

**H.R. 3309, AS AMENDED BY
THE SUBCOMMITTEE ON COMMUNICATIONS
AND TECHNOLOGY ON NOVEMBER 16, 2011**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Communica-
3 tions Commission Process Reform Act of 2011”.

4 **SEC. 2. FCC PROCESS REFORM.**

5 (a) IN GENERAL.—Title I of the Communications Act
6 of 1934 (47 U.S.C. 151 et seq.) is amended by adding
7 at the end the following new section:

8 **“SEC. 13. TRANSPARENCY AND EFFICIENCY.**

9 “(a) RULEMAKING REQUIREMENTS.—

10 “(1) REQUIREMENTS FOR NOTICES OF PRO-
11 POSED RULEMAKING.—The Commission may not
12 issue a notice of proposed rulemaking unless the
13 Commission provides for a period of not less than 30
14 days for the submission of comments and an addi-
15 tional period of not less than 30 days for the sub-
16 mission of reply comments on such notice and the
17 Commission includes in such notice the following:

18 “(A) Either—

19 “(i) an identification of—

1 “(I) a notice of inquiry, a prior
2 notice of proposed rulemaking, or a
3 notice on a petition for rulemaking
4 issued by the Commission during the
5 3-year period preceding the issuance
6 of the notice of proposed rulemaking
7 concerned and of which such notice is
8 a logical outgrowth; or

9 “(II) an order of a court review-
10 ing action by the Commission or oth-
11 erwise directing the Commission to
12 act that was issued by the court dur-
13 ing the 3-year period preceding the
14 issuance of the notice of proposed
15 rulemaking concerned and in response
16 to which such notice is being issued;
17 or

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

20 “(I) that the proposed rule or the
21 proposed amendment of an existing
22 rule will not impose additional bur-
23 dens on industry or consumers; or

24 “(II) for good cause, that a no-
25 tice of inquiry is impracticable, unnec-

1 essary, or contrary to the public inter-
2 est.

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

6 “(C) In the case of a proposal to create a
7 program activity, proposed performance meas-
8 ures for evaluating the effectiveness of the pro-
9 gram activity.

10 “(D) In the case of a proposal to substan-
11 tially change a program activity—

12 “(i) proposed performance measures
13 for evaluating the effectiveness of the pro-
14 gram activity as proposed to be changed;
15 or

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

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

24 “(A) the specific language of the adopted
25 rule or the amendment of an existing rule is a

1 logical outgrowth of the specific language of a
2 proposed rule or a proposed amendment of an
3 existing rule included in a notice of proposed
4 rulemaking, as described in subparagraph (B)
5 of paragraph (1);

6 “(B) such notice of proposed rulemaking—

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

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

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

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

22 “(ii) a reasoned determination that
23 the benefits of the adopted rule or the
24 amendment of an existing rule justify its
25 costs (recognizing that some benefits and

1 costs are difficult to quantify), taking into
2 account alternative forms of regulation and
3 the need to tailor regulation to impose the
4 least burden on society, consistent with ob-
5 taining regulatory objectives;

6 “(D) in the case of the adoption of a rule
7 or the amendment of an existing rule that cre-
8 ates a program activity, the order contains per-
9 formance measures for evaluating the effective-
10 ness of the program activity; and

11 “(E) in the case of the adoption of a rule
12 or the amendment of an existing rule that sub-
13 stantially changes a program activity, the order
14 contains—

15 “(i) performance measures for evalu-
16 ating the effectiveness of the program ac-
17 tivity as changed; or

18 “(ii) a finding that existing perform-
19 ance measures will effectively evaluate the
20 program activity as changed.

21 “(3) DATA FOR PERFORMANCE MEASURES.—

22 The Commission shall develop a performance meas-
23 ure or proposed performance measure required by
24 this subsection to rely, where possible, on data al-
25 ready collected by the Commission.

1 “(b) ADEQUATE DELIBERATION BY COMMIS-
2 SIONERS.—The Commission shall by rule establish proce-
3 dures for—

4 “(1) informing all Commissioners of a reason-
5 able number of options available to the Commission
6 for resolving a petition, complaint, application, rule-
7 making, or other proceeding;

8 “(2) ensuring that all Commissioners have ade-
9 quate time, prior to being required to decide a peti-
10 tion, complaint, application, rulemaking, or other
11 proceeding (including at a meeting held pursuant to
12 section 5(d)), to review the proposed Commission de-
13 cision document, including the specific language of
14 any proposed rule or any proposed amendment of an
15 existing rule; and

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

20 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

21 “(1) IN GENERAL.—Notwithstanding section
22 552b of title 5, United States Code, a bipartisan
23 majority of Commissioners may hold a meeting that
24 is closed to the public to discuss official business
25 if—

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

3 “(B) each person present at such meeting
4 is a Commissioner, an employee of the Commis-
5 sion, a member of a joint board established
6 under section 410, or a person on the staff of
7 such a joint board; and

8 “(C) an attorney from the Office of Gen-
9 eral Counsel of the Commission is present at
10 such meeting.

11 “(2) DISCLOSURE OF NONPUBLIC COLLABO-
12 RATIVE DISCUSSIONS.—Not later than 2 business
13 days after the conclusion of a meeting held under
14 paragraph (1), the Commission shall publish a dis-
15 closure of such meeting, including—

16 “(A) a list of the persons who attended
17 such meeting; and

18 “(B) a summary of the matters discussed
19 at such meeting, except for such matters as the
20 Commission determines may be withheld under
21 section 552b(e) of title 5, United States Code.

22 “(3) PRESERVATION OF OPEN MEETINGS RE-
23 QUIREMENTS FOR AGENCY ACTION.—Nothing in this
24 subsection shall limit the applicability of section
25 552b of title 5, United States Code, with respect to

1 a meeting of Commissioners other than that de-
2 scribed in paragraph (1).

3 “(d) INITIATION OF ITEMS BY BIPARTISAN MAJOR-
4 ITY.—The Commission shall by rule establish procedures
5 for allowing a bipartisan majority of Commissioners to—

6 “(1) direct Commission staff to draft an order,
7 decision, report, or action for review by the Commis-
8 sion;

9 “(2) require Commission approval of an order,
10 decision, report, or action with respect to a function
11 of the Commission delegated under section 5(c)(1);
12 and

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

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

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), the Commission may not rely, in any
19 order, decision, report, or action, on—

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

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

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

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

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

7 “(h) PROMPT RELEASE OF CERTAIN REPORTS AND
8 DECISION DOCUMENTS.—

9 “(1) STATISTICAL REPORTS AND REPORTS TO
10 CONGRESS.—

11 “(A) RELEASE SCHEDULE.—Not later
12 than January 15th of each year, the Commis-
13 sion shall identify, catalog, and publish an an-
14 ticipated release schedule for all statistical re-
15 ports and reports to Congress that are regularly
16 or intermittently released by the Commission
17 and will be released during such year.

18 “(B) PUBLICATION DEADLINES.—The
19 Commission shall publish each report identified
20 in a schedule published under subparagraph (A)
21 not later than the date indicated in such sched-
22 ule for the anticipated release of such report.

23 “(2) DECISION DOCUMENTS.—The Commission
24 shall publish each order, decision, report, or action

1 not later than 7 days after the date of the adoption
2 of such order, decision, report, or action.

3 “(3) EFFECT IF DEADLINES NOT MET.—

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

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

25 “(i) BIENNIAL SCORECARD REPORTS.—

1 “(1) IN GENERAL.—For the 6-month period be-
2 ginning on January 1st of each year and the 6-
3 month period beginning on July 1st of each year,
4 the Commission shall prepare a report on the per-
5 formance of the Commission in conducting its pro-
6 ceedings and meeting the deadlines established
7 under subsections (g), (h)(1)(B), and (h)(2).

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

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

16 “(i) the number of petitions, applica-
17 tions, complaints, and other filings seeking
18 Commission action that were pending on
19 the last day of the period covered by such
20 report;

21 “(ii) the number of filings described
22 in clause (i) that were not resolved by the
23 deadlines established under such sub-
24 section and the average length of time
25 such filings have been pending; and

1 “(iii) for petitions, applications, com-
2 plaints, and other filings seeking Commis-
3 sion action that were resolved during such
4 period, the average time between initiation
5 and resolution and the percentage resolved
6 by the deadlines established under such
7 subsection;

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

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

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

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

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

25 “(j) TRANSACTION REVIEW STANDARDS.—

1 “(1) IN GENERAL.—The Commission shall con-
2 dition its approval of a transfer of lines, a transfer
3 of licenses, or any other transaction under section
4 214, 309, or 310 or any other provision of this Act
5 only if—

6 “(A) the imposed condition is narrowly tai-
7 lored to remedy a harm that arises as a direct
8 result of the specific transfer or specific trans-
9 action that this Act empowers the Commission
10 to review; and

11 “(B) the Commission could impose a simi-
12 lar requirement under the authority of a spe-
13 cific provision of law other than a provision em-
14 powering the Commission to review a transfer
15 of lines, a transfer of licenses, or other trans-
16 action.

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

1 “(k) ACCESS TO CERTAIN INFORMATION ON COMMIS-
2 SION’S WEBSITE.—The Commission shall provide direct
3 access from the homepage of its website to—

4 “(1) detailed information regarding—

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

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

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

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

14 “(l) FORM OF PUBLICATION.—

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

21 “(2) EXCEPTION.—The Commission shall by
22 rule establish procedures for redacting documents
23 required to be published by this section so that the
24 published versions of such documents do not con-
25 tain—

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

5 “(B) information that is proprietary or
6 confidential.

7 “(m) DEFINITIONS.—In this section:

8 “(1) AMENDMENT.—The term ‘amendment’ in-
9 cludes, when used with respect to an existing rule,
10 the deletion of such rule.

11 “(2) BIPARTISAN MAJORITY.—The term ‘bipar-
12 tisan majority’ means, when used with respect to a
13 group of Commissioners, that such group—

14 “(A) is a group of 3 or more Commis-
15 sioners; and

16 “(B) includes, for each political party of
17 which any Commissioner is a member, at least
18 1 Commissioner who is a member of such polit-
19 ical party, and, if any Commissioner has no po-
20 litical party affiliation, at least 1 unaffiliated
21 Commissioner.

22 “(3) ECONOMICALLY SIGNIFICANT IMPACT.—
23 The term ‘economically significant impact’ means an
24 effect on the economy of \$100,000,000 or more an-
25 nually or a material adverse effect on the economy,

1 a sector of the economy, productivity, competition,
2 jobs, the environment, public health or safety, or
3 State, local, or tribal governments or communities.

4 “(4) PERFORMANCE MEASURE.—The term ‘per-
5 formance measure’ means an objective and quantifi-
6 able outcome measure or output measure (as such
7 terms are defined in section 1115 of title 31, United
8 States Code).

9 “(5) PROGRAM ACTIVITY.—The term ‘program
10 activity’ has the meaning given such term in section
11 1115 of title 31, United States Code, except that
12 such term also includes any annual collection or dis-
13 tribution or related series of collections or distribu-
14 tions by the Commission of an amount that is great-
15 er than or equal to \$100,000,000.

16 “(6) OTHER DEFINITIONS.—The terms ‘agency
17 action’, ‘ex parte communication’, and ‘rule’ have
18 the meanings given such terms in section 551 of title
19 5, United States Code.”.

20 (b) EFFECTIVE DATE AND IMPLEMENTING RULES.—

21 (1) EFFECTIVE DATE.—

22 (A) IN GENERAL.—The requirements of
23 section 13 of the Communications Act of 1934,
24 as added by subsection (a), shall apply begin-

1 ning on the date that is 6 months after the date
2 of the enactment of this Act.

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

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

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

19 (C) SCHEDULES AND REPORTS.—Notwith-
20 standing subparagraph (A), subsections (h)(1)
21 and (i) of such section shall apply with respect
22 to 2013 and any year thereafter.

23 (2) RULES.—The Federal Communications
24 Commission shall promulgate the rules necessary to

1 carry out such section not later than 1 year after
2 the date of the enactment of this Act.

3 (3) PROCEDURES FOR ADOPTING RULES.—Not-
4 withstanding paragraph (1)(A), in promulgating
5 rules to carry out such section, the Federal Commu-
6 nications Commission shall comply with the require-
7 ments of subsections (a) and (h)(2) of such section.

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

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

