

112TH CONGRESS
2^D SESSION

H. R. 3309

IN THE SENATE OF THE UNITED STATES

MARCH 28, 2012

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

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

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 2012”.

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 inserting
7 after section 12 the following new section:

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

9 “(a) RULEMAKING REQUIREMENTS.—

10 “(1) REQUIREMENTS FOR NOTICES OF PRO-
11 POSED RULEMAKING.—The Commission may not
12 issue a notice of proposed rulemaking unless the
13 Commission provides for a period of not less than 30
14 days for the submission of comments and an addi-
15 tional period of not less than 30 days for the sub-
16 mission of reply comments on such notice and the
17 Commission includes in such notice the following:

18 “(A) Either—

19 “(i) an identification of—

20 “(I) a notice of inquiry, a prior
21 notice of proposed rulemaking, or a
22 notice on a petition for rulemaking
23 issued by the Commission during the
24 3-year period preceding the issuance
25 of the notice of proposed rulemaking

1 concerned and of which such notice is
2 a logical outgrowth; or

3 “(II) an order of a court review-
4 ing action by the Commission or oth-
5 erwise directing the Commission to
6 act that was issued by the court dur-
7 ing the 3-year period preceding the
8 issuance of the notice of proposed
9 rulemaking concerned and in response
10 to which such notice is being issued;
11 or

12 “(ii) a finding (together with a brief
13 statement of reasons therefor)—

14 “(I) that the proposed rule or the
15 proposed amendment of an existing
16 rule will not impose additional bur-
17 dens on industry or consumers; or

18 “(II) for good cause, that a no-
19 tice of inquiry is impracticable, unnec-
20 essary, or contrary to the public inter-
21 est.

22 “(B) The specific language of the proposed
23 rule or the proposed amendment of an existing
24 rule.

1 “(C) In the case of a proposal to create a
2 program activity, proposed performance meas-
3 ures for evaluating the effectiveness of the pro-
4 gram activity.

5 “(D) In the case of a proposal to substan-
6 tially change a program activity—

7 “(i) proposed performance measures
8 for evaluating the effectiveness of the pro-
9 gram activity as proposed to be changed;
10 or

11 “(ii) a proposed finding that existing
12 performance measures will effectively
13 evaluate the program activity as proposed
14 to be changed.

15 “(2) REQUIREMENTS FOR RULES.—Except as
16 provided in the 3rd sentence of section 553(b) of
17 title 5, United States Code, the Commission may not
18 adopt or amend a rule unless—

19 “(A) the specific language of the adopted
20 rule or the amendment of an existing rule is a
21 logical outgrowth of the specific language of a
22 proposed rule or a proposed amendment of an
23 existing rule included in a notice of proposed
24 rulemaking, as described in subparagraph (B)
25 of paragraph (1);

1 “(B) such notice of proposed rulemaking—

2 “(i) was issued in compliance with
3 such paragraph and during the 3-year pe-
4 riod preceding the adoption of the rule or
5 the amendment of an existing rule; and

6 “(ii) is identified in the order making
7 the adoption or amendment;

8 “(C) in the case of the adoption of a rule
9 or the amendment of an existing rule that may
10 have an economically significant impact, the
11 order contains—

12 “(i) an identification and analysis of
13 the specific market failure, actual con-
14 sumer harm, burden of existing regulation,
15 or failure of public institutions that war-
16 rants the adoption or amendment; and

17 “(ii) a reasoned determination that
18 the benefits of the adopted rule or the
19 amendment of an existing rule justify its
20 costs (recognizing that some benefits and
21 costs are difficult to quantify), taking into
22 account alternative forms of regulation and
23 the need to tailor regulation to impose the
24 least burden on society, consistent with ob-
25 taining regulatory objectives;

1 “(D) in the case of the adoption of a rule
2 or the amendment of an existing rule that cre-
3 ates a program activity, the order contains per-
4 formance measures for evaluating the effective-
5 ness of the program activity; and

6 “(E) in the case of the adoption of a rule
7 or the amendment of an existing rule that sub-
8 stantially changes a program activity, the order
9 contains—

10 “(i) performance measures for evalu-
11 ating the effectiveness of the program ac-
12 tivity as changed; or

13 “(ii) a finding that existing perform-
14 ance measures will effectively evaluate the
15 program activity as changed.

16 “(3) DATA FOR PERFORMANCE MEASURES.—
17 The Commission shall develop a performance meas-
18 ure or proposed performance measure required by
19 this subsection to rely, where possible, on data al-
20 ready collected by the Commission.

21 “(b) ADEQUATE DELIBERATION BY COMMIS-
22 SIONERS.—The Commission shall by rule establish proce-
23 dures for—

24 “(1) informing all Commissioners of a reason-
25 able number of options available to the Commission

1 for resolving a petition, complaint, application, rule-
2 making, or other proceeding;

3 “(2) ensuring that all Commissioners have ade-
4 quate time, prior to being required to decide a peti-
5 tion, complaint, application, rulemaking, or other
6 proceeding (including at a meeting held pursuant to
7 section 5(d)), to review the proposed Commission de-
8 cision document, including the specific language of
9 any proposed rule or any proposed amendment of an
10 existing rule; and

11 “(3) publishing the text of agenda items to be
12 voted on at an open meeting in advance of such
13 meeting so that the public has the opportunity to
14 read the text before a vote is taken.

15 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

16 “(1) IN GENERAL.—Notwithstanding section
17 552b of title 5, United States Code, a bipartisan
18 majority of Commissioners may hold a meeting that
19 is closed to the public to discuss official business
20 if—

21 “(A) a vote or any other agency action is
22 not taken at such meeting;

23 “(B) each person present at such meeting
24 is a Commissioner, an employee of the Commis-
25 sion, a member of a joint board established

1 under section 410, or a person on the staff of
2 such a joint board; and

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

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

11 “(A) a list of the persons who attended
12 such meeting; and

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

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

23 “(d) INITIATION OF ITEMS BY BIPARTISAN MAJOR-
24 ITY.—The Commission shall by rule establish procedures
25 for allowing a bipartisan majority of Commissioners to—

1 “(1) direct Commission staff to draft an order,
2 decision, report, or action for review by the Commis-
3 sion;

4 “(2) require Commission approval of an order,
5 decision, report, or action with respect to a function
6 of the Commission delegated under section 5(c)(1);
7 and

8 “(3) place an order, decision, report, or action
9 on the agenda of an open meeting.

10 “(e) PUBLIC REVIEW OF CERTAIN REPORTS AND EX
11 PARTE COMMUNICATIONS.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), the Commission may not rely, in any
14 order, decision, report, or action, on—

15 “(A) a statistical report or report to Con-
16 gress, unless the Commission has published and
17 made such report available for comment for not
18 less than a 30-day period prior to the adoption
19 of such order, decision, report, or action; or

20 “(B) an ex parte communication or any fil-
21 ing with the Commission, unless the public has
22 been afforded adequate notice of and oppor-
23 tunity to respond to such communication or fil-
24 ing, in accordance with procedures to be estab-
25 lished by the Commission by rule.

1 “(2) EXCEPTION.—Paragraph (1) does not
2 apply when the Commission for good cause finds
3 (and incorporates the finding and a brief statement
4 of reasons therefor in the order, decision, report, or
5 action) that publication or availability of a report
6 under subparagraph (A) of such paragraph or notice
7 of and opportunity to respond to an ex parte com-
8 munication under subparagraph (B) of such para-
9 graph are impracticable, unnecessary, or contrary to
10 the public interest.

11 “(f) PUBLICATION OF STATUS OF CERTAIN PRO-
12 CEEDINGS AND ITEMS.—The Commission shall by rule es-
13 tablish procedures for publishing the status of all open
14 rulemaking proceedings and all proposed orders, decisions,
15 reports, or actions on circulation for review by the Com-
16 missioners, including which Commissioners have not cast
17 a vote on an order, decision, report, or action that has
18 been on circulation for more than 60 days.

19 “(g) DEADLINES FOR ACTION.—The Commission
20 shall by rule establish deadlines for any Commission order,
21 decision, report, or action for each of the various cat-
22 egories of petitions, applications, complaints, and other fil-
23 ings seeking Commission action, including filings seeking
24 action through authority delegated under section 5(c)(1).

1 “(h) PROMPT RELEASE OF CERTAIN REPORTS AND
2 DECISION DOCUMENTS.—

3 “(1) STATISTICAL REPORTS AND REPORTS TO
4 CONGRESS.—

5 “(A) RELEASE SCHEDULE.—Not later
6 than January 15th of each year, the Commis-
7 sion shall identify, catalog, and publish an an-
8 ticipated release schedule for all statistical re-
9 ports and reports to Congress that are regularly
10 or intermittently released by the Commission
11 and will be released during such year.

12 “(B) PUBLICATION DEADLINES.—The
13 Commission shall publish each report identified
14 in a schedule published under subparagraph (A)
15 not later than the date indicated in such sched-
16 ule for the anticipated release of such report.

17 “(2) DECISION DOCUMENTS.—The Commission
18 shall publish each order, decision, report, or action
19 not later than 7 days after the date of the adoption
20 of such order, decision, report, or action.

21 “(3) EFFECT IF DEADLINES NOT MET.—

22 “(A) NOTIFICATION OF CONGRESS.—If the
23 Commission fails to publish an order, decision,
24 report, or action by a deadline described in
25 paragraph (1)(B) or (2), the Commission shall,

1 not later than 7 days after such deadline and
2 every 14 days thereafter until the publication of
3 the order, decision, report, or action, notify by
4 letter the chairpersons and ranking members of
5 the Committee on Energy and Commerce of the
6 House of Representatives and the Committee
7 on Commerce, Science, and Transportation of
8 the Senate. Such letter shall identify such
9 order, decision, report, or action, specify the
10 deadline, and describe the reason for the delay.
11 The Commission shall publish such letter.

12 “(B) NO IMPACT ON EFFECTIVENESS.—
13 The failure of the Commission to publish an
14 order, decision, report, or action by a deadline
15 described in paragraph (1)(B) or (2) shall not
16 render such order, decision, report, or action in-
17 effective when published.

18 “(i) BIENNIAL SCORECARD REPORTS.—

19 “(1) IN GENERAL.—For the 6-month period be-
20 ginning on January 1st of each year and the 6-
21 month period beginning on July 1st of each year,
22 the Commission shall prepare a report on the per-
23 formance of the Commission in conducting its pro-
24 ceedings and meeting the deadlines established
25 under subsections (g), (h)(1)(B), and (h)(2).

1 “(2) CONTENTS.—Each report required by
2 paragraph (1) shall contain detailed statistics on
3 such performance, including, with respect to each
4 Bureau of the Commission—

5 “(A) in the case of performance in meeting
6 the deadlines established under subsection (g),
7 with respect to each category established under
8 such subsection—

9 “(i) the number of petitions, applica-
10 tions, complaints, and other filings seeking
11 Commission action that were pending on
12 the last day of the period covered by such
13 report;

14 “(ii) the number of filings described
15 in clause (i) that were not resolved by the
16 deadlines established under such sub-
17 section and the average length of time
18 such filings have been pending; and

19 “(iii) for petitions, applications, com-
20 plaints, and other filings seeking Commis-
21 sion action that were resolved during such
22 period, the average time between initiation
23 and resolution and the percentage resolved
24 by the deadlines established under such
25 subsection;

1 “(B) in the case of proceedings before an
2 administrative law judge—

3 “(i) the number of such proceedings
4 completed during such period; and

5 “(ii) the number of such proceedings
6 pending on the last day of such period; and

7 “(C) the number of independent studies or
8 analyses published by the Commission during
9 such period.

10 “(3) PUBLICATION AND SUBMISSION.—The
11 Commission shall publish and submit to the Com-
12 mittee on Energy and Commerce of the House of
13 Representatives and the Committee on Commerce,
14 Science, and Transportation of the Senate each re-
15 port required by paragraph (1) not later than the
16 date that is 30 days after the last day of the period
17 covered by such report.

18 “(j) TRANSACTION REVIEW STANDARDS.—

19 “(1) IN GENERAL.—The Commission shall con-
20 dition its approval of a transfer of lines, a transfer
21 of licenses, or any other transaction under section
22 214, 309, or 310 or any other provision of this Act
23 only if—

24 “(A) the imposed condition is narrowly tai-
25 lored to remedy a harm that arises as a direct

1 result of the specific transfer or specific trans-
2 action that this Act empowers the Commission
3 to review; and

4 “(B) the Commission could impose a simi-
5 lar requirement under the authority of a spe-
6 cific provision of law other than a provision em-
7 powering the Commission to review a transfer
8 of lines, a transfer of licenses, or other trans-
9 action.

10 “(2) EXCLUSIONS.—In reviewing a transfer of
11 lines, a transfer of licenses, or any other transaction
12 under section 214, 309, or 310 or any other provi-
13 sion of this Act, the Commission may not consider
14 a voluntary commitment of a party to such transfer
15 or transaction unless the Commission could adopt
16 that voluntary commitment as a condition under
17 paragraph (1).

18 “(k) ACCESS TO CERTAIN INFORMATION ON COMMIS-
19 SION’S WEBSITE.—The Commission shall provide direct
20 access from the homepage of its website to—

21 “(1) detailed information regarding—

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

24 “(B) the appropriations for the Commis-
25 sion for such fiscal year; and

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

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

6 “(1) FEDERAL REGISTER PUBLICATION.—

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

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

16 “(A) the day that is 45 days after the date
17 of the release of the document; or

18 “(B) the day by which such actions must
19 be completed to comply with any deadline under
20 any other provision of law.

21 “(3) NO EFFECT ON DEADLINES FOR PUBLICA-
22 TION IN OTHER FORM.—In the case of a deadline
23 that does not specify that the form of publication is
24 publication in the Federal Register, the Commission
25 may comply with such deadline by publishing the

1 document in another form. Such other form of publi-
2 cation does not relieve the Commission of any Fed-
3 eral Register publication requirement applicable to
4 such document, including the requirement of para-
5 graph (1).

6 “(m) CONSUMER COMPLAINT DATABASE.—

7 “(1) IN GENERAL.—In evaluating and proc-
8 essing consumer complaints, the Commission shall
9 present information about such complaints in a pub-
10 licly available, searchable database on its website
11 that—

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

13 “(B) to the extent practicable, is sortable
14 and accessible by—

15 “(i) the date of the filing of the com-
16 plaint;

17 “(ii) the topic of the complaint;

18 “(iii) the party complained of; and

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

21 “(2) DUPLICATIVE COMPLAINTS.—In the case
22 of multiple complaints arising from the same alleged
23 misconduct, the Commission shall be required to in-
24 clude only information concerning one such com-
25 plaint in the database described in paragraph (1).

1 “(n) FORM OF PUBLICATION.—

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

8 “(2) EXCEPTION.—The Commission shall by
9 rule establish procedures for redacting documents
10 required to be published by this section so that the
11 published versions of such documents do not con-
12 tain—

13 “(A) information the publication of which
14 would be detrimental to national security,
15 homeland security, law enforcement, or public
16 safety; or

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

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

1 “(1) Publishing on the Commission’s website
2 the Commission’s logs for tracking, responding to,
3 and managing requests submitted under such sec-
4 tion, including the Commission’s fee estimates, fee
5 categories, and fee request determinations.

6 “(2) Releasing to the public all decisions made
7 by the Commission (including decisions made by the
8 Commission’s Bureaus and Offices) granting or de-
9 nying requests filed under such section, including
10 any such decisions pertaining to the estimate and
11 application of fees assessed under such section.

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

15 “(4) Presenting information about the Commis-
16 sion’s handling of requests under such section in the
17 Commission’s annual budget estimates submitted to
18 Congress and the Commission’s annual performance
19 and financial reports. Such information shall include
20 the number of requests under such section the Com-
21 mission received in the most recent fiscal year, the
22 number of such requests granted and denied, a com-
23 parison of the Commission’s processing of such re-
24 quests over at least the previous 3 fiscal years, and
25 a comparison of the Commission’s results with the

1 most recent average for the United States Govern-
2 ment as published on www.foia.gov.

3 “(p) DEFINITIONS.—In this section:

4 “(1) AMENDMENT.—The term ‘amendment’ in-
5 cludes, when used with respect to an existing rule,
6 the deletion of such rule.

7 “(2) BIPARTISAN MAJORITY.—The term ‘bipar-
8 tisan majority’ means, when used with respect to a
9 group of Commissioners, that such group—

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

12 “(B) includes, for each political party of
13 which any Commissioner is a member, at least
14 1 Commissioner who is a member of such polit-
15 ical party, and, if any Commissioner has no po-
16 litical party affiliation, at least 1 unaffiliated
17 Commissioner.

18 “(3) ECONOMICALLY SIGNIFICANT IMPACT.—
19 The term ‘economically significant impact’ means an
20 effect on the economy of \$100,000,000 or more an-
21 nually or a material adverse effect on the economy,
22 a sector of the economy, productivity, competition,
23 jobs, the environment, public health or safety, or
24 State, local, or tribal governments or communities.

1 “(4) PERFORMANCE MEASURE.—The term ‘per-
2 formance measure’ means an objective and quantifi-
3 able outcome measure or output measure (as such
4 terms are defined in section 1115 of title 31, United
5 States Code).

6 “(5) PROGRAM ACTIVITY.—The term ‘program
7 activity’ has the meaning given such term in section
8 1115 of title 31, United States Code, except that
9 such term also includes any annual collection or dis-
10 tribution or related series of collections or distribu-
11 tions by the Commission of an amount that is great-
12 er than or equal to \$100,000,000.

13 “(6) OTHER DEFINITIONS.—The terms ‘agency
14 action’, ‘ex parte communication’, and ‘rule’ have
15 the meanings given such terms in section 551 of title
16 5, United States Code.”.

17 (b) EFFECTIVE DATE AND IMPLEMENTING RULES.—

18 (1) EFFECTIVE DATE.—

19 (A) IN GENERAL.—The requirements of
20 section 13 of the Communications Act of 1934,
21 as added by subsection (a), shall apply begin-
22 ning on the date that is 6 months after the date
23 of the enactment of this Act.

24 (B) PRIOR NOTICES OF PROPOSED RULE-
25 MAKING.—If the Federal Communications Com-

1 mission identifies under paragraph (2)(B)(ii) of
2 subsection (a) of such section 13 a notice of
3 proposed rulemaking issued prior to the date of
4 the enactment of this Act—

5 (i) such notice shall be deemed to
6 have complied with paragraph (1) of such
7 subsection; and

8 (ii) if such notice did not contain the
9 specific language of a proposed rule or a
10 proposed amendment of an existing rule,
11 paragraph (2)(A) of such subsection shall
12 be satisfied if the adopted rule or the
13 amendment of an existing rule is a logical
14 outgrowth of such notice.

15 (C) SCHEDULES AND REPORTS.—Notwith-
16 standing subparagraph (A), subsections (h)(1)
17 and (i) of such section shall apply with respect
18 to 2013 and any year thereafter.

19 (2) RULES.—The Federal Communications
20 Commission shall promulgate the rules necessary to
21 carry out such section not later than 1 year after
22 the date of the enactment of this Act.

23 (3) PROCEDURES FOR ADOPTING RULES.—Not-
24 withstanding paragraph (1)(A), in promulgating
25 rules to carry out such section, the Federal Commu-

1 Act, shall be construed to impede the Federal Communica-
2 tions Commission from acting in times of emergency to
3 ensure the availability of efficient and effective commu-
4 nications systems for State and local first responders.

5 **SEC. 6. EFFECT ON OTHER LAWS.**

6 Nothing in this Act or the amendment made by this
7 Act shall relieve the Federal Communications Commission
8 from any obligations under title 5, United States Code,
9 except where otherwise expressly provided.

Passed the House of Representatives March 27,
2012.

Attest:

KAREN L. HAAS,

Clerk.