

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Review of the Commission’s Broadcast and) MB Docket No. 16-410
Cable Equal Employment Opportunity Rules)
And Policies)

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction and Summary

The National Association of Broadcasters (NAB)¹ supports the request in the above-captioned Petition for Rulemaking to modernize the Commission’s equal employment opportunity (EEO) policies rules to better reflect today’s employment marketplace.² Specifically, we agree that the EEO policies should be changed to allow broadcasters the option of using Internet recruitment sources to satisfy requirements to “widely disseminate” notices of job vacancies within their community,³ instead of posting notices in a local newspaper, trade journal or the like. Given that the vast majority of Americans today use the Internet as their primary, if not sole, source for information about job opportunities, updating the Commission’s current approach to permit Internet-only recruitment is long overdue. Most importantly, updating this policy will serve the public interest by aligning broadcasters’ practices with the expectations and practices of job seekers.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Petition for Rulemaking, Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies, Sun Valley Radio, Inc., and Canyon Media Corporation (Petitioners), MB Docket No. 16-410 (filed Dec. 12, 2016) (Petition).

³ 47 C.F.R. § 73.2080(c)(1)(i).

II. Background

The Commission established the current EEO rules in 2002.⁴ The rules emphasize broad outreach to a broadcaster's local community when recruiting to fill job vacancies, to minimize recruitment through word-of-mouth within a broadcaster's business or social circle, which can disadvantage certain segments of society.⁵ Section 73.2080(c)(1)(i) of the rules states: "A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable good faith judgment to widely disseminate information concerning the vacancy."⁶

The Commission ostensibly left the particulars of compliance to a broadcaster's discretion, stating that, while it would not dictate the use of a specific type or number of recruitment sources, the source(s) must be reasonably expected to reach a broadcaster's entire community.⁷ However, as an example, the Commission stated that it would consider placement of a vacancy announcement in a widely circulated local newspaper every day for a week sufficient to ensure the wide dissemination required in the EEO rule.⁸ This example has served as the Commission's baseline ever since.⁹

In the 2002 EEO Order, the Commission rejected a request that posting job vacancy information only on Internet sources be deemed sufficient recruitment.¹⁰ The Commission

⁴ *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018 (2002) (2002 EEO Order).

⁵ *Id.* at 24047.

⁶ 47 C.F.R. § 73.2080(c)(1)(i).

⁷ 2002 EEO Order, 17 FCC Rcd at 24047.

⁸ *Id.* at 24047 n.147. The Commission added that regional or national recruitment sources, such as a trade journal, may be sufficient in certain situations. *Id.* at 24047-48.

⁹ See, e.g., *Cox Radio, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. MB-200941410009, at ¶5 (*rel.* June 29, 2009).

¹⁰ 2002 EEO Order, 17 FCC Rcd at 24050.

found that the record did not demonstrate that the Internet was a principal resource for job seekers or that online job banks were well established. It also expressed concerns that too many Americans still lacked adequate access to the Internet, especially minorities, low income individuals, and individuals in rural areas.¹¹

The Commission thus considered it premature to allow online recruitment alone to satisfy the “wide dissemination” prong of the EEO rule. And, despite the obvious expansion of the Internet into every facet of society and commerce since 2002, the Commission has consistently maintained this outmoded approach in numerous subsequent enforcement actions.¹² Indeed, only six months ago, the Commission fined a cable television system \$11,000 for using only online sources to recruit for three job vacancies.¹³ Given today’s digital economy, the Commission’s position on Internet job recruitment is clearly out of step.

III. Updating the EEO Rules to Permit Internet-only Job Recruitment is Long Overdue

The world has changed dramatically since the Commission adopted the EEO policies in 2002. Top-ranked websites such as LinkedIn, YouTube and Facebook did not yet exist, and widespread adoption of smartphones was still seven or eight years away.¹⁴ Internet

¹¹ *Id.* at 24050-51.

¹² See, e.g., *New Northwest Broadcasters LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, NAL/Acct No. 200641410082 (Sep. 26, 2006) (assessing \$12,000 fine in part for failing to recruit from non-Internet sources for five positions); *Capstar TX LLC and Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, NAL/Acct Nos. 201141410039 and 201141410042 (Dec. 29, 2011) (\$14,000 fine for using only Internet sources to recruit for eight positions).

¹³ *Full Channel TV, Inc.*, Forfeiture Order, NAL/Acct No. MB-201241410026 (July 25, 2016).

¹⁴ Petition at 3-4; see also <https://www.statista.com/statistics/263437/global-smartphone-sales-to-end-users-since-2007/>.

access was not yet ubiquitous, as only about half of U.S. households had an Internet connection and only 53.9 percent of individuals used the Internet.¹⁵

As of 2014, 73 percent of U.S. households had a computer with a broadband connection to the Internet,¹⁶ and as of 2015, the number of Internet connections in the U.S. actually exceeded the U.S. population.¹⁷ Today, 77 percent of Americans have a smartphone (up from only 35 percent in 2011), nearly 80 percent of adults own a desktop or laptop computer and about half own table computers.¹⁸ In addition, the digital divide that concerned the Commission in 2002 has greatly diminished. In September 2001, 59.9 percent of Whites used the Internet, compared to 39.8 percent of Blacks and 31.6 percent of Hispanics.¹⁹ Today, 85 percent of Whites use the Internet, compared to 78 percent of Blacks and 81 percent of Hispanics.²⁰

The employment marketplace has also moved online, as the most important sources for researching industries and job opportunities are now found on the Internet. LinkedIn receives 250 million unique visitors every month, Indeed has 55 million, Monster has 35 million, GlassDoor has 30 million, and CareerBuilder has 20 million.²¹ All of these figures far

¹⁵ 2002 EEO Order citing National Telecommunications and Information Administration, “A Nation Online: How Americans are Expanding their Use of the Internet” (Feb. 2002) (2002 NTIA Report).

¹⁶ Pew Research Center, *Census: Computer Ownership, Internet Connection Varies Widely Across U.S.*, (Sep. 19, 2014), available at <http://www.pewresearch.org/fact-tank/2014/09/19/census-computer-ownership-internet-connection-varies-widely-across-u-s/>.

¹⁷ Petition at 5 citing *Internet Access Services: Status as of June 30, 2015*, Industry Analysis and Technology Division, Wireline Competition Bureau (Aug. 2016).

¹⁸ Pew Research Center, *Mobile Fact Sheet* (Jan. 12, 2017), available at <http://www.pewinternet.org/fact-sheet/mobile/>.

¹⁹ 2002 EEO Order, 17 FCC Rcd at 24051 citing 2002 NTIA Report.

²⁰ Petition at 6 n. 25, Pew Research Center, *Americans’ Internet Access: 2000-2015* (June 26, 2015), available at <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015>.

²¹ See <http://www.ebizmba.com/articles/job-websites>.

outpace the circulations of even the largest nationwide newspapers,²² and newspaper readership continues to decline, especially among younger demographic groups.²³ Social media is also a critical resource for job seekers, with more than 86 percent of Americans reporting use of social media to search for a new job.²⁴

These developments mean that updating the Commission's EEO rules to allow broadcasters to recruit for job vacancies solely online would serve the public interest by making it easier for job seekers to research the broadcasting industry and identify opportunities. Broadcasters would realign their practices to match the habits of job seekers. First, unlike newspapers and especially trade journals, access to online recruitment sources is immediate and virtually universal. Second, job search websites are able to consolidate and organize thousands of job postings, making it much easier for job seekers to search for opportunities by industry, location, position, salary and other factors.

Internet recruitment sources are simply more efficient at reaching job candidates in a broadcaster's community, and a more successful method for both employers and employees. NAB members have recently confirmed this:

- "I recently placed help wanted ads in the Pratt Tribune and Great Bend Tribune. The run was for a month and the cost was nearly \$500. Oh...the results... (1) resume."
- "The [TV station call letters omitted] Facebook page has 332,961 likes. The local paper has 54,675 daily subscribers. In the past four years, 41 hires have come from an internet source."
- "The reach of our websites, and station and personal Facebook pages well outreaches the (local paper redacted) circulation, which is 46,000. Our Facebook pages alone have over 52,347 followers. Add the websites and you get another 15-20,000 per week. Somewhere around 65,000 reach for our social media per

²² USA Today has a circulation of 2.3 million, the Wall Street Journal has 2 million, and the New York Times has 1.1 million. See <http://www.infoplease.com/ipea/A0004420.html>.

²³ See, e.g., Pew Research Center, *State of the News Media 2016* (June 2016), available at <http://www.journalism.org/2016/06/15/state-of-the-news-media-2016/>.

²⁴ Petition at 8 citing Pew Research Center, *Searching for Work in the Digital Era*, at 13 (Nov. 19, 2015), available at <http://www.pewinternet.org/2015/11/19/searching-for-work-in-the-digital-era>.

month. We have filled no jobs using the newspaper. Social media, industry publications and websites like [state broadcaster association's], and word of mouth/recommendations is where we find our employees. We've filled 4 positions in 2016. None came from the paper."

- "The (local paper) currently has 25k subscribers to the Wednesday and Friday editions and 39k to the Sunday edition. [Radio station cluster redacted] has 44,147 Facebook followers. That doesn't include our followers on Twitter, Instagram and Snapchat. Or our email database. In the 3+ years that I've been in this position, we've hired 7 full time employees and all of them have come from internet leads."
- "Sunday circulation for (local paper) is 24K... our page views, Twitter followers and Facebook friends equal over 74K. In my experience, in the last 10 years leads have come from a combination of industry news/jobs sites, [state broadcaster association's] jobs board, (radio company website) jobs postings/site, social media and referrals."

Finally, granting the Petition would not be inconsistent with the terms of Section 73.2080(c)(1)(i). Although the Commission concluded in the 2002 EEO Order that online postings alone do not fulfill the "widely disseminate" requirement of the rule, it also promised to monitor and revisit the situation as Internet access and usage expanded and online job sources became more established.²⁵

NAB submits that the time is ripe for Commission action. The explosion of Internet access and online recruitment sources is unmistakable. In the reasonable good faith judgment of broadcasters, online recruitment sources are now the best outlets for reaching their entire community, as required under the EEO rule, and far superior to newspaper postings. Most important, the Commission's antiquated policy hinders job seekers. Americans look for job opportunities online, and it is long overdue for the Commission to modernize the EEO policy to reflect today's employment marketplace. Accordingly, NAB respectfully requests that the Commission permit broadcasters to use Internet-only sources to fulfill the recruitment requirements in the EEO rules.²⁶

²⁵ 2002 EEO Order, 17 FCC Rcd at 24047.

²⁶ NAB differs with the Petition to the extent Petitioners ask the Commission to allow broadcasters to rely on Internet recruitment sources only if they are coupled with on-air

IV. Conclusion

For the reasons described above, NAB respectfully requests that the Commission grant the above-captioned Petition for Rulemaking.²⁷

Respectfully submitted,



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advertising. Petition at Summary. An obligation to announce on-air each and every vacancy would be unduly burdensome, especially for stations with multiple vacancies. Compliance also would be largely impossible for multichannel video programming distributors with no local on-air programming equivalent. In addition, the occasional on-air announcement of job vacancies would be unlikely to reach all interested job seekers, who may not be listening or watching at the precise time of the announcements.

²⁷ We also note that Petitioners' requested rulemaking proceeding may be unnecessary to address their proposal. The rule itself directs broadcasters to rely on their good faith judgment to widely disseminate information about job vacancies, but does not endorse or prohibit any specific methods of doing so. It is only in the accompanying text of the 2002 EEO Order and subsequent enforcement actions that the Commission interpreted the rule to prohibit Internet-only recruitment. Thus, NAB submits that the Commission could simply clarify that Internet-only recruitment is sufficient to comply with Section 73.2080(c)(1)(i) based on the growth of Internet access and online recruitment sources.