

Can You Rely on Internet-Only Sources to Find Job Candidates? The FCC Seeks Comments on Broadcasters' Employment Outreach

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Reacting to a petition submitted in December, the Federal Communications Commission (FCC or Commission) released a Public Notice requesting comments on its policy prohibiting broadcasters from using Internet sources as a sole means of recruiting to fill their full-time vacancies. Initial comments are due on January 30, 2016, and the reply deadline falls on February 14, 2017.

Styled as a request to initiate a rulemaking proceeding to revise the Commission's Equal Employment Opportunity (EEO) rules, the petition argues that the Commission should update its current EEO policies to "recognize the realities of today's employment marketplace—that recruiting is done online—and that mandating any other outreach from a broadcaster is unnecessary and unlikely to be a productive use of resources..." However, in urging the change, the petitioners suggest that the FCC modify its policies to allow broadcasters, if they so choose, to rely on Internet recruitment sources, *coupled with their on-air advertising*, when conducting outreach for new job openings.

The Commission adopted its current EEO program back in 2002, which requires broadcasters and multichannel video program distributors to widely disseminate information about their full-time job vacancies. To ensure wide dissemination, the FCC's 2002 order (EEO Order) indicated that broadcasters must develop a list of recruitment sources that could be reasonably be expected to reach the licensee's entire community. While the FCC did not dictate a certain number or type of sources that licensees must use to achieve wide dissemination, it did conclude that Internet usage at the time was not sufficiently widespread to allow licensees to use Internet-based

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sources alone to distribute a job vacancy notice. Nevertheless, the Commission did state in the EEO Order that it would monitor the viability of the Internet as a recruitment source and would consider petitions in the future seeking to demonstrate that circumstances have changed sufficiently to warrant a change to the policy.

Since 2002, the FCC has enforced its ban on Internet-only recruitment as many as 17 times, fining licensees—including one just this past Summer—up to \$12,000 for the practice. In each case, the FCC returns to the same rationale that sole reliance on Internet recruitment is not considered broad and inclusive employment outreach. On the other hand, the petitioners argue that “the Internet has transformed the way employers and job applicants seek out each other.” If any of our clients would like to comment this issue, please contact the Wiley Rein attorneys listed on this alert.