

115TH CONGRESS
1ST SESSION

H. R. 290

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 HOUSE OF REPRESENTATIVES

JANUARY 4, 2017

Mr. WALDEN (for himself and Mr. KINZINGER) introduced the following bill;
which was referred to the Committee on Energy and Commerce

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 2017”.

1 **SEC. 2. FEDERAL COMMUNICATIONS COMMISSION PROC-**
2 **ESS REFORM.**

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

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

7 “(a) INITIAL RULEMAKING AND INQUIRY.—

8 “(1) RULEMAKING.—Not later than 1 year
9 after the date of the enactment of this section, the
10 Commission shall complete a rulemaking proceeding
11 and adopt procedural changes to its rules to maxi-
12 mize opportunities for public participation and effi-
13 cient decisionmaking.

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

16 “(A) set minimum comment periods for
17 comment and reply comment, subject to a de-
18 termination by the Commission that good cause
19 exists for departing from such minimum com-
20 ment periods, for—

21 “(i) significant regulatory actions, as
22 defined in Executive Order No. 12866; and

23 “(ii) all other rulemaking proceedings;

24 “(B) establish policies concerning the sub-
25 mission of extensive new comments, data, or re-
26 ports towards the end of the comment period;

1 “(C) establish policies regarding treatment
2 of comments, ex parte communications, and
3 data or reports (including statistical reports
4 and reports to Congress) submitted after the
5 comment period to ensure that the public has
6 adequate notice of and opportunity to respond
7 to such submissions before the Commission re-
8 lies on such submissions in any order, decision,
9 report, or action;

10 “(D) establish procedures for, not later
11 than 14 days after the end of each quarter of
12 a calendar year (or more frequently, as the
13 Commission considers appropriate), publishing
14 on the Internet website of the Commission and
15 submitting to Congress a report that contains—

16 “(i) the status of open rulemaking
17 proceedings and proposed orders, decisions,
18 reports, or actions on circulation for review
19 by the Commissioners, including which
20 Commissioners have not cast a vote on an
21 order, decision, report, or action that has
22 been on circulation for more than 60 days;

23 “(ii) for the petitions, applications,
24 complaints, and other requests for action
25 by the Commission that were pending at

1 the Commission on the last day of such
2 quarter (or more frequent period, as the
3 case may be)—

4 “(I) the number of such requests,
5 broken down by the bureau primarily
6 responsible for action and, for each
7 bureau, the type of request (such as a
8 petition, application, or complaint);
9 and

10 “(II) information regarding the
11 amount of time for which such re-
12 quests have been pending, broken
13 down as described in subclause (I);
14 and

15 “(iii) a list of the congressional inves-
16 tigation of the Commission that were
17 pending on the last day of such quarter (or
18 more frequent period, as the case may be)
19 and the cost of such investigations, individ-
20 ually and in the aggregate;

21 “(E) establish deadlines (relative to the
22 date of filing) for—

23 “(i) in the case of a petition for a de-
24 claratory ruling under section 1.2 of title

1 47, Code of Federal Regulations, issuing a
2 public notice of such petition;

3 “(ii) in the case of a petition for rule-
4 making under section 1.401 of such title,
5 issuing a public notice of such petition;
6 and

7 “(iii) in the case of a petition for re-
8 consideration under section 1.106 or 1.429
9 of such title or an application for review
10 under section 1.115 of such title, issuing a
11 public notice of a decision on the petition
12 or application by the Commission or under
13 delegated authority (as the case may be);

14 “(F) establish guidelines (relative to the
15 date of filing) for the disposition of petitions
16 filed under section 1.2 of such title;

17 “(G) establish procedures for the inclusion
18 of the specific language of the proposed rule or
19 the proposed amendment of an existing rule in
20 a notice of proposed rulemaking; and

21 “(H) require notices of proposed rule-
22 making and orders adopting a rule or amending
23 an existing rule that—

24 “(i) create (or propose to create) a
25 program activity to contain performance

1 measures for evaluating the effectiveness of
2 the program activity; and

3 “(ii) substantially change (or propose
4 to substantially change) a program activity
5 to contain—

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

10 “(II) a finding that existing per-
11 formance measures will effectively
12 evaluate the program activity as
13 changed (or proposed to be changed).

14 “(3) INQUIRY.—Not later than 1 year after the
15 date of the enactment of this section, the Commis-
16 sion shall complete an inquiry to seek public com-
17 ment on whether and how the Commission should—

18 “(A) establish procedures for allowing a bi-
19 partisan majority of Commissioners to place an
20 order, decision, report, or action on the agenda
21 of an open meeting;

22 “(B) establish procedures for informing all
23 Commissioners of a reasonable number of op-
24 tions available to the Commission for resolving

1 a petition, complaint, application, rulemaking,
2 or other proceeding;

3 “(C) establish procedures for ensuring that
4 all Commissioners have adequate time, prior to
5 being required to decide a petition, complaint,
6 application, rulemaking, or other proceeding
7 (including at a meeting held pursuant to section
8 5(d)), to review the proposed Commission deci-
9 sion document, including the specific language
10 of any proposed rule or any proposed amend-
11 ment of an existing rule;

12 “(D) establish procedures for publishing
13 the text of agenda items to be voted on at an
14 open meeting in advance of such meeting so
15 that the public has the opportunity to read the
16 text before a vote is taken;

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

21 “(F) assign resources needed in order to
22 meet the deadlines described in subparagraph
23 (E), including whether the Commission’s ability
24 to meet such deadlines would be enhanced by

1 assessing a fee from applicants for such a li-
2 cense; and

3 “(G) except as otherwise provided in sec-
4 tion 4(p), publish each order, decision, report,
5 or action not later than 30 days after the date
6 of the adoption of such order, decision, report,
7 or action.

8 “(4) DATA FOR PERFORMANCE MEASURES.—
9 The Commission shall develop a performance meas-
10 ure or proposed performance measure required by
11 this subsection to rely, where possible, on data al-
12 ready collected by the Commission.

13 “(5) GAO AUDIT.—Not less frequently than
14 every 6 months, the Comptroller General of the
15 United States shall audit the cost estimates provided
16 by the Commission under paragraph (2)(D)(iii) dur-
17 ing the preceding 6-month period.

18 “(b) PERIODIC REVIEW.—On the date that is 5 years
19 after the completion of the rulemaking proceeding under
20 subsection (a)(1), and every 5 years thereafter, the Com-
21 mission shall initiate a new rulemaking proceeding to con-
22 tinue to consider such procedural changes to its rules as
23 may be in the public interest to maximize opportunities
24 for public participation and efficient decisionmaking.

25 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

1 “(1) IN GENERAL.—Notwithstanding section
2 552b of title 5, United States Code, a bipartisan
3 majority of Commissioners may hold a meeting that
4 is closed to the public to discuss official business
5 if—

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

8 “(B) each person present at such meeting
9 is a Commissioner, an employee of the Commis-
10 sion, a member of a joint board or conference
11 established under section 410, or a person on
12 the staff of such a joint board or conference or
13 of a member of such a joint board or con-
14 ference; and

15 “(C) an attorney from the Office of Gen-
16 eral Counsel of the Commission is present at
17 such meeting.

18 “(2) DISCLOSURE OF NONPUBLIC COLLABO-
19 RATIVE DISCUSSIONS.—Not later than 2 business
20 days after the conclusion of a meeting held under
21 paragraph (1), the Commission shall publish a dis-
22 closure of such meeting, including—

23 “(A) a list of the persons who attended
24 such meeting; and

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

5 “(3) PRESERVATION OF OPEN MEETINGS RE-
6 QUIREMENTS FOR AGENCY ACTION.—Nothing in this
7 subsection shall limit the applicability of section
8 552b of title 5, United States Code, with respect to
9 a meeting of Commissioners other than that de-
10 scribed in paragraph (1).

11 “(d) ACCESS TO CERTAIN INFORMATION ON COMMIS-
12 SION’S WEBSITE.—The Commission shall provide direct
13 access from the homepage of its website to—

14 “(1) detailed information regarding—

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

17 “(B) the appropriations for the Commis-
18 sion for such fiscal year; and

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

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

1 “(e) INTERNET PUBLICATION OF CERTAIN FCC
2 POLICIES AND PROCEDURES.—The chairman of the Com-
3 mission shall—

4 “(1) publish on the Internet website of the
5 Commission any policies or procedures of the Com-
6 mission that—

7 “(A) are established by the chairman; and

8 “(B) relate to the functioning of the Com-
9 mission or the handling of the agenda of the
10 Commission; and

11 “(2) update such publication not later than 48
12 hours after the chairman makes changes to any such
13 policies or procedures.

14 “(f) FEDERAL REGISTER PUBLICATION.—

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

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

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

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

4 “(3) NO EFFECT ON DEADLINES FOR PUBLICA-
5 TION IN OTHER FORM.—In the case of a deadline
6 that does not specify that the form of publication is
7 publication in the Federal Register, the Commission
8 may comply with such deadline by publishing the
9 document in another form. Such other form of publi-
10 cation does not relieve the Commission of any Fed-
11 eral Register publication requirement applicable to
12 such document, including the requirement of para-
13 graph (1).

14 “(g) CONSUMER COMPLAINT DATABASE.—

15 “(1) IN GENERAL.—In evaluating and proc-
16 essing consumer complaints, the Commission shall
17 present information about such complaints in a pub-
18 licly available, searchable database on its website
19 that—

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

21 “(B) to the extent practicable, is sortable
22 and accessible by—

23 “(i) the date of the filing of the com-
24 plaint;

25 “(ii) the topic of the complaint;

1 “(iii) the party complained of; and

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

4 “(2) DUPLICATIVE COMPLAINTS.—In the case
5 of multiple complaints arising from the same alleged
6 misconduct, the Commission shall be required to in-
7 clude only information concerning one such com-
8 plaint in the database described in paragraph (1).

9 “(h) FORM OF PUBLICATION.—

10 “(1) IN GENERAL.—In complying with a re-
11 quirement of this section to publish a document, the
12 Commission shall publish such document on its
13 website, in addition to publishing such document in
14 any other form that the Commission is required to
15 use or is permitted to and chooses to use.

16 “(2) EXCEPTION.—The Commission shall by
17 rule establish procedures for redacting documents
18 required to be published by this section so that the
19 published versions of such documents do not con-
20 tain—

21 “(A) information the publication of which
22 would be detrimental to national security,
23 homeland security, law enforcement, or public
24 safety; or

1 “(B) information that is proprietary or
2 confidential.

3 “(i) TRANSPARENCY RELATING TO PERFORMANCE IN
4 MEETING FOIA REQUIREMENTS.—The Commission shall
5 take additional steps to inform the public about its per-
6 formance and efficiency in meeting the disclosure and
7 other requirements of section 552 of title 5, United States
8 Code (commonly referred to as the Freedom of Informa-
9 tion Act), including by doing the following:

10 “(1) Publishing on the Commission’s website
11 the Commission’s logs for tracking, responding to,
12 and managing requests submitted under such sec-
13 tion, including the Commission’s fee estimates, fee
14 categories, and fee request determinations.

15 “(2) Releasing to the public all decisions made
16 by the Commission (including decisions made by the
17 Commission’s Bureaus and Offices) granting or de-
18 nying requests filed under such section, including
19 any such decisions pertaining to the estimate and
20 application of fees assessed under such section.

21 “(3) Publishing on the Commission’s website
22 electronic copies of documents released under such
23 section.

24 “(4) Presenting information about the Commis-
25 sion’s handling of requests under such section in the

1 Commission’s annual budget estimates submitted to
2 Congress and the Commission’s annual performance
3 and financial reports. Such information shall include
4 the number of requests under such section the Com-
5 mission received in the most recent fiscal year, the
6 number of such requests granted and denied, a com-
7 parison of the Commission’s processing of such re-
8 quests over at least the previous 3 fiscal years, and
9 a comparison of the Commission’s results with the
10 most recent average for the United States Govern-
11 ment as published on www.foia.gov.

12 “(j) PROMPT RELEASE OF STATISTICAL REPORTS
13 AND REPORTS TO CONGRESS.—Not later than January
14 15th of each year, the Commission shall identify, catalog,
15 and publish an anticipated release schedule for all statis-
16 tical reports and reports to Congress that are regularly
17 or intermittently released by the Commission and will be
18 released during such year.

19 “(k) ANNUAL SCORECARD REPORTS.—

20 “(1) IN GENERAL.—For the 1-year period be-
21 ginning on January 1st of each year, the Commis-
22 sion shall prepare a report on the performance of
23 the Commission in conducting its proceedings and
24 meeting the deadlines established under subsection

1 (a)(2)(E) and the guidelines established under sub-
2 section (a)(2)(F).

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

7 “(A) with respect to each type of filing
8 specified in subsection (a)(2)(E) or (a)(2)(F)—

9 “(i) the number of filings that were
10 pending on the last day of the period cov-
11 ered by such report;

12 “(ii) the number of filings described
13 in clause (i) for which each applicable
14 deadline or guideline established under
15 such subsection was not met and the aver-
16 age length of time such filings have been
17 pending; and

18 “(iii) for filings that were resolved
19 during such period, the average time be-
20 tween initiation and resolution and the
21 percentage for which each applicable dead-
22 line or guideline established under such
23 subsection was met;

24 “(B) with respect to proceedings before an
25 administrative law judge—

1 “(i) the number of such proceedings
2 completed during such period; and

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

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

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

16 “(l) DEFINITIONS.—In this section:

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

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

23 “(A) is a group of three or more Commis-
24 sioners; and

“(B) includes, for each political party of which any Commissioner is a member, at least one Commissioner who is a member of such political party, and, if any Commissioner has no political party affiliation, at least one unaffiliated Commissioner.

“(3) PERFORMANCE MEASURE.—The term ‘performance measure’ means an objective and quantifiable outcome measure or output measure (as such terms are defined in section 1115 of title 31, United States Code).

“(4) PROGRAM ACTIVITY.—The term ‘program activity’ has the meaning given such term in section 1115 of title 31, United States Code, except that such term also includes any annual collection or distribution or related series of collections or distributions by the Commission of an amount that is greater than or equal to \$100,000,000.

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

(b) EFFECTIVE DATES AND IMPLEMENTING RULES.—

(1) EFFECTIVE DATES.—

1 (A) NONPUBLIC COLLABORATIVE DISCUS-
2 SIONS.—Subsection (c) of section 13 of the
3 Communications Act of 1934, as added by sub-
4 section (a), shall apply beginning on the first
5 date on which all of the procedural changes to
6 the rules of the Federal Communications Com-
7 mission required by subsection (a)(1) of such
8 section have taken effect.

9 (B) REPORT RELEASE SCHEDULES.—Sub-
10 section (j) of such section 13 shall apply with
11 respect to 2018 and any year thereafter.

12 (C) ANNUAL SCORECARD REPORTS.—Sub-
13 section (k) of such section 13 shall apply with
14 respect to 2017 and any year thereafter.

15 (D) INTERNET PUBLICATION OF CERTAIN
16 FCC POLICIES AND PROCEDURES.—Subsection
17 (e) of such section 13 shall apply beginning on
18 the date that is 30 days after the date of the
19 enactment of this Act.

20 (2) RULES.—Except as otherwise provided in
21 such section 13, the Federal Communications Com-
22 mission shall promulgate any rules necessary to
23 carry out such section not later than 1 year after
24 the date of the enactment of this Act.

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

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

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

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

17 **SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNI-**
18 **VERSAL SERVICE PROGRAM.**

19 Section 302 of Public Law 108–494 (118 Stat. 3998)
20 is amended by striking “December 31, 2017” each place
21 it appears and inserting “December 31, 2021”.

22 **SEC. 6. REPORT ON IMPROVING SMALL BUSINESS PARTICI-**
23 **PATION IN FCC PROCEEDINGS.**

24 Not later than 1 year after the date of the enactment
25 of this Act, the Federal Communications Commission, in

1 consultation with the Administrator of the Small Business
2 Administration, shall submit to Congress a report on—

3 (1) actions that the Commission will take to im-
4 prove the participation of small businesses in the
5 proceedings of the Commission; and

6 (2) recommendations for any legislation that
7 the Commission considers appropriate to improve
8 such participation.

9 **SEC. 7. TIMELY AVAILABILITY OF ITEMS ADOPTED BY VOTE**
10 **OF THE COMMISSION.**

11 (a) AMENDMENT.—Section 4 of the Communications
12 Act of 1934 (47 U.S.C. 154) is amended by adding at
13 the end the following:

14 “(p) In the case of any item that is adopted by vote
15 of the Commission, the Commission shall publish on the
16 Internet website of the Commission the text of such item
17 not later than 24 hours after the Secretary of the Commis-
18 sion has received dissenting statements from all Commis-
19 sioners wishing to submit such a statement with respect
20 to such item.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply with respect to an item that is
23 adopted after the date that is 30 days after the date of
24 the enactment of this Act.

○