



Legislative Bulletin.....March 27, 2012

Contents:

H.R. 3309 - Federal Communications Commission Process Reform Act of 2012

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Order of Business: The bill is scheduled to be considered on Tuesday, March 27, 2012, under a structured rule, H.Res. 595. The rule specifies that the House of Representatives shall begin consideration of H.R. 3309 in the Committee of the Whole House. The rule provides for one hour of general debate equally divided and controlled by the chair and ranking minority member of the Energy and Commerce Committee. After general debate, the legislation shall be considered for amendment under the five-minute rule. After amendment consideration, the Committee shall rise and report the bill to the House. At that time, any Member may demand a separate vote on any amendment that was adopted by the Committee of the Whole. The rule provides for one motion to recommit with or without instructions.

Summary: H.R. 3309 reforms the Federal Communications Commission’s (Commission) rulemaking process. It requires the Commission to rigorously examine the marketplace, give increased time for public input and comment, and increase transparency while approving new rules and amendments. This legislation shall become effective 6 months after enactment.

Increased Transparency:

The Commission is prohibited from issuing a notice of rulemaking unless the Commission gives at least 30 days for public comment, and an additional 30 days for reply comments. The Commission must also identify:

- A notice of inquiry, a prior notice of proposed rulemaking, or a notice on a petition for rulemaking issued by the Commission during the past 3 years; or
- A notice of a court review that directs the Commission to act.

The Commission would also make available the specific language of the proposed rule or amendment, and would include a finding that the proposed rule or amendment would not impose an additional burden on industry or consumers.

The Commission is prohibited from adopting rules or amendments unless the specific language is a logical outgrowth of the proposed language. In the event that a proposed rule or amendment change would have a significant economic impact, the order of such proposal shall:

- Identify the specific market failure, actual consumer harm, burden of existing regulation, or the failure of the public institution that warrants the proposal; and
- A determination that the benefits of the proposal will justify its costs.

Adequate Deliberation:

H.R. 3309 requires the Commission to establish procedures to inform all Commissioners of a reasonable number of options available to the Commission for resolving a petition, complaint, application or rulemaking. The Commission must adopt procedures to ensure that all Commissioners have adequate time to review proposals before being voted on. This includes allowing the Commissioners to have access to the specific language of the proposal prior to deciding on the proposal. The Commission will also be required to publish the text of agenda items in advance of Commission meetings, so that the public has the opportunity to read the text before a vote is taken.

Closed Door Meetings:

The Commission is prohibited from voting on proposals during closed-door meetings. The Commission is only allowed to conduct closed-door meetings if they publish, within 2 business days, a list of the persons who attended the meeting, and a summary of the matters discussed at the meeting.

Ex-Parte Communication:

The legislation prohibits the Commission from relying on a report to Congress, unless the Commission has published the report and has made it available for at least 30 days. The Commission is also prohibited from relying on any ex-parte communication with the Commission unless the public has had adequate notice and opportunity to respond to such communication.

Status of Proceedings:

The Commission shall establish rules for publishing the status of all open rulemaking proceedings and all proposed orders, decisions, reports, or actions being reviewed by the Commission. This includes proceedings in which Commissioners have not cast a vote on but have been circulating for more than 60 days.

Deadlines for Action:

The Commission shall establish decision deadlines for any action regarding petitions, applications, complaints, and filings seeking action.

Release of Reports and Decision Documents:

Annually, by January 15, the Commission shall publish an anticipated release schedule for all statistical reports and reports to Congress that are expected to be released that year.

The Commission shall publish each order, decision, report, or action with 7 days after the date of its adoption.

Scorecard Reports:

The Commission shall prepare a biannual performance report of the Commission. This report shall detail the number of petitions, applications, complaints and other filings that are pending and not resolved. It shall detail the average length of time such filings have been pending. This report will detail cases or proceedings before an administrative law judge, the number of such cases completed, and the number pending. This report will be submitted to the House Committee on Energy and Commerce, and the Senate Committee on Commerce, Science, and Transportation. This report is due no later than February 1 and August 1 of each year.

Access to Certain Information on Commission’s Website:

The Commission shall provide direct access from the homepage of their website to the following information:

- The Commission’s budget for the current fiscal year;
- The Commission’s appropriations for the current fiscal year;
- The Commission’s total number of full-time employees; and
- The Commission’s most recent performance plan.

Federal Register Publication:

Unless otherwise directed by law, the Commission shall publish in the Federal Register, within 45 days of adoption, any document adopted by the Commission that they are required to publish within the Federal Register.

Consumer Complaint Database:

The Commission shall establish a publicly available and searchable database regarding consumer complaints. The database contain the date the complaint was filed, the topic of the complaint, the party complained of, and other elements that the Commission considers in the public interest.

Publication of Documents:

All reports required by this legislation are required to be published on the Commission’s website. The Commission may redact certain documents which are vital to national security, homeland security, law enforcement or public safety, and they may also redact information that is proprietary or confidential.

TCPA Inquires:

The Commission is prohibited from categorizing a complaint, or inquiry, about the Telephone Consumer Protection Act as a wireless or wireline complaint in their quarterly report, unless a wireless or wireline provider was the subject of the inquiry.

Additional Information: The Federal Communications Commission was established by the Communications Act of 1934. The Agency includes five commissioners who are

appointed by the president, subject to Senate confirmation. The Chairman of the FCC is selected by the president. At no time can more than 3 commissioners be of the same political party. Each commissioner serves a five-year term, except when filling an unexpired term.¹

Committee Action: H.R. 3309 was introduced on November 2, 2011, and was referred to the House Subcommittee on Communications and Technology. The Subcommittee met on November 16, 2011, and favorably reported the bill, as amended, by a roll call vote of 14-9.² The full committee met on March 6, 2012, and favorably reported the bill, as amended, by a roll call vote of 31-16.³

Outside Groups: The U.S. Chamber of Commerce strongly supports H.R. 3309, and may consider this vote in their annual scorecard.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to [House Report 112-414](#): “CBO estimates that implementing the provisions of H.R. 3309 would cost \$26 million over the 2013-2017 period, assuming appropriation of the necessary amounts, for additional personnel and information technology expenses. Under current law, the FCC is authorized to collect fees sufficient to offset the cost of its regulatory activities each year; therefore, CBO estimates that the net cost to implement the provisions of H.R. 3309 would not be significant, assuming annual appropriation actions consistent with the agency’s authorities.”

Does the Bill Expand the Size and Scope of the Federal Government?: The legislation requires the Federal Communication Commission to establish new procedures (detailed above) and a new consumer complaint database.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to [House Report 112-414](#): “H.R. 3309 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. To the extent that the FCC would increase annual fee collections to offset the costs of its additional regulatory activities, the bill could impose a private-sector mandate on some commercial entities regulated by the FCC. Based on information from the FCC, CBO estimates that the cost of the mandate would be small, and fall well below the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation).”

¹ <http://www.fcc.gov/what-we-do>

² http://republicans.energycommerce.house.gov/Media/file/Markups/Telecom/111611/HR3309_Final_Passage_Vote_Sheet.pdf

³ <http://republicans.energycommerce.house.gov/Media/file/Markups/FullCmte/20120305/CPRT-112-IF00-Vote19-20120306.pdf>

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation contains no earmarks.

Constitutional Authority: Rep. Walden’s statement of constitutional authority states: “Congress has the power to enact this legislation pursuant to the following: This bill is enacted pursuant to Article I, Section 8, Clause 3 of the United States Constitution, which empowers Congress to regulate Commerce among the several States.”⁴

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.

⁴<http://www.gpo.gov/fdsys/cas/getdocument.action?billnumber=3309&billtype=hr&congress=112&format=html>