY ACTION.—Nothing in this
subsection shall limit the applicability of section 552b
of title 5, United States Code, with respect to a meet-
ing of Commissioners other than that described in
paragraph (1).

“(d) INITIATION OF ITEMS BY BIPARTISAN MAJOR-
ITY.—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(c)(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 paragraph (2), the Commission may not rely, in any order, decision, report, or action, on—

“(A) a statistical report or report to Congress, 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 filing with the Commission, unless the public has been afforded adequate notice of and opportunity to respond to such communication or filing, in accordance with procedures to be established 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 communication under subparagraph (B) of such paragraph are impracticable, unnecessary, or contrary to the public interest.

“(f) PUBLICATION OF STATUS OF CERTAIN PROCEEDINGS AND ITEMS.—The Commission shall by rule establish procedures for publishing the status of all open rule-making proceedings and all 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.

“(g) DEADLINES FOR ACTION.—The Commission shall by rule establish deadlines for any Commission order, decision, report, or action for each of the various categories of petitions, applications, complaints, and other filings 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 Commission shall
identify, catalog, and publish an anticipated re-
lease schedule for all statistical reports and re-
ports to Congress that are regularly or intermit-
tently released by the Commission and will be re-
leased during such year.

“(B) PUBLICATION DEADLINES.—The Com-
mission shall publish each report identified in a
schedule published under subparagraph (A) not
later than the date indicated in such schedule 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, de-
cision, report, or action, specify the deadline,
and describe the reason for the delay. The Com-
mission 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 de-
scribed 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 Com-
mission shall prepare a report on the performance of
the Commission in conducting its proceedings 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 trans-
action 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 empowering the Commission to review a transfer of lines, a transfer of licenses, or other transaction.

“(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 provision 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) 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.

“(l) **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 PUBLICA-
TION IN OTHER FORM.—In the case of a deadline that
does not specify that the form of publication is publi-
cation in the Federal Register, the Commission may
comply with such deadline by publishing the docu-
ment in another form. Such other form of publication
does not relieve the Commission of any Federal Reg-
ister publication requirement applicable to such docu-
ment, including the requirement of paragraph (1).

“(m) 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 com-
plaint;

“(ii) the topic of the complaint;

“(iii) the party complained of; and

“(iv) other elements that the Commis-
sion 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 in-
clude only information concerning one such com-
plaint in the database described in paragraph (1).

“(n) 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 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.

“(o) 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 polit-
ical party, and, if any Commissioner has no po-

tical party affiliation, at least 1 unaffiliated

Commissioner.

“(3) ECONOMICALLY SIGNIFICANT IMPACT.—The
term ‘economically significant impact’ means an ef-
fect 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 ‘per-
formance measure’ means an objective and quantifi-
able 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 distribu-
tion 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 Federal Communications 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. 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 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.
A BILL

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