

EMMIS COMMUNICATIONS CORP

Form 8-K

March 02, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (date of earliest event reported): March 1, 2018

EMMIS COMMUNICATIONS CORPORATION

(Exact name of registrant as specified in its
charter)

INDIANA

(State of incorporation or organization)

0-23264

(Commission file number)

35 1542018

(I.R.S. Employer
Identification No.)

ONE EMMIS PLAZA

40 MONUMENT CIRCLE

SUITE 700

INDIANAPOLIS, INDIANA 46204

(Address of principal executive offices)

(317) 266-0100

(Registrant's Telephone Number,
Including Area Code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934

(§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 5.02 Departure of Directors of Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Effective March 1, 2018, Emmis Communications Corporation and its subsidiary Emmis Operating Company (collectively, “Emmis” or the “Company”) signed a Change in Control Severance Agreement (the “New CIC Agreement”) with Jeffrey H. Smulyan. This Change in Control Severance Agreement replaces in its entirety the Change in Control Severance Agreement (the “Old CIC Agreement”) between Emmis and Mr. Smulyan dated July 10, 2012. The New CIC Agreement provides that if Mr. Smulyan’s employment is terminated by the Company within two years after a change in control of the Company (or, in certain instances, in anticipation of a change in control), other than for cause, or is terminated by Mr. Smulyan for good reason, Mr. Smulyan is entitled to (1) a payment equal to his base salary through the termination date, plus a pro-rata portion of his target bonus for the year and accrued vacation pay; (2) a severance payment equal to two times Mr. Smulyan’s base salary and target bonus; (3) continued accident and life insurance benefits for two years; (4) reimbursement of COBRA premiums for continuation of medical and dental benefits for 18 months and reimbursement for private medical and dental benefits of an equivalent level for six months following termination of the COBRA reimbursement; (5) accelerated vesting of all stock options and restricted shares. The New CIC Agreement makes Mr. Smulyan responsible for the payment of any excise tax under Section 4999 of the Internal Revenue Code (i.e., the parachute tax) and contains a so-called ‘valley provision.’ Under the valley provision, if the aggregate amount of the payments to Mr. Smulyan under the New CIC Agreement would trigger the payment of the parachute tax, the payments under the New CIC Agreement will be reduced to an amount that does not trigger the parachute tax unless payment of the full amount due under the New CIC Agreement, after deducting the parachute tax to be paid by Mr. Smulyan, is 102% or more of the reduced amount. Under the New CIC Agreement, Mr. Smulyan is obligated to not voluntarily leave employment with Emmis during the pendency of (and prior to the consummation or abandonment of) a change in control other than as a result of disability, retirement or an event that would constitute good reason if the change-of-control had occurred. The benefits payable to Mr. Smulyan under the New CIC Agreement are less than those payable to Mr. Smulyan under the Old CIC Agreement. Accordingly, on March 1, 2018, the Company awarded to Mr. Smulyan 100,000 restricted shares of Class B common stock. The shares will vest upon the third anniversary of the date of grant.

This description of the Change in Control Severance Agreement set forth above is qualified in its entirety by reference to the employment agreement, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits.

Exhibit No. Description

10.1 Change in Control Severance Agreement with Jeffrey H. Smulyan effective March 1, 2018.

Note: Certain statements included in this Current Report on Form 8-K which are not statements of historical fact, including but not limited to those identified with the words “expect,” “will,” “look” or “are subject to” are intended to be, and are, by this Note, identified as “forward-looking statements,” as defined in the Securities and Exchange Act of 1934, as amended. Such statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company to be materially different from any future result, performance or achievement expressed or implied by such forward-looking statement. Such factors include, among others:

- general economic and business conditions;
 - fluctuations in the demand for advertising and demand for different types of advertising media;
 - our ability to service our outstanding debt;
 - competition from new or different media and technologies;
 - loss of key personnel;
 - increased competition in our markets and the broadcasting industry, including our competitors changing the format of a station they operate
- to more directly compete with a station we operate in the same market;

- our ability to attract and secure programming, on-air talent, writers and photographers;
- inability to obtain (or to obtain timely) necessary approvals for purchase or sale transactions or to complete the transactions for other reasons generally beyond our control;
- increases in the costs of programming, including on-air talent;
- fluctuations in the market price of publicly traded or other securities;
- new or changing regulations of the Federal Communications Commission or other governmental agencies;
- enforcement of rules and regulations of governmental and other entities to which the Company is subject;
- changes in radio audience measurement methodologies;
- war, terrorist acts or political instability; and
- other factors mentioned in documents filed by the Company with the Securities and Exchange Commission.

Emmis does not undertake any obligation to publicly update or revise any forward-looking statements because of new information, future events or otherwise.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

EMMIS
COMMUNICATIONS
CORPORATION

Date:
March
2,
2018

By: /s/ J. Scott
 Enright
 J. Scott
 Enright,
 Executive
 Vice
 President,
 General
 Counsel
 and
 Secretary