

ALERT

FCC Throws EEO Form 397 Filing into “Trash Heap” But Keeps Mid-Term Review; Will Seek Comment on its EEO Track Record Within 90 Days

February 22, 2019

The Federal Communications Commission (FCC or Commission) has adopted a Report and Order (Order) eliminating the Form 397 Broadcast Mid-Term Report, throwing the filing into the “trash heap” according to Commissioner O’Rielly.

The Form 397 serves as a vehicle—essentially a cover page—through which a broadcast station transmits its two most recent Public File Reports (PFR(s)) and certain other information to the FCC for a review of its Equal Employment Opportunity (EEO) practices in the fourth year (or mid-point) of its license term.

Because most of the information collected by the Form 397 is now available on the FCC’s website, the Commission deemed it unnecessary, amending FCC rules to eliminate the filing requirement for Form 397 once the current mid-term cycle ends on April 1, 2019.

While the elimination of the Form 397 reflects another of the Commission’s efforts to modernize rules applicable to broadcasters, it’s important to note that the Order does not scrap the underlying mid-term EEO review. Instead, the Commission will evaluate a broadcaster’s PFRs as posted at the FCC-hosted online public inspection file (OPIF). Radio stations will have to identify whether their staff size is large enough to trigger the mid-term review (11 or more full-time employees) in the OPIF. Television stations will not face a similar OPIF requirement because the employee threshold for the TV mid-term review is lower—five or more full-timers—and simply

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uploading the PFR to the OPIF indicates that the benchmark is met.

Both Commissioners Starks and Rosenworcel expressed dissatisfaction that the Order did not address the broader question of the Commission’s efficacy in EEO enforcement and compliance. Commissioner Starks also urged the Commission to revive the currently suspended Form 395-B, an annual filing collecting workforce diversity data among broadcasters. While the FCC did not take up those issues in the Order, it acknowledged the concerns expressed by certain commenters regarding, among other things, the degree to which the Commission has addressed word-of-mouth recruiting within the broadcast industry. And, the Order states the FCC will seek further comment on its EEO track record in a separate proceeding to be initiated within 90 days of the Order’s adoption.

If you have any questions about the Order or have interest in commenting in the upcoming proceeding, please contact the Wiley Rein attorneys listed on this alert.