

FEDERAL COMMUNICATIONS COMMISSION PROCESS
 REFORM ACT OF 2015

OCTOBER 22, 2015.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
 submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2583]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2583) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Communications Commission Process Reform Act of 2015”.

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:

“SEC. 13. TRANSPARENCY AND EFFICIENCY.

“(a) INITIAL RULEMAKING AND INQUIRY.—

“(1) RULEMAKING.—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2015, the Commission shall complete a rulemaking proceeding and adopt procedural changes to its rules to maximize opportunities for public participation and efficient decisionmaking.

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

“(A) set minimum comment periods for comment and reply comment, subject to a determination by the Commission that good cause exists for departing from such minimum comment periods, for—

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

“(ii) all other rulemaking proceedings;

“(B) establish policies concerning the submission of extensive new comments, data, or reports towards the end of the comment period;

“(C) establish policies regarding treatment of comments, ex parte communications, and data or reports (including statistical reports and reports to Congress) submitted after the comment period to ensure that the public has adequate notice of and opportunity to respond to such submissions before the Commission relies on such submissions in any order, decision, report, or action;

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

“(i) the status of open rulemaking proceedings and 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;

“(ii) for the petitions, applications, complaints, and other requests for action by the Commission that were pending at the Commission on the last day of such quarter (or more frequent period, as the case may be)—

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

“(II) information regarding the amount of time for which such requests have been pending, broken down as described in subclause (I); and

“(iii) a list of the congressional investigations of the Commission that were pending on the last day of such quarter (or more frequent period, as the case may be) and the cost of such investigations, individually and in the aggregate;

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

“(i) in the case of a petition for a declaratory ruling under section 1.2 of title 47, Code of Federal Regulations, issuing a public notice of such petition;

“(ii) in the case of a petition for rulemaking under section 1.401 of such title, issuing a public notice of such petition; and

“(iii) in the case of a petition for reconsideration under section 1.106 or 1.429 of such title or an application for review under section 1.115

of such title, issuing a public notice of a decision on the petition or application by the Commission or under delegated authority (as the case may be);

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

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

“(H) require notices of proposed rulemaking and orders adopting a rule or amending an existing rule that—

“(i) create (or propose to create) a program activity to contain performance measures for evaluating the effectiveness of the program activity; and

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

“(I) performance measures for evaluating the effectiveness of the program activity as changed (or proposed to be changed); or

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

“(3) INQUIRY.—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2015, the Commission shall complete an inquiry to seek public comment on whether and how the Commission should—

“(A) establish procedures for allowing a bipartisan majority of Commissioners to place an order, decision, report, or action on the agenda of an open meeting;

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

“(C) establish procedures for 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;

“(D) establish deadlines (relative to the date of filing) for disposition of applications for a license under section 1.913 of title 47, Code of Federal Regulations;

“(E) assign resources needed in order to meet the deadlines described in subparagraph (D), including whether the Commission’s ability to meet such deadlines would be enhanced by assessing a fee from applicants for such a license; and

“(F) publish each order, decision, report, or action not later than 30 days after the date of the adoption of such order, decision, report, or action.

“(4) 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.

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

“(b) PERIODIC REVIEW.—On the date that is 5 years after the completion of the rulemaking proceeding under subsection (a)(1), and every 5 years thereafter, the Commission shall initiate a new rulemaking proceeding to continue to consider such procedural changes to its rules as may be in the public interest to maximize opportunities for public participation and efficient decisionmaking.

“(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 or conference established under section 410, or a person on the staff of such a joint board or conference or of a member of such a joint board or conference; 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) PUBLICATION OF DOCUMENTS IN ADVANCE OF FCC VOTING.—

“(1) IN GENERAL.—The Commission may not adopt any order, decision, report, or action by vote of the Commission, unless the Chairman causes the Commission to publish on the Internet website of the Commission the text of such order, decision, report, or action—

“(A) not later than 24 hours after the time such text is placed on circulation for review by the Commissioners; or

“(B) not later than 21 days before the date on which the vote is to occur.

“(2) TEXT TO BE PUBLISHED; EFFECT.—The text published pursuant to paragraph (1) shall be the text intended at the time of the publishing to be subject to a vote. Nothing in this subsection may be construed to prevent the Commission from making changes to the text after the publishing.

“(3) EXCEPTION.—This subsection shall not apply to a portion of any order, decision, report, or action if the publishing of such portion is likely to lead to a result described in a paragraph of section 552b(c) of title 5, United States Code.

“(4) NOT AGENCY ACTION.—Publication pursuant to this subsection shall not constitute ‘agency action’ as defined in section 551 of title 5, United States Code.

“(e) TIMELY AVAILABILITY OF CHANGES TO RULES OF THE COMMISSION.—Not later than 24 hours after adopting a provision that will appear in the Code of Federal Regulations, or an amendment to or repeal of a provision that appears in the Code of Federal Regulations, the Commission shall publish on the Internet website of the Commission the text of the provision adopted or repealed, or the text indicating how the provision is being amended, as the case may be.

“(f) 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.

“(g) INTERNET PUBLICATION OF CERTAIN FCC POLICIES AND PROCEDURES.—The chairman of the Commission shall—

“(1) publish on the Internet website of the Commission any policies or procedures of the Commission that—

“(A) are established by the chairman; and

“(B) relate to the functioning of the Commission or the handling of the agenda of the Commission; and

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

“(h) 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 PUBLICATION IN OTHER FORM.—In the case of a deadline that does not specify that the form of publication is publication in the Federal Register, the Commission may comply with such deadline by publishing the document in another form. Such other form of publication does

not relieve the Commission of any Federal Register publication requirement applicable to such document, including the requirement of paragraph (1).

“(i) 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 complaint;

“(ii) the topic of the complaint;

“(iii) the party complained of; and

“(iv) other elements that the Commission 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 include only information concerning one such complaint in the database described in paragraph (1).

“(j) FORM OF PUBLICATION.—

“(1) IN GENERAL.—In complying with a requirement 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.

“(k) TRANSPARENCY RELATING TO PERFORMANCE IN MEETING FOIA REQUIREMENTS.—The Commission shall take additional steps to inform the public about its performance and efficiency in meeting the disclosure and other requirements of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), including by doing the following:

“(1) Publishing on the Commission’s website the Commission’s logs for tracking, responding to, and managing requests submitted under such section, including the Commission’s fee estimates, fee categories, and fee request determinations.

“(2) Releasing to the public all decisions made by the Commission (including decisions made by the Commission’s Bureaus and Offices) granting or denying requests filed under such section, including any such decisions pertaining to the estimate and application of fees assessed under such section.

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

“(4) Presenting information about the Commission’s handling of requests under such section in the Commission’s annual budget estimates submitted to Congress and the Commission’s annual performance and financial reports. Such information shall include the number of requests under such section the Commission received in the most recent fiscal year, the number of such requests granted and denied, a comparison of the Commission’s processing of such requests over at least the previous 3 fiscal years, and a comparison of the Commission’s results with the most recent average for the United States Government as published on www.foia.gov.

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

“(m) ANNUAL SCORECARD REPORTS.—

“(1) IN GENERAL.—For the 1-year period beginning on January 1st of each year, the Commission shall prepare a report on the performance of the Commission in conducting its proceedings and meeting the deadlines established under subsection (a)(2)(E) and the guidelines established under subsection (a)(2)(F).

“(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) with respect to each type of filing specified in subsection (a)(2)(E) or

(a)(2)(F)—

“(i) the number of filings that were pending on the last day of the period covered by such report;

“(ii) the number of filings described in clause (i) for which each applicable deadline or guideline established under such subsection was not met and the average length of time such filings have been pending; and
 “(iii) for filings that were resolved during such period, the average time between initiation and resolution and the percentage for which each applicable deadline or guideline established under such subsection was met;

“(B) with respect to 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.

“(n) 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) 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).

“(4) 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.

“(5) 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 DATES AND IMPLEMENTING RULES.—

(1) EFFECTIVE DATES.—

(A) NONPUBLIC COLLABORATIVE DISCUSSIONS.—Subsection (c) of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply beginning on the first date on which all of the procedural changes to the rules of the Federal Communications Commission required by subsection (a)(1) of such section have taken effect.

(B) PUBLICATION OF DOCUMENTS IN ADVANCE OF FCC VOTING.—Subsection (d) of such section 13 shall apply with respect to an order, decision, report, or action the text of which is placed on circulation after the date that is 90 days after the date of the enactment of this Act.

(C) TIMELY AVAILABILITY OF CHANGES TO RULES OF THE COMMISSION.—Subsection (e) of such section 13 shall apply with respect to a provision, or an amendment to or repeal of a provision, that is adopted after the date that is 30 days after the date of the enactment of this Act.

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

(E) REPORT RELEASE SCHEDULES.—Subsection (l) of such section 13 shall apply with respect to 2016 and any year thereafter.

(F) ANNUAL SCORECARD REPORTS.—Subsection (m) of such section 13 shall apply with respect to 2015 and any year thereafter.

(2) RULES.—Except as otherwise provided in such section 13, the Federal Communications Commission shall promulgate any rules necessary to carry out such section not later than 1 year after the date of the enactment of this Act.

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 amendments made by this Act shall relieve the Federal Communications Commission from any obligations under title 5, United States Code, except where otherwise expressly provided.

SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNIVERSAL SERVICE PROGRAM.

Section 302 of Public Law 108 494 (118 Stat. 3998) is amended by striking “December 31, 2016” each place it appears and inserting “December 31, 2020”.

SEC. 6. REPORT ON IMPROVING SMALL BUSINESS PARTICIPATION IN FCC PROCEEDINGS.

Not later than 1 year after the date of the enactment of this Act, the Federal Communications Commission, in consultation with the Administrator of the Small Business Administration, shall submit to Congress a report on—

- (1) actions that the Commission will take to improve the participation of small businesses in the proceedings of the Commission; and
- (2) recommendations for any legislation that the Commission considers appropriate to improve such participation.

SEC. 7. IDENTIFICATION AND DESCRIPTION OF ITEMS TO BE DECIDED ON AUTHORITY DELEGATED BY THE COMMISSION.

(a) **IN GENERAL.**—Section 5(c) of the Communications Act of 1934 (47 U.S.C. 155(c)) is amended by adding at the end the following:

“(10) Not later than 48 hours before the time when an order, decision, report, or action is made or taken pursuant to delegation under paragraph (1), such order, decision, report, or action shall be identified and briefly described on the Internet website of the Commission, unless the authority to which the delegation is made for good cause finds that such identification and description are likely to lead to a result described in a paragraph of section 552b(c) of title 5, United States Code. Identification and description pursuant to this paragraph shall not constitute ‘agency action’ as defined in section 551 of title 5, United States Code. This paragraph shall not apply with respect to an order, decision, report, or action that—

“(A) does not receive a delegated authority number pursuant to the procedures of the Commission;

“(B) is made or taken on authority delegated to an administrative law judge;

or

“(C) is made or taken to address an immediate threat to health or safety that constitutes an emergency requiring an expedited response from the Commission.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to an order, decision, report, or action made or taken after the date that is 90 days after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 2583, Federal Communications Process Reform Act of 2015 (FCC Process Reform Act) amends the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission (FCC, the Commission, or the Agency) and for other purposes. Among other things, the legislation requires the Commission to conduct a rule-making and adopt procedural changes to its rules to maximize opportunities for public participation and efficient decision-making. The legislation also requires the Commission to inject much-needed visibility into its decision-making procedures.

The legislation also provides for a bipartisan majority of Commissioners to meet in non-public collaborative discussions, despite the Government in Sunshine Act, once the rulemaking has been implemented.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2583 is the evolution of a bill that began in the 112th Congress, H.R. 3309, which ultimately passed the House of Representatives by a recorded vote of 247–174.¹ During the 113th Congress, as a result of discussion among the Members, the Committee substantially revised the bill, resulting in a bipartisan bill that passed the House of Representatives unanimously.² H.R. 2583, as introduced, is substantially similar to H.R. 3675 from the 113th Congress, with changes in effective dates. At the full Committee markup, the bill was amended several times, resulting in the current version discussed in this report.

This brief synopsis of the legislation’s history demonstrates the Committee’s ongoing commitment to reforming process at the Commission. This legislation is necessary to remedy the numerous process failings at the FCC during the tenures of both Republican and Democratic chairmen.³

Over the past several years, this Committee, under Republican and Democrat leadership, has expressed many concerns that the FCC has fallen short in both transparency and efficiency. In the 110th Congress, the Committee and its Subcommittee on Oversight and Investigations investigated the FCC’s procedures, and the Committee ultimately released a report documenting abuses at the agency.⁴ Senator Rockefeller, then Chairman of the Senate Commerce Committee, also instructed Chairman Genachowski during his nomination hearing, “Fix this agency, or we will fix it for you. Prove to us that the FCC is not battered beyond repair.”⁵ In the 111th Congress, Rep. Barton introduced H.R. 2183, a bill to improve public participation and overall decision-making at the FCC. In the 112th Congress, Chairman Walden and Rep. Kinzinger introduced H.R. 3309 to reform the FCC’s procedures, and in the 113th, Chairman Walden, Rep. Kinzinger, and Ranking Member Anna Eshoo together introduced H.R. 3675 to reform the FCC’s process. These bills were based on multiple Congressional hearings and investigations, as well as multiple reports from the Government Accountability Office, assessing the transparency and fairness of FCC procedures.⁶

¹ 158 Cong. Rec. H1609–H1629 (Federal Communications Commission Process Reform Act of 2012 on March 27, 2012).

² 159 Cong. Reg. H2280–H2284 (Federal Communications Commission Process Reform Act of 2014 on March 11, 2014).

³ See Section by Section analysis below for a more detailed discussion of various process failures at the FCC.

⁴ See House Committee on Energy and Commerce, Deception and Distrust: The Federal Communications Commission under Chairman Kevin J. Martin, 110th Cong. (2008).

⁵ See Opening Statement of Chairman Jay Rockefeller, Nomination Hearing, June 16, 2009 at http://www.commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=bca080f3-15a0-4d05-8abd-77f5327a2cb7&Statement_id=ac4a336c-ed40-4f57-9600-6d30f4c11e3f&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=6&YearDisplay=2009.

⁶ See Government Accountability Office Report 10–249, “Information Collection and Management at the Federal Communications Commission,” Mar. 2010 at <http://www.gao.gov/products/GAO-10-249>; Government Accountability Office Report 10–79, “FCC Management: Improvements Needed in Communication, Decision-Making Processes, and Workforce Planning,” Jan. 2010 at <http://www.gao.gov/products/GAO-10-79>; Government Accountability Office Report 08-125, “FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed,” Mar. 2008 at <http://www.gao.gov/products/GAO-08-125>; Government Accountability Office Report 07–1046, “FCC Should Take Steps to Ensure Equal Access to Rulemaking Information,” Sept. 2007 at <http://www.gao.gov/products/GAO-07-1046>.

Criticism of the FCC has come from off of the Hill as well. In 2008, the National Association of Regulatory Utility Commissioners wrote an open letter to President Obama's transition team, highlighting the need for structural and procedural reforms at the FCC and suggesting thirteen separate reforms to consider.⁷ In 2009, then Professor Philip Weiser wrote that "the great weight of opinion is that the FCC has always operated in a suboptimal fashion and is in dire need of institutional reform."⁸ And in a 2010 Public Knowledge paper, that organization called for a "shock to the system" and "a surrender of discretion by FCC leadership and a move away from unpredictable and ad hoc decisionmaking."⁹ The paper details a number of reforms similar to those effected by this bill, including additional transparency in editorial privileges after a Commission vote or identification of items delegated to bureaus for decision; self-imposed deadlines for Commission action on petitions and other matters; increased empowerment of Commission staff; and effective communication with the public regarding its internal processes.¹⁰

The most telling criticism comes from within the agency itself. In 2009, Commissioner Robert McDowell called twice for financial and ethics audits of the agency, as well as a review of the external communications from the agency.¹¹ Chairman Julius Genachowski billed regulatory reform a "top priority" of his Chairmanship¹² and appointed a Special Counsel for FCC Reform "to ensure high-level attention to this vitally important issue."¹³ Chairman Tom Wheeler also appointed a special counsel to review and institute procedural reforms¹⁴ and more recently convened yet another task force to assess the decision-making procedures at the agency.¹⁵ Commis-

⁷ See Letter from Frederick Butler, President, NARUC, to Susan Crawford, Visiting Professor, Yale Law School, Obama-Biden Transition Team on the FCC (Dec. 12, 2008), available at <http://www.naruc.org/Testimony/08%201212%20RV%20FCC%20Transition%20letter.pdf>.

⁸ Philip J. Weiser, "Institutional Design, FCC Reform, and the Hidden Side of the Administrative State," 61 ADMIN. L. REV. 675 (2009) at 677.

⁹ Michael Weinberg and Gigi B. Sohn, An FCC for the Internet Age: Recommendations for Reforming the Federal Communications Commission (Mar. 5, 2010), available at <http://go.usa.gov/PyH>.

¹⁰ *Id.*

¹¹ See Letter from Commissioner Robert M. McDowell to Chairman Julius Genachowski (Jul. 20, 2009) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-292122A1.pdf; Letter from Commissioner Robert M. McDowell to Acting Chairman Michael J. Copps (Jan. 27, 2009) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-288104A1.pdf.

¹² Statement from FCC Chairman Julius Genachowski on the Executive Order on Regulatory Reform and Independent Agencies (Jul. 11, 2011) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf.

¹³ Letter from Chairman Julius Genachowski to Commissioner Robert M. McDowell (Jul. 21, 2009) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-292121A1.pdf. Note that Mary Beth Richards was appointed to serve as Special Counsel on FCC Reform not once but twice. The first appointment came under Chairman Michael K. Powell. Press Release, "FCC Chairman Michael Powell Designates Special Counsel to Spearhead Internal FCC Reform Efforts" (Feb. 26, 2001) at <https://transition.fcc.gov/Speeches/Powell/Statements/2001/stmkp108.html>.

¹⁴ Press Release, "FCC Chairman Tom Wheeler Announces Staff Appointments" (Nov. 4, 2013) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-323962A1.pdf.

¹⁵ See Statement of Commissioner Michael O'Rielly on FCC Process Reform Task Force (rel. Mar. 19, 2015) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-332610A1.pdf (in response to Chairman Wheeler's announcement). The FCC has not released an official press release on the task force, but Chairman Wheeler stated in the Subcommittee's March 19, 2015 oversight hearing that "I am going to be asking each Commissioner to appoint one staff person to work on a task force to be headed by Diane Cornell, who ran our process reform task force." See Transcript of the Hearing of the Subcommittee on Communications & Technology, entitled "FCC Reauthorization: Oversight of the Commission," p. 33 at <http://docs.house.gov/meetings/IF/IF16/20150319/103182/HHRG-114-IF16-20150319-SD003.pdf>.

sioners Ajit Pai and Michael O’Rielly also have called for multiple reforms to improve the transparency and process of the agency.¹⁶

Internal efforts at reform have yielded some laudable changes, but they have not been enough. The same issues raised by then Chairman John Dingell in 1991 continue to plague the agency today.¹⁷ The Committee believes that FCC process can be improved only with legislative action.

HEARINGS

The Energy and Commerce Committee has held a number of hearings in recent Congresses. As noted above, H.R. 2583 was preceded by similar bills in the 112th and 113th Congresses.

In the 113th Congress, the Subcommittee on Communications and Technology held a hearing on December 12, 2013, shortly after Chairman Wheeler was confirmed as Chairman of the agency. Chairman Tom Wheeler, Commissioner Mignon Clyburn, Commissioner Jessica Rosenworcel, Commissioner Ajit Pai, and Commissioner Michael O’Rielly all provided testimony. The Subcommittee held a second hearing, with Chairman Wheeler as the sole witness, on May 20, 2014. On September 17, 2014, the Subcommittee also held a third hearing focused on the Commission’s process and budget with testimony from the FCC’s Managing Director, Jon Wilkins, and the agency’s Inspector General, David L. Hunt.

During the 113th Congress, the Subcommittee also held a hearing on H.R. 3675, the predecessor bill to H.R. 2583. On July 11, 2013, at a hearing entitled “Improving FCC Process,” the Subcommittee received testimony from Stuart M. Benjamin, Douglas B. Maggs Chair in Law and Associate Dean for Research at Duke Law; Larry Downes, Internet industry analyst and author; Robert M. McDowell, Former FCC Commissioner and Visiting Fellow at Hudson Institute; Randolph J. May, President of Free State Foundation; Richard J. Pierce Jr., Lyle T. Alverson Professor of Law at George Washington University Law School; and James Bradford Ramsay, General Counsel of the National Association of Regulatory Utility Commissioners.

The 114th Congress continued the efforts of the 113th in oversight of the Commission. On March 4, 2015, the Subcommittee reviewed the FCC’s budget and considered reauthorization during a hearing entitled, “Reauthorization of the Federal Communications Commission: The FCC’s FY 2016 Budget Request.” At the hearing, the Subcommittee heard testimony from Managing Director Jon

¹⁶ See, e.g., Statement of Commission Ajit Pai on the Release of Misleading Incentive Auction Data (May 20, 2015) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-333581A1.pdf; FCC Blog Post by Commissioner Michael O’Rielly, “Fixing Flawed and Non-Existent Editorial Privileges” (Mar. 9, 2015) at <https://www.fcc.gov/blog/fixing-flawed-and-non-existent-editorial-privileges>; FCC Blog Post by Commissioner Michael O’Rielly, “Delegated Authority: Serious Objections and Solutions” (Feb. 2, 2015) at <https://www.fcc.gov/blog/delegated-authority-serious-objections-and-solutions>; FCC Blog Post by Commissioner Michael O’Rielly, “Update on Advance Posting of Commission Meeting Items” (Jan. 16, 2015) at <https://www.fcc.gov/blog/update-advance-posting-commission-meeting-items>; Statement of FCC Commissioner Ajit Pai on Calls for the FCC to Preempt State Laws Governing Municipalities (Jan. 14, 2015) at <https://www.fcc.gov/document/statement-commissioner-pai-government-run-broadband>; Joint Statement of Commissioners Ajit Pai and Michael O’Rielly on the Abandonment of Consensus-Based Decision-Making at the FCC (Dec. 18, 2014) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-331140A1.pdf.

¹⁷ See Letter from John D. Dingell, Chairman, Committee on Energy and Commerce, to the Honorable Alfred C. Sikes, Chairman, Federal Communications Commission (May 21, 1991), quoted in FCC Process Reform: Hearing before the Subcommittee on Communications and Technology, 112th Cong., at 79–81 (May 13, 2011).

Wilkins. The Subcommittee held a hearing with testimony from all five Commissioners on March 19, 2015, entitled “FCC Reauthorization: Oversight of the Commission.”

The Subcommittee considered a discussion draft of H.R. 2583 on April 30, 2015, at a hearing entitled “FCC Reauthorization: Improving Commission Transparency.” The Subcommittee also considered the discussion drafts of H.R. 2589, sponsored by Rep. Ellmers, which required the FCC to publish on its Internet website changes to the rules of the Commission not later than 24 hours after adoption; H.R. 2592, sponsored by Rep. Kinzinger, which required the FCC to publish on the website of the Commission documents to be voted on by the Commission; and H.R. 2593, sponsored by Rep. Latta, which required identification and description on the FCC website of items to be decided on delegated authority. FCC Chairman Wheeler and Commissioner O’Rielly testified.

On May 15, 2015, the Subcommittee held a hearing entitled “FCC Reauthorization: Improving Commission Transparency, Part II” with testimony from Stuart M. Benjamin, Douglas B. Maggs Chair in Law and Associate Dean for Research, Duke Law; Robert M. McDowell, former FCC Commissioner, Senior Fellow, Hudson Institute; and, Randolph J. May, President, Free State Foundation. The Subcommittee considered several bills, including offered discussion draft sponsored by Rep. Matsui, which would require the FCC to submit to Congress a report on improving the participation of small businesses in the proceedings of the Commission; a discussion draft sponsored by Rep. Clarke, which would require the FCC to publish a quarterly report on pending requests for action and pending congressional investigations of the agency; and a discussion draft sponsored by Rep. Loeb sack, which would require the FCC to publish its internal rules and procedures on the agency’s website.

COMMITTEE CONSIDERATION

On May 20, 2015, the Subcommittee on Communications and Technology met in open markup session and forwarded a discussion draft entitled “Federal Communications Commission Process Reform Act of 2015,” without amendment, to the full Committee by a voice vote.

Chairman Walden, together with Rep. Kinzinger, introduced H.R. 2583 on May 29, 2015. H.R. 2583 was identical to the discussion draft forwarded by the Subcommittee.

On June 2 and 3, 2015, the Committee on Energy and Commerce met in open markup session and ordered H.R. 2583 reported to the House, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 2583 reported to the House, as amended, was agreed to by a voice vote. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 18**

BILL: H.R. 2583, the "Federal Communications Commission Process Reform Act of 2015"

AMENDMENT: An amendment in the nature of a substitute offered by Ms. Eshoo and Mr. Pallone, No. 1, to accomplish the same objectives expressed in H.R. 2583, except that nonpublic collaborative discussions among Commissioners would be permitted to commence immediately. The amendment also includes three new provisions: (1) to require the FCC to publish its internal procedures and rules on its website; (2) to require the FCC to publish on its website the status of complaints, petitions, and applications as well as the status and cost of current congressional investigations on a quarterly basis; and (3) to require the FCC to collaborate with the Small Business Administration to develop a report and recommendations on how best to encourage small businesses to participate in FCC proceedings.

DISPOSITION: NOT AGREED TO, by a roll call vote of 20 yeas and 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush			
Mr. Whitfield				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth			
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader			
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores							
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 19**

BILL: H.R. 2583, the "Federal Communications Commission Process Reform Act of 2015"

AMENDMENT: An amendment offered by Mr. Sarbanes, Mr. Yarmuth, Mr. Pallone, Ms. Eshoo, Mr. Butterfield, Mr. Green, Ms. Matsui, Mr. Welch, and Ms. Clarke, No. 3, to require the Federal Communications Commission to revise its sponsorship identification rule (section 73.1212 and 76.1615 of title 47, Code of Federal Regulations) to provide that, in the case of broadcast matter or origination cablecasting matter that is political matter or matter involving the discussion of a controversial issue of public importance, the announcement required by such sections shall include the names of significant donors to the person the identity of which is required to be disclosed in such announcement.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas and 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush			
Mr. Whitfield				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Scalise				Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo		X		Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 20**

BILL: H.R. 2583, the "Federal Communications Commission Process Reform Act of 2015"

AMENDMENT: An amendment offered by Mr. Kinzinger, No. 4, to require the publication of Federal Communications Commission documents at the time of circulation in advance of a Commission vote.

DISPOSITION: AGREED TO, by a roll call vote of 30 yeas and 18 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush			
Mr. Whitfield	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Pitts	X			Mr. Green		X	
Mr. Walden	X			Ms. DeGette		X	
Mr. Murphy	X			Ms. Capps		X	
Mr. Burgess	X			Mr. Doyle		X	
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise				Mr. Butterfield			
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Ms. Castor		X	
Mr. Harper	X			Mr. Sarbanes		X	
Mr. Lance	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Welch		X	
Mr. Olson	X			Mr. Lujan		X	
Mr. McKinley	X			Mr. Tonko		X	
Mr. Pompeo	X			Mr. Yarmuth			
Mr. Kinzinger	X			Ms. Clarke			
Mr. Griffith	X			Mr. Loeb sack		X	
Mr. Bilirakis	X			Mr. Schrader	X		
Mr. Johnson	X			Mr. Kennedy		X	
Mr. Long	X			Mr. Cardenas		X	
Mrs. Ellmers	X						
Mr. Bucshon	X						
Mr. Flores	X						
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson	X						
Mr. Collins							
Mr. Cramer	X						

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 21**

BILL: H.R. 2583, the "Federal Communications Commission Process Reform Act of 2015"

AMENDMENT: An amendment offered by Mrs. Ellmers, No. 5, to require the Federal Communications Commission (FCC) to publish the text of rules within 24 hours of adoption.

DISPOSITION: AGREED TO, by a roll call vote of 29 yeas and 18 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush			
Mr. Whitfield	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Pitts	X			Mr. Green		X	
Mr. Walden	X			Ms. DeGette		X	
Mr. Murphy	X			Ms. Capps		X	
Mr. Burgess	X			Mr. Doyle		X	
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise				Mr. Butterfield			
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Ms. Castor		X	
Mr. Harper	X			Mr. Sarbanes		X	
Mr. Lance	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Welch		X	
Mr. Olson	X			Mr. Lujan		X	
Mr. McKinley	X			Mr. Tonko		X	
Mr. Pompeo				Mr. Yarmuth			
Mr. Kinzinger				Ms. Clarke			
Mr. Griffith	X			Mr. Loeb sack		X	
Mr. Bilirakis	X			Mr. Schrader	X		
Mr. Johnson	X			Mr. Kennedy		X	
Mr. Long	X			Mr. Cardenas		X	
Mrs. Ellmers	X						
Mr. Bucshon	X						
Mr. Flores	X						
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 2583 is to provide for greater transparency and efficiency in the decision-making processes followed by the FCC. This legislation accomplishes this by requiring the Commission to complete a rulemaking no later than one year after the date of enactment, establishing schedules and procedures for processing matters before the Commission. The legislation also provides for a bipartisan majority of Commissioners to meet in non-public collaborative discussions despite the Government in Sunshine Act, once the rulemaking has been completed.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2583 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 2583 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 2015.

Hon. FRED UPTON, *Chairman,*
Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2583, the Federal Communications Commission Process Reform Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2583—Federal Communications Commission Process Reform Act of 2015

Summary: H.R. 2583 would make a number of changes to procedures that the Federal Communications Commission (FCC) follows in its rulemaking processes. The bill also would require the FCC to create a public database of information about complaints made by consumers of telecommunications services. Finally, the bill would exempt the Universal Service Fund (USF) from provisions of the Antideficiency Act through December 31, 2020.

CBO estimates that enacting H.R. 2583 would change the timing of spending from the USF, which would affect direct spending over the 2016–2025 period; therefore, pay-as-you-go procedures apply. We estimate, however, that the timing changes would net to zero over the ten-year period. Enacting H.R. 2583 would not affect revenues.

Further, CBO estimates that implementing H.R. 2583 to amend the FCC’s operating procedures would cost \$10 million over the next five years; such spending would be subject to the availability of appropriated funds. Under current law, the FCC is authorized to collect fees sufficient to offset the cost of its regulatory activities each year. Therefore, CBO estimates that the net cost to implement those provisions of H.R. 2583 would not be significant, assuming annual appropriation actions consistent with the agency’s authorities.

H.R. 2583 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

If the FCC increases annual fee collections to offset the costs of implementing its additional regulatory activities, the bill would impose a private-sector mandate on some commercial entities regulated by the FCC. Based on information from the FCC, CBO estimates that the cost of the mandate would be small, and fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2583 is shown in the following table. The costs of this legislation falls within budget function 370 (commerce and housing credit).

By fiscal year, in millions of dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016–2020	2016–2025
CHANGES IN DIRECT SPENDING ^a												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays ...	0	0	151	115	26	6	–158	–118	–22	0	292	0

^a CBO estimates that implementing H.R. 2583 also would have an insignificant net effect on spending subject to appropriation.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2016.

Direct spending

H.R. 2583 would exempt the USF from provisions of the Antideficiency Act through December 31, 2020. Created by the Telecommunications Act of 1996, the USF redistributes income from interstate telecommunications carriers to other carriers that

provide services to high-cost areas, low-income households, schools, libraries, and nonprofit health care providers in rural areas. The cash flows from the USF appear in the budget as revenues (for fund collections) and direct spending (for amounts distributed from the fund).

Under current law, the USF has a temporary exemption from the Antideficiency Act that will expire at the end of calendar year 2016. Spending for one of the fund's initiatives, the Schools and Libraries program is affected by that exemption. When the USF receives and approves an application for funding from the Schools and Libraries program, it obligates funds to be paid to the recipient pending compliance with certain grant conditions. While the exemption is in place, the USF is able to obligate funds for schools and libraries without having sufficient amounts available to meet those obligations. Without the exemption, the Schools and Libraries program would be unable to obligate funds until sufficient resources to meet those obligations became available. This program, which distributes funds to eligible institutions to provide affordable Internet and telecommunications services, spent \$2.3 billion for those purposes in fiscal year 2014. By extending the exemption through 2020, H.R. 2583 would continue to allow the program to obligate and spend funds faster than it would without the exemption.

CBO does not expect that the USF would collect or spend more as a result of the exemption; rather, we estimate that the timing of the spending would change. Specifically, CBO estimates that under the exemption, spending patterns would shift so that funds would be spent more quickly relative to the current-law baseline estimates during the period the proposed exemption would be in force. However, spending in the years immediately after the expiration of the proposed exemption would decrease, relative to the baseline, because of that shift. Thus, CBO estimates that under the bill direct spending would increase by \$292 million over the 2016–2020 period; but over the 2016–2025 period there would be no change in direct spending.

Spending subject to appropriation

H.R. 2583 would require the FCC to adopt new rules related to the agency's decision-making processes and to present certain information in greater detail on the agency's website. Based on information from the FCC, CBO estimates that implementing those provisions would cost about \$10 million over the 2016–2020 period for additional administrative and information technology costs. However, the FCC is authorized to collect fees sufficient to offset its regulatory costs each year; therefore, CBO estimates that the net cost to implement H.R. 2583 would not be significant over the ten-year period, assuming appropriation actions consistent with that authority.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2583, AS ORDERED REPORTED BY THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE ON JUNE 3, 2015

	By fiscal year, in millions of dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016– 2020	2016– 2025	
CHANGES IN DIRECT SPENDING													
Statutory Pay-As-You-Go Impact	0	0	151	115	26	6	–158	–118	–22	0	292	0	

Estimated impact on state, local, and tribal governments: H.R. 2583 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: If the FCC increases annual fee collections to offset the costs of implementing its additional regulatory activities, the bill would increase the cost of an existing mandate to pay those fees by some commercial entities regulated by the agency. The FCC is authorized to collect fees sufficient to offset its regulatory costs each year, subject to its annual appropriation. Based on information from the FCC, CBO estimates that the cost of the mandate would be small—no more than about \$10 million over the next five years—and fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Marin Burnett.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2583 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 2583 specifically directs to be completed one rule making within the meaning of 5 U.S.C. 551, as specified in Section 2(a).

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Federal Communications Commission Process Reform Act of 2015.”

Section 2. FCC process reform

Section 2(a). Section 2(a) inserts after section 12 of the Communications Act of 1934 a new section, section 13, Transparency and Efficiency.

Section 13(a) Initial rulemaking and inquiry

This subsection requires the FCC to conduct a notice and comment rulemaking and adopt rules to (1) set minimum comment and reply comment periods for rulemaking proceedings; (2) establish policies concerning extensive comments toward the end of a comment period; (3) establish policies to ensure that the public has time to review material submitted in a proceeding after the comment cycle has closed; (4) publish the status of open rulemakings as well as list the draft items the Commissioners are currently considering; (5) establish deadlines for action on certain filings to the Commission and its bureaus; (6) establish guidelines for the disposition of petitions for declaratory ruling; (7) establish procedures for including the specific text of proposed rules in Commission Notice of Proposed Rule Makings (NPRM); and (8) to require the development of performance measures for FCC program activities, defined as each FCC program listed in the Federal budget or each program through which the FCC collects or distributes \$100 million or more.

New Section 13(a) is intended to ensure that the Commission provides a more predictable framework for making decisions as well as adequate opportunity for public participation. Too often, the members of the public will file petitions for declaratory ruling, rulemaking, or reconsideration of an FCC decision only to find that their petitions languish at the agency for an extended and often indeterminate length of time.¹⁸ The Commission also has begun rulemakings and failed to conclude them in a timely fashion or simply to close the docket.¹⁹

¹⁸See, e.g., *in re Fifty-five Unopposed Petitions for Determination of Effective Competition*, Memorandum Opinion and Order, 29 FCC Rcd 3140 (2014) (closing out *unopposed* petitions for determination of effective competition, some of which had been filed in early December of 2011).

¹⁹See *2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371 (2014). The Commission did not complete the 2010 Quadrennial Review, as statutorily required. Instead, it decided that it would incorporate the 2010 Review into the 2014 Quadrennial Review without producing a separate report. Similarly, the Commission failed to complete Video Competition Reports. See also *Special Access for Price Cap Exchange Carriers*, WC Docket No. 05–25 (which has been fully briefed several times and also is based on a petition for rulemaking, which was opened in 2002 and related to special access rates).

With specific regard to new section 13(a)(2)(A), the bill requires the Commission to set minimum comment periods to set expectations for the public on the timeframe for the impending Commission actions. The Commission retains the flexibility to depart from such comment periods for significant regulatory actions as defined in Executive Order No. 12866 and rulemakings. This is a practice supported by the Administrative Conference of the United States (ACUS).²⁰ The President also issued guidance to executive agencies that sixty days should be the minimum comment period to “afford the public a meaningful opportunity to comment.”²¹

Section 13(a)(2)(B) is intended to remedy a chronic problem with the FCC’s notice and comment procedures. Currently, parties can wait until near the end of the comment period to submit massive amounts of new evidence in the docket to support their positions. The last-minute inclusion deprives other stakeholders of the opportunity to adequately analyze the submission and respond.²² Section 13(a)(2)(C) is intended to remedy a similar situation, in which the agency submits documents very late in the process and substantially relies on those submissions to justify the regulation.²³

Section 13(a)(2)(D) was included in H.R. 3675 in the 113th Congress and requires the FCC to report on the status of its open proceedings and to provide the public with clear information on the efficiency of the agency. During the full Committee mark-up, the section was amended to include a proposal offered by Rep. Clarke (D-NY), which would require the Commission also to report on the status of requests for action from the public as well as on the cost of Congressional investigations. The analysis of the cost of Congressional investigations will be subject to audit per section 13(a)(5).

Section 13(a) also requires the Commission to seek public comment on a notice of inquiry into whether and how the Commission should (1) allow a bipartisan majority of Commissioners to add an item to the Commission’s agenda; (2) inform Commissioners of all options available on a given Commission item; (3) ensure that Commissioners have adequate time to review the text of Commission items; (4) publish the text of items for Commission consideration prior to Commission vote; (5) establish deadlines for the processing of applications for licenses; (6) generate additional resources for the processing of applications; and (7) publish Commission decisions within thirty days of adoption.

Section 13(a)(2)(G) requires the Commission to establish procedures for including the specific language of a proposed rule in the notice of proposed rulemaking. In the past decade, the Commission has fallen into the habit of delineating only a general summary of potential action in Notices of Proposed Rulemaking, without includ-

²⁰ See ACUS, *Improving the Environment for Agency Rulemaking*, Recommendation No. 93-4.

²¹ See Executive Order No. 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

²² See, e.g., Comments of the National Association of Regulatory Utility Commissioners, FCC GN Docket No. 14-25 (filed Mar. 31, 2014) at 13.

²³ This is not a theoretical concern. Just seven days before the Commissioners were due to vote on the reform of the intercarrier compensation and universal service regimes, the Wireline Competition Bureau of the FCC inundated the record with thousands of pages of lists of academic reports and published articles, studies, position papers, analyses, statistics, newspaper articles, white papers, publications, handbooks, State laws, State regulatory pleadings and decisions, reference works, industry surveys, treatises, congressional reports, and correspondence to the FCC. The National Association of Regulatory Utility Commissioners (NARUC) urged the FCC to “establish some sort of a procedure . . . to assure this sort of thing does not happen again.” See Comments of NARUC, GN Docket No. 14-25 (filed Mar. 31, 2014) at 14.

ing the specific language of proposed rules.²⁴ The inclusion of the specific text of proposed rules is “a critical step in facilitating meaningful discussion.” Without the text of the proposed rules,²⁵ the public is left “with the challenge of guessing what issues are really important,” which “undermines the opportunity for meaningful participation and effective deliberation.”²⁶ The public deserves a Commission that can commit to “publishing the text of proposed rules sufficiently in advance of Commission meetings for both (i) the public to have a meaningful opportunity to comment and (ii) the Commissioners to have a meaningful opportunity to review such comments.”²⁷

Section 13(a)(2)(H) attempts to increase the transparency of the Commission’s largest programs, such as the Universal Service Fund and the Interstate Telecommunications Relay Service Fund. The Government Performance Results Act of 1993 already requires the FCC and other agencies to identify yearly performance goals for all items on the Federal budget.²⁸ Despite this requirement, the Government Accountability Office has repeatedly cited the FCC for failing to establish objective, quantifiable performance measures for the various programs within the Universal Service Fund.²⁹ To remedy this situation, this subsection requires the Commission to develop performance measures for its program activities, defined as each program listed in the Federal budget, as well as each program through which the Commission collects or distributes \$100 million or more, relying on data it already collects when possible. To reduce the administrative burden, this subsection does not require the FCC to adopt performance measures immediately, but instead to adopt them as it moves forward with reforms of the Universal Service Fund, the Interstate Telecommunications Relay Service Fund, and its other program activities. The Committee expects that the Commission will include performance measures that address both the collection and distribution of funds.

Given that the FCC already has 417 separate information collections approved by the Office of Information and Regulatory Affairs,³⁰ the Committee does not expect the FCC will need to create new information collections in order to establish meaningful per-

²⁴ See, e.g., Letter from Frederick Butler, President, NARUC, to Susan Crawford, Visiting Professor, Yale Law School, Obama-Biden Transition Team on the FCC (Dec. 12, 2008), available at <http://www.naruc.org/Testimony/08%201212%20RV%20FCC%20Transition%20letter.pdf>. (“The FCC frequently releases vague Notices of Proposed Rulemaking that fail to articulate proposed rules and read more like Notices of Inquiry by posing countless open-ended questions.”)

²⁵ Michael Weinberg and Gigi B. Sohn, An FCC for the Internet Age: Recommendations for Reforming the Federal Communications Commission, at 4 (Mar. 5, 2010), available at <http://go.usa.gov/PyH>.

²⁶ Philip J. Weiser, FCC Reform and the Future of Telecommunications Policy at 16–17 (Jan. 5, 2009), available at <http://fcc-reform.org/paper/fcc-reform-and-future-telecommunications-policy>.

²⁷ Letter from Rep. John D. Dingell, Chairman, Committee on Energy and Commerce, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (Dec. 3, 2007).

²⁸ See 5 U.S.C. § 1115 *et al.*

²⁹ See, e.g., GAO Report No. 11–11, Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program (Oct. 2010); GAO Report No. 09–253, Long-Term Strategic Vision Would Help Ensure Targeting of E-Rate Funds to Highest-Priority Uses (Mar. 2009); GAO Report No. 08–633, FCC Needs To Improve Performance Management and Strengthen Oversight of the High-Cost Program (June 2008); GAO Report No. 05–151, Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program (Feb. 2005).

³⁰ See OIRA, Inventory of Currently Approved Information Collections, <http://www.reginfo.gov/public/do/PRAMain> (search for “Federal Communications Commission”); see also GAO Report No. 10–249, Information Collection and Management at the Federal Communications Commission (Jan. 2010).

formance measures. If the FCC determines otherwise, the Committee expects that the Commission will first look to consolidate and reduce the burden of existing collections before imposing new burdens.

Section 13(b) Periodic review

This subsection requires the FCC to conduct a rulemaking to review the rules established in subsection 13(a) every five years.

Section 13(c) Nonpublic collaborative discussions

This subsection allows a bipartisan majority of Commissioners to meet for collaborative discussions if they disclose such meetings within two business days and comply with Office of General Counsel oversight. This subsection also applies to meetings of Federal-State Joint Boards. The testimonies of multiple administrative law experts recommend the exception as a means of increasing the efficiency of Commissioner negotiations for policymaking.³¹ However, the Committee recognizes that this subsection creates an exception to the Government in the Sunshine Act.³² As such, the Committee does not grant this privilege lightly; the permission to engage in non-public collaborations takes effect only when the procedural safeguards required in the rulemaking as directed in section 13(a)(1) have been implemented. *See* Section 1(b) of the bill. This section does not otherwise change the applicability of the Government in Sunshine Act to the Commission's Open Meetings.

Section 13(d) Publication of documents in advance of FCC voting

This subsection requires the FCC Chairman to make documents to be voted on by the Commission available within twenty-four hours of circulation to the Commissioners for vote. This applies to both documents to be voted at Open Meetings and documents to be voted on circulation. Under the current rules, the Chairman is the sole arbiter of when information on a draft order reaches the public.³³ As such, stakeholders are uncertain as to whether their concerns are addressed, how the changed or new rules will modify their obligations, or whether the Commission's actions will produce the results desired, among other things. More problematically, those with special access to members of the agency have greater knowledge of the Commission's actions, which, as the Government Accountability Office has found, gives those stakeholders an advantage in lobbying the FCC.³⁴ Moreover, other Commissioners are prevented from fully discussing the issues in the document with potentially impacted parties before a vote, because they are prohibited from discovering the specifics of a proposal. This does not promote informed policymaking.

³¹ *See, e.g.*, Testimony of Stuart Minor Benajamin, Douglas M. Maggas Professor of Law, Duke Law School, before the Subcommittee on Communications and Technology (May 15, 2015). *See also* Randolph J. May, *Reforming the Sunshine Act*, 49 AD. LAW REV. 415 (1997).

³² Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241 (1976), codified at 5. U.S.C. § 552b.

³³ *See* 47 C.F.R. § 19.735-203 (which begins "Except as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission.").

³⁴ *See* Government Accountability Office Report 07-1046, "FCC Should Take Steps to Ensure Equal Access to Rulemaking Information" (Sept. 2007).

This subsection establishes a practice of publishing the documents to be voted on by the Commission before an actual vote, allowing access to the public. This also is a practice endorsed by ACUS.³⁵ Other Federal agencies already practice this type of transparency either by providing the proposed text of rules from the outset of the comment period or releasing the final text of the rules before the final decision.³⁶

Critics have argued that this subsection would hamper the deliberative process at the FCC. This subsection explicitly recognizes in subparagraph (2) that the draft to be published is a document, subject to revision; the only requirement is that the document reflects the intent of the Commission at the time of circulation. It is important to note that the Committee expects the Chairman to publish a bona fide representation of the decision at the time and not to post an ersatz proposal to be completely replaced at a later date.³⁷

This subsection, however, does allow the Commission to withhold certain information in keeping with the exceptions permitted in the Government in Sunshine Act. Failure to post other documents within the twenty-four-hour window, however, would result in a twenty-one-day delay—the standard circulation period for an item to be considered at an open meeting of the Commission—before the document may be voted on, so that the FCC may remedy its error and provide the document for publication.

Critics also have argued that posting a draft decision before the vote could lead to a fresh round of comments from stakeholders, forcing the Commission to delay its vote until the comments are incorporated. The Committee notes that current practice at the Commission permits lobbying during circulation of a document, less the sunshine period for open meeting items. There is a significant body of caselaw addressing the issue of the public's right to comment³⁸ and the doctrine of ripeness, which governs the availability of judicial review.³⁹ Moreover, should comments arise that require significant response, the Commission should delay resolution of the item until a meaningful review of any new issues has been completed. Nonetheless, to foreclose any questions of whether the posted draft should be considered actionable, this subsection includes subparagraph (4), which clearly states that the publication of the draft itself does not constitute final agency action, available for judicial review.

³⁵ See ACUS Recommendation 2014–2 available at <https://www.acus.gov/recommendation/government-sunshine-act>.

³⁶ FERC, which operates at an almost identical size, composition, budget, and statutory basis as the FCC, releases orders the day of the vote. The FTC releases the actual text of rules before proceeding to a final decision, pursuant to Federal Trade Commission Act, 15 USC Section 57 a(b)(1)(A).

³⁷ See Commissioner Michael O'Rielly, "FCC's Pre-Adoption Process Also Needs Work," FCC Blog, Apr. 1, 2015 at <http://www.fcc.gov/blog/fcc-s-pre-adoption-process-also-needs-work>. Commissioner O'Rielly sums up the issue by stating, "It is patently unfair to expect Commissioners to promptly read and provide feedback on an item when staff is working on a substantially different document to be provided later—sometimes not until late the night before a vote."

³⁸ See, e.g., *Sprint Corp. v. FCC*, 331 F.3d 952 (D.C. Cir. 2003) (stating that Commission need not address every possible comment but need only "respond in a reasoned manner to those [comments] that raise significant problems").

³⁹ See, e.g., *Bennett v. Spear*, 520 US 154 (1997).

Section 13(e) Timely availability of changes to rules of the Commission

This subsection requires the Commission to post the text of its rules (i.e., the actual modifications to the Code of Federal Regulations) on its Internet website within 24 hours of adoption.

Once the Commissioners have voted to adopt an item, the document often remains unreleased to the public, preventing the public from fully understanding the Commission's action. Part of the reason for this delay is the routine practice of granting the Commission staff "editorial privileges," which range from proofreading and cleaning up the document, to making changes to the text of the item to address arguments raised by dissenting Commissioners.⁴⁰ However, a significant lag between the vote and the publication of the voted item could indicate substantive changes buried in the "editorial privileges" process. In fact, the FCC has maintained the confidentiality of the as-voted document as exempt from disclosure under FOIA's "deliberative process privilege," despite the fact that the vote had occurred already and deliberation had ended.⁴¹ Substantive post-decision revisions could undermine the legitimacy of the Commission's decision and the integrity of the rulemaking. This subsection would require the Commission to promulgate the text of the rules, which should not require further editing, if these rules were the basis for the Commissioners' votes.

Section 13(f) Access to certain information on the Commission's website.

This subsection requires the FCC to provide links on the Commission's home page to the current budget, appropriations, number of full-time equivalent employees, and the Commission's performance plan. This practice is followed by most other administrative agencies, and availability of this information would provide valuable insight into the operations of the Commission.

While this subsection requires only that the Commission publish information for the current fiscal year, the Committee hopes the Commission will provide such information on a historical basis, as is common practice at other agencies. The cost and operation of the Commission is a matter of public record, and the Committee does not believe it will constitute a burden to require the agency to make such historical information easily accessible to the public.

Section 13(g) Internet publication of certain FCC policies and procedures.

This subsection is based on a draft bill proposed by Rep. Loeb sack and requires the FCC to publish policies and procedures that govern the Commission's decisionmaking process. The Chairman of the Commission is considered the "CEO" of the Commission and may dictate procedures for carrying out Commission busi-

⁴⁰The concept of "editorial privileges" is itself controversial as there does not appear to be any support for the practice in the laws governing the Commission's process. See e.g. Commissioner Michael O'Rielly, "Fixing Flawed and Non-Existent Editorial Privileges," FCC Blog, Mar. 9, 2015 at <http://www.fcc.gov/blog/fixing-flawed-and-non-existent-editorial-privileges>.

⁴¹Associated Press, "Voted Items at FCC may be Secret till Final, Agency Says," Jun. 19, 2008 available at <http://www.firstamendmentcenter.org/voted-items-at-fcc-may-be-secret-till-final-agency-says>.

ness.⁴² As a result, the Chairman manages the staff of the entire agency (other than those in the offices of the other Commissioners), including the General Counsel and the Inspector General, determines which policy matters will be considered and when they will be considered, and controls the availability of information to the public and to other Commissioners.

It does not appear that the FCC maintains standard operating manuals for basic Commission decision-making functions, such as procedures for providing information to the offices of other Commissioners for agenda items, as recommended by the GAO.⁴³ Limited information on agency procedures impedes the public's ability to determine whether the agency is functioning effectively. Other independent agencies have posted these materials on their websites and make them available to the public.⁴⁴

Section 13(h) Federal Register publication.

This subsection requires the FCC to publish the documents specified in the Federal Register no later than forty-five days after release of the document or the day specified under any other provision of law.

Section 13(i) Consumer complaint database.

This subsection requires the FCC to put consumer complaint information in a publicly available, searchable database on its website.

Section 13(j) Form of publication.

This subsection requires the FCC to publish documents specified in this section on its website.

Section 13(k) Transparency relating to performance in meeting FOIA requirements.

This subsection requires the FCC to take additional steps to inform the public about its performance in meeting the disclosure requirements of the Freedom of Information Act.

Section 13(l) Prompt release of statistical reports and reports to Congress.

This subsection requires the FCC to establish a schedule for the release of its required reports.

Section 13(m) Annual scorecard.

This subsection requires the FCC to report annually regarding its performance in meeting the deadlines and guidelines established in subsection (a), as well as how the Commission has used administrative law judges and independent studies.

Section 13(n) Definitions

This subsection defines several terms used in the Act, including "performance measure" and "program activity."

⁴² See 47 U.S.C. § 155(a) (stating "The member of the Commission designated by the President as chairman shall be the chief executive officer of the Commission").

⁴³ See GAO Report 10-79, "FCC Management: Improvements Needed in Communications, Decision-Making Processes, and Workforce Planning" (December 2009) at 2.

⁴⁴ See, e.g., NRC Procedures <http://www.nrc.gov/about-nrc/policy-making/internal.html>; FTC Procedures <https://www.ftc.gov/about-ftc/foia/foia-resources/ftc-administrative-staff-manuals>.

Section 2(b). Section 2(b) sets the effective dates for the changes required in section 2(a). It also sets the schedule of the reports to be submitted under new section 13.

Specifically, Commission is required to complete its rulemaking on new section 13 no later than one year after the date of enactment and delays the implementation of the non-public collaborative discussion provisions until all rules required by section 13 have taken effect.

The implementation of subsection 13(d) on publishing FCC documents in advance of voting must be completed no later than ninety days after the date of enactment.

The implementation of subsection 13(e) on the timely availability of the newly voted rules must be completed no later than thirty days after the date of enactment.

The implementation of subsection 13(g) on the availability of Commission decisionmaking procedures must be completed no later than 30 days after the date of enactment.

Section 3. Categorization of TCPA inquiries and complaints in quarterly report

Section 3 prohibits the FCC from categorizing inquiries or complaints under the Telephone Consumer Protection Act as wireline or wireless inquiries or complaints unless the complaint or inquiry originated from the conduct of a wireline or wireless carrier.

Section 4. Effect on other laws

Section 4 specifies that the Act does not alter the general framework established by the Administrative Procedures Act and related laws, except where it does so explicitly (i.e., allowing deliberative collaboration among Commissioners and on the Federal-State Joint Boards).

Section 5. Application of Antideficiency Act to Universal Service Program

Section 5 creates a waiver of the Antideficiency Act for the Federal Universal Service Fund through December 31, 2020. The Universal Service Fund has been subject to a series of temporary waivers since 2004.

Section 6. Report on improving Small Business participation in FCC proceedings.

Section 6 requires the Commission to consult with the Small Business Administration (SBA) to produce a report recommending actions and legislation that would improve the participation of small businesses in Commission proceedings. This section was based on a draft bill proposed by Rep. Matsui to remedy concerns that the small business community has not been able to engage in proceedings at the Commission. As the Commission considers how it may engage small businesses, it must carefully consider the definition of "small business." Since Congress has designated the SBA as the expert entity on small businesses, the Committee strongly recommends that the Commission defer to the SBA's existing size standard definition.

Section 7. Identification and description of items to be decided on authority delegated by the Commission

Section 7 requires the Commission to describe and list items to be adopted on delegated authority on its website forty-eight hours before the action becomes effective. This change must be made no later than ninety days after the date of enactment.

Not all work at the FCC is done at the Commission level. By statute, the Commission is permitted to delegate certain routine matters to staff in order to ensure that the FCC runs smoothly and stakeholder needs are met in a timely fashion.⁴⁵ The FCC's rules, however, prohibit staff from resolving new or novel questions of law or policy that cannot be resolved under outstanding Commission precedents or guidelines.⁴⁶ That responsibility falls to the Commission, which is tasked with interpreting policy under the statute. Without safeguards, however, there is the danger that items on delegated authority may address new and novel questions of law or policy.⁴⁷

It is unwritten policy at the FCC to provide Commissioners with some notice—varying from forty-eight hours to no time at all—when an action is decided at the Bureau or Office level on delegated authority.⁴⁸ This bill seeks to codify a good policy already loosely in practice at the Commission to prevent abuse of the delegated authority.

Critics have argued that requiring advance notice of items to be issued on delegated authority would slow the Commission's operations to a crawl. Chairman Wheeler testified that over 950,000 items were decided on delegated authority in 2014.⁴⁹ However, Bureau Chiefs at the Commission may adopt certain delegated items and assign a "DA" number, if the Bureau Chief considers that the decision may have precedential value in the future and may resolve an "issue of broad public attention."⁵⁰ Of the 950,000 items, only 1,845 items received a DA number in 2014.⁵¹ In order to avoid

⁴⁵ 47 U.S.C. § 155(c)(1).

⁴⁶ See 47 C.F.R. Part 0, Subpart B.

⁴⁷ In March 2014, the Media Bureau, using delegated authority, changed longstanding FCC policy with regard to the approval of broadcast television transactions involving sharing agreements. This policy change was neither routine nor non-controversial. Yet, this change in Commission policy was not debated among the Commissioners, and it was not subject to a vote of any kind. Rather, it was announced by the Chief of the Media Bureau in a Public Notice. See FCC Public Notice, "Process of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests," DA 14-330 (rel. Mar. 12, 2014); In July 2014, a Public Notice related to the then upcoming AWS-3 auction was placed on circulation, beginning the process by which Commissioners and their staffs may request edits and ultimately vote on the item. However, subsequent action by the Chairman's office removed the item from circulation and directed the Wireless Telecommunications Bureau to issue the Public Notice on delegated authority—depriving the public of essential process and the members of the Commission an opportunity to vote on the matter. According to the media reports, one of the Commissioners sought information related to the substance of the Public Notice and was told he would be briefed *after* the item was adopted. See FCC Press Release, Statement of Commissioner Ajit Pai on the Pulling of the AWS-3 Coordination Item From Commission Consideration, Jul. 18, 2014, at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328339A1.pdf. Other instances have been documented in a variety of trade press.

⁴⁸ See Commissioner Michael O'Rielly, "Delegated Authority: Serious Objections and Solutions," FCC Blog, Feb. 2, 2015 at <http://www.fcc.gov/blog/delegated-authority-serious-objections-and-solutions>.

⁴⁹ See Testimony of FCC Chairman Tom Wheeler, before the Subcommittee on Communications and Technology (Apr. 30, 2015).

⁵⁰ See John Eggerton, "CC Source: Both Walden, Eshoo DA Figures Are Correct," Broadcasting & Cable (May 20, 2015) at <http://www.broadcastingcable.com/news/washington/fcc-source-both-walden-eshoo-da-figures-are-correct/141061>.

⁵¹ The 1,845 figure was submitted by the Commission in response to a letter sent to the FCC Chairman from Full Committee Chairman Fred Upton, Subcommittee Chairman Tim Murphy, and Subcommittee Chairman Greg Walden on February 15, 2015.

slowing the agency's most routine operations, the subsection requires only that those items receiving a DA number be listed and described forty-eight hours before adoption. Accordingly, the Committee hopes to ensure that the Commission's use of delegated authority remains above reproach.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

* * * * *

SEC. 5. ORGANIZATION AND FUNCTIONING OF THE COMMISSION.

(a) The member of the Commission designated by the President as chairman shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the Commission, to represent the Commission in all matters relating to legislation and legislative reports, except that any commissioner may present his own or minority views or supplemental reports, to represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies, and generally to coordinate and organize the work of the Commission in such manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission. In the case of a vacancy in the office of the chairman of the Commission, or the absence or inability of the chairman to serve, the Commission may temporarily designate one of its members to act as chairman until the cause or circumstance requiring such designation shall have been eliminated or corrected.

(b) From time to time as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operations, and (2) such other divisional organizations as the Commission may deem necessary. Each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical, and other personnel as the Commission may determine to be necessary to perform its functions.

(c)(1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions (except functions granted to the Commission by this paragraph and by paragraphs (4), (5), and (6) of this subsection and except any action referred to in sections 204(a)(2), 208(b), and 405(b)) to a panel of commissioners, an individual commissioner, an employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying, reporting, or

otherwise acting as to any work, business, or matter; except that in delegating review functions to employees in cases of adjudication (as defined in the Administrative Procedure Act), the delegation in any such case may be made only to an employee board consisting of two or more employees referred to in paragraph (8). Any such rule or order may be adopted, amended, or rescinded only by a vote of a majority of the members of the Commission then holding office. Except for cases involving the authorization of service in the instructional television fixed service, or as otherwise provided in this Act, nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in paragraph (2) or (3) of section 556(b) of title 5, United States Code, of any hearing to which such section applies.

(2) As used in this subsection (d) the term "order, decision, report, or action" does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b).

(3) Any order, decision, report, or action made or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission.

(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken pursuant to any delegation under paragraph (1).

(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefore. No such application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employee board, or individual employee has been afforded no opportunity to pass.

(6) If the Commission grants the application for review, it may affirm, modify, or set aside the order, decision, report, or action, or it may order a rehearing upon such order, decision, report, or action in accordance with section 405.

(7) The filing of an application for review under this subsection shall be a condition precedent to judicial review of any order, decision, report, or action made or taken pursuant to a delegation under paragraph (1). The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed in any case.

(8) The employees to whom the Commission may delegate review functions in any case of adjudication (as defined in the Administrative Procedure Act) shall be qualified, by reason of their training, experience, and competence, to perform such review functions, and shall perform no duties inconsistent with such review functions. Such employees shall be in a grade classification or salary level commensurate with their important duties, and in no event less

than the grade classification or salary level of the employee or employees whose actions are to be reviewed. In the performance of such review functions such employees shall be assigned to cases in rotation so far as practicable and shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency.

(9) The secretary and seal of the Commission shall be the secretary and seal of each panel of the Commission, each individual commissioner, and each employee board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection.

(10) *Not later than 48 hours before the time when an order, decision, report, or action is made or taken pursuant to delegation under paragraph (1), such order, decision, report, or action shall be identified and briefly described on the Internet website of the Commission, unless the authority to which the delegation is made for good cause finds that such identification and description are likely to lead to a result described in a paragraph of section 552b(c) of title 5, United States Code. Identification and description pursuant to this paragraph shall not constitute "agency action" as defined in section 551 of title 5, United States Code. This paragraph shall not apply with respect to an order, decision, report, or action that—*

(A) does not receive a delegated authority number pursuant to the procedures of the Commission;

(B) is made or taken on authority delegated to an administrative law judge; or

(C) is made or taken to address an immediate threat to health or safety that constitutes an emergency requiring an expedited response from the Commission.

(d) Meetings of the Commission shall be held at regular intervals, not less frequently than once each calendar month, at which times the functioning of the Commission and the handling of its work load shall be reviewed and such orders shall be entered and other action taken as may be necessary or appropriate to expedite the prompt and orderly conduct of the business of the Commission with the objective of rendering a final decision (1) within three months from the date of filing in all original application, renewal, and transfer cases in which it will not be necessary to hold a hearing, and (2) within six months from the final date of the hearing in all hearing cases.

(e) The Commission shall have a Managing Director who shall be appointed by the Chairman subject to the approval of the Commission. The Managing Director, under the supervision and direction of the Chairman, shall perform such administrative and executive functions as the Chairman shall delegate. The Managing Director shall be paid at a rate equal to the rate then payable for level V of the Executive Schedule.

* * * * *

SEC. 13. TRANSPARENCY AND EFFICIENCY.

(a) **INITIAL RULEMAKING AND INQUIRY.**—

(1) RULEMAKING.—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2015, the Commission shall complete a rule-

making proceeding and adopt procedural changes to its rules to maximize opportunities for public participation and efficient decisionmaking.

(2) *REQUIREMENTS FOR RULEMAKING.—The rules adopted under paragraph (1) shall—*

(A) *set minimum comment periods for comment and reply comment, subject to a determination by the Commission that good cause exists for departing from such minimum comment periods, for—*

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

(ii) *all other rulemaking proceedings;*

(B) *establish policies concerning the submission of extensive new comments, data, or reports towards the end of the comment period;*

(C) *establish policies regarding treatment of comments, ex parte communications, and data or reports (including statistical reports and reports to Congress) submitted after the comment period to ensure that the public has adequate notice of and opportunity to respond to such submissions before the Commission relies on such submissions in any order, decision, report, or action;*

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

(i) *the status of open rulemaking proceedings and 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;*

(ii) *for the petitions, applications, complaints, and other requests for action by the Commission that were pending at the Commission on the last day of such quarter (or more frequent period, as the case may be)—*

(I) *the number of such requests, broken down by the bureau primarily responsible for action and, for each bureau, the type of request (such as a petition, application, or complaint); and*

(II) *information regarding the amount of time for which such requests have been pending, broken down as described in subclause (I); and*

(iii) *a list of the congressional investigations of the Commission that were pending on the last day of such quarter (or more frequent period, as the case may be) and the cost of such investigations, individually and in the aggregate;*

(E) *establish deadlines (relative to the date of filing) for—*

(i) *in the case of a petition for a declaratory ruling under section 1.2 of title 47, Code of Federal Regulations, issuing a public notice of such petition;*

(ii) in the case of a petition for rulemaking under section 1.401 of such title, issuing a public notice of such petition; and

(iii) in the case of a petition for reconsideration under section 1.106 or 1.429 of such title or an application for review under section 1.115 of such title, issuing a public notice of a decision on the petition or application by the Commission or under delegated authority (as the case may be);

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

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

(H) require notices of proposed rulemaking and orders adopting a rule or amending an existing rule that—

(i) create (or propose to create) a program activity to contain performance measures for evaluating the effectiveness of the program activity; and

(ii) substantially change (or propose to substantially change) a program activity to contain—

(I) performance measures for evaluating the effectiveness of the program activity as changed (or proposed to be changed); or

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

(3) *INQUIRY.*—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2015, the Commission shall complete an inquiry to seek public comment on whether and how the Commission should—

(A) establish procedures for allowing a bipartisan majority of Commissioners to place an order, decision, report, or action on the agenda of an open meeting;

(B) establish procedures for informing all Commissioners of a reasonable number of options available to the Commission for resolving a petition, complaint, application, rulemaking, or other proceeding;

(C) establish procedures for 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;

(D) establish deadlines (relative to the date of filing) for disposition of applications for a license under section 1.913 of title 47, Code of Federal Regulations;

(E) assign resources needed in order to meet the deadlines described in subparagraph (D), including whether the Commission's ability to meet such deadlines would be enhanced by assessing a fee from applicants for such a license; and

(F) publish each order, decision, report, or action not later than 30 days after the date of the adoption of such order, decision, report, or action.

(4) 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.

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

(b) PERIODIC REVIEW.—On the date that is 5 years after the completion of the rulemaking proceeding under subsection (a)(1), and every 5 years thereafter, the Commission shall initiate a new rulemaking proceeding to continue to consider such procedural changes to its rules as may be in the public interest to maximize opportunities for public participation and efficient decisionmaking.

(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 or conference established under section 410, or a person on the staff of such a joint board or conference or of a member of such a joint board or conference; 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) PUBLICATION OF DOCUMENTS IN ADVANCE OF FCC VOTING.—

(1) IN GENERAL.—The Commission may not adopt any order, decision, report, or action by vote of the Commission, unless the Chairman causes the Commission to publish on the Internet website of the Commission the text of such order, decision, report, or action—

(A) not later than 24 hours after the time such text is placed on circulation for review by the Commissioners; or

(B) not later than 21 days before the date on which the vote is to occur.

(2) *TEXT TO BE PUBLISHED; EFFECT.*—The text published pursuant to paragraph (1) shall be the text intended at the time of the publishing to be subject to a vote. Nothing in this subsection may be construed to prevent the Commission from making changes to the text after the publishing.

(3) *EXCEPTION.*—This subsection shall not apply to a portion of any order, decision, report, or action if the publishing of such portion is likely to lead to a result described in a paragraph of section 552b(c) of title 5, United States Code.

(4) *NOT AGENCY ACTION.*—Publication pursuant to this subsection shall not constitute “agency action” as defined in section 551 of title 5, United States Code.

(e) *TIMELY AVAILABILITY OF CHANGES TO RULES OF THE COMMISSION.*—Not later than 24 hours after adopting a provision that will appear in the Code of Federal Regulations, or an amendment to or repeal of a provision that appears in the Code of Federal Regulations, the Commission shall publish on the Internet website of the Commission the text of the provision adopted or repealed, or the text indicating how the provision is being amended, as the case may be.

(f) *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.

(g) *INTERNET PUBLICATION OF CERTAIN FCC POLICIES AND PROCEDURES.*—The chairman of the Commission shall—

(1) publish on the Internet website of the Commission any policies or procedures of the Commission that—

(A) are established by the chairman; and

(B) relate to the functioning of the Commission or the handling of the agenda of the Commission; and

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

(h) *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 PUBLICATION IN OTHER FORM.*—In the case of a deadline that does not specify that the form of publication is publication in the Federal Register, the Commission may comply with such deadline by publishing the document in another form. Such other form of publication does not relieve the Commission of any Federal Register publication requirement applicable to such document, including the requirement of paragraph (1).

(i) *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 complaint;

(ii) the topic of the complaint;

(iii) the party complained of; and

(iv) other elements that the Commission 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 include only information concerning one such complaint in the database described in paragraph (1).

(j) *FORM OF PUBLICATION.*—

(1) *IN GENERAL.*—In complying with a requirement 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.

(k) *TRANSPARENCY RELATING TO PERFORMANCE IN MEETING FOIA REQUIREMENTS.*—The Commission shall take additional steps to inform the public about its performance and efficiency in meeting the disclosure and other requirements of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), including by doing the following:

(1) Publishing on the Commission's website the Commission's logs for tracking, responding to, and managing requests submitted under such section, including the Commission's fee estimates, fee categories, and fee request determinations.

(2) Releasing to the public all decisions made by the Commission (including decisions made by the Commission's Bureaus and Offices) granting or denying requests filed under such section, including any such decisions pertaining to the estimate and application of fees assessed under such section.

(3) Publishing on the Commission's website electronic copies of documents released under such section.

(4) Presenting information about the Commission's handling of requests under such section in the Commission's annual budget estimates submitted to Congress and the Commission's annual performance and financial reports. Such information shall include the number of requests under such section the Commission received in the most recent fiscal year, the number of such requests granted and denied, a comparison of the Commission's processing of such requests over at least the previous 3 fiscal years, and a comparison of the Commission's results with the most recent average for the United States Government as published on www.foia.gov.

(l) **PROMPT RELEASE OF STATISTICAL REPORTS AND REPORTS TO CONGRESS.**—Not later than January 15th of each year, the Commission shall identify, catalog, and publish an anticipated release schedule for all statistical reports and reports to Congress that are regularly or intermittently released by the Commission and will be released during such year.

(m) **ANNUAL SCORECARD REPORTS.**—

(1) **IN GENERAL.**—For the 1-year period beginning on January 1st of each year, the Commission shall prepare a report on the performance of the Commission in conducting its proceedings and meeting the deadlines established under subsection (a)(2)(E) and the guidelines established under subsection (a)(2)(F).

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

(i) the number of filings that were pending on the last day of the period covered by such report;

(ii) the number of filings described in clause (i) for which each applicable deadline or guideline established under such subsection was not met and the average length of time such filings have been pending; and

(iii) for filings that were resolved during such period, the average time between initiation and resolution and the percentage for which each applicable deadline or guideline established under such subsection was met;

(B) with respect to 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.

(n) *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) *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).*

(4) *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.*

(5) *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.*

* * * * *

PUBLIC LAW 108-494

AN ACT To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to improve, enhance, and promote the Nation’s homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E-911 calls, and to support in the construction and operation of a ubiquitous and reliable citizen activated system; and to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time.

* * * * *

TITLE III—UNIVERSAL SERVICE

* * * * *

SEC. 302. APPLICATION OF CERTAIN TITLE 31 PROVISIONS TO UNIVERSAL SERVICE FUND.

(a) *IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on [December 31, 2016] December 31, 2020, section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply—*

(1) to any amount collected or received as Federal universal service contributions required by section 254 of the Commu-

nications Act of 1934 (47 U.S.C. 254), including any interest earned on such contributions; nor

(2) to the expenditure or obligation of amounts attributable to such contributions for universal service support programs established pursuant to that section.

(b) POST-2005 FULFILLMENT OF PROTECTED OBLIGATIONS.—Section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply after **December 31, 2016** *December 31, 2020*, to an expenditure or obligation described in subsection (a)(2) made or authorized during the period described in subsection (a).

* * * * *

DISSENTING VIEWS

Dissenting Views on H.R. 2583, the “Federal Communications Commission Process Reform Act of 2015”

Congress and the House Energy and Commerce Committee have had a long-standing interest in process reform at the Federal Communications Commission (FCC). Our efforts in the last Congress were bipartisan in nature, with Members on both sides thoughtfully examining concerns and developing appropriate solutions.

A different approach, however, was taken this Congress. Rather than work from the carefully negotiated, bipartisan language addressing FCC process reform that passed the House in 2014, the Republicans deliberately decided to release several discussion draft bills at the opening of the 114th Congress to retaliate against and effectively punish the Commission for adopting an order titled and widely known as *Protecting and Promoting the Open Internet* (docketed at the FCC under GN Docket No. 14–28).

Our Committee’s Republicans have vehemently opposed the Open Internet Order and made it one of their highest-priority targets. Republicans returned to negotiate in good faith on bipartisan principles and language addressing process reform only after Energy and Commerce Committee Democrats offered our alternatives to the three Republican proposals, which are described briefly below and in greater detail later on in these views. Much of the platform for bipartisan agreement came from understandings and legislative text we had agreed to as we neared the end of the 113th Congress.

While we appreciate that Committee Republicans have adopted some Democratic suggestions to improve on H.R. 2583, we cannot support this bill, as it continues to include other very ill-advised provisions. Specifically, we object to those amendments that would require the FCC to publish (1) rules (but not explanatory text) within 24 hours after adoption by the Commission, (2) draft Commission items, and (3) a list of items taken up by FCC staff under delegated authority, 48 hours before action.

These provisions are designed to slow the work of the FCC, potentially cause conflicts in law, and create confusion for stakeholders. We believe that rather than punitively slowing the FCC down, FCC process reform should make the FCC faster, more efficient, and more transparent.

BACKGROUND

The FCC is an independent federal agency established by the Communications Act of 1934, as amended (the Act). The FCC

issues rules consistent with the requirements of the Administrative Procedure Act (APA).

The APA applies to all federal executive departments and independent federal agencies. Congress enacted the APA to establish consistency and predictability and to provide an opportunity for the public to participate in agency decision-making across the federal government.

A. FCC progress in reforming Agency process

FCC Chairman Wheeler has made it a priority, since the beginning of his tenure in November 2013, to improve the efficiency and transparency of the FCC's processes. Immediately upon taking office, Chairman Wheeler directed a top advisor to develop process reform recommendations. Initial recommendations included streamlining agency processes and data collections; eliminating or streamlining outdated rules; improving interactions with external stakeholders; and improving the internal management of the agency.¹ The Commission sought comment from stakeholders on the proposed recommendations, and the FCC is actively working toward implementing reforms.

The FCC also has made measurable progress in significantly reducing its backlog of pending petitions, applications, complaints, and requests. Since May 2014, the volume of items pending before the agency for more than six months has been reduced by over 44 percent.² In addition, the FCC has prioritized releasing its decisions to the public as quickly as possible; 85 percent of items are publicly released within two business days of adoption. Building on these efforts, Chairman Wheeler announced a new Process Reform Task Force in April 2015 that will consider additional reform proposals and include staff from the other Commissioners' offices.

B. FCC Process Reform Legislation in the 113th Congress

H.R. 3675, introduced in the 113th Congress, would have removed the FCC from the predictability of existing APA rules. Administrative Law experts testified that by removing the FCC from the standards of the APA, the bill, as introduced, could have created significant uncertainty, litigation risk, and higher transaction costs.³ As a result of bipartisan negotiations in Committee, Democrats were able to address several areas of concern in the bill as introduced. The final bill required the FCC to examine a number of potential process reforms and was reported out of the Energy and Commerce Committee, and passed by the House in March 2014.

ANALYSIS OF H.R. 2583, THE FEDERAL COMMUNICATIONS COMMISSION PROCESS REFORM ACT OF 2015

The following is a brief summary and analysis of the legislation.

¹ Federal Communications Commission, *Report on FCC Process Reform* (Feb. 14, 2014) (online at: www.fcc.gov/article/da-14-199a2).

² Letter from Chairman Wheeler to Chairman Walden (Apr. 16, 2015).

³ House Committee on Energy and Commerce, *Hearing on "Improving FCC Process,"* Subcommittee on Communications and Technology, 113th Cong. (July 11, 2013).

A. Summary of H.R. 2583, as introduced

H.R. 2583 was introduced on May 29, 2015, and reported favorably from the Energy and Commerce Committee, as amended, on June 3, 2015. The major provisions of the introduced bill would require the FCC to:

- (1) Complete a rulemaking proceeding to adopt procedural rule changes to maximize opportunities for public participation;
- (2) Complete an inquiry on whether and how the FCC should establish procedures where a bipartisan majority of commissioners can place an item on an agenda, as well as other procedural changes including establishing deadlines for application processing;
- (3) Provide information on the FCC webpage regarding budget;
- (4) Create a consumer complaint database;
- (5) Modify FOIA performance; and (6) Release annual performance reports.

The bill included a 4-year extension of the Universal Service Fund's exemption from the Anti-deficiency, and the bill included the text of the FCC Collaboration Act (H.R. 1396), which was introduced by Representative Eshoo. H.R. 1396 would allow two or more commissioners to discuss FCC business outside of an FCC open meeting, but also provides sufficient safeguards to protect against abuse.

H.R. 1396 was one of the specific Democratic process reform proposals discussed during the Communications and Technology Subcommittee's hearing on April 30, 2015. The origin of the bill dates back to December 2009, and has had bipartisan support since the 112th Congress. It previously has been included as part of the broader FCC Process Reform bill. Unfortunately, the reported bill language delays the effectiveness of this important provision until after the other reforms are implemented without any substantive reason for such delay. In fact, the FCC Process Reform bill from 2012 did not include a delay in the implementation of the FCC Collaboration Act provisions. Such a delay appears to be arbitrary and contrary to the witness testimony from the May 15, 2015, Subcommittee hearing supporting immediate implementation of the FCC Collaboration Act.⁴

B. Democratic provisions added at Full Committee Markup.

At the April 30, 2015 Communications and Technology Subcommittee hearing on FCC transparency, Democratic members suggested several reforms to FCC process designed to ensure that the FCC remain fast, efficient, and transparent without creating an unnecessary risk of litigation for the agency. The Republicans recognized the value of the Democratic suggestions, agreeing to offer an amendment that incorporated the ideas of Representatives Clarke, Loeb sack, and Matsui.

The Democratic amendment requires the FCC to report quarterly to Congress and to post, on its website, data on the total number

⁴House Committee on Energy and Commerce, Hearing on "Improving FCC Transparency, Part II," Subcommittee on Communications and Technology, 114th Cong. (May 15, 2015).

of decisions pending, categorized by bureau, the type of request, the length of time pending, as well as a list of pending Congressional investigations and their costs to the agency.⁵ Notwithstanding the impressive progress the FCC has made toward issuing rules and closing pending matters in a more timely fashion, the best way to ensure that future commissions continue this trend is by holding the agency accountable to the public. The public deserves timely responses from the FCC and information as to whether the FCC is acting on an application or a request for new rules. The Democratic amendment would seek to do that.

The amendment also requires the FCC to coordinate with the Small Business Administration to develop recommendations to improve small business participation in FCC proceedings.⁶ Small business inclusion is critical, as the FCC oversees industries that account for one sixth of the economy, including countless small businesses. Small businesses in every community throughout the country are impacted by many of the decisions and rules that the FCC adopts, and the voices of small businesses should be heard with greater consistency and regularity at the FCC.

Finally, the amendment requires the FCC chairman, as the head of the agency, to post the Commission's internal policies and procedures on the FCC website and to disclose any modifications to those procedures within 48 hours.⁷ Public participation at the FCC is at an all-time high with millions of Americans reaching out to the FCC. Consumers should have as much visibility into the operations of the FCC as large corporate interests and their well-compensated legal and other professional services firms.

The amendment, which was agreed to by voice vote, will enhance the process reforms included in H.R. 2583 without compromising existing FCC processes or penalizing the FCC. Unfortunately, the same cannot be said for other Republican amendments that were added at the Full Committee markup and are treated below in greater detail.

C. Republican provisions added at Full Committee Markup

Republican members of the Committee also offered several amendments that defeat the purported intent of the FCC process reform bill—to make the FCC a more efficient agency.

1. Rep. Kinzinger Amendment

The Kinzinger amendment requires that the FCC publish on its website any action the Commission plans to vote on three weeks prior to that vote.⁸ This proposal echoes a letter the Republicans sent to FCC Chairman Wheeler in January 2015, asking him to release his draft network neutrality order before the other Commissioners had an opportunity to review it.⁹

A requirement that the FCC release pre-decisional drafts runs counter to the policy underlying the exemption to the Freedom of

⁵ See New Section 13(a)(2)(D) which would amend the Communications Act (contained in Section 2(a) of H.R. 2583).

⁶ See Section 6 of H.R. 2583.

⁷ See New Section 13(g) (contained in Section 2(a) of H.R. 2583).

⁸ See New Section 13(d) (contained in Section 2(a) of H.R. 2583).

⁹ Letter from Rep. Fred Upton, Rep. Greg Walden, and Senator John Thune to FCC Chairman Tom Wheeler (Jan. 22, 2015).

Information Act (FOIA) for internal deliberative processes of an agency.¹⁰ By creating a potential conflict of law with FOIA, this bill could increase the risk of litigation for many FCC actions.

Posting draft documents could also spark an unending cycle of lobbying on successive draft items. Specifically, any new arguments raised in the record in response to the draft text could force the agency to trigger a new round of notice and comment. These lobbying cycles could undermine the ability of minority Commissioners to negotiate changes in a draft once the draft has been made public. Democrats believe this amendment would impose an inappropriate policy on the FCC that would significantly affect the Commission's ability to make final decisions.

2. Rep. Ellmers Amendment

The Ellmers amendment requires that the FCC publish, on its website, any changes to the Commission's rules within 24 hours of adoption.¹¹ This requirement could potentially conflict with the APA, which requires an agency to release explanatory text along with any new rules.¹² For each provision that appears in the Code of Federal Regulations, the explanatory text is vital to understanding the actual rules. This bill would separate the two, creating confusion and uncertainty for stakeholders. Again, Democrats believe that any FCC process reforms should enhance the public's ability to understand the actions of the FCC, and the Ellmers amendment would do the opposite.

3. Rep. Latta Amendment

The Latta amendment requires that the FCC publish information on its website 48 hours before making a decision on "delegated authority."¹³ Delegated authority allows the heads of FCC Bureaus and Offices to make decisions so long as new legal issues are not presented. As a practical matter, delegated authority is overwhelmingly used to conduct the routine business of the FCC, such as processing applications and issuing public notices. Thousands of actions are taken on delegated authority on a yearly basis. These actions are not final until they are released by the FCC, and the FCC can decide not to take an action at any time before it releases the item.

Requiring the Commission to post a description of potential actions before those actions are finalized could create confusion and may cause unwarranted administrative burdens on the FCC. Under its informal procedures, Commissioners are notified 48 hours before Bureaus take action on items that the Chairman's office believes may be of interest to the Commissioners. This proce-

¹⁰See Department of Justice Guide to Freedom of Information Act, 366 available at http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption5_1.pdf (explaining that the Freedom of Information Act protects inter-agency work product to "(1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.>").

¹¹See New Section 13(e) (contained in Section 2(a) of H.R. 2583).

¹²5 U.S.C. 553(c) (requiring agencies to "incorporate in the rules adopted a concise general statement of their basis and purpose"); see also Federal Register Guidance at https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (instructing agencies to add a number of explanatory sections along with new rules).

¹³See Section 7 of H.R. 2583.

ture is designed to balance the need to keep Commissioners informed while not overwhelming them with notice about each of the thousands of routine actions taken by the bureaus.

The actions contemplated in the Latta amendment go far beyond the informal policies in place at the Commission. Adding the new notice requirement contemplated by the amendment could have the perverse effect of slowing down the work of the FCC. Stakeholders could face uncertainty and longer wait times for previously routine decisions. Democrats believe that such a requirement defeats the purported intent of the FCC process reform bill—to make the FCC a more efficient agency.

D. Keeping Our Campaigns Honest (KOCH) Act Amendment

An integral part of the Democratic alternative to promoting process reform and increasing transparency, known as the KOCH Act (H.R. 2125), was introduced by Rep. Yarmuth on April 30, 2015. Although it was discussed at the legislative hearings, it was not considered at all for action at either the Subcommittee or full Committee markups of H.R. 2583.

The KOCH Act would increase transparency for TV viewers and radio listeners by requiring the FCC to modify its sponsorship identification rules to mandate the disclosure of significant donors to entities or persons purchasing issue advertisements. Transparency is an important issue, and it should not stop at the doors of the FCC. The public deserves to know who is paying for the advertisements they see on TV and hear on the radio, and the KOCH Act's simple direction to the FCC would make such transparency a reality.

We appreciate that the Majority attempted to work in a bipartisan manner and included some of the Democratic proposals within the reported bill. But due to the adoption of Republican amendments offered by Representatives Kinzinger, Ellmers, and Latta, and the adverse and severe impacts such provisions would have on the FCC's ability to operate quickly, efficiently, with integrity, and in a transparent manner, we strongly dissent from the majority views that are expressed in the Committee report.

FRANK PALLONE, JR.,
Ranking Member,

Committee on Energy and Commerce.

ANNA G. ESHOO,
Ranking Member,

Subcommittee on Communications and Technology.

