



# THE COMMITTEE ON ENERGY AND COMMERCE

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## MEMORANDUM

December 9, 2013

To: Energy and Commerce Committee

From: Majority Staff

Re: Addendum to the Majority Memorandum for December 10-11, 2013,  
Energy and Commerce Committee Markup

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The Committee on Energy and Commerce will meet in open markup session on Tuesday, December 10, 2013 at 4:30 p.m. in 2123 Rayburn House Office Building for opening statements, and will reconvene on Wednesday, December 11, 2013, at 12:30 p.m. in 2123 Rayburn House Office Building. **In addition to the previously noticed legislation, the Committee will consider H.R. 3674, Federal Spectrum Incentive Act of 2013.** The Committee will also consider an amendment in the nature of a substitute to H.R. 3675, Federal Communications Commission Process Reform Act of 2013. A summary of H.R. 3674 and H.R. 3675 is below.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

### **I. H.R. 3674, Federal Spectrum Incentive Act of 2013**

H.R. 3674 amends the Commercial Spectrum Enhancement Act (CSEA) to provide Federal users an additional option for relinquishing spectrum for commercial auction. The legislation would allow Federal users to relocate or terminate their operations and auction the relinquished spectrum, and in exchange receive a percentage of the net auction proceeds. Funds from the proceeds would be placed into a fund at the Office of Management and Budget to be used for relocation costs or to offset budget sequestration.

### **II. Amendment in the Nature of a Substitute to H.R. 3675, Federal Communications Commission Process Reform Act of 2013**

Section 1. Short Title.

Section 2(a). Adds section 13 to the Communications Act.

*New Section 13(a)*—Initial Rulemaking and Inquiry. Requires the FCC to conduct a

notice and comment rulemaking and adopt rules to: set minimum comment and reply comment periods for rulemaking proceedings; establish policies concerning extensive comments toward the end of a comment period; establish policies to ensure that the public has time to review material submitted in a proceeding after the comment cycle has closed; publish the status of open rulemakings as well as list the draft items the commissioners are currently considering; establish deadlines for action on certain filings to the Commission and its bureaus; establish guidelines for the disposition of petitions for declaratory ruling; establish procedures for including the specific text of proposed rules in Commission NPRMs; and to require the development of performance measures for FCC program activities, defined as each FCC program listed in the Federal budget, as well as each program through which the FCC collects or distributes \$100 million or more.

Section 13(a) also requires the Commission to seek public comment on a notice of inquiry into whether and how the Commission should: allow a bipartisan majority of Commissioners to add an item to the Commission's agenda; inform Commissioners of all options available on a given Commission item; ensure that Commissioners have adequate time to review the text of Commission items; publish the text of items for Commission consideration prior to Commission vote; establish deadlines for the processing of applications for licenses; generate additional resources for the processing of applications; and, publish Commission decisions within 30 days of adoption.

*New Section 13(b)*—Periodic Review. Requires the FCC to conduct a rulemaking to review the rules established in new section 13(a) every five years.

*New Section 13(c)*—Nonpublic Collaborative Discussions. Allows a bipartisan majority of Commissioners to meet for collaborative discussions if they disclose such meetings within two business days and comply with Office of General Counsel oversight. Also applies to meetings of Federal-State Joint Boards.

*New Section 13(d)*—Access to Certain Information on the Commission's Website. Requires the FCC to provide links on the Commission's home page to the current budget, appropriations, number of full-time equivalent employees, and the Commission's performance plan.

*New Section 13(e)*—Federal Register Publication. Requires the FCC to publish the documents specified in the Federal Register no later than 45 days after release of the document or the day specified under any other provision of law.

*New Section 13(f)*—Consumer Complaint Database. Requires the FCC to put consumer complaint information in a publicly available, searchable database on its website.

*New Section 13(g)*—Form of Publication. Requires the FCC to publish documents specified in this section on its website.

*New Section 13(h)*—Transparency Relating to Performance in Meeting FOIA Requirements. Requires the FCC to take additional steps to inform the public about its performance in meeting the disclosure requirements of the Freedom of Information Act.

*New Section 13(i)*—Prompt Release of Statistical Reports and Reports to Congress. Requires the FCC to establish a schedule for the release of its required reports.

*New Section 13(j)*—Annual Scorecard. Requires the FCC to report annually regarding its performance in meeting the deadlines and guideline established in new section 13(a), as well as how it has used administrative law judges and independent studies.

*New Section 13(k)*—Definitions. Defines several terms used in the Act, including the terms “performance measure” and “program activity.”

Section 2(b). Requires the Commission to adopt rules implementing new section 13 no later than one year after enactment and delays the implementation of the non-public collaborative discussion provisions until all rules required by new section 13 have taken effect.

Section 3. Prohibits the FCC from categorizing TCPA inquiries or complaints as wireline or wireless inquiries or complaints unless the complaint or inquiry originated from the conduct of a wireline or wireless carrier.

Section 4. Specifies that the Act does not alter the general framework established by the Administrative Procedures Act and related laws, except where it does so explicitly (i.e., allowing deliberative collaboration among Commissioners and on the Federal-State Joint Boards).

Section 5. Creates a permanent waiver of the Antideficiency Act for the Federal Universal Service Fund. The Universal Service Fund has been subject to a series of temporary waivers since its inception in 1996.

If you have questions regarding either bill, please contact David Redl with the Committee staff at 5-2927.