

**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
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) submits these comments in response to the Public Notice (Notice) issued by the Media Bureau (Bureau)¹ seeking comment on a proposal to initiate a rulemaking proceeding to revise certain Equal Employment Opportunity (EEO) rules that currently apply to broadcasters. The Notice addresses a Petition for Rulemaking (Petition) submitted to the Bureau by Sun Valley Radio Inc. and Canyon Media Corporation (Petitioners), which asks the Federal Communications Commission (Commission) to modify its EEO policies to permit broadcasters to rely on Internet recruitment sources when conducting outreach for new job openings.²

USTelecom strongly supports the underlying principles contained in the Commission's EEO rules, and our members have been and remain committed to effective recruitment programs that foster equal opportunity in employment. For those reasons, USTelecom agrees with the Petitioners that given the dramatic changes in job seeking opportunities facilitated by the

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 Requirements*, DA 16-1391, MB Docket No. 16-410 (released December 15, 2016) (*Notice*).

² See, Petition for Rulemaking of Sun Valley Radio Inc. and Canyon Media Corporation, MB Docket No. 16-410, p. 1 (filed Dec. 12, 2016) (*Petition*).

internet, “it is time to update the Commission’s rules to reflect today’s technological and employee recruitment landscape.”³ The Commission should not limit its review to just those EEO recruitment rules applicable to broadcasters. Instead, and consistent with Commission precedent, it should expand the proposed rulemaking to include EEO rules pertaining to multichannel video programming distributors (MVPDs). Such an approach will ensure parity among industry participants subject to the Commission’s EEO rules, while also ensuring that the agency’s EEO recruitment obligations are uniformly applied.

I. The Commission Should Expand any Rulemaking to Include Consideration of Identical EEO Recruitment Rules That Apply To MVPDs.

Given the transformative impact of the internet, USTelecom supports a rulemaking to consider modification of the Commission’s EEO policies pertaining to both broadcasters and MVPDs in order to allow them, if they so choose, to rely on internet recruitment sources when conducting outreach for new job openings. While the Petition limits the scope of its request to the EEO rules for broadcasters, the policy justification for permitting broadcasters to rely on internet recruitment sources applies with equal force to MVPDs⁴ and thus warrants a more comprehensive consideration of these rules by the Commission.

USTelecom maintains that it would be illogical for the Commission to consider changes to its EEO rules only for broadcasters. The Commission has previously concluded that its EEO rules require both broadcasters and MVPDs “to reach out in recruiting new employees beyond the confines of their circle of business and social contacts to all sectors of their communities [because] ... repeated hiring without broad outreach may unfairly exclude minority and women

³ *Id.*, p. i.

⁴ We note that Petitioners request permission to rely on internet recruiting and on-air advertising. Petition, p. 1. As distributors that do not control content, MVPDs should be permitted to rely exclusively on internet recruitment sources.

job candidates.”⁵ It would make little sense for the Commission to consider changes to its EEO rules for one group of stakeholders (*i.e.*, broadcasters), while declining to do so for another group of stakeholders (*i.e.*, MVPDs).

Such an approach would also be inconsistent with existing Commission precedent. In both instances where the Commission previously considered changes to its EEO rules, it appropriately considered reforms for both MVPDs and broadcasters. Indeed, in its proceeding in 2000 reforming broadcast and MVPD EEO rules, the Commission noted that it included MVPDs in its proceeding in order to “conform them, as much as possible, to the broadcast EEO Rule.”⁶ Moreover, the Commission noted that while an earlier D.C. Circuit Court of Appeals decision⁷ that initiated its proceeding “did not directly affect” MVPDs, the agency instituted such reforms “for both broadcasters and cable entities, including MVPDs,” in order to “avoid possible constitutional problems, as well as to emphasize broad and inclusive recruitment outreach.”⁸ USTelecom maintains that the same principle should apply in any rulemaking proceeding it initiates to address its EEO rules in response to the Petition.

II. The Realities of Today’s Employment Marketplace Warrant Acknowledgement that Job Recruitment is Conducted Online.

USTelecom also agrees with the Petitioners that “much has changed in the nearly 15 years since the Commission’s adoption” of its most recent EEO reforms to MVPD and

⁵ Second Report and Order, *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 17 FCC Rcd. 24018, 67 FR 77373, FCC 02-303, ¶ 4 (released November 20, 2002) (*Second Report and Order*).

⁶ Report and Order, *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, FCC 00-20, ¶ 1 (released February 2, 2000) (*EEO Order*).

⁷ See, *Lutheran Church – Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998), pet. for reh’g denied, 154 F.3d 487, pet. for reh’g en banc denied, 154 F.3d 494 (D.C. Cir. 1998).

⁸ *EEO Order*, ¶ 12.

broadcaster job recruitment.⁹ When the Commission last considered the obligations under its EEO rules for broadcasters and MVPDs in 2002,¹⁰ it acknowledged the greater availability of job-related internet sites, but remained concerned about “the extent to which the Internet has become well known as a principal resource for job seekers or the nature of any difficulties that Internet recruitment would create.”¹¹ As noted by Petitioners, however, that concern has been rendered moot by the substantial changes in internet deployment and adoption since 2002, and the resultant expansion of online job recruitment tools.

USTelecom’s member companies have been at the leading edge of expanding access to the internet, investing more than \$1.4 trillion in broadband deployment since 1996, including \$78 billion in 2014 alone.¹² These investments have contributed to “the ‘virtuous circle’ of innovation that has driven the explosive growth of the Internet.”¹³ The transformation resulting from the expansion of the internet has impacted every facet of consumer life, from education to entertainment, and has led to the broad availability of internet-based employment portals.

In addition to the data highlighted by the Petitioners,¹⁴ USTelecom’s own industry analysis shows that 96% of housing units in the country have access to at least one wired broadband provider, and 99% of housing units have access to at least one wireless broadband

⁹ *Petition*, p. 3.

¹⁰ *Id.*, p. 2.

¹¹ *Second Report and Order*, ¶ 97.

¹² *See* FCC 2016 Broadband Report, p. 758, n. 399 (citing Broadband Investment Gains Continued in 2014, USTelecom Research Brief 1 (Jul. 24, 2015)).

¹³ United States Telecom Ass’n, 825 F.3d at 694 (quoting *Verizon v. FCC*, 740 F.3d 623, 628 (D.C. Cir. 2014)).

¹⁴ *See, Petition*, pp. 3 – 6.

provider.¹⁵ Moreover, a USTelecom Research Brief released in 2015, demonstrated that U.S. internet traffic quadrupled over the last five years, and it is expected to grow two-and-a-half times again over the next five years.¹⁶

As demonstrated in the Petition, the expansion of internet availability and adoption has also radically transformed its role as the principal resource for job seekers.¹⁷ The Petitioners extensively catalogue the substantial increase in the number of free online job portals and their emergence as the “key tool for finding and applying for employment in the U.S.”¹⁸ The Commission should analyze this transformative growth in online tools against the “traditional means to advertise job openings [that] continue to wither.”¹⁹ In particular, the Petitioners note that more than 175 newspapers have closed between 2007 and 2010, “and more have closed or dropped to three or fewer publication days per week since then.”²⁰ Moreover, the Petition notes that – unlike many free online job recruitment tools – newspapers often require a paid subscription.²¹

¹⁵ USTelecom website: <http://www.ustelecom.org/broadband-industry/broadband-industry-stats/availability>.

¹⁶ USTelecom Research Brief, August 12, 2015 (available at: <https://www.ustelecom.org/sites/default/files/documents/081215%20Internet%20Usage%20%26%20Global%20Leadership.pdf>) (visited January 24, 2017).

¹⁷ *Petition*, pp. 6 – 10.

¹⁸ *Id.*, p. 7 (citing John B. Horrigan, Joint Center for Political and Economic Studies, *Broadband and Jobs: African Americans Rely Heavily on Mobile Access and Social Networking in Job Search* (2013), p. 1) (available at: <http://jointcenter.org/sites/default/files/Broadband%20and%20Jobs.pdf>) (visited January 24, 2017).

¹⁹ *Id.*, p. 9.

²⁰ *Id.*, p. 9.

²¹ *Petition*, p. 9.

Given the stark contrast between the thriving environment for online job opportunities and the declining market for newspaper job advertisements, it is time for the Commission to acknowledge this dramatic shift. The substantial changes in broadband deployment and internet adoption warrant a finding by the Commission that internet usage has become sufficiently widespread to justify conformance of its EEO recruitment rules for both broadcasters and MVPDs.

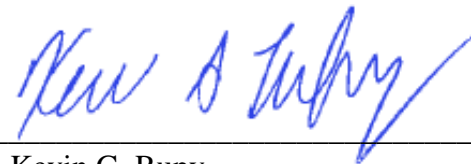
III. Conclusion

For the foregoing reasons, USTelecom supports the Petitioners' request and urges the Commission to expand any proposed rulemaking to include EEO recruitment rules pertaining to MVPDs.

Respectfully submitted,

United States Telecom Association

By: _____



Kevin G. Rupy

607 14th Street, NW, Suite 400
Washington, D.C. 20005
(202) 326-7300

January 30, 2017