

112TH CONGRESS
1ST SESSION

S. 1784

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 SENATE OF THE UNITED STATES

NOVEMBER 2, 2011

Mr. HELLER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 ule 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.

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