

[DISCUSSION DRAFT]

112TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

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.

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 2011”.

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

2 (a) IN GENERAL.—The Communications Act of 1934
3 (47 U.S.C. 151 et seq.) is amended by inserting after sec-
4 tion 5 the following new section:

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

6 “(a) RULE MAKING REQUIREMENTS.—

7 “(1) REQUIREMENTS FOR NOTICES OF PRO-
8 POSED RULE MAKING.—

9 “(A) CERTAIN PRIOR ACTION REQUIRED.—

10 The Commission may not issue a notice of pro-
11 posed rule making unless, during the 3-year pe-
12 riod preceding the issuance of such notice, the
13 Commission has sought public comment
14 through a notice of inquiry, a notice of pro-
15 posed rule making, or a notice on a petition for
16 rule making on the same or a substantially
17 similar subject matter.

18 “(B) CONTENTS.—The Commission shall
19 include in each notice of proposed rule mak-
20 ing—

21 “(i) the specific language of the pro-
22 posed rule or the proposed modification or
23 deletion of an existing rule; and

24 “(ii) in the case of a proposal that
25 may impose additional burdens on industry
26 or consumers, proposed performance meas-

1 ures for evaluating the effectiveness of the
2 proposal.

3 “(C) MINIMUM COMMENT PERIOD.—The
4 Commission shall provide in each notice of pro-
5 posed rule making a 30-day period for the sub-
6 mission of comments and an additional 30-day
7 period for the submission of reply comments on
8 such notice of proposed rule making.

9 “(2) REQUIREMENTS FOR FINAL RULES.—Ex-
10 cept as provided in the 3rd sentence of section
11 553(b) of title 5, United States Code, the Commis-
12 sion may not adopt, modify, or delete a final rule
13 unless—

14 “(A) during the 3-year period preceding
15 the adoption, modification, or deletion, the
16 Commission has issued a notice of proposed
17 rule making that complies with the require-
18 ments of paragraph (1) on the same or a sub-
19 stantially similar subject matter;

20 “(B) the specific language of the adopted
21 rule or the modification or deletion of an exist-
22 ing rule is a logical outgrowth of the specific
23 language required to be included in such notice
24 under paragraph (1)(B)(i); and

1 “(C) in the case of the adoption of a rule
2 or the modification or deletion of an existing
3 rule that may impose additional burdens on in-
4 dustry or consumers, the order contains—

5 “(i) an identification and analysis of
6 the market failure and actual harm to con-
7 sumers that the adoption, modification, or
8 deletion will prevent;

9 “(ii) a cost-benefit analysis of the
10 adopted rule or the modification or dele-
11 tion of an existing rule; and

12 “(iii) performance measures for evalu-
13 ating the effectiveness of the adopted rule
14 or the modification or deletion of an exist-
15 ing rule.

16 “(b) ADEQUATE DELIBERATION BY COMMIS-
17 SIONERS.—The Commission shall by rule establish proce-
18 dures for—

19 “(1) informing all Commissioners of the options
20 available to the Commission for resolving a petition,
21 complaint, application, rule making, or other pro-
22 ceeding;

23 “(2) ensuring that all Commissioners have ade-
24 quate time, prior to being required to decide a peti-
25 tion, complaint, application, rule making, or other

1 proceeding (including at a meeting held pursuant to
2 section 5(d)), to review the proposed Commission de-
3 cision document, including any specific language
4 that is proposed to be adopted as, modified in, or de-
5 leted from a rule; and

6 “(3) publishing the text of agenda items in ad-
7 vance of an open meeting so that the public has the
8 opportunity to review the text before a vote is taken.

9 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

10 “(1) IN GENERAL.—Notwithstanding section
11 552b of title 5, United States Code, 3 or more Com-
12 missioners may hold a meeting that is closed to the
13 public to discuss official business if—

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

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

21 “(C) for each political party of which any
22 Commissioner is a member, at least 1 Commis-
23 sioner who is a member of such political party
24 is present at such meeting, and, if any Commis-
25 sioner has no political party affiliation, at least

1 one unaffiliated Commissioner is present at
2 such meeting; and

3 “(D) 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 5 days after
8 the conclusion of a meeting held under paragraph
9 (1), the Commission shall publish on its website a
10 disclosure 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 majority of Commissioners to direct Com-

1 mission staff to draft an order, decision, report, or action
2 for review by the Commission. Such procedures shall re-
3 quire that such majority include, for each political party
4 of which any Commissioner is a member, at least 1 Com-
5 missioner who is a member of such political party, and,
6 if any Commissioner has no political party affiliation, at
7 least one unaffiliated Commissioner.

8 “(e) PUBLIC REVIEW OF CERTAIN REPORTS AND EX
9 PARTE COMMUNICATIONS.—Except as provided in the 3rd
10 sentence of section 553(b) of title 5, United States Code,
11 the Commission may not rely, in any order, decision, re-
12 port, or action, on—

13 “(1) a statistical report or report to Congress,
14 unless the Commission has made such report avail-
15 able for comment for not less than a 30-day period
16 prior to the adoption of such order, decision, report,
17 or action; or

18 “(2) an ex parte communication or any filing
19 with the Commission, unless the public has been af-
20 farded adequate notice of and opportunity to re-
21 spond to such communication or filing, in accord-
22 ance with procedures to be established by the Com-
23 mission by rule.

24 “(f) PUBLICATION OF STATUS OF PENDING
25 ITEMS.—The Commission shall by rule establish proce-

1 dures for informing the public of the status of all open
2 rule making proceedings and all proposed orders, deci-
3 sions, reports, or actions pending review by the Commis-
4 sion, including which Commissioners have not cast a vote
5 on an order, decision, report, or action that has been pend-
6 ing review for more than 60 days.

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

13 “(h) PROMPT RELEASE OF CERTAIN REPORTS AND
14 DECISION DOCUMENTS.—

15 “(1) STATISTICAL REPORTS AND REPORTS TO
16 CONGRESS.—

17 “(A) RELEASE SCHEDULE.—The Commis-
18 sion shall catalog, identify, and publish the an-
19 ticipated release schedule for all statistical re-
20 ports and reports to Congress regularly or
21 intermittently released by the Commission and
22 shall thereafter publish such schedule at least
23 annually.

24 “(B) PUBLICATION DEADLINES.—The
25 Commission shall publish each report identified

1 in the schedule published under subparagraph
2 (A) not later than the date indicated in such
3 schedule for the anticipated release of such re-
4 port.

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

9 “(3) EFFECT IF DEADLINES NOT MET.—

10 “(A) NOTIFICATION OF CONGRESS.—If the
11 Commission fails to publish an order, decision,
12 report, or action by a deadline described in
13 paragraph (1)(B) or (2), the Commission shall,
14 not later than 7 days after such deadline and
15 every 14 days thereafter until the publication of
16 the order, decision, report, or action, notify by
17 letter the chairpersons and ranking members of
18 the Committee on Energy and Commerce of the
19 House of Representatives and the Committee
20 on Commerce, Science, and Transportation of
21 the Senate. Such letter shall identify such
22 order, decision, report, or action, specify the
23 deadline, and describe the reason for the delay.
24 The Commission shall also publish such letter
25 on its website.

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

7 “(i) BIENNIAL SCORECARD REPORTS.—

8 “(1) IN GENERAL.—The Commission shall sub-
9 mit to the Committee on Energy and Commerce of
10 the House of Representatives and the Committee on
11 Commerce, Science, and Transportation of the Sen-
12 ate a biennial report on the performance of the
13 Commission in meeting the deadlines established
14 under subsections (g), (h)(1)(B), and (h)(2).

15 “(2) CONTENTS.—Each report required by
16 paragraph (1) shall contain detailed statistics on
17 such performance, including, in the case of perform-
18 ance in meeting the deadlines established under sub-
19 section (g), with respect to each Bureau of the Com-
20 mission and each category established under such
21 subsection—

22 “(A) the number of orders, decisions, re-
23 ports, or actions pending on the date of such
24 report;

1 “(B) the number of orders, decisions, re-
2 ports, or actions pending on the date of such
3 report that were not completed by the deadlines
4 established under such subsection and the aver-
5 age length of time those items have been out-
6 standing; and

7 “(C) for orders, decisions, reports, or ac-
8 tions that were completed during the period
9 covered by the report, the average time between
10 initiation and completion and the percentage
11 completed by the deadlines established under
12 such subsection.

13 “(j) TRANSACTION REVIEW STANDARDS.—

14 “(1) IN GENERAL.—The Commission shall con-
15 dition its approval of a transfer of lines, a transfer
16 of licenses, or any other transaction under sections
17 214, 309, 310, or any other provision of this Act
18 only if—

19 “(A) the imposed condition is narrowly tai-
20 lored to remedy a harm that arises as a direct
21 result of the specific transfer or specific trans-
22 action that this Act empowers the Commission
23 to review; and

1 “(B) the Commission could adopt a rule
2 substantially similar to the imposed condition
3 under its rule making authority.

4 “(2) EXCLUSIONS.—In reviewing a transfer of
5 lines, a transfer of licenses, or any other transaction
6 under sections 214, 309, 310, or any other provision
7 of this Act, the Commission may not consider a vol-
8 untary commitment of a party to such transfer or
9 transaction unless the Commission could adopt that
10 voluntary commitment as a condition under para-
11 graph (1).

12 “(k) COMMUNICATIONS MARKETPLACE REPORT.—

13 “(1) IN GENERAL.—In every odd-numbered
14 year (beginning with 2013), the Commission shall
15 submit to the Committee on Energy and Commerce
16 of the House of Representatives and the Committee
17 on Commerce, Science, and Transportation of the
18 Senate a report on the state of the communications
19 marketplace.

20 “(2) CONTENTS.—Each report required by
21 paragraph (1) shall identify the challenges and op-
22 portunities in the communications marketplace for
23 jobs, the economy, the expansion of existing busi-
24 nesses, and competitive entry as well as the Commis-

1 sion’s agenda to address the identified issues over
2 the course of the next 2-year period.

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

6 (b) EFFECTIVE DATE AND IMPLEMENTING RULES.—

7 (1) EFFECTIVE DATE.—

8 (A) IN GENERAL.—The requirements of
9 section 5A of the Communications Act of 1934,
10 as added by subsection (a), shall apply begin-
11 ning on the date that is 6 months after the date
12 of the enactment of this Act.

13 (B) PRIOR NOTICES OF PROPOSED RULE-
14 MAKING.—For purposes of paragraph (2) of
15 section 5A(a) of such Act, all notices of pro-
16 posed rule making released prior to the date of
17 enactment of this Act shall be deemed to have
18 complied with paragraph (1) of such section.

19 (2) RULES.—The Federal Communications
20 Commission shall promulgate the rules necessary to
21 carry out such section 5A 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 5A, the Federal Com-

1 munications Commission shall comply with the re-
2 quirements of subsections (a) and (h)(2) of such sec-
3 tion.

4 **SEC. 3. EFFECT ON OTHER LAWS.**

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