[DISCUSSION DRAFT]

113th 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

Mr. Walden (for himself and Mr. Kinzinger of Illinois) 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 Communications
5 Commission Process Reform Act of 2013”.

July 22, 2013 (12:30 p.m.)
SEC. 2. FCC PROCESS REFORM.

(a) IN GENERAL.—Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 12 the following new section:

“SEC. 13. TRANSPARENCY AND EFFICIENCY.

“(a) RULEMAKING REQUIREMENTS.—

“(1) REQUIREMENTS FOR NOTICES OF PROPOSED RULEMAKING.—The Commission may not issue a notice of proposed rulemaking unless the Commission provides for a period of not less than 30 days for the submission of comments and an additional period of not less than 30 days for the submission of reply comments on such notice and the Commission includes in such notice the following:

“(A) Either—

“(i) an identification of—

“(I) a notice of inquiry, a prior notice of proposed rulemaking, or a notice on a petition for rulemaking issued by the Commission during the 3-year period preceding the issuance of the notice of proposed rulemaking concerned and of which such notice is a logical outgrowth; or

“(II) an order of a court reviewing action by the Commission or oth-
erwise directing the Commission to act that was issued by the court during the 3-year period preceding the issuance of the notice of proposed rulemaking concerned and in response to which such notice is being issued; or

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

“(I) that the proposed rule or the proposed amendment of an existing rule will not impose additional burdens on industry or consumers; or

“(II) for good cause, that a notice of inquiry is impracticable, unnecessary, or contrary to the public interest.

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

“(C) In the case of a proposal to create a program activity, proposed performance measures for evaluating the effectiveness of the program activity.
“(D) In the case of a proposal to substantially change a program activity—

“(i) proposed performance measures for evaluating the effectiveness of the program activity as proposed to be changed; or

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

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

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

“(B) such notice of proposed rulemaking—

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

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

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

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

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

“(iii) a reasoned determination that
market forces are unlikely to resolve within
a reasonable period of time the specific
market failure, actual consumer harm, burden of existing regulation, or failure of public institutions identified under clause (i);

“(D) in the case of the adoption of a rule or the amendment of an existing rule that creates a program activity, the order contains performance measures for evaluating the effectiveness of the program activity; and

“(E) in the case of the adoption of a rule or the amendment of an existing rule that substantially changes a program activity, the order contains—

“(i) performance measures for evaluating the effectiveness of the program activity as changed; or

“(ii) a finding that existing performance measures will effectively evaluate the program activity as changed.

“(3) Data for Performance Measures.—The Commission shall develop a performance measure or proposed performance measure required by this subsection to rely, where possible, on data already collected by the Commission.
“(4) Cost-benefit determination not subject to judicial review.—A determination under paragraph (2)(C)(ii) shall not be subject to judicial review.

“(b) Adequate deliberation by Commissioners.—The Commission shall by rule establish procedures for—

“(1) informing all Commissioners of a reasonable number of options available to the Commission for resolving a petition, complaint, application, rulemaking, or other proceeding;

“(2) ensuring that all Commissioners have adequate time, prior to being required to decide a petition, complaint, application, rulemaking, or other proceeding (including at a meeting held pursuant to section 5(d)), to review the proposed Commission decision document, including the specific language of any proposed rule or any proposed amendment of an existing rule; and

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

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

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

“(B) each person present at such meeting is a Commissioner, an employee of the Commission, a member of a joint board or conference established under section 410, or a person on the staff of such a joint board or conference or of a member of such a joint board or conference; and

“(C) an attorney from the Office of General Counsel of the Commission is present at such meeting.

“(2) DISCLOSURE OF NONPUBLIC COLLABORATIVE DISCUSSIONS.—Not later than 2 business days after the conclusion of a meeting held under paragraph (1), the Commission shall publish a disclosure of such meeting, including—

“(A) a list of the persons who attended such meeting; and
“(B) a summary of the matters discussed at such meeting, except for such matters as the Commission determines may be withheld under section 552b(c) of title 5, United States Code.

“(3) PRESERVATION OF OPEN MEETINGS REQUIREMENTS FOR AGENCY ACTION.—Nothing in this subsection shall limit the applicability of section 552b of title 5, United States Code, with respect to a meeting of Commissioners other than that described in paragraph (1).

“(d) INITIATION OF ITEMS BY BIPARTISAN MAJORITY.—The Commission shall by rule establish procedures for allowing a bipartisan majority of Commissioners to—

“(1) direct Commission staff to draft an order, decision, report, or action for review by the Commission; and

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

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

“(1) IN GENERAL.—Except as provided in paragraph (2), the Commission may not rely, in any order, decision, report, or action, on—

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

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

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

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

“(g) Deadlines for Action.—The Commission shall by rule establish deadlines for any Commission order, decision, report, or action for each of the various categories of petitions, applications, complaints, and other filings seeking Commission action, including filings seeking action through authority delegated under section 5(c)(1).

“(h) Prompt Release of Certain Reports and Decision Documents.—

“(1) Statistical Reports and Reports to Congress.—

“(A) Release Schedule.—Not later than January 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.

“(B) Publication Deadlines.—The Commission shall publish each report identified in a schedule published under subparagraph (A) not later than the date indicated in such schedule for the anticipated release of such report.
“(2) Decision Documents.—The Commission shall 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.

“(3) Effect if Deadlines Not Met.—

“(A) Notification of Congress.—If the Commission fails to publish an order, decision, report, or action by a deadline described in paragraph (1)(B) or (2), the Commission shall, not later than 7 days after such deadline and every 14 days thereafter until the publication of the order, decision, report, or action, notify by letter the chairpersons and ranking members of the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such letter shall identify such order, decision, report, or action, specify the deadline, describe the reason for the delay, and indicate when the Commission anticipates that such order, decision, report, or action will be published. The Commission shall publish such letter.

“(B) No Impact on Effectiveness.—The failure of the Commission to publish an
order, decision, report, or action by a deadline described in paragraph (1)(B) or (2) shall not render such order, decision, report, or action ineffective when published.

“(i) **Biannual Scorecard Reports.**—

“(1) **In General.**—For the 6-month period beginning on January 1st of each year and the 6-month period beginning on July 1st of each year, the Commission shall prepare a report on the performance of the Commission in conducting its proceedings and meeting the deadlines established under subsections (g), (h)(1)(B), and (h)(2).

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

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

“(i) the number of petitions, applications, complaints, and other filings seeking Commission action that were pending on the last day of the period covered by such report;
“(ii) the number of filings described in clause (i) that were not resolved by the deadlines established under such subsection and the average length of time such filings have been pending; and

“(iii) for petitions, applications, complaints, and other filings seeking Commission action that were resolved during such period, the average time between initiation and resolution and the percentage resolved by the deadlines established under such subsection;

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

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

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

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

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

“(j) TRANSACTION REVIEW STANDARDS.—

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

“(A) the imposed condition is a remedy to
a harm that would likely arise as a direct result
of the specific transfer or specific transaction
that this Act empowers the Commission to re-
view;

“(B) the Commission could impose a simi-
lar requirement under the authority of a spe-
cific provision of law other than a provision em-
powering the Commission to review a transfer
of lines, a transfer of licenses, or other trans-
action; and

“(C) the likely harm described in subpara-
graph (A) is presented by the specific transfer
of lines, transfer of licenses, or other trans-
action, such that the harm is not presented by
persons not involved in the transfer or other
transaction.

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

“(k) Access to Certain Information on Commiss-
ion’s Website.—The Commission shall provide direct
access from the homepage of its website to—

“(1) detailed information regarding—

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

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

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

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

“(l) Federal Register Publication.—
“(1) IN GENERAL.—In the case of any document adopted by the Commission that the Commission is required, under any provision of law, to publish in the Federal Register, the Commission shall, not later than the date described in paragraph (2), complete all Commission actions necessary for such document to be so published.

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

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

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

“(3) NO EFFECT ON DEADLINES FOR PUBLICATION IN OTHER FORM.—In the case of a deadline that does not specify that the form of publication is publication in the Federal Register, the Commission may comply with such deadline by publishing the document in another form. Such other form of publication does not relieve the Commission of any Federal Register publication requirement applicable to such document, including the requirement of paragraph (1).

“(m) CONSUMER COMPLAINT DATABASE.—
“(1) IN GENERAL.—In evaluating and processing consumer complaints, the Commission shall present information about such complaints in a publicly available, searchable database on its website that—

“(A) facilitates easy use by consumers; and

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

“(i) the date of the filing of the complaint;

“(ii) the topic of the complaint;

“(iii) the party complained of; and

“(iv) other elements that the Commission considers in the public interest.

“(2) DUPLICATIVE COMPLAINTS.—In the case of multiple complaints arising from the same alleged misconduct, the Commission shall be required to include only information concerning one such complaint in the database described in paragraph (1).

“(n) FORM OF PUBLICATION.—

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

“(2) EXCEPTION.—The Commission shall by rule establish procedures for redacting documents required to be published by this section so that the published versions of such documents do not contain—

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

“(B) information that is proprietary or confidential.

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

“(1) Publishing on the Commission’s website the Commission’s logs for tracking, responding to, and managing requests submitted under such section, including the Commission’s fee estimates, fee categories, and fee request determinations.
“(2) Releasing to the public all decisions made by the Commission (including decisions made by the Commission’s Bureaus and Offices) granting or denying requests filed under such section, including any such decisions pertaining to the estimate and application of fees assessed under such section.

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

“(4) Presenting information about the Commission’s handling of requests under such section in the Commission’s annual budget estimates submitted to Congress and the Commission’s annual performance and financial reports. Such information shall include the number of requests under such section the Commission received in the most recent fiscal year, the number of such requests granted and denied, a comparison of the Commission’s processing of such requests over at least the previous 3 fiscal years, and a comparison of the Commission’s results with the most recent average for the United States Government as published on www.foia.gov.

“(p) DEFINITIONS.—In this section:
“(1) AMENDMENT.—The term ‘amendment’ includes, when used with respect to an existing rule, the deletion of such rule.

“(2) BIPARTISAN MAJORITY.—The term ‘bipartisan majority’ means, when used with respect to a group of Commissioners, that such group—

“(A) is a group of 3 or more Commissioners; and

“(B) includes, for each political party of which any Commissioner is a member, at least 1 Commissioner who is a member of such political party, and, if any Commissioner has no political party affiliation, at least 1 unaffiliated Commissioner.

“(3) ECONOMICALLY SIGNIFICANT IMPACT.—

The term ‘economically significant impact’ means an effect on the economy of $100,000,000 or more annually or a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

“(4) 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).

“(5) 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.

“(6) 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 DATE AND IMPLEMENTING RULES.—

(1) EFFECTIVE DATE.—

(A) IN GENERAL.—The requirements of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply beginning on the date that is 6 months after the date of the enactment of this Act.

(B) PRIOR NOTICES OF PROPOSED RULE-MAKING.—If the Federal Communications Commission identifies under paragraph (2)(B)(ii) of subsection (a) of such section 13 a notice of
proposed rulemaking issued prior to the date of
the enactment of this Act—

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

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

(C) SCHEDULES AND REPORTS.—Notwith-
standing subparagraph (A), subsections (h)(1)
and (i) of such section shall apply with respect
to 2014 and any year thereafter.

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

(3) PROCEDURES FOR ADOPTING RULES.—Not-
withstanding paragraph (1)(A), in promulgating
rules to carry out such section, the Federal Commu-
ications Commission shall comply with the require-
ments of subsections (a) and (h)(2) of such section.
SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COMPLAINTS IN QUARTERLY REPORT.

In compiling its quarterly report with respect to informal consumer inquiries and complaints, the Federal Communications Commission may not categorize an inquiry or complaint with respect to section 227 of the Communications Act of 1934 (47 U.S.C. 227) as being a wireline inquiry or complaint or a wireless inquiry or complaint unless the party whose conduct is the subject of the inquiry or complaint is a wireline carrier or a wireless carrier, respectively.

SEC. 4. PROVISION OF EMERGENCY WEATHER INFORMATION.

Nothing in subsection (a) of section 13 of the Communications Act of 1934, as added by section 2 of this Act, shall be construed to impede the Federal Communications Commission from acting in times of emergency to ensure the availability of efficient and effective communications systems to alert the public to imminent dangerous weather conditions.

SEC. 5. COMMUNICATIONS OF FIRST RESPONDERS.

Nothing in subsection (a) of section 13 of the Communications Act of 1934, as added by section 2 of this Act, shall be construed to impede the Federal Communications Commission from acting in times of emergency to
ensure the availability of efficient and effective communications systems for State and local first responders.

SEC. 6. EFFECT ON OTHER LAWS.

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