

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Review of the Commission’s Broadcast and) MB Docket No. 16-410
Cable Equal Employment Opportunity Rules)
and Policies)
)
To: The Chief, Media Bureau)

**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS**

The Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico,

Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations” or “Associations”) by their attorneys in this matter, hereby file these Joint Comments in response to the Commission’s December 15, 2016 Public Notice seeking comments in the above-captioned proceeding.¹

INTRODUCTION

The State Associations welcome the opportunity to participate in this proceeding. As noted in the Petition for Rulemaking² for which the Commission has sought comments, the State Associations first proposed in 2002 that the Commission clarify that Internet-only recruitment would qualify as broad employment outreach for job vacancies under the Commission’s revised EEO rule.³ In that regard, while the Petition appears to contemplate the use of Internet recruiting in combination with on-air advertising, the Commission’s request for comments explicitly seeks comment on allowing “the *sole use* of Internet sources for FCC EEO recruitment requirements,”⁴ and these Comments therefore focus on permitting the sole use of Internet sources. To the extent the Commission’s EEO rule applies to non-broadcast entities that do not necessarily have the ability to run on-air recruiting ads, adhering to the Commission’s requested focus in the Public

¹ See Public Notice, *Media Bureau Seeks Comment on Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment*, DA 16-1391 (December 15, 2016) (“Public Notice”).

² Petition for Rulemaking filed by Sun Valley Radio, Inc. and Canyon Media Corporation on December 12, 2016 (“Petition”).

³ See *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018 (2002), at ¶ 95, *recon. pending* (“*Second Report and Order*”).

⁴ Public Notice at 1 (emphasis added).

Notice may also make it easier for the Commission to assess at a later date whether such a change is appropriate for other types of FCC regulatees as well.

In addition, the Associations wish to note the while the Petition seeks the launch of a rulemaking to implement the requested change, Section 73.2080 of the Commission's Rules does not expressly prohibit the use of Internet-only recruitment to achieve broad employment outreach. Instead, it merely notes in Section 73.2080(c)(1)(i)⁵ that "[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." It is only in the Commission's original 2002 *Second Report and Order* and its subsequent enforcement decisions that it has indicated that Internet-only recruiting is an inadequate exercise of that "good faith judgment to widely disseminate information concerning the vacancy."

As a result, while launching a rulemaking to physically change the EEO rule would ensure that the change is ensconced in the Code of Federal Regulations and cannot later be reversed absent a notice and comment rulemaking, a rulemaking is not required to implement the requested relief. The Commission could issue either a Clarification or a Declaratory Ruling that Internet-only recruiting is, given the growth of the Internet as a communications and recruiting tool, adequate to meet a broadcaster's obligation to engage in wide dissemination of information concerning a job vacancy, and not, as the Commission has previously suggested, a faulty exercise of a licensee's good faith judgment on how best to achieve wide dissemination of job vacancy announcements.

Thus, while the State Associations certainly do not object to the Commission conducting a rulemaking to formally embed this change into the EEO rule, the current rule is not

⁵ 47 C.F.R. § 73.2080(c)(1)(i).

inconsistent with the proposed change, and such change could therefore be implemented without the delay inherent in conducting a formal rulemaking should the Commission elect to do so.

DISCUSSION

While the Commission felt that the Internet was not sufficiently mature in 2002 to rely upon as an exclusive recruitment tool, there can be no serious debate that it achieved the needed maturity long before 2017, and that the Commission should have years ago ceased faulting broadcasters utilizing Internet-based recruiting. In that regard, this proceeding is merely an effort to rectify the anachronistic disconnect between the Commission's 2002 decision and the current reality of job recruitment for all businesses, whether or not they hold an FCC license.

Thus, while the Petition does an admirable job of factually demonstrating the superiority of Internet recruiting to methods that used to be considered the gold standard of EEO recruiting by the FCC, it is beyond question that the Internet now represents the EEO recruiting tool the FCC would have dreamed of when the EEO rule was first created. Due in particular to the rapid growth in mobile devices, it is universally available, free (via public WiFi or libraries and schools), instantaneous, and flexible, providing not only an avenue for job seekers to learn of an opening, but to apply for it as well. The Internet also speeds that process, removing the lag time of sending resumes and job applications by mail. Indeed, it has even lowered the cost of applying for a job, as the postage, paper, printing, and copying costs that used to be inherent in applying for jobs have become a thing of the past (remember fretting over how heavy your resume paper stock should be and whether white or ivory would be more effective?).

In fact, if the current circumstances existed when the EEO rule was first created, recruiting via newspaper would be questioned because it increasingly lacks universal reach. In

today's world, broadcasters electing to recruit through Internet platforms rather than running newspaper ads is fully consistent with the inclusive goals of the EEO rule.

In that regard, there is no question that social media and other Internet recruiting mechanisms are superior and more efficient than recruiting mechanisms the Commission has traditionally focused on. One very consequential fact not discussed in the Petition is that the various iterations of the EEO rule have presumed that large segments of the population would leap at the opportunity to work at a broadcast station if only they knew that a job opening existed. The modern reality, however, is that getting applicants for broadcast job openings (and just as important, top-quality applicants) is no longer a matter of opening the door and watching them rush in. Broadcasters have to work hard to attract candidates that have the capabilities to grow in the job and who will stick around to learn the trade and rise in the ranks. At the same time, mobile devices have made the Internet pervasive among young job applicants, both as a medium of communication and an information source. Diverting recruiting resources to buy newspaper ads is not only an inefficient use of valuable resources, but a diversion of those resources from presenting the compelling story of broadcast employment on the platforms most used by young job applicants.

Moreover, the Internet represents a persistent medium where nearly all of a station's recruiting resources can be spent drafting and updating a persuasive narrative about the vitality of broadcast employment. In 2017, virtually all broadcast stations are digital media companies, and many broadcasters have integrated social media and other Internet tools into their business model and operations. As a result, many of the jobs currently available in broadcasting require digital expertise, including the knowledge of how to manage and utilize social media and other

Internet platforms. The most logical place to find job applicants with such skills and interests is of course on the Internet itself.

The simple fact of the matter is that government and businesses have nearly universally moved their job recruitment to the Internet. All job seekers recognize this undeniable fact, and because of this, the Internet is where they are looking for job announcements. Broadcasters need to focus their resources on standing out in that marketplace, where they must compete with technology, software, and other “latest and greatest” companies for the capable applicants that will determine the future of broadcasting.

That is no small task, and requiring licensees to focus their recruitment efforts on “traditional” avenues merely ensures that broadcasters will not reach the job applicants that “wide dissemination” was originally intended to attract to broadcasting. Broadcasting needs an influx of young and energetic employees that intend to make broadcasting a career, perhaps ultimately as broadcast owners, and who can help broadcasters build the bridge to the next generation of listeners and viewers. Today, those potential employees are found on the Internet. Giving broadcasters the flexibility originally intended by the EEO rule to make a good faith judgment about the appropriate recruiting avenues to achieve wide dissemination will help broadcasters build a healthy future—both for broadcasting and the employees needed to ensure that future.

CONCLUSION

For these compelling reasons, the State Associations urge the Commission to formally acknowledge that Internet-only recruiting is fully consistent with a broadcaster’s obligation to widely disseminate information about job openings. The Commission may elect to do this by

formally adopting a rule to that effect, or issuing a clarification of the existing rule. In either case, both broadcasters and job applicants will benefit.

Respectfully submitted,

NAMED STATE BROADCASTERS ASSOCIATIONS

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