

113TH CONGRESS
1ST SESSION

H. R. 539

To amend the Communications Act of 1934 to authorize a bipartisan majority of Commissioners of the Federal Communications Commission to hold nonpublic collaborative discussions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2013

Ms. ESHOO (for herself, Mr. SHIMKUS, and Mr. DOYLE) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to authorize a bipartisan majority of Commissioners of the Federal Communications Commission to hold nonpublic collaborative discussions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Communica-
5 tions Commission Collaboration Act of 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Commissioners of the Federal Communica-
2 tions Commission (in this section referred to as the
3 “Commission”), past and present, have stated that,
4 while they support the intent of section 552b of title
5 5, United States Code, the implementation of that
6 section has hindered the ability of the Commission
7 to have a substantive exchange of ideas and hold col-
8 lective deliberations on issues pending before the
9 Commission.

10 (2) The principal purpose of Congress in cre-
11 ating a multimember agency is to obtain the benefits
12 of collegial decisionmaking by the members of the
13 agency, who bring to the decisionmaking process dif-
14 ferent philosophical perspectives, experiences, and
15 areas of expertise.

16 (3) Commissioners have relied primarily on an
17 inefficient combination of written messages, commu-
18 nications among staff, and a series of meetings re-
19 stricted to 2 Commissioners at each such meeting to
20 discuss complex telecommunications matters pending
21 before the Commission.

22 (4) Extensive use of such methods of commu-
23 nication has harmed collegiality and cooperation at
24 the Commission.

1 (5) Numerous regulatory matters have been
 2 pending before the Commission for years, and con-
 3 tinued inaction on these issues has the potential to
 4 hinder innovation and private investment in the do-
 5 mestic communications industry.

6 (6) The Commission must be able to work more
 7 collaboratively and efficiently than in the past to
 8 meet the current challenge of expanding broadband
 9 Internet access to the extent necessary to serve the
 10 business, educational, health, and cultural needs of
 11 all people in the United States.

12 **SEC. 3. NONPUBLIC COLLABORATIVE DISCUSSIONS OF THE**
 13 **FEDERAL COMMUNICATIONS COMMISSION.**

14 Section 4 of the Communications Act of 1934 (47
 15 U.S.C. 154) is amended by adding at the end the fol-
 16 lowing:

17 “(p) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

18 “(1) DEFINITIONS.—In this subsection:

19 “(A) AGENCY ACTION.—The term ‘agency
 20 action’ has the meaning given the term in sec-
 21 tion 551 of title 5, United States Code.

22 “(B) BIPARTISAN MAJORITY OF COMMIS-
 23 SIONERS.—The term ‘bipartisan majority of
 24 Commissioners’ means a group of not less than
 25 3 Commissioners that includes—

1 “(i) for each political party of which
2 any Commissioner is a member, not less
3 than 1 Commissioner who is a member of
4 that political party; and

5 “(ii) if any Commissioner has no po-
6 litical party affiliation, not less than 1 un-
7 affiliated Commissioner.

8 “(2) NONPUBLIC COLLABORATIVE DISCUS-
9 SIONS.—Notwithstanding section 552b of title 5,
10 United States Code, a bipartisan majority of Com-
11 missioners may hold a meeting that is closed to the
12 public to discuss official business if—

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

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

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

23 “(3) DISCLOSURE OF NONPUBLIC COLLABO-
24 RATIVE DISCUSSIONS.—Not later than 2 business
25 days after the conclusion of a meeting held under

1 paragraph (2), the Commission shall publish on the
2 website of the Commission a disclosure relating to
3 the meeting that includes—

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

6 “(B) a summary of the matters discussed
7 at the meeting, except for any matters that the
8 Commission determines may be withheld in ac-
9 cordance with section 552b(c) of title 5, United
10 States Code.

11 “(4) PRESERVATION OF OPEN MEETINGS RE-
12 QUIREMENTS FOR AGENCY ACTION.—Nothing in this
13 subsection shall limit the applicability of section
14 552b of title 5, United States Code, with respect to
15 a meeting of Commissioners other than a meeting
16 described in paragraph (2).”.

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