

Calendar No. 699

114TH CONGRESS
2^D SESSION

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

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

DECEMBER 6, 2016

Reported by Mr. THUNE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Communica-
3 tions Commission Process Reform Act of 2015”.

4 **SEC. 2. FCC PROCESS REFORM.**

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

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

9 “(a) DEFINITIONS.—In this section:

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

13 “(2) APPLICATION FOR REVIEW.—The term
14 ‘application for review’ means an application for re-
15 view filed under section 1.115 of title 47, Code of
16 Federal Regulations, or any successor thereto.

17 “(3) BIPARTISAN MAJORITY.—The term ‘bipar-
18 tisan majority’ means, when used with respect to a
19 group of Commissioners, that the group—

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

22 “(B) includes—

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

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

4 “(4) PERFORMANCE MEASURE.—The term ‘per-
 5 formance measure’ means an objective and quantifi-
 6 able outcome measure or output measure (as those
 7 defined in section 1115 of title 31, United States
 8 Code).

9 “(5) ECONOMICALLY SIGNIFICANT IMPACT.—
 10 The term ‘economically significant impact’ means an
 11 effect on the economy of \$100,000,000 or more an-
 12 nually or a material adverse effect on the economy,
 13 a sector of the economy, productivity, competition,
 14 jobs, the environment, public health or safety, or
 15 State, local, or tribal governments or communities.

16 “(6) PETITION FOR DECLARATORY RULING.—
 17 The term ‘petition for declaratory ruling’ means a
 18 petition for declaratory ruling filed under section 1.2
 19 of title 47, Code of Federal Regulations, or any suc-
 20 cessor thereto.

21 “(7) PETITION FOR RECONSIDERATION.—The
 22 term ‘petition for reconsideration’ means a petition
 23 for reconsideration filed under section 1.106 or
 24 1.429 of title 47, Code of Federal Regulations, or
 25 any successor thereto.

1 “(8) PETITION FOR RULEMAKING.—The term
 2 ‘petition for rulemaking’ means a petition for rule-
 3 making filed under section 1.401 of title 47, Code of
 4 Federal Regulations, or any successor thereto.

5 “(9) PROGRAM ACTIVITY.—The term ‘program
 6 activity’—

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

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

14 “(10) OTHER DEFINITIONS.—The terms ‘adju-
 15 dication’, ‘agency action’, ‘ex parte communication’,
 16 ‘rule’, and ‘rulemaking’ have the meanings given the
 17 terms in section 551 of title 5, United States Code.

18 “(b) INITIAL RULEMAKING AND INQUIRY.—

19 “(1) RULEMAKING.—Not later than 1 year
 20 after the date of enactment of the Federal Commu-
 21 nications Commission Process Reform Act of 2015,
 22 the Commission shall complete a rulemaking pro-
 23 ceeding and adopt procedural changes to the rules of
 24 the Commission to maximize opportunities for public
 25 participation and efficient decision making.

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

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

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

12 ~~“(ii) all other rulemaking proceedings;~~
 13 ~~and~~

14 ~~“(iii) petitions for forbearance filed~~
 15 ~~under section 10(e) of the Communications~~
 16 ~~Act of 1934 (47 U.S.C. 160(c));~~

17 ~~“(B) establish policies concerning the sub-~~
 18 ~~mission of extensive new comments, data, or re-~~
 19 ~~ports towards the end of a comment period;~~

20 ~~“(C) establish policies regarding treatment~~
 21 ~~of comments, ex parte communications, and~~
 22 ~~data or reports (including statistical reports~~
 23 ~~and reports to Congress) submitted after a~~
 24 ~~comment period to ensure that the public has~~
 25 ~~adequate notice of and opportunity to respond~~

1 to the submissions before the Commission relies
 2 on the submissions in any order, decision, re-
 3 port, or action;

4 “(D) establish procedures for publishing
 5 the status of open rulemaking proceedings and
 6 proposed orders, decisions, reports, or actions
 7 on circulation for review by the Commissioners,
 8 including which Commissioners have not cast a
 9 vote on an order, decision, report, or action that
 10 has been on circulation for more than 60 days;

11 “(E) establish guidelines (relative to the
 12 date of filing) for issuing a public notice of—

13 “(i) a petition for declaratory ruling;

14 “(ii) a petition for rulemaking;

15 “(iii) a petition for reconsideration; or

16 “(iv) an application for review;

17 “(F) require each notice of proposed rule-
 18 making to include the specific language of the
 19 proposed rule or the proposed amendment of an
 20 existing rule;

21 “(G) require each petition filed with the
 22 Commission to be—

23 “(i) put out for public notice, subject
 24 to the minimum comment and reply com-

ment 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—

1 “(i) an identification of a notice of in-
 2 quiry, a prior notice of proposed rule-
 3 making, or a notice on a petition for rule-
 4 making, issued by the Commission during
 5 the 3-year period preceding the date on
 6 which the notice of proposed rulemaking
 7 concerned is issued and of which such no-
 8 tice is a logical outgrowth;

9 “(ii) an order of a court reviewing ac-
 10 tion by the Commission or otherwise di-
 11 recting the Commission to act that the
 12 court issued during the 3-year period pre-
 13 ceding the date on which the notice of pro-
 14 posed rulemaking concerned is issued and
 15 in response to which such notice is being
 16 issued; or

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

19 “(I) that the proposed rule or the
 20 proposed amendment of an existing
 21 rule will not impose additional bur-
 22 dens on industry or consumers; and

23 “(II) for good cause, that a no-
 24 tice of inquiry is impracticable, unnee-

1 essary, or contrary to the public inter-
2 est;

3 “(K) require each notice of proposed rule-
4 making or order adopting a rule or amending
5 an existing rule that may have an economically
6 significant impact, to contain—

7 “(i) an identification and analysis of
8 the specific market failure, actual con-
9 sumer harm, burden of existing regulation,
10 or failure of public institutions that war-
11 rants the adoption or amendment; and

12 “(ii) a reasoned determination that
13 the benefits of the adoption or amendment
14 justify the costs (recognizing that some
15 benefits and costs are difficult to quan-
16 tify); taking into account alternative forms
17 of regulation and the need to tailor regula-
18 tion to impose the least burden on society;
19 consistent with obtaining regulatory objec-
20 tives;

21 “(L) establish procedures under which a
22 Commissioner, with respect to an order, deci-
23 sion, report, or action of a bureau or office of
24 the Commission, may require the entire Com-
25 mission to vote on whether to—

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

3 “(ii) order a rehearing upon the order;
4 decision, report, or action in accordance
5 with section 405; and

6 “(M) establish procedures for publishing
7 the language of a rule or amendment of an ex-
8 isting rule for a period of not fewer than 21
9 days before the date on which a vote on the rule
10 or amendment to an existing rule begins.

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

17 “(A) establish procedures for informing all
18 Commissioners of a reasonable number of op-
19 tions available to the Commission for resolving
20 a petition, complaint, application, rulemaking,
21 or other proceeding;

22 “(B) establish procedures for ensuring that
23 all Commissioners have adequate time, prior to
24 being required to decide a petition, complaint,
25 application, rulemaking, or other proceeding

1 (including at a meeting held under section
2 5(d)), to review the proposed Commission deci-
3 sion document, including the specific language
4 of any proposed rule or any proposed amend-
5 ment of an existing rule;

6 “(C) 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 “(D) assign resources needed to meet the
11 deadlines described in subparagraph (C), 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 (C); and

16 “(E) 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(e) 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 60 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) FORM OF PUBLICATION.—~~

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

1 “(2) EXCEPTION.—The Commission shall by
 2 rule establish procedures for redacting documents
 3 required to be published under this section so that
 4 the published versions of the documents do not con-
 5 tain—

6 “(A) information the publication of which
 7 would be detrimental to national security,
 8 homeland security, law enforcement, or public
 9 safety; or

10 “(B) information that is proprietary or
 11 confidential.

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

19 “(1) publishing on the website of the Commis-
 20 sion the logs used by the Commission for tracking,
 21 responding to, and managing requests submitted
 22 under such section, including the Commission’s fee
 23 estimates, fee categories, and fee request determina-
 24 tions;

1 “(2) releasing to the public all decisions made
 2 by the Commission (including decisions made by the
 3 Bureaus and Offices of the Commission) granting or
 4 denying requests filed under such section, including
 5 any such decisions pertaining to the estimate and
 6 application of fees assessed under such section;

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

10 “(4) presenting, in the annual budget estimates
 11 of the Commission submitted to Congress and the
 12 annual performance and financial reports of the
 13 Commission, information about the handling by the
 14 Commission of requests under such section, includ-
 15 ing—

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

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

21 “(C) a comparison of the processing of re-
 22 quests described in subparagraph (A) by the
 23 Commission during a period of not less than
 24 the 3 preceding fiscal years; and

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

6 “(i) PROMPT RELEASE OF STATISTICAL REPORTS
 7 AND REPORTS TO CONGRESS.—Not later than January 15
 8 of each year, the Commission shall identify, catalog, and
 9 publish an anticipated release schedule for all statistical
 10 reports and reports to Congress that are regularly or
 11 intermittently released by the Commission and will be re-
 12 leased during the year.

13 “(j) ANNUAL SCORE CARD REPORTS.—

14 “(1) IN GENERAL.—For the 1-year period be-
 15 ginning on January 1 of each year, the Commission
 16 shall prepare a report on the performance of the
 17 Commission in conducting proceedings and meeting
 18 the guidelines established under subsection
 19 (b)(2)(E).

20 “(2) CONTENTS.—Each report required under
 21 paragraph (1) shall contain detailed statistics on the
 22 performance of the Commission as described in
 23 paragraph (1), including, with respect to each bu-
 24 reau or office of the Commission—

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

3 “(i) the number of filings that were
4 pending on the last day of the period cov-
5 ered by the report;

6 “(ii) the number of filings described
7 in clause (i) for which each applicable
8 deadline or guideline established under
9 such subsection was not met and the aver-
10 age length of time those filings have been
11 pending; and

12 “(iii) for filings that were resolved
13 during the period covered by the report,
14 the average time between initiation and
15 resolution and the percentage for which
16 each applicable deadline or guideline estab-
17 lished under such subsection was met;

18 “(B) with respect to proceedings before an
19 administrative law judge—

20 “(i) the number of proceedings com-
21 pleted during the period covered by the re-
22 port; and

23 “(ii) the number of proceedings pend-
24 ing on the last day of the period covered
25 by the report; and

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

4 “(3) PUBLICATION AND SUBMISSION.—The
5 Commission shall publish and submit to the Com-
6 mittee on Energy and Commerce of the House of
7 Representatives and the Committee on Commerce
8 Science, and Transportation of the Senate each re-
9 port required under paragraph (1) not later than the
10 date that is 30 days after the last day of the period
11 covered by the report.”.

12 (b) EFFECTIVE DATES AND IMPLEMENTING
13 RULES.—

14 (1) EFFECTIVE DATES.—

15 (A) NONPUBLIC COLLABORATIVE DISCUS-
16 SIONS.—Subsection (d) of section 13 of the
17 Communications Act of 1934, as added by sub-
18 section (a), shall apply beginning on the first
19 date on which all of the procedural changes to
20 the rules of the Federal Communications Com-
21 mission required under subsection (b)(1) of
22 such section have taken effect.

23 (B) SCHEDULES AND REPORTS.—Sub-
24 sections (j) and (k) of section 13 of the Com-
25 munications Act of 1934, as added by sub-

1 section (a), shall apply with respect to 2015
2 and any year thereafter.

3 (2) RULES.—Except as otherwise provided in
4 section 13 of the Communications Act of 1934, as
5 added by subsection (a), the Federal Communica-
6 tions Commission shall promulgate any rules nec-
7 essary to carry out such section not later than 1
8 year after the date of enactment of this Act.

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

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

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

21 Nothing in this Act or the amendments made by this
22 Act shall relieve the Federal Communications Commission
23 from any obligations under title 5, United States Code,
24 except where otherwise expressly provided.

1 **SEC. 5. PROVISION OF EMERGENCY WEATHER INFORMA-**
 2 **TION; COMMUNICATIONS OF FIRST RESPOND-**
 3 **ERS.**

4 Nothing in this Act or the amendments made by this
 5 Act shall be construed to impede the Federal Communica-
 6 tions Commission from acting in times of emergency to
 7 ensure the availability of efficient and effective commu-
 8 nications systems—

9 (1) to alert the public to imminent dangerous
 10 weather conditions; or

11 (2) for State and local first responders.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Federal Communica-*
 14 *tions Commission Process Reform Act of 2015”.*

15 **SEC. 2. FCC PROCESS REFORM.**

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 23 *deletion of the rule.*

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 25 *plication for review’ means an application for review*

1 *filed under section 1.115 of title 47, Code of Federal*
 2 *Regulations, or any successor thereto.*

3 “(3) *BIPARTISAN MAJORITY.*—*The term ‘bipar-*
 4 *tisan majority’ means, when used with respect to a*
 5 *group of Commissioners, that the group—*

6 “(A) *is a group of 3 or more Commis-*
 7 *sioners; and*

8 “(B) *includes—*

9 “(i) *for each political party of which*
 10 *any Commissioner is a member, not less*
 11 *than 1 Commissioner who is a member of*
 12 *the political party; and*

13 “(ii) *if any Commissioner has no po-*
 14 *litical party affiliation, not less than 1 un-*
 15 *affiliated Commissioner.*

16 “(4) *PERFORMANCE MEASURE.*—*The term ‘per-*
 17 *formance measure’ means an objective and quantifi-*
 18 *able outcome measure or output measure (as those de-*
 19 *finied in section 1115 of title 31, United States Code).*

20 “(5) *ECONOMICALLY SIGNIFICANT IMPACT.*—*The*
 21 *term ‘economically significant impact’ means an ef-*
 22 *fect on the economy of \$100,000,000 or more annually*
 23 *or a material adverse effect on the economy, a sector*
 24 *of the economy, productivity, competition, jobs, the*

1 *environment, public health or safety, or State, local,*
 2 *or tribal governments or communities.*

3 “(6) *PETITION FOR DECLARATORY RULING.*—*The*
 4 *term ‘petition for declaratory ruling’ means a peti-*
 5 *tion for declaratory ruling filed under section 1.2 of*
 6 *title 47, Code of Federal Regulations, or any successor*
 7 *thereto.*

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 9 *term ‘petition for reconsideration’ means a petition*
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21 “(B) *includes any annual collection or dis-*
 22 *tribution or related series of collections or dis-*
 23 *tributions by the Commission of an amount not*
 24 *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

1 “(iii) petitions for forbearance filed
2 under section 10(c) of the Communications
3 Act of 1934 (47 U.S.C. 160(c));

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

7 “(C) establish policies regarding treatment
8 of comments, ex parte communications, and data
9 or reports (including statistical reports and re-
10 ports to Congress) submitted after a comment pe-
11 riod to ensure that the public has adequate no-
12 tice of and opportunity to respond to the submis-
13 sions before the Commission relies on the submis-
14 sions in any order, decision, report, or action;

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16 status of open rulemaking proceedings and pro-
17 posed orders, decisions, reports, or actions on cir-
18 culation for review by the Commissioners, in-
19 cluding which Commissioners have not cast a
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5 proposed rule or the proposed amendment of an
6 existing rule;

7 “(G) require each petition filed with the
8 Commission to be—

9 “(i) put out for public notice, subject to
10 the minimum comment and reply comment
11 periods established under subparagraph (A);
12 or

13 “(ii) disposed of pursuant to an order
14 of dismissal;

15 “(H) require each new notice of proposed
16 rulemaking or order adopting a rule or amend-
17 ing an existing rule that creates (or proposes to
18 create) a program activity to contain perform-
19 ance measures for evaluating the effectiveness of
20 the program activity;

21 “(I) require each notice of proposed rule-
22 making or order adopting a rule or amending an
23 existing rule that substantially changes (or pro-
24 poses to substantially change) a program activ-
25 ity to contain—

1 “(i) performance measures for evalu-
 2 ating the effectiveness of the program activ-
 3 ity as changed (or proposed to be changed);
 4 or

5 “(ii) a finding that existing perform-
 6 ance measures will effectively evaluate the
 7 program activity as changed (or proposed to
 8 be changed);

9 “(J) require each notice of proposed rule-
 10 making to include—

11 “(i) an identification of a notice of in-
 12 quiry, a prior notice of proposed rule-
 13 making, or a notice on a petition for rule-
 14 making, issued by the Commission during
 15 the 3-year period preceding the date on
 16 which the notice of proposed rulemaking
 17 concerned is issued and of which such notice
 18 is a logical outgrowth;

19 “(ii) an order of a court reviewing ac-
 20 tion by the Commission or otherwise direct-
 21 ing the Commission to act that the court
 22 issued during the 3-year period preceding
 23 the date on which the notice of proposed
 24 rulemaking concerned is issued and in re-

1 *sponse to which such notice is being issued;*
 2 *or*

3 *“(iii) a finding (together with a brief*
 4 *statement of reasons therefor)—*

5 *“(I) that the proposed rule or the*
 6 *proposed amendment of an existing*
 7 *rule will not impose additional bur-*
 8 *dens on industry or consumers; and*

9 *“(II) for good cause, that a notice*
 10 *of inquiry is impracticable, unneces-*
 11 *sary, or contrary to the public interest;*

12 *“(K) require each notice of proposed rule-*
 13 *making or order adopting a rule or amending an*
 14 *existing rule that may have an economically sig-*
 15 *nificant impact, to contain—*

16 *“(i) an identification and analysis of*
 17 *the specific market failure, actual consumer*
 18 *harm, burden of existing regulation, or fail-*
 19 *ure of public institutions that warrants the*
 20 *adoption or amendment; and*

21 *“(ii) a reasoned determination that the*
 22 *benefits of the adoption or amendment jus-*
 23 *tify the costs (recognizing that some benefits*
 24 *and costs are difficult to quantify), taking*
 25 *into account alternative forms of regulation*

1 *and the need to tailor regulation to impose*
 2 *the least burden on society, consistent with*
 3 *obtaining regulatory objectives;*

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

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

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

14 “(M) establish procedures for publishing the
 15 language of a rule or amendment of an existing
 16 rule for a period of not fewer than 21 days before
 17 the date on which a vote on the rule or amend-
 18 ment to an existing rule begins; and

19 “(N) establish procedures to, when pub-
 20 lishing an item adopted by the Commission,
 21 identify any changes made to the item after its
 22 adoption.

23 “(3) INQUIRY.—Not later than 1 year after the
 24 date of enactment of the Federal Communications
 25 Commission Process Reform Act of 2015, the Commis-

1 *sion shall complete an inquiry to seek public comment*
2 *on whether and how the Commission should—*

3 *“(A) establish procedures for informing all*
4 *Commissioners of a reasonable number of options*
5 *available to the Commission for resolving a peti-*
6 *tion, complaint, application, rulemaking, or*
7 *other proceeding;*

8 *“(B) establish procedures for ensuring that*
9 *all Commissioners have adequate time, prior to*
10 *being required to decide a petition, complaint,*
11 *application, rulemaking, or other proceeding (in-*
12 *cluding at a meeting held under section 5(d)), to*
13 *review the proposed Commission decision docu-*
14 *ment, including the specific language of any pro-*
15 *posed rule or any proposed amendment of an ex-*
16 *isting rule;*

17 *“(C) establish deadlines (relative to the date*
18 *of filing) for disposition of applications for a li-*
19 *cense under section 1.913 of title 47, Code of*
20 *Federal Regulations;*

21 *“(D) assign resources needed to meet the*
22 *deadlines described in subparagraph (C), includ-*
23 *ing whether the ability of the Commission to*
24 *meet those deadlines would be enhanced by as-*

1 *sessing a fee from applicants for a license de-*
 2 *scribed in subparagraph (C); and*

3 *“(E) publish each order, decision, report, or*
 4 *action not later than 30 days after the date of*
 5 *the adoption of the order, decision, report, or ac-*
 6 *tion.*

7 *“(4) DATA FOR PERFORMANCE MEASURES.—The*
 8 *Commission shall develop a performance measure or*
 9 *proposed performance measure required under this*
 10 *subsection to rely, where possible, on data already col-*
 11 *lected by the Commission.*

12 *“(c) PERIODIC REVIEW.—On the date that is 5 years*
 13 *after the completion of the rulemaking proceeding under*
 14 *subsection (b)(1), and every 5 years thereafter, the Commis-*
 15 *sion shall initiate a new rulemaking proceeding to continue*
 16 *to consider any procedural changes to the rules of the Com-*
 17 *mission that may be in the public interest to maximize op-*
 18 *portunities for public participation and efficient decision-*
 19 *making.*

20 *“(d) NONPUBLIC COLLABORATIVE DISCUSSIONS.—*

21 *“(1) IN GENERAL.—Notwithstanding section*
 22 *552b of title 5, United States Code, a bipartisan ma-*
 23 *jority of Commissioners may hold a meeting that is*
 24 *closed to the public to discuss official business if—*

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

3 “(B) each person present at the meeting is
4 a Commissioner, an employee of the Commission,
5 a member of a joint board or conference estab-
6 lished under section 410, or a person on the staff
7 of such a joint board or conference or of a mem-
8 ber of such a joint board or conference; and

9 “(C) an attorney from the Office of General
10 Counsel of the Commission is present at the
11 meeting.

12 “(2) *DISCLOSURE OF NONPUBLIC COLLABO-*
13 *RATIVE DISCUSSIONS.*—Not later than 2 business days
14 after the conclusion of a meeting held under para-
15 graph (1), the Commission shall publish a disclosure
16 of the meeting, including—

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

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

23 “(3) *PRESERVATION OF OPEN MEETINGS RE-*
24 *QUIREMENTS FOR AGENCY ACTION.*—Nothing in this
25 subsection shall limit the applicability of section 552b

1 *of title 5, United States Code, with respect to a meet-*
 2 *ing of Commissioners other than that described in*
 3 *paragraph (1).*

4 “(e) *ACCESS TO CERTAIN INFORMATION ON COMMIS-*
 5 *SION’S WEBSITE.—The Commission shall provide direct ac-*
 6 *cess from the homepage of the website of the Commission*
 7 *to—*

8 “(1) *detailed information regarding—*

9 “(A) *the budget of the Commission for the*
 10 *current fiscal year;*

11 “(B) *the appropriations for the Commission*
 12 *for the current fiscal year; and*

13 “(C) *the total number of full-time equiva-*
 14 *lent employees of the Commission; and*

15 “(2) *the performance plan most recently made*
 16 *available by the Commission under section 1115(b) of*
 17 *title 31, United States Code.*

18 “(f) *FEDERAL REGISTER PUBLICATION.—*

19 “(1) *IN GENERAL.—In the case of any document*
 20 *adopted by the Commission that the Commission is*
 21 *required, under any provision of law, to publish in*
 22 *the Federal Register, the Commission shall, not later*
 23 *than the date described in paragraph (2), complete all*
 24 *Commission actions necessary for the document to be*
 25 *so published.*

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

3 “(A) *the date that is 60 days after the date*
 4 *of the release of the document described in para-*
 5 *graph (1); or*

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

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

12 “(A) *IN GENERAL.*—*In the case of a dead-*
 13 *line that does not specify that the form of publi-*
 14 *cation is publication in the Federal Register, the*
 15 *Commission may comply with the deadline by*
 16 *publishing the document in another form.*

17 “(B) *APPLICABILITY OF FEDERAL REGISTER*
 18 *PUBLICATION REQUIREMENTS.*—*Publication of a*
 19 *document in another form as described in sub-*
 20 *paragraph (A) shall not relieve the Commission*
 21 *of any Federal Register publication requirement*
 22 *applicable to the document, including the re-*
 23 *quirement under paragraph (1).*

24 “(g) *FORM OF PUBLICATION.*—

1 “(1) *IN GENERAL.*—*In complying with a re-*
 2 *quirement under this section to publish a document,*
 3 *the Commission shall publish the document on the*
 4 *website of the Commission, in addition to publishing*
 5 *the document in any other form that the Commission*
 6 *is required to use or is permitted to and chooses to*
 7 *use.*

8 “(2) *EXCEPTION.*—*The Commission shall by rule*
 9 *establish procedures for redacting documents required*
 10 *to be published under this section so that the pub-*
 11 *lished versions of the documents do not contain—*

12 “(A) *information the publication of which*
 13 *would be detrimental to national security, home-*
 14 *land security, law enforcement, or public safety;*
 15 *or*

16 “(B) *information that is proprietary or*
 17 *confidential.*

18 “(h) *TRANSPARENCY RELATING TO PERFORMANCE IN*
 19 *MEETING FOIA REQUIREMENTS.*—*The Commission shall*
 20 *take additional steps to inform the public about the per-*
 21 *formance and efficiency of the Commission in meeting the*
 22 *disclosure and other requirements under section 552 of title*
 23 *5, United States Code (commonly referred to as the ‘Free-*
 24 *dom of Information Act’), including by—*

1 “(1) publishing on the website of the Commission
2 the logs used by the Commission for tracking, re-
3 sponding to, and managing requests submitted under
4 such section, including the Commission’s fee esti-
5 mates, fee categories, and fee request determinations;

6 “(2) releasing to the public all decisions made by
7 the Commission (including decisions made by the Bu-
8 reaus and Offices of the Commission) granting or de-
9 nying requests filed under such section, including any
10 such decisions pertaining to the estimate and applica-
11 tion of fees assessed under such section;

12 “(3) publishing on the website of the Commission
13 electronic copies of documents released under such sec-
14 tion; and

15 “(4) presenting, in the annual budget estimates
16 of the Commission submitted to Congress and the an-
17 nual performance and financial reports of the Com-
18 mission, information about the handling by the Com-
19 mission of requests under such section, including—

20 “(A) the number of requests under such sec-
21 tion the Commission received during the most re-
22 cent fiscal year;

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

1 “(C) a comparison of the processing of re-
 2 quests described in subparagraph (A) by the
 3 Commission during a period of not less than the
 4 3 preceding fiscal years; and

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

10 “(i) *PROMPT RELEASE OF STATISTICAL REPORTS AND*
 11 *REPORTS TO CONGRESS.*—Not later than January 15 of
 12 each year, the Commission shall identify, catalog, and pub-
 13 lish an anticipated release schedule for all statistical reports
 14 and reports to Congress that are regularly or intermittently
 15 released by the Commission and will be released during the
 16 year.

17 “(j) *ANNUAL SCORE CARD REPORTS.*—

18 “(1) *IN GENERAL.*—For the 1-year period begin-
 19 ning on January 1 of each year, the Commission
 20 shall prepare a report on the performance of the Com-
 21 mission in conducting proceedings and meeting the
 22 guidelines established under subsection (b)(2)(E).

23 “(2) *CONTENTS.*—Each report required under
 24 paragraph (1) shall contain detailed statistics on the
 25 performance of the Commission as described in para-

1 *graph (1), including, with respect to each bureau or*
 2 *office of the Commission—*

3 “(A) *with respect to each type of filing spec-*
 4 *ified in subsection (b)(2)(E)—*

5 “(i) *the number of filings that were*
 6 *pending on the last day of the period cov-*
 7 *ered by the report;*

8 “(ii) *the number of filings described in*
 9 *clause (i) for which each applicable deadline*
 10 *or guideline established under such sub-*
 11 *section was not met and the average length*
 12 *of time those filings have been pending; and*

13 “(iii) *for filings that were resolved dur-*
 14 *ing the period covered by the report, the av-*
 15 *erage time between initiation and resolution*
 16 *and the percentage for which each applica-*
 17 *ble deadline or guideline established under*
 18 *such subsection was met;*

19 “(B) *with respect to proceedings before an*
 20 *administrative law judge—*

21 “(i) *the number of proceedings com-*
 22 *pleted during the period covered by the re-*
 23 *port; and*

1 “(ii) the number of proceedings pend-
 2 ing on the last day of the period covered by
 3 the report; and

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

7 “(3) *PUBLICATION AND SUBMISSION.*—The Com-
 8 mission shall publish and submit to the Committee on
 9 Energy and Commerce of the House of Representa-
 10 tives and the Committee on Commerce Science, and
 11 Transportation of the Senate each report required
 12 under paragraph (1) not later than the date that is
 13 30 days after the last day of the period covered by the
 14 report.”.

15 (b) *EFFECTIVE DATES AND IMPLEMENTING RULES.*—

16 (1) *EFFECTIVE DATES.*—

17 (A) *NONPUBLIC COLLABORATIVE DISCUS-*
 18 *SIONS.*—Subsection (d) of section 13 of the Com-
 19 munications Act of 1934, as added by subsection
 20 (a), shall apply beginning on the first date on
 21 which all of the procedural changes to the rules
 22 of the Federal Communications Commission re-
 23 quired under subsection (b)(1) of such section
 24 have taken effect.

1 (B) *SCHEDULES AND REPORTS.*—Sub-
 2 section (j) of section 13 of the Communications
 3 Act of 1934, as added by subsection (a), shall
 4 apply with respect to 2015 and any year there-
 5 after.

6 (2) *RULES.*—Except as otherwise provided in
 7 section 13 of the Communications Act of 1934, as
 8 added by subsection (a), the Federal Communications
 9 Commission shall promulgate any rules necessary to
 10 carry out such section not later than 1 year after the
 11 date of enactment of this Act.

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

14 In compiling its quarterly report with respect to infor-
 15 mal consumer inquiries and complaints, the Federal Com-
 16 munications Commission may not categorize an inquiry or
 17 complaint with respect to section 227 of the Communica-
 18 tions Act of 1934 (47 U.S.C. 227) as being a wireline in-
 19 quiry or complaint or a wireless inquiry or complaint un-
 20 less the party whose conduct is the subject of the inquiry
 21 or complaint is a wireline carrier or a wireless carrier, re-
 22 spectively.

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

24 Nothing in this Act or the amendments made by this
 25 Act shall relieve the Federal Communications Commission

1 *from any obligations under title 5, United States Code, ex-*
2 *cept where otherwise expressly provided.*

3 **SEC. 5. PROVISION OF EMERGENCY WEATHER INFORMA-**
4 **TION; COMMUNICATIONS OF FIRST RESPOND-**
5 **ERS.**

6 *Nothing in this Act or the amendments made by this*
7 *Act shall be construed to impede the Federal Communica-*
8 *tions Commission from acting in times of emergency to en-*
9 *sure the availability of efficient and effective communica-*
10 *tions systems—*

11 *(1) to alert the public to imminent dangerous*
12 *weather conditions; or*

13 *(2) for State and local first responders.*

Calendar No. 699

114TH CONGRESS
2D Session

S. 421

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.

DECEMBER 6, 2016

Reported with an amendment