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114TH CONGRESS
1ST SESSION

S. 421

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 SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Mr. HELLER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Communications Commission Process Reform Act of 2015''.

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 adding at the end the following:

"SEC. 13. TRANSPARENCY AND EFFICIENCY.

"(a) DEFINITIONS.—In this section:

"(1) AMENDMENT.—The term 'amendment' includes, when used with respect to an existing rule, the deletion of the rule.

"(2) APPLICATION FOR REVIEW.—The term 'application for review' means an application for review filed under section 1.115 of title 47, Code of Federal Regulations, or any successor thereto.

"(3) BIPARTISAN MAJORITY.—The term 'bipartisan majority' means, when used with respect to a group of Commissioners, that the group—

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

"(B) includes—

"(i) for each political party of which any Commissioner is a member, not less than 1 Commissioner who is a member of the political party; and

"(ii) if any Commissioner has no political party affiliation, not less than 1 unaffiliated Commissioner.

"(4) PERFORMANCE MEASURE.—The term 'performance measure' means an objective and quantifiable outcome measure or output measure (as those defined in section 1115 of title 31, United States Code).

"(5) 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.

"(6) PETITION FOR DECLARATORY RULING.—The term 'petition for declaratory ruling' means a petition for declaratory ruling filed under section 1.2 of title 47, Code of Federal Regulations, or any successor thereto.

"(7) PETITION FOR RECONSIDERATION.—The term 'petition for reconsideration' means a petition for reconsideration filed under section 1.106 or 1.429 of title 47, Code of Federal Regulations, or any successor thereto.

"(8) PETITION FOR RULEMAKING.—The term 'petition for rulemaking' means a petition for rule-

making filed under section 1.401 of title 47, Code of Federal Regulations, or any successor thereto.

"(9) PROGRAM ACTIVITY.—The term 'program activity'—

"(A) has the meaning given the term in section 1115 of title 31, United States Code; and

"(B) includes any annual collection or distribution or related series of collections or distributions by the Commission of an amount not less than $100,000,000.

"(10) OTHER DEFINITIONS.—The terms 'adjudication', 'agency action', 'ex parte communication', 'rule', and 'rulemaking' have the meanings given the terms in section 551 of title 5, United States Code.

"(b) INITIAL RULEMAKING AND INQUIRY.—

"(1) RULEMAKING.—Not later than 1 year after the date of enactment of the Federal Communications Commission Process Reform Act of 2015, the Commission shall complete a rulemaking proceeding and adopt procedural changes to the rules of the Commission to maximize opportunities for public participation and efficient decision making.

"(2) REQUIREMENTS FOR RULEMAKING.—The rules adopted under paragraph (1) shall—

"(A) set minimum comment periods for comment and reply comment, subject to a determination by the Commission that good cause exists for departing from the minimum comment periods, for—

"(i) significant regulatory actions, as defined in Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review);

"(ii) all other rulemaking proceedings; and

"(iii) petitions for forbearance filed under section 10(c) of the Communications Act of 1934 (47 U.S.C. 160(c));

"(B) establish policies concerning the submission of extensive new comments, data, or reports towards the end of a comment period;

"(C) establish policies regarding treatment of comments, ex parte communications, and data or reports (including statistical reports and reports to Congress) submitted after a comment period to ensure that the public has adequate notice of and opportunity to respond to the submissions before the Commission relies

on the submissions in any order, decision, report, or action;

"(D) establish procedures for publishing the status of open rulemaking proceedings and proposed orders, decisions, reports, or actions on circulation for review by the Commissioners, 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;

"(E) establish guidelines (relative to the date of filing) for issuing a public notice of—

"(i) a petition for declaratory ruling;

"(ii) a petition for rulemaking;

"(iii) a petition for reconsideration; or

"(iv) an application for review;

"(F) require each notice of proposed rulemaking to include the specific language of the proposed rule or the proposed amendment of an existing rule;

"(G) require each petition filed with the Commission to be—

"(i) put out for public notice, subject to the minimum comment and reply comment periods established under subparagraph (A); or

"(ii) disposed of pursuant to an order of dismissal;

"(H) require each new notice of proposed rulemaking or order adopting a rule or amending an existing rule that creates (or proposes to create) a program activity to contain performance measures for evaluating the effectiveness of the program activity;

"(I) require each notice of proposed rulemaking or order adopting a rule or amending an existing rule that substantially changes (or proposes to substantially change) a program activity to contain—

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

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

"(J) require each notice of proposed rulemaking to include—

"(i) an identification of a notice of inquiry, a prior notice of proposed rule-

making, or a notice on a petition for rulemaking, issued by the Commission during the 3-year period preceding the date on which the notice of proposed rulemaking concerned is issued and of which such notice is a logical outgrowth;

''(ii) an order of a court reviewing action by the Commission or otherwise directing the Commission to act that the court issued during the 3-year period preceding the date on which the notice of proposed rulemaking concerned is issued and in response to which such notice is being issued; or

''(iii) 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; and

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

"(K) require each notice of proposed rulemaking or order adopting a rule or amending an existing rule that may have an economically significant impact, to contain—

"(i) an identification and analysis of the specific market failure, actual consumer harm, burden of existing regulation, or failure of public institutions that warrants the adoption or amendment; and

"(ii) a reasoned determination that the benefits of the adoption or amendment justify the 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 obtaining regulatory objectives;

"(L) establish procedures under which a Commissioner, with respect to an order, decision, report, or action of a bureau or office of the Commission, may require the entire Commission to vote on whether to—

"(i) affirm, modify, or set aside the order, decision, report, or action; or

"(ii) order a rehearing upon the order, decision, report, or action in accordance with section 405; and

"(M) establish procedures for publishing the language of a rule or amendment of an existing rule for a period of not fewer than 21 days before the date on which a vote on the rule or amendment to an existing rule begins.

"(3) INQUIRY.—Not later than 1 year after the date of enactment of the Federal Communications Commission Process Reform Act of 2015, the Commission shall complete an inquiry to seek public comment on whether and how the Commission should—

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

"(B) establish procedures for 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 under section 5(d)), to review the proposed Commission deci-

sion document, including the specific language of any proposed rule or any proposed amendment of an existing rule;

"(C) establish deadlines (relative to the date of filing) for disposition of applications for a license under section 1.913 of title 47, Code of Federal Regulations;

"(D) assign resources needed to meet the deadlines described in subparagraph (C), including whether the ability of the Commission to meet those deadlines would be enhanced by assessing a fee from applicants for a license described in subparagraph (C); and

"(E) publish each order, decision, report, or action not later than 30 days after the date of the adoption of the order, decision, report, or action.

"(4) DATA FOR PERFORMANCE MEASURES.—The Commission shall develop a performance measure or proposed performance measure required under this subsection to rely, where possible, on data already collected by the Commission.

"(c) PERIODIC REVIEW.—On the date that is 5 years after the completion of the rulemaking proceeding under subsection (b)(1), and every 5 years thereafter, the Com-

mission shall initiate a new rulemaking proceeding to continue to consider any procedural changes to the rules of the Commission that may be in the public interest to maximize opportunities for public participation and efficient decisionmaking.

"(d) 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 the meeting;

"(B) each person present at the 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 the 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 the meeting, including—

"(A) a list of the persons who attended the meeting; and

"(B) a summary of the matters discussed at the meeting, except for any matters that 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).

"(e) ACCESS TO CERTAIN INFORMATION ON COMMISSION'S WEBSITE.—The Commission shall provide direct access from the homepage of the website of the Commission to—

"(1) detailed information regarding—

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

"(B) the appropriations for the Commission for the current fiscal year; and

"(C) the total number of full-time equivalent 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.

"(f) 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 the document to be so published.

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

"(A) the date that is 60 days after the date of the release of the document described in paragraph (1); or

"(B) the date by which the actions described in paragraph (1) must be completed to comply with any deadline under any other provision of law.

"(3) NO EFFECT ON DEADLINES FOR PUBLICATION IN OTHER FORM.—

"(A) IN GENERAL.—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 the deadline by publishing the document in another form.

"(B) APPLICABILITY OF FEDERAL REGISTER PUBLICATION REQUIREMENTS.—Publication of a document in another form as described in subparagraph (A) shall not relieve the Commission of any Federal Register publication requirement applicable to the document, including the requirement under paragraph (1).

"(g) FORM OF PUBLICATION.—

"(1) IN GENERAL.—In complying with a requirement under this section to publish a document, the Commission shall publish the document on the website of the Commission, in addition to publishing the 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 under this section so that the published versions of the 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.

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

"(1) publishing on the website of the Commission the logs used by the Commission 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 Bureaus and Offices of the Commission) 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 website of the Commission electronic copies of documents released under such section; and

"(4) presenting, in the annual budget estimates of the Commission submitted to Congress and the annual performance and financial reports of the Commission, information about the handling by the Commission of requests under such section, including—

"(A) the number of requests under such section the Commission received during the most recent fiscal year;

"(B) the number of requests described in subparagraph (A) granted and denied;

"(C) a comparison of the processing of requests described in subparagraph (A) by the Commission during a period of not less than the 3 preceding fiscal years; and

"(D) a comparison of the results of the Commission in processing requests described in subparagraph (A) with the most recent average for the United States Government as published on www.foia.gov.

"(i) PROMPT RELEASE OF STATISTICAL REPORTS AND REPORTS TO CONGRESS.—Not later than January 15

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 the year.

"(j) ANNUAL SCORE CARD REPORTS.—

"(1) IN GENERAL.—For the 1-year period beginning on January 1 of each year, the Commission shall prepare a report on the performance of the Commission in conducting proceedings and meeting the guidelines established under subsection (b)(2)(E).

"(2) CONTENTS.—Each report required under paragraph (1) shall contain detailed statistics on the performance of the Commission as described in paragraph (1), including, with respect to each bureau or office of the Commission—

"(A) with respect to each type of filing specified in subsection (b)(2)(E)—

"(i) the number of filings that were pending on the last day of the period covered by the report;

"(ii) the number of filings described in clause (i) for which each applicable deadline or guideline established under

such subsection was not met and the average length of time those filings have been pending; and

"(iii) for filings that were resolved during the period covered by the report, the average time between initiation and resolution and the percentage for which each applicable deadline or guideline established under such subsection was met;

"(B) with respect to proceedings before an administrative law judge—

"(i) the number of proceedings completed during the period covered by the report; and

"(ii) the number of proceedings pending on the last day of the period covered by the report; and

"(C) the number of independent studies or analyses published by the Commission during the period covered by the report.

"(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 under paragraph (1) not later than the date that is 30 days after the last day of the period covered by the report.''.

(b) EFFECTIVE DATES AND IMPLEMENTING RULES.—

(1) EFFECTIVE DATES.—

(A) NONPUBLIC COLLABORATIVE DISCUSSIONS.—Subsection (d) of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply beginning on the first date on which all of the procedural changes to the rules of the Federal Communications Commission required under subsection (b)(1) of such section have taken effect.

(B) SCHEDULES AND REPORTS.—Subsections (j) and (k) of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply with respect to 2015 and any year thereafter.

(2) RULES.—Except as otherwise provided in section 13 of the Communications Act of 1934, as added by subsection (a), the Federal Communications Commission shall promulgate any rules necessary to carry out such section not later than 1 year after the date of enactment of this Act.

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. EFFECT ON OTHER LAWS.

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

SEC. 5. PROVISION OF EMERGENCY WEATHER INFORMATION; COMMUNICATIONS OF FIRST RESPONDERS.

Nothing in this Act or the amendments made by 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—

(1) to alert the public to imminent dangerous weather conditions; or

1 (2) for State and local first responders.

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