



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

### FCC Adjusts Its EEO Policy to Allow Internet-Only Recruitment in Certain Circumstances

Late Friday afternoon, April 21, the FCC released a [Declaratory Ruling](#) that may result in greater efficiencies for stations recruiting for full-time job vacancies: Internet-only recruitment will—when certain conditions are met—become a viable approach to compliance with the FCC’s EEO recruitment rules. To be clear, this ruling does not affect any other aspect of the FCC’s EEO rules; the outreach initiatives and record keeping portions of the rules remain the same as they have been for more than a decade.

Under the FCC’s EEO rules—which were adopted in 2002 and have been in effect since early 2003—broadcast stations with at least five full-time employees (and certain MVPDs) are required to recruit for full-time vacancies by *widely disseminating* vacancy notices that are *reasonably calculated* to reach a station’s *entire community*. When the rules were adopted, the FCC clearly stated that it was “unable to conclude that Internet usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source.” In other words, for the past 14 years, stations have been unable to meet the “wide dissemination” standard by relying solely on the use of (i) online vacancy notices or (ii) online vacancy notices combined with “internal” recruitment sources such as word-of-mouth, employee referrals, and station bulletin boards. In fact, the FCC has issued fines to numerous stations (and MVPDs) for violating this Internet-only prohibition. With the April 21 Declaratory Ruling, this principle has changed.

In its ruling, the FCC observed that all parties who filed comments support the change, and the FCC drew the following conclusions:

Today online job postings are more effective than traditional means of advertising job vacancies like newspapers, with job applicants tending to learn of vacancies through online postings. Given the relative popularity of online postings in comparison to

newspaper advertisements, the record indicates that the use of online job postings likely will disseminate information about a job vacancy to the largest number of people possible, if posted on a widely available site. Broadcasters, MVPDs, and job seekers all will benefit from the use of the more effective and more efficient online job postings, and small entities in particular will benefit from the enhanced efficiency.

In addition, it seems that the FCC fully understands the implications of online recruitment in the modern era, as job applications for *the Commission's own vacancies* are required to be submitted online (“unless doing so poses a hardship”), and the FCC noted that its own web-based recruitment system “significantly improves our competitiveness in the job market and is imperative to our ability to reach top talent.” Of course, broadcasters have recognized this same sentiment to be true for at least the past several years.

While this development is certainly a welcome change, it is critically important that stations understand the limits of the new policy: **The FCC's ruling DOES NOT give broadcasters carte blanche to rely solely on Internet-based recruitment!** Instead, the FCC's new policy allows stations to rely on Internet-only recruitment **within the context of the existing “wide dissemination” standard**, which still requires the distribution of vacancy notices to be reasonably calculated to reach a station's entire community. In that regard, the FCC specifically stated: “We find that Internet usage has become sufficient to justify allowing online job postings to be used as a sole recruitment source, in circumstances where doing so meets the ‘widely disseminate’ requirement of the rules.”

In other words, broadcasters will remain free to select the number and type of recruitment sources that they use for full-time vacancies as long as they meet the requirement for *wide dissemination*. And, a broadcaster may choose to rely on a *single online job posting* if the posting appears on a website that is so widely used that it can reasonably be expected to widely disseminate information about the job vacancy. But, stations must be careful and deliberate in their decisions to use Internet-only recruitment—and especially with any decision to use only one website—after all, the FCC warned in its ruling that the EEO Staff “will continue to examine the specifics of each case to ascertain whether a particular broadcaster has satisfied the requirement to widely disseminate information about a full-time job vacancy.”

Furthermore, broadcasters should heed the fact that the FCC expressly “encourages” each station to consider the following three factors when evaluating whether to rely on Internet-only recruitment: (1) whether the online job posting is easy to find; (2) whether job openings are posted online for an adequate period of time and the station maintains adequate records of interviewee data; and (3) whether the station “cultivates job referral relationships with resources that are likely to include diverse candidates.” Indeed, while these three features are not *requirements*, the FCC stated that they will be “important factors in evaluating whether the online job posting process meets the ‘widely disseminated’ requirement.”

Finally, the Declaratory Ruling states that it is “effective upon release,” which means that stations may begin immediately to revise their recruitment practices consistent with the new flexibility described in the [Declaratory Ruling](#) and discussed above.

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

*Stephen Hartzell, Editor*

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