

Calendar No. 699

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-425

FEDERAL COMMUNICATIONS COMMISSION
PROCESS REFORM ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 421

together with

MINORITY VIEWS



DECEMBER 20, 2016.—Ordered to be printed

Filed, under authority of the order of the Senate of December 10
(legislative day, December 9), 2016

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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FEDERAL COMMUNICATIONS COMMISSION PROCESS REFORM ACT OF 2015

DECEMBER 20, 2016.—Ordered to be printed

FILED, UNDER AUTHORITY OF THE ORDER OF THE SENATE OF DECEMBER 10
(LEGISLATIVE DAY, DECEMBER 9), 2016

Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 421]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 421) 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, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 421, the Federal Communications Commission Process Reform Act of 2015, amends the Communications Act of 1934 (47 U.S.C. 151 et seq.) to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission (FCC or the Commission), and for other purposes.

BACKGROUND AND NEEDS

The Federal Communications Commission Process Reform Act of 2015 would improve the transparency and efficiency of Commission operations.

The Commission exerts broad regulatory authority over matters of fundamental importance to the American people and to the economy, regulating interstate and international communications by

radio, television, and wire.¹ The Commission is charged with making available to the American people a rapid, efficient, Nation-wide, and world-wide wire and radio communication service,² and ensuring deployment of advanced telecommunications and information services networks throughout “all regions of the Nation.”³

The stakes are high; last year alone the Commission auctioned over \$40 billion of spectrum⁴ and applied 1930’s era utility-style regulations to fixed and mobile broadband Internet networks,⁵ an industry estimated to have invested some \$1.4 trillion since 1996.⁶

Given its broad regulatory reach, it is essential that the Commission’s activities be efficient and subject to appropriate oversight by the American people and their representatives in Congress. Yet despite some modest Commission efforts⁷ to address the need for greater transparency and efficiency necessary to earn the confidence of the American people, the Commission remains burdened with opaque and inefficient practices and processes. These practices and processes hinder oversight, frustrate bipartisanship, limit the ability of Commissioners to participate fully in Commission policy,⁸ and ultimately make it more difficult to advance the best possible telecommunications policies.⁹

Commission proceedings, sometimes unavoidably complex and highly technical, often fail to provide the public sufficient information about what the Commission proposes to do, or even to propose specific rules at all. When it has proposed rules, the Commission sometimes changes direction and promulgates drastically different rules without giving the public a meaningful opportunity to comment on the Commission’s new regulatory scheme, thereby depriving the Commission of the insight of the people who actually use and provide communications services.¹⁰

While composed of political appointees, the Commission’s statutory responsibilities are not inherently partisan and the Commission has historically sought bipartisan consensus on major policy initiatives, promoting the consistency conducive to robust long-term investment in our Nation’s communications infrastructure. Under its current chairman, however, the Commission has adopted nearly twice as many rulemakings on a party-line vote as under the previous five FCC chairmen combined, in doing so often eschewing possible bipartisan compromises.¹¹ The Federal Communications

¹ 47 U.S.C. § 152.

² 47 U.S.C. § 151.

³ 47 U.S.C. § 254(b)(3).

⁴ See, e.g., http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=97.

⁵ See Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, 2015, 30 FCC Rcd 5601.

⁶ <https://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment>.

⁷ Federal Communications Commission (FCC), “Report on FCC Process Reform,” <https://www.fcc.gov/article/da-14-199a2>.

⁸ Fixing Flawed and Non-Existent Editorial Privileges, Commissioner Michael O’Rielly, at <https://www.fcc.gov/news-events/blog/2015/03/09/fixing-flawed-and-non-existent-editorial-privileges> (stating that when changes are made to a Commission item after it has been adopted, “dissenting Commissioners do not even get to vote on them.”).

⁹ See generally, Regulating the Internet: How the White House Bowled Over FCC Independence, A Majority Staff Report of the Committee on Homeland Security and Governmental Affairs United States Senate Senator Ron Johnson, Chairman, Feb. 29, 2016, at <https://www.hsgac.senate.gov/download/regulating-the-internet-how-the-white-house-bowled-over-fcc-independence>.

¹⁰ See, e.g., Chairman Wheeler’s new set-top box proposal: from unmitigated disaster to plain old disaster, available at <https://truthonthemarket.com/2016/09/10/chairman-wheeler-s-new-set-top-box-proposal-from-unmitigated-disaster-to-plain-old-disaster>.

¹¹ U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Oversight of the Federal Communications Commission*, Statement of Committee Chairman John Thune,

Commission Process Reform Act of 2015, would help return bipartisan consensus to communications policy by facilitating bipartisan discussions amongst commissioners given fair access to information about Commission activities.

SUMMARY OF PROVISIONS

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

Section 2 would add a section 13 to title I of the Communications Act of 1934, titled “Transparency and Efficiency.” The new section 13 would improve information made available to the public and to Commissioners about a variety of Commission activities. It would require, among other things, that the Commission include in notices of proposed rulemakings the specific language of the proposed rules, and establish procedures to ensure that the public has the time and information necessary to allow reasonable participation in rulemaking proceedings. The new section 13 would ensure that all commissioners have adequate time to review Commission documents before having to vote on them, and would allow commissioners to engage in collaborative bipartisan discussions when properly disclosed to the public. This section also would require that the Commission publish on its website information about its budget, required reports, and information about how well it has met deadlines, among other things.

Section 3 would limit FCC categorization of inquiries or complaints under the Telephone Consumer Protection Act of 1991 (Public Law 102–243; 105 Stat. 2394; TCPA) to eliminate the inclusion of misleading statistics in Commission reports.

Section 4 would clarify that the Act does not alter the general framework established under chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act) and related laws, except where it does so explicitly.

Section 5 would ensure that nothing in this Act or the amendments made by this Act shall be construed to impede the FCC from acting in times of emergency to ensure the availability of efficient and effective communications systems: (1) to alert the public to imminent dangerous weather conditions; or (2) for State and local first responders.

LEGISLATIVE HISTORY

On February 10, 2015, Senator Heller introduced S. 421, the Federal Communications Commission Process Reform Act of 2015. S. 421 was cosponsored by Senator Daines. The bill was referred to the Committee on Commerce, Science, and Transportation. On April 27, 2016, the Committee met in open Executive Session and, by roll call vote of 13 yeas and 11 nays, ordered the bill reported, as amended, with an amendment in the nature of a substitute.

H.R. 2583, a bill similar to S. 421, was introduced in the House of Representatives by Representative Greg Walden (OR) on May 29, 2015. H.R. 2583 was agreed to by the House of Representatives

114th Congress, September 15, 2016, at http://www.commerce.senate.gov/public/index.cfm/hearings?Id=7AEC5792-41D2-4FD2-A894-B54B1CFFE31C*Statement__id=33E56D29-EF49-4B5F-ABEF-FF9073E597D5.

by voice vote on November 16, 2015, and was received in the Senate and referred to the Committee on November 17, 2015.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 421—Federal Communications Commission Process Reform Act of 2015

S. 421 would direct the Federal Communications Commission (FCC) to make a number of procedural changes in its rulemaking process and to incorporate additional opportunities for public comment on agency proposals.

On the basis of information from the FCC, CBO estimates that implementing S. 421 would cost \$10 million over the 2017–2021 period to hire five additional staff and to upgrade its information technology. Such spending would be subject to the availability of appropriated funds. However, 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 S. 421 would be negligible, assuming annual appropriation actions consistent with the agency’s authorities.

Enacting S. 421 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 421 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 421 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 increase the cost of an existing mandate on commercial entities required to pay those fees. Based on information from the FCC, CBO estimates that the incremental cost of the mandate would be small—about \$10 million over the next five years—and would fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The number of persons covered by this legislation should be consistent with current levels.

ECONOMIC IMPACT

S. 421 would increase the transparency and efficiency of FCC operations. By improving the regulatory process, the bill would reduce unanticipated burdens on industry and promote more effective provision of communications services, benefiting consumers and the economy generally.

PRIVACY

The bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

The Committee does not anticipate the passage of the bill would result in a major increase in paperwork burdens.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

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

Section 2. FCC process reform.

This section would amend title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.) to add a new section 13, titled “Transparency and Efficiency.”

The new section 13 would provide definitions for certain terms used in the new section 13.

The new section 13 would direct the FCC, not later than 1 year after the date of enactment, to complete a rulemaking proceeding and adopt procedural changes to its rules to do the following:

- Set minimum comment and reply comment periods for significant regulatory actions, allowing departure from these minimum periods only upon approval by the Commission.
- Establish policies concerning the submission of public comments made toward the end of a comment period.
- Establish policies regarding treatment of comments and ex parte communications submitted after a comment period to ensure that the public has adequate opportunity to respond to the submissions.
- Make transparent what items are on circulation for review by the Commissioners, including which Commissioners have not cast a vote on an item that has been on circulation for more than 60 days.
- Establish guidelines for issuing a public notice for certain petitions.
- Require notices of proposed rulemaking (NPRMs) to include the specific language of the proposed rule.

- Require petitions filed with the Commission to be put out for public notice or disposed of publicly.
- Require NPRMs or final orders that create a program activity to contain performance measures for evaluating the effectiveness of the program activity.
- Require NPRMs or final orders that change a program activity to contain performance measures for evaluating the effectiveness of the program activity as changed.
- Require each NPRM that will impose additional burdens on industry or consumers to include: (1) an identification of prior Commission activity of which such NPRM is a logical outgrowth; or (2) a court order directing the Commission to act in the manner reflected in the NPRM.
- Require each NPRM or final order that may have an economically significant impact to contain an identification and analysis of the specific market failure that warrants the adoption of the item and a reasoned determination that the benefits of the item justify the costs.
- Establish procedures under which a Commissioner, with respect to an order or other specified Commission actions, may require the entire Commission to vote on whether to: (1) affirm, modify, or set aside the order or action; or (2) order a rehearing upon the order or action.
- Publish the language of a rule or amendment of an existing rule for a period of not fewer than 21 days before the date on which a vote on the rule or amendment to an existing rule begins.
- Establish procedures to identify upon publication any changes made to an item after it has been adopted by the Commission.

The new section 13 also would direct the FCC, not later than 1 year after the date of enactment, to complete an inquiry to seek public comment on whether and how the FCC should do the following:

- Inform all Commissioners of a reasonable number of options available to the Commission for resolving a petition, complaint, application, rulemaking, or other proceeding.
- Ensure that all Commissioners have adequate time, prior to being required to decide on a rulemaking or other proceeding, to review the proposed Commission decision document.
- Establish deadlines for the processing of license applications.
- Generate additional resources for the processing of applications.
- Publish Commission decisions within 30 days of adoption.

The new section 13 would require the FCC to review the rules established in section 13(b) every five years.

The new section 13 would allow a bipartisan majority of commissioners to meet for collaborative discussions if they disclose such meetings within 2 business days and comply with Office of General Counsel oversight. The section also would apply to meetings of Federal-State Joint Boards.

The new section 13 would require the FCC to provide links on its website home page to the current budget, appropriations re-

quest, number of full-time equivalent employees, and its performance plan.

The new section 13 would require the FCC to publish certain documents in the Federal Register no later than 60 days after release of the document or the day specified under any other provision of law.

The new section 13 would require the FCC to publish certain documents on its website.

The new section 13 would require the FCC to take additional steps to inform the public about its performance in meeting the disclosure requirements of the Freedom of Information Act.

The new section 13 would require the FCC to establish a schedule for the release of its required reports.

The new section 13 would require the FCC to report annually regarding its performance in meeting its deadlines and guidelines as well as how the Commission has used administrative law judges and independent studies.

The new section 13 would require the FCC to adopt rules implementing new section 13 no later than 1 year after the date of enactment and would delay the implementation of the non-public collaborative discussion provisions until all rules required by section 13 have taken effect.

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

This section would prohibit the FCC from categorizing inquiries or complaints under the TCPA 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.

This section would clarify that the Act does not alter the general framework established by the Administrative Procedures Act and related laws, except where it does so explicitly (for example, allowing collaboration among Commissioners and on the Federal-State Joint Boards).

Section 5. Provision of emergency weather information; communications of first responders.

This section would ensure that nothing in this Act or the amendments made by this Act shall be construed to impede the FCC from acting in times of emergency to ensure the availability of efficient and effective communications systems (1) to alert the public to imminent dangerous weather conditions, or (2) for State and local first responders.

VOTES IN COMMITTEE

By a rollcall vote of 13 yeas and 11 nays as follows, the bill was ordered reported with amendments:¹²

¹²The bill, as amended, was approved by the Committee on April 27, 2016, with a roll call vote of 13-11, including proxy votes cast. The vote of those members physically present, however, was 7-7. Standing Rule of the Senate XXVI requires that a vote to report a measure have the concurrence of a majority of the members who are present. Nevertheless, rather than require the Committee to reconvene to ratify the vote to approve the bill, the Chairman and Rank-

YEAS—13

Mr. Wicker
 Mr. Blunt¹
 Mr. Rubio¹
 Ms. Ayotte
 Mr. Cruz¹
 Ms. Fischer
 Mr. Moran¹
 Mr. Sullivan
 Mr. Johnson¹
 Mr. Heller
 Mr. Gardner¹
 Mr. Daines
 Mr. Thune

¹By proxy

NAYS—11

Mr. Nelson
 Ms. Cantwell
 Ms. McCaskill¹
 Ms. Klobuchar
 Mr. Blumenthal
 Mr. Schatz
 Mr. Markey¹
 Mr. Booker
 Mr. Udall¹
 Mr. Manchin¹
 Mr. Peters

MINORITY VIEWS OF SENATOR NELSON

S. 421, the Federal Communications Commission Process Reform Act of 2015, is a flawed and unnecessary attempt to curtail the rulemaking authority of the Federal Communications Commission (FCC). Simply put, I cannot support any legislation that I believe would hamstring a key consumer protection agency like the FCC. The end result of this proposal will be to tie the hands of this agency and make it nearly impossible for the FCC to issue rules or take enforcement actions to protect consumers. The FCC must have rulemaking processes that are flexible enough that it can respond to a changing world. If we put a straightjacket on the FCC, we may very well miss the future and leave the agency powerless - and American consumers defenseless - to deal with emerging problems.

The Administrative Procedure Act (APA) already governs the processes by which federal agencies, including independent agencies, develop and issue regulations. The FCC adheres to the APA in publishing notices of proposed and final rulemakings in the Federal Register, providing opportunities for public comment, as well as satisfying other requirements concerning issuance of licenses and permits. Use of the APA by all administrative agencies encourages the development of a standard body of case law that provides for certainty and reduces transaction costs. S. 421, though, would subject the FCC to a number of unique rulemaking procedures and processes that diverge from those set forth in the APA. By moving the FCC away from existing APA precedents and future developments, I believe that S. 421 would create uncertainty, confusion, and additional work for consumers, regulated entities, the FCC, and the courts.

I also disagree with many of the substantive procedural changes contained in S. 421. The communications industry is characterized by rapid technological change and advancement. The FCC uses its expertise to address a wide variety of topics and issues for which one-size-fits-all proceeding time limits would be inappropriate and counter-productive. Depending on the topic and circumstances, flexibility with respect to elements of the regulatory process such

ing Member have agreed to file this report to document the committee's work and pursuant to an understanding that neither will seek to advance the bill in the current session of Congress absent further agreement to do so.

as comment periods, notice approaches (e.g., Notice of Inquiry (NOI) vs. Notice of Proposed Rulemaking (NPRM)), the degree of cost-benefit analysis, and timeframes for action, assist the FCC in carrying out its core responsibilities under the Communications Act. In fact, requiring additional procedural hoops, like the issuance of a NOI before a NPRM, may unnecessarily hamper the FCC's ability to provide prompt regulatory relief. In other cases, such requirements could harm the ability of the FCC to respond quickly to address matters of public safety, consumer protection, or homeland security.

In addition, the legislation's requirement that final rules must be the "logical outgrowth" of the "specific language required to be included" in the NPRM departs from well-established court precedent under Section 553 of the APA. Specifically, reviewing courts already use "logical outgrowth" as a factor in evaluating whether an agency's initial notice is adequate, to ensure that interested members of the public have a genuine opportunity to comment. Requiring the agency to limit its decision to rules that are a logical outgrowth of the "specific language" of a proposed rule contained in the NPRM goes beyond this commonsense approach and would seem to require the agency to issue a new NPRM if comments responsive to the NPRM identify a different and better way of tackling the problem at issue than the one reflected in the proposed rule language itself. Similarly, court review under the APA already requires agencies to consider all relevant factors raised in the record when making decisions, including factors implicating the costs and benefits of a particular rule. The Regulatory Flexibility Act also already requires an analysis of the impact of the FCC's rules on small organizations.

Furthermore, the requirement to publish items prior to final approval will make the rulemaking process even more difficult and delay any final action by the FCC on such items indefinitely. The APA requires the Commission to respond to all arguments presented in the record in any final order. Demanding that the FCC seek additional comment on the final text of an order would create a never-ending cycle of posting, comment, revision, and posting - a cycle whose end result likely would be the inability of the FCC to finalize rules and defend those successfully in court. It is also possible that this requirement also may lead to less transparency at the agency. Given the complexities with negotiating and publishing an agenda item prior to its formal consideration at an open meeting, Commission staff may find it easier to manage complex items on "circulation" (i.e., taking action on a matter without an open meeting) without disclosure requirements or public discussion. Or the FCC may eschew rulemaking in favor of additional actions via enforcement. Both could mean less certainty for regulated entities, and more importantly, an agency less able to best protect consumers through the rulemaking process.

Moreover, proposed requirements that the FCC must identify market failure and actual harm to consumers for each rule that imposes "additional burdens" on industry or consumers may be contrary to the FCC's statutory mandate to serve the public interest. The "public interest" standard that has been the bedrock of the Communications Act since 1934 does not change when an FCC rule imposes burdens on industry. It also does not limit the FCC to

adopting rules that address market failures that involve actual harm to consumers. For example, the FCC’s efforts to ensure the effectiveness of its 9-1-1 rules and improving the resilience of communications networks against attack may impose burdens on the communications industry. These burdens may be justified, though they are unrelated to a market failure. Similarly, an FCC order addressing harmful interference between groups within the same radio-based service or in different radio-based services may produce regulatory burdens for certain parties that are irrelevant to the identification and analysis of “market failure and actual harm to consumers.”

Finally, S. 421 contains numerous new and untested terms that will take years for the FCC and reviewing courts to interpret and implement. By way of example, now the FCC would have to decide what is a “burden on industry or consumers,” and determine whether a notice of inquiry is “impracticable, unnecessary, or contrary to the public interest.” The FCC also would have to define “actual consumer harm” and “specific market failure.” In addition, the FCC would have to determine what it means to ensure that all Commissioners have “adequate time, prior to being required to decide a petition, complaint, application rulemaking or other proceeding.” Notwithstanding the agency’s best efforts to apply these terms precisely and fairly, each presents a novel legal issue that will likely be challenged by industry or other interested stakeholders when they disagree with a particular Commission decision. Moreover, each of these challenges could take years of expensive litigation to clarify and resolve. With the FCC stymied by uncertainty and unique court challenges, S. 421 could ultimately make the FCC less effective, agile, and transparent.

The proposed reforms in S. 421 could result in unintended consequences that jeopardize the FCC’s independence and weaken the agency’s decision-making process. For these reasons, I oppose S. 421.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL COMMUNICATIONS ACT OF 1934

[47 U.S.C. 151 et seq.]

SEC. 13. TRANSPARENCY AND EFFICIENCY.

(a) *DEFINITIONS.—In this section:*

(1) *AMENDMENT.—The term “amendment” includes, when used with respect to an existing rule, the deletion of the rule.*

(2) *APPLICATION FOR REVIEW.—The term “application for review” means an application for review filed under section 1.115 of title 47, Code of Federal Regulations, or any successor thereto.*

(3) *BIPARTISAN MAJORITY.—The term “bipartisan majority” means, when used with respect to a group of Commissioners, that the group—*

(A) is a group of 3 or more Commissioners; and

(B) includes—

(i) for each political party of which any Commissioner is a member, not less than 1 Commissioner who is a member of the political party; and

(ii) if any Commissioner has no political party affiliation, not less than 1 unaffiliated Commissioner.

(4) **PERFORMANCE MEASURE.**—The term “performance measure” means an objective and quantifiable outcome measure or output measure (as those defined in section 1115 of title 31, United States Code).

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

(6) **PETITION FOR DECLARATORY RULING.**—The term “petition for declaratory ruling” means a petition for declaratory ruling filed under section 1.2 of title 47, Code of Federal Regulations, or any successor thereto.

(7) **PETITION FOR RECONSIDERATION.**—The term “petition for reconsideration” means a petition for reconsideration filed under section 1.106 or 1.429 of title 47, Code of Federal Regulations, or any successor thereto.

(8) **PETITION FOR RULEMAKING.**—The term “petition for rulemaking” means a petition for rulemaking filed under section 1.401 of title 47, Code of Federal Regulations, or any successor thereto.

(9) **PROGRAM ACTIVITY.**—The term “program activity”—

(A) has the meaning given the term in section 1115 of title 31, United States Code; and

(B) includes any annual collection or distribution or related series of collections or distributions by the Commission of an amount not less than \$100,000,000.

(10) **OTHER DEFINITIONS.**—The terms “adjudication”, “agency action”, “ex parte communication”, “rule”, and “rulemaking” have the meanings given the terms in section 551 of title 5, United States Code.

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

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

(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 the minimum comment periods, for—

(i) significant regulatory actions, as defined in Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review);

- (ii) *all other rulemaking proceedings; and*
- (iii) *petitions for forbearance filed under section 10(c) of the Communications Act of 1934 (47 U.S.C. 160(c));*
- (B) *establish policies concerning the submission of extensive new comments, data, or reports towards the end of a 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 a comment period to ensure that the public has adequate notice of and opportunity to respond to the submissions before the Commission relies on the submissions in any order, decision, report, or action;*
- (D) *establish procedures for publishing 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;*
- (E) *establish guidelines (relative to the date of filing) for issuing a public notice of—*
 - (i) *a petition for declaratory ruling;*
 - (ii) *a petition for rulemaking;*
 - (iii) *a petition for reconsideration; or*
 - (iv) *an application for review;*
- (F) *require each notice of proposed rulemaking to include the specific language of the proposed rule or the proposed amendment of an existing rule;*
- (G) *require each petition filed with the Commission to be—*
 - (i) *put out for public notice, subject to the minimum comment and reply comment periods established under subparagraph (A); or*
 - (ii) *disposed of pursuant to an order of dismissal;*
- (H) *require each new notice of proposed rulemaking or order adopting a rule or amending an existing rule that creates (or proposes to create) a program activity to contain performance measures for evaluating the effectiveness of the program activity;*
- (I) *require each notice of proposed rulemaking or order adopting a rule or amending an existing rule that substantially changes (or proposes 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);*
- (J) *require each notice of proposed rulemaking to include—*
 - (i) *an identification of a notice of inquiry, a prior notice of proposed rulemaking, or a notice on a petition for rulemaking, issued by the Commission during the 3-year period preceding the date on which the notice of*

proposed rulemaking concerned is issued and of which such notice is a logical outgrowth;

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

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

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

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

(K) require each notice of proposed rulemaking or order adopting a rule or amending an existing rule that may have an economically significant impact, to contain—

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

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

(L) establish procedures under which a Commissioner, with respect to an order, decision, report, or action of a bureau or office of the Commission, may require the entire Commission to vote on whether to—

(i) affirm, modify, or set aside the order, decision, report, or action; or

(ii) order a rehearing upon the order, decision, report, or action in accordance with section 405;

(M) establish procedures for publishing the language of a rule or amendment of an existing rule for a period of not fewer than 21 days before the date on which a vote on the rule or amendment to an existing rule begins; and

(N) establish procedures to, when publishing an item adopted by the Commission, identify any changes made to the item after its adoption.

(3) INQUIRY.—Not later than 1 year after the date of 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 informing all Commissioners of a reasonable number of options available to the Commission for resolving a petition, complaint, application, rulemaking, or other proceeding;

(B) 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 under 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;

(C) 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;

(D) assign resources needed to meet the deadlines described in subparagraph (C), including whether the ability of the Commission to meet those deadlines would be enhanced by assessing a fee from applicants for a license described in subparagraph (C); and

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

(4) **DATA FOR PERFORMANCE MEASURES.**—The Commission shall develop a performance measure or proposed performance measure required under this subsection to rely, where possible, on data already collected by the Commission.

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

(d) **NONPUBLIC COLLABORATIVE DISCUSSIONS.**—¹

(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 the meeting;

(B) each person present at the 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 the 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 the meeting, including—

(A) a list of the persons who attended the meeting; and

(B) a summary of the matters discussed at the meeting, except for any matters that the Commission determines may be withheld under section 552b(c) of title 5, United States Code.

¹ Subsection (d) of section 13 of the Communications Act of 1934, as added, shall apply beginning on the first date on which all of the procedural changes to the rules of the Federal Communications Commission required under subsection (b)(1) of such section have taken effect.

(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).

(e) *ACCESS TO CERTAIN INFORMATION ON COMMISSION'S WEBSITE.*—The Commission shall provide direct access from the homepage of the website of the Commission to—

(1) detailed information regarding—

(A) the budget of the Commission for the current fiscal year;

(B) the appropriations for the Commission for the current 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.

(f) *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 the document to be so published.

(2) *DATE DESCRIBED.*—The date described in this paragraph is the earlier of—

(A) the date that is 60 days after the date of the release of the document described in paragraph (1); or

(B) the date by which the actions described in paragraph (1) must be completed to comply with any deadline under any other provision of law.

(3) *NO EFFECT ON DEADLINES FOR PUBLICATION IN OTHER FORM.*—

(A) *IN GENERAL.*—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 the deadline by publishing the document in another form.

(B) *APPLICABILITY OF FEDERAL REGISTER PUBLICATION REQUIREMENTS.*—Publication of a document in another form as described in subparagraph (A) shall not relieve the Commission of any Federal Register publication requirement applicable to the document, including the requirement under paragraph (1).

(g) *FORM OF PUBLICATION.*—

(1) *IN GENERAL.*—In complying with a requirement under this section to publish a document, the Commission shall publish the document on the website of the Commission, in addition to publishing the 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 under this section so that the published versions of the 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.

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

(1) publishing on the website of the Commission the logs used by the Commission 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 Bureaus and Offices of the Commission) 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 website of the Commission electronic copies of documents released under such section; and

(4) presenting, in the annual budget estimates of the Commission submitted to Congress and the annual performance and financial reports of the Commission, information about the handling by the Commission of requests under such section, including—

(A) the number of requests under such section the Commission received during the most recent fiscal year;

(B) the number of requests described in subparagraph (A) granted and denied;

(C) a comparison of the processing of requests described in subparagraph (A) by the Commission during a period of not less than the 3 preceding fiscal years; and

(D) a comparison of the results of the Commission in processing requests described in subparagraph (A) with the most recent average for the United States Government as published on www.foia.gov.

(i) **PROMPT RELEASE OF STATISTICAL REPORTS AND REPORTS TO CONGRESS.**—Not later than January 15 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 the year.

(j) **ANNUAL SCORE CARD REPORTS.**—²

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

(2) **CONTENTS.**—Each report required under paragraph (1) shall contain detailed statistics on the performance of the Com-

² Subsection (j) of section 13 of the Communications Act of 1934, as added, shall apply with respect to 2015 and any year thereafter.

mission as described in paragraph (1), including, with respect to each bureau or office of the Commission—

(A) with respect to each type of filing specified in subsection (b)(2)(E)—

(i) the number of filings that were pending on the last day of the period covered by the 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 those filings have been pending; and

(iii) for filings that were resolved during the period covered by the report, 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 proceedings completed during the period covered by the report; and

(ii) the number of proceedings pending on the last day of the period covered by the report; and

(C) the number of independent studies or analyses published by the Commission during the period covered by the report.

(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 under paragraph (1) not later than the date that is 30 days after the last day of the period covered by the report.