

113TH CONGRESS
2D SESSION

S. 1989

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2014

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

A BILL

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission, 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 Process Reform Act of 2014”.

1 **SEC. 2. FCC PROCESS REFORM.**

2 (a) IN GENERAL.—Title I of the Communications Act
3 of 1934 (47 U.S.C. 151 et seq.) is amended by adding
4 at the end the following:

5 **“SEC. 13. TRANSPARENCY AND EFFICIENCY.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) AMENDMENT.—The term ‘amendment’ in-
8 cludes, when used with respect to an existing rule,
9 the deletion of the rule.

10 “(2) BIPARTISAN MAJORITY.—The term ‘bipar-
11 tisan majority’ means, when used with respect to a
12 group of Commissioners, that the group—

13 “(A) is a group of 3 or more Commis-
14 sioners; and

15 “(B) includes—

16 “(i) for each political party of which
17 any Commissioner is a member, not less
18 than 1 Commissioner who is a member of
19 that political party; and

20 “(ii) if any Commissioner has no po-
21 litical party affiliation, not less than 1 un-
22 affiliated Commissioner.

23 “(3) PERFORMANCE MEASURE.—The term ‘per-
24 formance measure’ means an objective and quantifi-
25 able outcome measure or output measure (as those

1 terms are defined in section 1115 of title 31, United
2 States Code).

3 “(4) PROGRAM ACTIVITY.—The term ‘program
4 activity’—

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

8 “(B) includes any annual collection or dis-
9 tribution or related series of collections or dis-
10 tributions by the Commission of an amount
11 that is not less than \$100,000,000.

12 “(5) OTHER DEFINITIONS.—The terms ‘agency
13 action’, ‘ex parte communication’, and ‘rule’ have
14 the meanings given the terms in section 551 of title
15 5, United States Code.

16 “(b) INITIAL RULEMAKING AND INQUIRY.—

17 “(1) RULEMAKING.—Not later than 1 year
18 after the date of enactment of the Federal Commu-
19 nications Commission Process Reform Act of 2014,
20 the Commission shall complete a rulemaking pro-
21 ceeding and adopt procedural changes to the rules of
22 the Commission to maximize opportunities for public
23 participation and efficient decisionmaking.

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

1 “(A) set minimum comment periods for
2 comment and reply comment, subject to a de-
3 termination by the Commission that good cause
4 exists for departing from the minimum com-
5 ment periods, for—

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

10 “(ii) all other rulemaking proceedings;

11 “(B) establish policies concerning the sub-
12 mission of extensive new comments, data, or re-
13 ports towards the end of a comment period;

14 “(C) establish policies regarding treatment
15 of comments, ex parte communications, and
16 data or reports (including statistical reports
17 and reports to Congress) submitted after a
18 comment period to ensure that the public has
19 adequate notice of and opportunity to respond
20 to the submissions before the Commission relies
21 on the submissions in any order, decision, re-
22 port, or action;

23 “(D) establish procedures for publishing
24 the status of open rulemaking proceedings and
25 proposed orders, decisions, reports, or actions

1 on circulation for review by the Commissioners,
2 including which Commissioners have not cast a
3 vote on an order, decision, report, or action that
4 has been on circulation for more than 60 days;

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

7 “(i) in the case of a petition for a de-
8 claratory ruling under section 1.2 of title
9 47, Code of Federal Regulations, issuing a
10 public notice of the petition;

11 “(ii) in the case of a petition for rule-
12 making under section 1.401 of title 47,
13 Code of Federal Regulations, issuing a
14 public notice of the petition; and

15 “(iii) in the case of a petition for re-
16 consideration under section 1.106 or 1.429
17 of title 47, Code of Federal Regulations, or
18 an application for review under section
19 1.115 of such title, issuing a public notice
20 of a decision on the petition or application
21 by the Commission or under delegated au-
22 thority (as the case may be);

23 “(F) establish guidelines (relative to the
24 date of filing) for the disposition of petitions

1 filed under section 1.2 of title 47, Code of Fed-
2 eral Regulations;

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

7 “(H) require each notice of proposed rule-
8 making or order adopting a rule or amending
9 an existing rule that creates (or proposes to
10 create) a program activity to contain perform-
11 ance measures for evaluating the effectiveness
12 of the program activity; and

13 “(I) require each notice of proposed rule-
14 making or order adopting a rule or amending
15 an existing rule that substantially changes (or
16 proposes to substantially change) a program ac-
17 tivity to contain—

18 “(i) performance measures for evalu-
19 ating the effectiveness of the program ac-
20 tivity as changed (or proposed to be
21 changed); or

22 “(ii) a finding that existing perform-
23 ance measures will effectively evaluate the
24 program activity as changed (or proposed
25 to be changed).

1 “(3) INQUIRY.—Not later than 1 year after the
2 date of enactment of the Federal Communications
3 Commission Process Reform Act of 2014, the Com-
4 mission shall complete an inquiry to seek public
5 comment on whether and how the Commission
6 should—

7 “(A) establish procedures for allowing a bi-
8 partisan majority of Commissioners to place an
9 order, decision, report, or action on the agenda
10 of an open meeting;

11 “(B) establish procedures for informing all
12 Commissioners of a reasonable number of op-
13 tions available to the Commission for resolving
14 a petition, complaint, application, rulemaking,
15 or other proceeding;

16 “(C) establish procedures for ensuring that
17 all Commissioners have adequate time, prior to
18 being required to decide a petition, complaint,
19 application, rulemaking, or other proceeding
20 (including at a meeting held under section
21 5(d)), to review the proposed Commission deci-
22 sion document, including the specific language
23 of any proposed rule or any proposed amend-
24 ment of an existing rule;

1 “(D) establish procedures for publishing
 2 the text of agenda items to be voted on at an
 3 open meeting in advance of the meeting so that
 4 the public has the opportunity to read the text
 5 before a vote is taken;

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

10 “(F) assign resources needed to meet the
 11 deadlines described in subparagraph (E), in-
 12 cluding whether the ability of the Commission
 13 to meet those deadlines would be enhanced by
 14 assessing a fee from applicants for a license de-
 15 scribed in subparagraph (E); and

16 “(G) publish each order, decision, report,
 17 or action not later than 30 days after the date
 18 of the adoption of the order, decision, report, or
 19 action.

20 “(4) DATA FOR PERFORMANCE MEASURES.—
 21 The Commission shall develop a performance meas-
 22 ure or proposed performance measure required
 23 under this subsection to rely, where possible, on data
 24 already collected by the Commission.

1 “(c) PERIODIC REVIEW.—On the date that is 5 years
 2 after the completion of the rulemaking proceeding under
 3 subsection (b)(1), and every 5 years thereafter, the Com-
 4 mission shall initiate a new rulemaking proceeding to con-
 5 tinue to consider any procedural changes to the rules of
 6 the Commission that may be in the public interest to maxi-
 7 mize opportunities for public participation and efficient
 8 decisionmaking.

9 “(d) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

10 “(1) IN GENERAL.—Notwithstanding section
 11 552b of title 5, United States Code, a bipartisan
 12 majority of Commissioners may hold a meeting that
 13 is closed to the public to discuss official business
 14 if—

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

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

1 “(C) an attorney from the Office of Gen-
2 eral Counsel of the Commission is present at
3 the meeting.

4 “(2) DISCLOSURE OF NONPUBLIC COLLABO-
5 RATIVE DISCUSSIONS.—Not later than 2 business
6 days after the conclusion of a meeting held under
7 paragraph (1), the Commission shall publish a dis-
8 closure of the meeting, including—

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

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

15 “(3) PRESERVATION OF OPEN MEETINGS RE-
16 QUIREMENTS FOR AGENCY ACTION.—Nothing in this
17 subsection shall limit the applicability of section
18 552b of title 5, United States Code, with respect to
19 a meeting of Commissioners other than that de-
20 scribed in paragraph (1).

21 “(e) ACCESS TO CERTAIN INFORMATION ON COMMIS-
22 SION’S WEBSITE.—The Commission shall provide direct
23 access from the homepage of the website of the Commis-
24 sion to—

25 “(1) detailed information regarding—

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

3 “(B) the appropriations for the Commis-
4 sion for the current fiscal year; and

5 “(C) the total number of full-time equiva-
6 lent employees of the Commission; and

7 “(2) the performance plan most recently made
8 available by the Commission under section 1115(b)
9 of title 31, United States Code.

10 “(f) FEDERAL REGISTER PUBLICATION.—

11 “(1) IN GENERAL.—In the case of any docu-
12 ment adopted by the Commission that the Commis-
13 sion is required, under any provision of law, to pub-
14 lish in the Federal Register, the Commission shall,
15 not later than the date described in paragraph (2),
16 complete all Commission actions necessary for the
17 document to be so published.

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

20 “(A) the date that is 45 days after the
21 date of the release of the document described in
22 paragraph (1); or

23 “(B) the date by which the actions de-
24 scribed in paragraph (1) must be completed to

1 comply with any deadline under any other pro-
2 vision of law.

3 “(3) NO EFFECT ON DEADLINES FOR PUBLICA-
4 TION IN OTHER FORM.—

5 “(A) IN GENERAL.—In the case of a dead-
6 line that does not specify that the form of pub-
7 lication is publication in the Federal Register,
8 the Commission may comply with the deadline
9 by publishing the document in another form.

10 “(B) APPLICABILITY OF FEDERAL REG-
11 ISTER PUBLICATION REQUIREMENTS.—Publica-
12 tion of a document in another form as described
13 in subparagraph (A) shall not relieve the Com-
14 mission of any Federal Register publication re-
15 quirement applicable to the document, including
16 the requirement under paragraph (1).

17 “(g) CONSUMER COMPLAINT DATABASE.—

18 “(1) IN GENERAL.—In evaluating and proc-
19 essing consumer complaints, the Commission shall
20 present information about the complaints in a pub-
21 licly available, searchable database on the website of
22 the Commission that—

23 “(A) facilitates easy use by consumers; and

24 “(B) to the extent practicable, is sortable
25 and accessible by—

1 “(i) the date of the filing of the com-
2 plaint;

3 “(ii) the topic of the complaint;

4 “(iii) the party complained of; and

5 “(iv) other elements that the Commis-
6 sion considers in the public interest.

7 “(2) DUPLICATIVE COMPLAINTS.—In the case
8 of multiple complaints arising from the same alleged
9 misconduct, the Commission may satisfy the require-
10 ment under paragraph (1) by including information
11 concerning only 1 such complaint in the database
12 described in paragraph (1).

13 “(h) FORM OF PUBLICATION.—

14 “(1) IN GENERAL.—In complying with a re-
15 quirement under this section to publish a document,
16 the Commission shall publish the document on the
17 website of the Commission, in addition to publishing
18 the document in any other form that the Commis-
19 sion is required to use or is permitted to and chooses
20 to use.

21 “(2) EXCEPTION.—The Commission shall by
22 rule establish procedures for redacting documents
23 required to be published under this section so that
24 the published versions of the documents do not con-
25 tain—

1 “(A) information the publication of which
2 would be detrimental to national security,
3 homeland security, law enforcement, or public
4 safety; or

5 “(B) information that is proprietary or
6 confidential.

7 “(i) TRANSPARENCY RELATING TO PERFORMANCE IN
8 MEETING FOIA REQUIREMENTS.—The Commission shall
9 take additional steps to inform the public about the per-
10 formance and efficiency of the Commission in meeting the
11 disclosure and other requirements under section 552 of
12 title 5, United States Code (commonly referred to as the
13 ‘Freedom of Information Act’), including by—

14 “(1) publishing on the website of the Commis-
15 sion the logs used by the Commission for tracking,
16 responding to, and managing requests submitted
17 under such section, including the Commission’s fee
18 estimates, fee categories, and fee request determina-
19 tions;

20 “(2) releasing to the public all decisions made
21 by the Commission (including decisions made by the
22 Bureaus and Offices of the Commission) granting or
23 denying requests filed under such section, including
24 any such decisions pertaining to the estimate and
25 application of fees assessed under such section;

1 “(3) publishing on the website of the Commis-
2 sion electronic copies of documents released under
3 such section; and

4 “(4) presenting, in the annual budget estimates
5 of the Commission submitted to Congress and the
6 annual performance and financial reports of the
7 Commission, information about the handling by the
8 Commission of requests under such section, includ-
9 ing—

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

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

15 “(C) a comparison of the processing of re-
16 quests described in subparagraph (A) by the
17 Commission during a period of not less than
18 the 3 preceding fiscal years; and

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

24 “(j) PROMPT RELEASE OF STATISTICAL REPORTS
25 AND REPORTS TO CONGRESS.—Not later than January 15

1 of each year, the Commission shall identify, catalog, and
 2 publish an anticipated release schedule for all statistical
 3 reports and reports to Congress that are regularly or
 4 intermittently released by the Commission and will be re-
 5 leased during the year.

6 “(k) ANNUAL SCORECARD REPORTS.—

7 “(1) IN GENERAL.—For the 1-year period be-
 8 ginning on January 1 of each year, the Commission
 9 shall prepare a report on the performance of the
 10 Commission in conducting proceedings and meeting
 11 the deadlines established under subsection (b)(2)(E)
 12 and the guidelines established under subsection
 13 (b)(2)(F).

14 “(2) CONTENTS.—Each report required under
 15 paragraph (1) shall contain detailed statistics on the
 16 performance of the Commission as described in
 17 paragraph (1), including, with respect to each Bu-
 18 reau of the Commission—

19 “(A) with respect to each type of filing
 20 specified in subsection (b)(2)(E) or (b)(2)(F)—

21 “(i) the number of filings that were
 22 pending on the last day of the period cov-
 23 ered by the report;

24 “(ii) the number of filings described
 25 in clause (i) for which each applicable

1 deadline or guideline established under
2 such subsection was not met and the aver-
3 age length of time those filings have been
4 pending; and

5 “(iii) for filings that were resolved
6 during the period covered by the report,
7 the average time between initiation and
8 resolution and the percentage for which
9 each applicable deadline or guideline estab-
10 lished under such subsection was met;

11 “(B) with respect to proceedings before an
12 administrative law judge—

13 “(i) the number of proceedings com-
14 pleted during the period covered by the re-
15 port; and

16 “(ii) the number of proceedings pend-
17 ing on the last day of the period covered
18 by the report; and

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

22 “(3) PUBLICATION AND SUBMISSION.—The
23 Commission shall publish and submit to the Com-
24 mittee on Energy and Commerce of the House of
25 Representatives and the Committee on Commerce,

1 Science, and Transportation of the Senate each re-
 2 port required under paragraph (1) not later than the
 3 date that is 30 days after the last day of the period
 4 covered by the report.”.

5 (b) EFFECTIVE DATES AND IMPLEMENTING
 6 RULES.—

7 (1) EFFECTIVE DATES.—

8 (A) NONPUBLIC COLLABORATIVE DISCUS-
 9 SIONS.—Subsection (d) of section 13 of the
 10 Communications Act of 1934, as added by sub-
 11 section (a), shall apply beginning on the first
 12 date on which all of the procedural changes to
 13 the rules of the Federal Communications Com-
 14 mission required under subsection (b)(1) of
 15 such section have taken effect.

16 (B) SCHEDULES AND REPORTS.—Sub-
 17 sections (j) and (k) of section 13 of the Com-
 18 munications Act of 1934, as added by sub-
 19 section (a), shall apply with respect to 2015
 20 and any year thereafter.

21 (2) RULES.—Except as otherwise provided in
 22 section 13 of the Communications Act of 1934, as
 23 added by subsection (a), the Federal Communica-
 24 tions Commission shall promulgate any rules nec-

1 essary to carry out such section not later than 1
2 year after the date of enactment of this Act.

3 **SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COM-**
4 **PLAINTS IN QUARTERLY REPORT.**

5 In compiling its quarterly report with respect to in-
6 formal consumer inquiries and complaints, the Federal
7 Communications Commission may not categorize an in-
8 quiry or complaint with respect to section 227 of the Com-
9 munications Act of 1934 (47 U.S.C. 227) as being a
10 wireline inquiry or complaint or a wireless inquiry or com-
11 plaint unless the party whose conduct is the subject of
12 the inquiry or complaint is a wireline carrier or a wireless
13 carrier, respectively.

14 **SEC. 4. EFFECT ON OTHER LAWS.**

15 Nothing in this Act or the amendments made by this
16 Act shall relieve the Federal Communications Commission
17 from any obligations under title 5, United States Code,
18 except where otherwise expressly provided.

19 **SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNI-**
20 **VERSAL SERVICE PROGRAM.**

21 (a) IN GENERAL.—Section 254 of the Communica-
22 tions Act of 1934 (47 U.S.C. 254) is amended by adding
23 at the end the following:

1 “(m) APPLICATION OF ANTIDEFICIENCY ACT.—Sec-
2 tion 1341 and subchapter II of chapter 15 of title 31,
3 United States Code, shall not apply to—

4 “(1) any amount collected or received as Fed-
5 eral universal service contributions required under
6 this section, including any interest earned on such
7 contributions; or

8 “(2) the expenditure or obligation of amounts
9 attributable to contributions described in paragraph
10 (1) for universal service support programs estab-
11 lished under this section.”.

12 (b) REPEAL OF TEMPORARY PROVISION.—The Uni-
13 versal Service Antideficiency Temporary Suspension Act
14 (title III of Public Law 108–494; 118 Stat. 3997) is re-
15 pealed.

○