

113TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. HELLER introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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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.

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 2014”.

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

2 (a) IN GENERAL.—Title I of the Communications Act  
3 of 1934 (47 U.S.C. 151 et seq.) is amended by adding  
4 at the end the following:

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

6 “(a) DEFINITIONS.—In this section:

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

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

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

15 “(B) includes—

16 “(i) for each political party of which  
17 any Commissioner is a member, not less  
18 than 1 Commissioner who is a member of  
19 that political party; and

20 “(ii) if any Commissioner has no po-  
21 litical party affiliation, not less than 1 un-  
22 affiliated Commissioner.

23 “(3) PERFORMANCE MEASURE.—The term ‘per-  
24 formance measure’ means an objective and quantifi-  
25 able outcome measure or output measure (as those

1 terms are defined in section 1115 of title 31, United  
2 States Code).

3 “(4) PROGRAM ACTIVITY.—The term ‘program  
4 activity’—

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

8 “(B) includes any annual collection or dis-  
9 tribution or related series of collections or dis-  
10 tributions by the Commission of an amount  
11 that is not less than \$100,000,000.

12 “(5) OTHER DEFINITIONS.—The terms ‘agency  
13 action’, ‘ex parte communication’, and ‘rule’ have  
14 the meanings given the terms in section 551 of title  
15 5, United States Code.

16 “(b) INITIAL RULEMAKING AND INQUIRY.—

17 “(1) RULEMAKING.—Not later than 1 year  
18 after the date of enactment of the Federal Commu-  
19 nications Commission Process Reform Act of 2014,  
20 the Commission shall complete a rulemaking pro-  
21 ceeding and adopt procedural changes to the rules of  
22 the Commission to maximize opportunities for public  
23 participation and efficient decisionmaking.

24 “(2) REQUIREMENTS FOR RULEMAKING.—The  
25 rules adopted under paragraph (1) shall—

1           “(A) set minimum comment periods for  
2 comment and reply comment, subject to a de-  
3 termination by the Commission that good cause  
4 exists for departing from the minimum com-  
5 ment periods, for—

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

10           “(ii) all other rulemaking proceedings;

11           “(B) establish policies concerning the sub-  
12 mission of extensive new comments, data, or re-  
13 ports towards the end of a comment period;

14           “(C) establish policies regarding treatment  
15 of comments, ex parte communications, and  
16 data or reports (including statistical reports  
17 and reports to Congress) submitted after a  
18 comment period to ensure that the public has  
19 adequate notice of and opportunity to respond  
20 to the submissions before the Commission relies  
21 on the submissions in any order, decision, re-  
22 port, or action;

23           “(D) establish procedures for publishing  
24 the status of open rulemaking proceedings and  
25 proposed orders, decisions, reports, or actions

1 on circulation for review by the Commissioners,  
2 including which Commissioners have not cast a  
3 vote on an order, decision, report, or action that  
4 has been on circulation for more than 60 days;

5 “(E) establish deadlines (relative to the  
6 date of filing) for—

7 “(i) in the case of a petition for a de-  
8 claratory ruling under section 1.2 of title  
9 47, Code of Federal Regulations, issuing a  
10 public notice of the petition;

11 “(ii) in the case of a petition for rule-  
12 making under section 1.401 of title 47,  
13 Code of Federal Regulations, issuing a  
14 public notice of the petition; and

15 “(iii) in the case of a petition for re-  
16 consideration under section 1.106 or 1.429  
17 of title 47, Code of Federal Regulations, or  
18 an application for review under section  
19 1.115 of such title, issuing a public notice  
20 of a decision on the petition or application  
21 by the Commission or under delegated au-  
22 thority (as the case may be);

23 “(F) establish guidelines (relative to the  
24 date of filing) for the disposition of petitions

1 filed under section 1.2 of title 47, Code of Fed-  
2 eral Regulations;

3 “(G) establish procedures for the inclusion  
4 of the specific language of the proposed rule or  
5 the proposed amendment of an existing rule in  
6 a notice of proposed rulemaking;

7 “(H) require each notice of proposed rule-  
8 making or order adopting a rule or amending  
9 an existing rule that creates (or proposes to  
10 create) a program activity to contain perform-  
11 ance measures for evaluating the effectiveness  
12 of the program activity; and

13 “(I) require each notice of proposed rule-  
14 making or order adopting a rule or amending  
15 an existing rule that substantially changes (or  
16 proposes to substantially change) a program ac-  
17 tivity to contain—

18 “(i) performance measures for evalu-  
19 ating the effectiveness of the program ac-  
20 tivity as changed (or proposed to be  
21 changed); or

22 “(ii) a finding that existing perform-  
23 ance measures will effectively evaluate the  
24 program activity as changed (or proposed  
25 to be changed).

1           “(3) INQUIRY.—Not later than 1 year after the  
2           date of enactment of the Federal Communications  
3           Commission Process Reform Act of 2014, the Com-  
4           mission shall complete an inquiry to seek public  
5           comment on whether and how the Commission  
6           should—

7                   “(A) establish procedures for allowing a bi-  
8                   partisan majority of Commissioners to place an  
9                   order, decision, report, or action on the agenda  
10                  of an open meeting;

11                  “(B) establish procedures for informing all  
12                  Commissioners of a reasonable number of op-  
13                  tions available to the Commission for resolving  
14                  a petition, complaint, application, rulemaking,  
15                  or other proceeding;

16                  “(C) establish procedures for ensuring that  
17                  all Commissioners have adequate time, prior to  
18                  being required to decide a petition, complaint,  
19                  application, rulemaking, or other proceeding  
20                  (including at a meeting held under section  
21                  5(d)), to review the proposed Commission deci-  
22                  sion document, including the specific language  
23                  of any proposed rule or any proposed amend-  
24                  ment of an existing rule;

1           “(D) establish procedures for publishing  
2           the text of agenda items to be voted on at an  
3           open meeting in advance of the meeting so that  
4           the public has the opportunity to read the text  
5           before a vote is taken;

6           “(E) establish deadlines (relative to the  
7           date of filing) for disposition of applications for  
8           a license under section 1.913 of title 47, Code  
9           of Federal Regulations;

10          “(F) assign resources needed to meet the  
11          deadlines described in subparagraph (E), in-  
12          cluding whether the ability of the Commission  
13          to meet those deadlines would be enhanced by  
14          assessing a fee from applicants for a license de-  
15          scribed in subparagraph (E); and

16          “(G) publish each order, decision, report,  
17          or action not later than 30 days after the date  
18          of the adoption of the order, decision, report, or  
19          action.

20          “(4) DATA FOR PERFORMANCE MEASURES.—  
21          The Commission shall develop a performance meas-  
22          ure or proposed performance measure required  
23          under this subsection to rely, where possible, on data  
24          already collected by the Commission.



1       “(c) PERIODIC REVIEW.—On the date that is 5 years  
2 after the completion of the rulemaking proceeding under  
3 subsection (b)(1), and every 5 years thereafter, the Com-  
4 mission shall initiate a new rulemaking proceeding to con-  
5 tinue to consider any procedural changes to the rules of  
6 the Commission that may be in the public interest to maxi-  
7 mize opportunities for public participation and efficient  
8 decisionmaking.

9       “(d) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

10       “(1) IN GENERAL.—Notwithstanding section  
11 552b of title 5, United States Code, a bipartisan  
12 majority of Commissioners may hold a meeting that  
13 is closed to the public to discuss official business  
14 if—

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

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

1           “(C) an attorney from the Office of Gen-  
2           eral Counsel of the Commission is present at  
3           the meeting.

4           “(2) DISCLOSURE OF NONPUBLIC COLLABO-  
5           RATIVE DISCUSSIONS.—Not later than 2 business  
6           days after the conclusion of a meeting held under  
7           paragraph (1), the Commission shall publish a dis-  
8           closure of the meeting, including—

9           “(A) a list of the persons who attended the  
10          meeting; and

11          “(B) a summary of the matters discussed  
12          at the meeting, except for any matters that the  
13          Commission determines may be withheld under  
14          section 552b(c) of title 5, United States Code.

15          “(3) PRESERVATION OF OPEN MEETINGS RE-  
16          QUIREMENTS FOR AGENCY ACTION.—Nothing in this  
17          subsection shall limit the applicability of section  
18          552b of title 5, United States Code, with respect to  
19          a meeting of Commissioners other than that de-  
20          scribed in paragraph (1).

21          “(e) ACCESS TO CERTAIN INFORMATION ON COMMIS-  
22          SION’S WEBSITE.—The Commission shall provide direct  
23          access from the homepage of the website of the Commis-  
24          sion to—

25          “(1) detailed information regarding—

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

3           “(B) the appropriations for the Commis-  
4           sion for the current fiscal year; and

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

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

10          “(f) FEDERAL REGISTER PUBLICATION.—

11           “(1) IN GENERAL.—In the case of any docu-  
12           ment adopted by the Commission that the Commis-  
13           sion is required, under any provision of law, to pub-  
14           lish in the Federal Register, the Commission shall,  
15           not later than the date described in paragraph (2),  
16           complete all Commission actions necessary for the  
17           document to be so published.

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

20           “(A) the date that is 45 days after the  
21           date of the release of the document described in  
22           paragraph (1); or

23           “(B) the date by which the actions de-  
24           scribed in paragraph (1) must be completed to

1           comply with any deadline under any other pro-  
2           vision of law.

3           “(3) NO EFFECT ON DEADLINES FOR PUBLICA-  
4           TION IN OTHER FORM.—

5                   “(A) IN GENERAL.—In the case of a dead-  
6           line that does not specify that the form of pub-  
7           lication is publication in the Federal Register,  
8           the Commission may comply with the deadline  
9           by publishing the document in another form.

10                   “(B) APPLICABILITY OF FEDERAL REG-  
11           ISTER PUBLICATION REQUIREMENTS.—Publica-  
12           tion of a document in another form as described  
13           in subparagraph (A) shall not relieve the Com-  
14           mission of any Federal Register publication re-  
15           quirement applicable to the document, including  
16           the requirement under paragraph (1).

17           “(g) CONSUMER COMPLAINT DATABASE.—

18                   “(1) IN GENERAL.—In evaluating and proc-  
19           essing consumer complaints, the Commission shall  
20           present information about the complaints in a pub-  
21           licly available, searchable database on the website of  
22           the Commission that—

23                           “(A) facilitates easy use by consumers; and

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

1 “(i) the date of the filing of the com-  
2 plaint;

3 “(ii) the topic of the complaint;

4 “(iii) the party complained of; and

5 “(iv) other elements that the Commis-  
6 sion considers in the public interest.

7 “(2) DUPLICATIVE COMPLAINTS.—In the case  
8 of multiple complaints arising from the same alleged  
9 misconduct, the Commission may satisfy the require-  
10 ment under paragraph (1) by including information  
11 concerning only 1 such complaint in the database  
12 described in paragraph (1).

13 “(h) FORM OF PUBLICATION.—

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

21 “(2) EXCEPTION.—The Commission shall by  
22 rule establish procedures for redacting documents  
23 required to be published under this section so that  
24 the published versions of the 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           “(i) **TRANSPARENCY RELATING TO PERFORMANCE IN**  
8 **MEETING FOIA REQUIREMENTS.**—The Commission shall  
9 take additional steps to inform the public about the per-  
10 formance and efficiency of the Commission in meeting the  
11 disclosure and other requirements under section 552 of  
12 title 5, United States Code (commonly referred to as the  
13 ‘Freedom of Information Act’), including by—

14           “(1) publishing on the website of the Commis-  
15 sion the logs used by the Commission for tracking,  
16 responding to, and managing requests submitted  
17 under such section, including the Commission’s fee  
18 estimates, fee categories, and fee request determina-  
19 tions;

20           “(2) releasing to the public all decisions made  
21 by the Commission (including decisions made by the  
22 Bureaus and Offices of the Commission) granting or  
23 denying requests filed under such section, including  
24 any such decisions pertaining to the estimate and  
25 application of fees assessed under such section;

1           “(3) publishing on the website of the Commis-  
2           sion electronic copies of documents released under  
3           such section; and

4           “(4) presenting, in the annual budget estimates  
5           of the Commission submitted to Congress and the  
6           annual performance and financial reports of the  
7           Commission, information about the handling by the  
8           Commission of requests under such section, includ-  
9           ing—

10                   “(A) the number of requests under such  
11                   section the Commission received during the  
12                   most recent fiscal year;

13                   “(B) the number of requests described in  
14                   subparagraph (A) granted and denied;

15                   “(C) a comparison of the processing of re-  
16                   quests described in subparagraph (A) by the  
17                   Commission during a period of not less than  
18                   the 3 preceding fiscal years; and

19                   “(D) a comparison of the results of the  
20                   Commission in processing requests described in  
21                   subparagraph (A) with the most recent average  
22                   for the United States Government as published  
23                   on [www.foia.gov](http://www.foia.gov).

24           “(j) PROMPT RELEASE OF STATISTICAL REPORTS  
25           AND REPORTS TO CONGRESS.—Not later than January 15

1 of each year, the Commission shall identify, catalog, and  
2 publish an anticipated release schedule for all statistical  
3 reports and reports to Congress that are regularly or  
4 intermittently released by the Commission and will be re-  
5 leased during the year.

6 “(k) ANNUAL SCORECARD REPORTS.—

7 “(1) IN GENERAL.—For the 1-year period be-  
8 ginning on January 1 of each year, the Commission  
9 shall prepare a report on the performance of the  
10 Commission in conducting proceedings and meeting  
11 the deadlines established under subsection (b)(2)(E)  
12 and the guidelines established under subsection  
13 (b)(2)(F).

14 “(2) CONTENTS.—Each report required under  
15 paragraph (1) shall contain detailed statistics on the  
16 performance of the Commission as described in  
17 paragraph (1), including, with respect to each Bu-  
18 reau of the Commission—

19 “(A) with respect to each type of filing  
20 specified in subsection (b)(2)(E) or (b)(2)(F)—

21 “(i) the number of filings that were  
22 pending on the last day of the period cov-  
23 ered by the report;

24 “(ii) the number of filings described  
25 in clause (i) for which each applicable



1 deadline or guideline established under  
2 such subsection was not met and the aver-  
3 age length of time those filings have been  
4 pending; and

5 “(iii) for filings that were resolved  
6 during the period covered by the report,  
7 the average time between initiation and  
8 resolution and the percentage for which  
9 each applicable deadline or guideline estab-  
10 lished under such subsection was met;

11 “(B) with respect to proceedings before an  
12 administrative law judge—

13 “(i) the number of proceedings com-  
14 pleted during the period covered by the re-  
15 port; and

16 “(ii) the number of proceedings pend-  
17 ing on the last day of the period covered  
18 by the report; and

19 “(C) the number of independent studies or  
20 analyses published by the Commission during  
21 the period covered by the report.

22 “(3) PUBLICATION AND SUBMISSION.—The  
23 Commission shall publish and submit to the Com-  
24 mittee on Energy and Commerce of the House of  
25 Representatives and the Committee on Commerce,

1 Science, and Transportation of the Senate each re-  
2 port required under paragraph (1) not later than the  
3 date that is 30 days after the last day of the period  
4 covered by the report.”.

5 (b) EFFECTIVE DATES AND IMPLEMENTING  
6 RULES.—

7 (1) EFFECTIVE DATES.—

8 (A) NONPUBLIC COLLABORATIVE DISCUS-  
9 SIONS.—Subsection (d) of section 13 of the  
10 Communications Act of 1934, as added by sub-  
11 section (a), shall apply beginning on the first  
12 date on which all of the procedural changes to  
13 the rules of the Federal Communications Com-  
14 mission required under subsection (b)(1) of  
15 such section have taken effect.

16 (B) SCHEDULES AND REPORTS.—Sub-  
17 sections (j) and (k) of section 13 of the Com-  
18 munications Act of 1934, as added by sub-  
19 section (a), shall apply with respect to 2014  
20 and any year thereafter.

21 (2) RULES.—Except as otherwise provided in  
22 section 13 of the Communications Act of 1934, as  
23 added by subsection (a), the Federal Communica-  
24 tions Commission shall promulgate any rules nec-



1           “(m) APPLICATION OF ANTIDEFICIENCY ACT.—Sec-  
2 tion 1341 and subchapter II of chapter 15 of title 31,  
3 United States Code, shall not apply to—

4           “(1) any amount collected or received as Fed-  
5 eral universal service contributions required under  
6 this section, including any interest earned on such  
7 contributions; or

8           “(2) the expenditure or obligation of amounts  
9 attributable to contributions described in paragraph  
10 (1) for universal service support programs estab-  
11 lished under this section.”.

12           (b) REPEAL OF TEMPORARY PROVISION.—The Uni-  
13 versal Service Antideficiency Temporary Suspension Act  
14 (title III of Public Law 108–494; 118 Stat. 3997) is re-  
15 pealed.