

FCC Proposes to Abolish Form 397 EEO Mid-Term Report Filing, But Not Mid-Term EEO Review

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As part of Chairman Pai's Modernization of Media Regulation Initiative, the Federal Communications Commission (FCC or Commission) adopted a Notice of Proposed Rulemaking (NPRM) at its February 22 open meeting, aiming to eliminate the Form 397 Broadcast Mid-Term Report. Form 397 has served as a vehicle—essentially a cover page—through which a station employment unit (SEU) transmits its two most recent Public File Reports and certain other information to the FCC for a review of the SEU's Equal Employment Opportunity (EEO) practices. Form 397 must be submitted by radio clusters with 11 or more full time employees and television SEU's with 5 or more full-time employees at the 4-year mark of their license terms for a "mid-term review" by the FCC staff.

While the FCC proposes eliminating the Form 397 filing, it is important to note that the Commission will continue to perform the EEO mid-term review. Instead of retrieving EEO Public File Reports via the Form 397, however, the FCC staff will review a licensee's EEO Public File Reports as posted in the online public inspection file (OPIF). As of March 1, 2018, every station in a radio or television SEU with five or more full-time employees is required to post its recent EEO Public File Report (and all those covering the current license term) in its OPIF. As Commissioner Carr noted, "Given the ease with which the Commission can access these files, there is no longer any reason to continue requiring broadcasters to file redundant paperwork."

Without a Form 397 filing, the FCC would be missing information indicating: 1) whether an SEU is subject to a mid-term review based on its full-time employee count (five or more full-time employees for

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television SEUs and 11 or more full-timers for radio), and 2) the name and job title of the individual that serves as the SEU's point of contact for EEO compliance. As a result, the Commission asks how this information should be tracked, offering two suggestions: (1) add the information to the annual EEO Public File Report; or (2) provide it via the OPIF. If either approach is adopted, it appears that licensees will be supplying this information on an annual basis rather than once every four years. The FCC also notes that it also would need a vehicle through which licensees would provide the name and job title of the SEU's point of contact for EEO compliance, and that this missing piece of information could instead be collected only once every eight years via a Form 396 (which is filed in conjunction with a station's license renewal application). The NPRM asks whether once every eight years sufficient and, if not, whether an SEU should identify the point of contact in either its annual EEO Public File Report or via its OPIF. The NPRM also poses questions about attendant costs, underscoring the FCC's overall goal of reducing regulatory burdens for licensees and minimizing costs to licensees and the Commission.

Democrat Commissioners Clyburn and Rosenworcel both voted in favor of the rulemaking, but raised concerns about EEO rule enforcement. Commissioner Clyburn stated, "If we are going to take a weedwhacker to EEO reporting obligations that the majority deems 'unnecessary' or 'unduly burdensome,' then we ought to simultaneously discuss compliance practices, to ensure that the rules we have on the books are effectively enforced." Consequently, the NPRM also asks for comment on whether the elimination of the Form 397 impacts the FCC's ability to ensure compliance and enforcement. And, more broadly, the FCC seeks comment on its track record of EEO enforcement and how the agency can improve both enforcement of and compliance with its EEO rules.

Comments will be due 30 days after the NPRM is published in the Federal Register. If you are interested in submitting comments, please contact the Wiley Rein attorney who regularly handles your FCC matters or one of the attorneys listed on this client alert.