

115TH CONGRESS 1ST SESSION

# H.R. 290

## 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, 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 2017". 4 SEC. 2. FEDERAL COMMUNICATIONS COMMISSION PROC-5 ESS REFORM. 6 (a) IN GENERAL.—Title I of the Communications Act of 1934 (47 U.S.C. 151 et seg.) is amended by adding 8 at the end the following: 9 "SEC. 13. TRANSPARENCY AND EFFICIENCY. "(a) Initial Rulemaking and Inquiry.— 10 "(1) RULEMAKING.—Not later than 1 year 11 12 after the date of the enactment of this section, the 13 Commission shall complete a rulemaking proceeding 14 and adopt procedural changes to its rules to maxi-15 mize opportunities for public participation and effi-16 cient decisionmaking. "(2) REQUIREMENTS FOR RULEMAKING.—The 17 18 rules adopted under paragraph (1) shall— 19 "(A) set minimum comment periods for 20 comment and reply comment, subject to a de-21 termination by the Commission that good cause 22 exists for departing from such minimum comment periods, for— 23 24 "(i) significant regulatory actions, as 25 defined in Executive Order No. 12866; and

"(ii) all other rulemaking proceedings;

1	"(B) establish policies concerning the sub-
2	mission of extensive new comments, data, or re-
3	ports towards the end of the comment period;
4	"(C) establish policies regarding treatment
5	of comments, ex parte communications, and
6	data or reports (including statistical reports
7	and reports to Congress) submitted after the
8	comment period to ensure that the public has
9	adequate notice of and opportunity to respond
10	to such submissions before the Commission re-
11	lies on such submissions in any order, decision,
12	report, or action;
13	"(D) establish procedures for, not later
14	than 14 days after the end of each quarter of
15	a calendar year (or more frequently, as the
16	Commission considers appropriate), publishing
17	on the Internet website of the Commission and
18	submitting to Congress a report that contains—
19	"(i) the status of open rulemaking
20	proceedings and proposed orders, decisions,
21	reports, or actions on circulation for review
22	by the Commissioners, including which
23	Commissioners have not cast a vote on an
24	order, decision, report, or action that has

been on circulation for more than 60 days;

1	"(ii) for the petitions, applications,
2	complaints, and other requests for action
3	by the Commission that were pending at
4	the Commission on the last day of such
5	quarter (or more frequent period, as the
6	case may be)—
7	"(I) the number of such requests,
8	broken down by the bureau primarily
9	responsible for action and, for each
10	bureau, the type of request (such as a
11	petition, application, or complaint);
12	and
13	"(II) information regarding the
14	amount of time for which such re-
15	quests have been pending, broken
16	down as described in subclause (I);
17	and
18	"(iii) a list of the congressional inves-
19	tigations of the Commission that were
20	pending on the last day of such quarter (or
21	more frequent period, as the case may be)
22	and the cost of such investigations, individ-
23	ually and in the aggregate;
24	"(E) establish deadlines (relative to the
25	date of filing) for—

1	"(i) in the case of a petition for a de-
2	claratory ruling under section 1.2 of title
3	47, Code of Federal Regulations, issuing a
4	public notice of such petition;
5	"(ii) in the case of a petition for rule-
6	making under section 1.401 of such title,
7	issuing a public notice of such petition;
8	and
9	"(iii) in the case of a petition for re-
10	consideration under section 1.106 or 1.429
11	of such title or an application for review
12	under section 1.115 of such title, issuing a
13	public notice of a decision on the petition
14	or application by the Commission or under
15	delegated authority (as the case may be);
16	"(F) establish guidelines (relative to the
17	date of filing) for the disposition of petitions
18	filed under section 1.2 of such title;
19	"(G) establish procedures for the inclusion
20	of the specific language of the proposed rule or
21	the proposed amendment of an existing rule in
22	a notice of proposed rulemaking; and
23	"(H) require notices of proposed rule-
24	making and orders adopting a rule or amending
25	an existing rule that—

1	"(i) create (or propose to create) a
2	program activity to contain performance
3	measures for evaluating the effectiveness of
4	the program activity; and
5	"(ii) substantially change (or propose
6	to substantially change) a program activity
7	to contain—
8	"(I) performance measures for
9	evaluating the effectiveness of the pro-
10	gram activity as changed (or proposed
11	to be changed); or
12	"(II) a finding that existing per-
13	formance measures will effectively
14	evaluate the program activity as
15	changed (or proposed to be changed).
16	"(3) INQUIRY.—Not later than 1 year after the
17	date of the enactment of this section, the Commis-
18	sion shall complete an inquiry to seek public com-
19	ment on whether and how the Commission should—
20	"(A) establish procedures for allowing a bi-
21	partisan majority of Commissioners to place an
22	order, decision, report, or action on the agenda
23	of an open meeting;
24	"(B) establish procedures for informing all
25	Commissioners of a reasonable number of op-

1 tions available to the Commission for resolving 2 a petition, complaint, application, rulemaking, 3 or other proceeding; "(C) establish procedures for ensuring that all Commissioners have adequate time, prior to 6 being required to decide a petition, complaint, 7 application, rulemaking, or other proceeding 8 (including at a meeting held pursuant to section 9 5(d)), to review the proposed Commission deci-10 sion document, including the specific language 11 of any proposed rule or any proposed amend-12 ment of an existing rule; "(D) establish procedures for publishing 13 14 the text of agenda items to be voted on at an 15 open meeting in advance of such meeting so 16 that the public has the opportunity to read the 17 text before a vote is taken; 18 "(E) establish deadlines (relative to the 19 date of filing) for disposition of applications for 20 a license under section 1.913 of title 47, Code 21 of Federal Regulations; 22 "(F) assign resources needed in order to

meet the deadlines described in subparagraph

(E), including whether the Commission's ability

to meet such deadlines would be enhanced by

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- 1 assessing a fee from applicants for such a li-2 cense; and
- "(G) except as otherwise provided in section 4(p), publish each order, decision, report, or action not later than 30 days after the date of the adoption of such order, decision, report, or action.
- 8 "(4) Data for Performance measures.—
  9 The Commission shall develop a performance measure or proposed performance measure required by
  11 this subsection to rely, where possible, on data al12 ready collected by the Commission.
- "(5) GAO AUDIT.—Not less frequently than every 6 months, the Comptroller General of the United States shall audit the cost estimates provided by the Commission under paragraph (2)(D)(iii) during the preceding 6-month period.
- "(b) Periodic Review.—On the date that is 5 years after the completion of the rulemaking proceeding under subsection (a)(1), and every 5 years thereafter, the Commission shall initiate a new rulemaking proceeding to continue to consider such procedural changes to its rules as may be in the public interest to maximize opportunities 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 bipartisar
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 Commissioner
10	sion, a member of a joint board or conference
11	established under section 410, or a person or
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 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
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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 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.

- "(j) Prompt Release of Statistical Reports
  AND Reports to Congress.—Not later than January
  14 15th of each year, the Commission shall identify, catalog,
  and publish an anticipated release schedule for all statistical reports and reports to Congress that are regularly
  or intermittently released by the Commission and will be
  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

1 "(B) includes, for each political party of 2 which any Commissioner is a member, at least one Commissioner who is a member of such po-3 4 litical party, and, if any Commissioner has no 5 political party affiliation, at least one unaffili-6 ated Commissioner. 7 "(3) Performance Measure.—The term 'performance measure' means an objective and quantifi-8 9 able outcome measure or output measure (as such 10 terms are defined in section 1115 of title 31, United 11 States Code). 12 "(4) Program Activity.—The term 'program 13 activity' has the meaning given such term in section 14 1115 of title 31, United States Code, except that 15 such term also includes any annual collection or distribution or related series of collections or distribu-16 17 tions by the Commission of an amount that is great-18 er than or equal to \$100,000,000. "(5) Other definitions.—The terms 'agency 19 20 action', 'ex parte communication', and 'rule' have 21 the meanings given such terms in section 551 of title 22 5, United States Code.". 23 (b) EFFECTIVE DATES AND IMPLEMENTING

25 (1) Effective dates.—

Rules.—

- (A) Nonpublic collaborative discus-SIONS.—Subsection (c) of section 13 of the Communications Act of 1934, as added by sub-section (a), shall apply beginning on the first date on which all of the procedural changes to the rules of the Federal Communications Com-mission required by subsection (a)(1) of such section have taken effect. (B) Report Release Schedules.—Sub-
  - (B) REPORT RELEASE SCHEDULES.—Subsection (j) of such section 13 shall apply with respect to 2018 and any year thereafter.
  - (C) Annual scorecard reports.—Subsection (k) of such section 13 shall apply with respect to 2017 and any year thereafter.
  - (D) Internet publication of certain fcc policies and procedures.—Subsection (e) of such section 13 shall apply beginning on the date that is 30 days after the date of the enactment of this Act.
  - (2) Rules.—Except as otherwise provided in such section 13, the Federal Communications Commission shall promulgate any rules necessary to carry out such section not later than 1 year after 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				
8	wireline inquiry or complaint or a wireless inquiry or com-				
9	plaint unless the party whose conduct is the subject o				
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

- 1 adopted after the date that is 30 days after the date of
- 2 the enactment of this Act.

Passed the House of Representatives January 23, 2017.

Attest:

Clerk.

# 115TH CONGRESS H. R. 290

# 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, and for other purposes.