

ALERT

FCC Requests Comments on EEO Enforcement Efforts

July 2, 2019

The Federal Communications Commission (FCC or Commission) is seeking comments on how the Commission can improve enforcement of the Equal Employment Opportunity (EEO) rules applicable to broadcasters and multichannel video programming distributors (MVPDs). The Notice of Proposed Rulemaking (NPRM) follows up on the FCC's February 2019 order eliminating the Form 397 filing—one of a dozen updates Chairman Pai has pursued in his effort to modernize rules applicable to broadcasters—as well as the recent move of the Commission's EEO staff from the FCC's Media Bureau to its Enforcement Bureau.

The Commission currently utilizes several tools to enforce its EEO rules. It conducts random audits of approximately 5% of all broadcasters each year and more intensive reviews of MVPD compliance practices every five years. It can also conduct inquiries of broadcasters and MVPDs with evidence of a possible violation. When the Commission identifies violations of the existing rules, it typically issues monetary fines and institutes special reporting obligations (mini-audits). The FCC reprimands a handful of licensees each year with most fines under \$20,000.

The FCC did not put forth any specific proposal in the NPRM and instead asks many open-ended questions about the efficacy of its EEO enforcement regime, including (1) what elements of the Commission's program are effective or not effective, (2) what elements could be improved and how they could be improved, and (3) whether there are elements that should be added or removed to increase its effectiveness.

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Practice Areas

Media
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In response to the concerns expressed by a group of 34 organizations led by the Multicultural Media, Telecom and Internet Council about the degree of word-of-mouth recruiting within the broadcast industry, the NPRM also seeks comments on whether the Commission's current audit procedures produce sufficient information "to verify that hiring decisions were made after the job postings were made, not before-hand, and that audits are allowed to uncover discrimination at the points of recruitment, interviewing, and selection." The FCC requested that commenters seeking modifications to its audit program describe proposed changes with specificity, including data or studies indicating that such proposals would further the Commission's goal of nondiscrimination in employment, addressing implementation difficulties, and comparing the relative costs and benefits of such proposals.

In concurring statements, Commissioner Starks called on the FCC again to revive the currently suspended Form 395-B, an annual filing collecting workforce diversity data among broadcasters and, in voicing similar concerns about the lack of workforce data, Commissioner Rosenworcel noted that "we cannot manage what we don't measure."

Comments are due within 30 days of Federal Register publication. Reply comments are due 45 days after Federal Register publication.

If you are interested in commenting in this proceeding, please contact the Wiley Rein attorney who regularly handles your FCC matters, or one of the attorneys listed on this alert.