

112TH CONGRESS  
1ST SESSION

# H. R. 1009

To amend the Communications Act of 1934 to authorize 3 or more Commissioners of the Federal Communications Commission to hold nonpublic collaborative discussions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2011

Ms. ESHOO (for herself, Mr. SHIMKUS, and Mr. DOYLE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Communications Act of 1934 to authorize 3 or more Commissioners of the Federal Communications Commission to hold nonpublic collaborative discussions, 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 Collaboration Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Commissioners of the Federal Communica-  
2           tions Commission (in this section referred to as the  
3           “Commission”), past and present, have stated that  
4           they support the intent of section 552b of title 5,  
5           United States Code, but that its implementation has  
6           hindered the Commission’s ability to have a sub-  
7           stantive exchange of ideas and hold collective delib-  
8           erations on issues pending before the Commission.

9           (2) Congress’s principal purpose in creating a  
10          multimember agency is to obtain the benefits of col-  
11          legial decisionmaking by the agency’s members, who  
12          bring to the decisionmaking process different philo-  
13          sophical perspectives, experiences, and areas of ex-  
14          pertise.

15          (3) Commissioners have relied primarily on an  
16          inefficient combination of written messages, commu-  
17          nications among staff, and a series of meetings re-  
18          stricted to 2 Commissioners at each such meeting to  
19          discuss complex telecommunications matters pending  
20          before the Commission.

21          (4) Extensive use of such methods of commu-  
22          nication has harmed collegiality and cooperation at  
23          the Commission.

24          (5) Numerous regulatory matters have been  
25          pending before the Commission for years, and con-

1       tinued inaction on these issues has the potential to  
2       hinder innovation and private investment in the do-  
3       mestic communications industry.

4               (6) The Commission must be able to work more  
5       collaboratively and efficiently than in the past to  
6       meet the current challenge of expanding broadband  
7       Internet access to the extent necessary to serve the  
8       business, educational, health, and cultural needs of  
9       all Americans.

10 **SEC. 3. NONPUBLIC COLLABORATIVE DISCUSSIONS OF THE**  
11 **FEDERAL COMMUNICATIONS COMMISSION.**

12       Section 4 of the Communications Act of 1934 (47  
13 U.S.C. 154) is amended by adding at the end the following  
14 new subsection:

15       “(p) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

16               “(1) IN GENERAL.—Notwithstanding section  
17       552b of title 5, United States Code, 3 or more Com-  
18       missioners may hold a meeting that is closed to the  
19       public to discuss official business if—

20                       “(A) a vote or any other agency action, as  
21       such term is defined in section 551(13) of title  
22       5, United States Code, is not taken at such  
23       meeting;

1           “(B) each person present at such meeting  
2 is a Commissioner or an employee of the Com-  
3 mission;

4           “(C) for each political party of which any  
5 Commissioner is a member, at least 1 Commis-  
6 sioner who is a member of such respective polit-  
7 ical party is present at such meeting, and, if  
8 any Commissioner has no political party affili-  
9 ation, at least one unaffiliated Commissioner is  
10 present at such meeting; and

11           “(D) an attorney from the Office of Gen-  
12 eral Counsel of the Commission is present at  
13 such meeting.

14           “(2) DISCLOSURE OF NONPUBLIC COLLABO-  
15 RATIVE DISCUSSIONS.—Not later than 5 days after  
16 the conclusion of a meeting held under paragraph  
17 (1), the Commission shall publish on its Web site a  
18 disclosure of such meeting, including—

19           “(A) a list of the persons who attended  
20 such meeting; and

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

1           “(3) PRESERVATION OF OPEN MEETINGS RE-  
2           QUIREMENTS FOR AGENCY ACTION.—Nothing in this  
3           subsection shall limit the applicability of section  
4           552b of title 5, United States Code, with respect to  
5           a meeting of Commissioners other than that de-  
6           scribed in paragraph (1).

7           “(4) SUNSET.—This subsection shall cease to  
8           be effective 5 years after the date of enactment of  
9           the Federal Communications Commission Collabora-  
10          tion Act.”.

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