

collectively, to reach the entire community, the broadcaster may be found in noncompliance with our EEO rule. A broadcaster may widely disseminate job postings through any combination of methods sufficient to ensure that its recruitment efforts are inclusive. Broadcasters may contact the FCC's EEO staff with any questions on this matter. We also clarify that the same recruitment sources need not be used for every hire. We do not require licensees to use recruitment sources that, in their good faith judgment, are unlikely to elicit responses from qualified applicants in light of the demands of a particular job. We do expect them, however, to use whatever recruitment source or sources can reasonably be expected to widely disseminate notice of the vacancy to qualified applicants. Although our rule seeks to achieve broad outreach to the community, this does not preclude the use of regional or national recruitment sources. We will accordingly give consideration to a broadcaster's use of such sources in assessing its EEO record. Whatever sources a licensee uses, however, or whatever a licensee's perception is regarding whether anyone in its community is qualified for a unique job, we are requiring that sources reach qualified potential applicants in the licensee's community. Licensees are not permitted to target any group in the community for exclusion from the recruitment process.

45. With reference to the definition of community for purposes of the broad outreach requirement, we proposed in the *2NPRM* to define "community" as encompassing, at a minimum, the county in which a station is licensed or MVPD employees are primarily located, or the Metropolitan Statistical Area ("MSA") in the case of counties located in an MSA. We will instead define "community" for the purpose of the broad outreach requirement in accordance with the approach taken in the *Recon*, (Memorandum Opinion and Order, 65 FR 76948, December 8, 2000). There, we left the definition of "market" or "community" to the licensee's good faith discretion. We indicated, that in making this determination, a broadcaster should assess the technical coverage of its station(s); its marketing, promotional, and advertising practices; the pertinent market definitions adopted by public agencies or commercial services, such as Nielsen and Arbitron; and requests for notices of job vacancies from locally-based community groups. We will adopt the same policy for purposes of our new rule. (Although we are according discretion regarding the

definition of "community," we expect broadcasters to be able to provide a reasonable explanation for their determinations should it become pertinent. We would be concerned if the circumstances suggested that a broadcaster is unreasonably defining its community in a manner that excludes certain areas or populations that it clearly does serve.)

46. We require only that EEO recruitment sources be reasonably calculated to reach the entire community. We do not require that broadcasters demonstrate that any particular segment of the community actually was aware of any vacancy. Nor do we require that recruitment be targeted to a specific segment or that broadcasters prove that they obtained a response from a particular segment. Prong 1 neither requires nor precludes the use of any number or type of sources a broadcaster deems appropriate to achieve broad outreach. Further, we leave the definition of "community" to the licensee's good faith discretion. We also recognize that it is difficult for licensees to recruit for vacancies in exigent circumstances. Thus, Prong 1 allows broadcasters flexibility in implementing appropriate recruitment programs for their individual circumstances.

47. Notwithstanding the greater availability of job-related Internet sites, the record does not reflect 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. We anticipated in the *R&O* that we would be able to assess the extent of any such difficulties based on our experience under the rules adopted therein. Because those rules were in effect for only a few months, we do not have the experience necessary to reach definitive conclusions in that respect.

48. With regard to the access of minority and rural populations to the Internet, our concerns arose from a series of reports by the National Telecommunications and Information Administration ("NTIA") in 1995, 1998 and 1999.

49. Proponents of the use of the Internet as a sole recruitment source cite the improvements reflected in NTIA's 2002 report. Although the NTIA 2002 report shows increases in Internet usage, the report also indicates continuing disparities in usage among different segments of society. Indeed, only about half of all U.S. households had Internet service as of September 2001, and only slightly more than half of individuals used the Internet from any location. We are unable to conclude that Internet

usage has become sufficiently widespread to justify allowing it to be used as the sole recruitment source. As we indicated in the *R&O*, we will continue to monitor the viability of the Internet as a recruitment source and will consider petitions seeking to demonstrate in the future that circumstances have changed sufficiently to warrant a change in our policy.

50. As indicated in the *R&O*, we expect broadcasters to allow a reasonable time after recruitment is initiated for applications to be filed before the position is filled. We recognize that occasionally a shorter time might be necessary because of extraordinary circumstances. We caution that excessive instances of hires being made shortly after the initiation of recruitment could result in a finding of noncompliance if the evidence suggests that the broadcaster is not in good faith allowing adequate time for applicants to respond to its outreach efforts or is not considering their applications. Also, it is not the intention of our rule to prohibit word of mouth recruitment. Our purpose is to ensure that word-of-mouth recruitment practices are not the sole method of recruitment and that all members of the public have an opportunity to compete for available jobs. Broadcasters are free to use non-public recruitment sources and to interview and hire persons referred by such sources, so long as they also use public recruitment sources sufficient to achieve broad outreach and fairly consider the applications generated by those sources.

51. We will continue our policy stated in the *R&O* that broadcasters may engage in joint recruitment efforts. Broadcasters may also rely upon the services of outside organizations or individuals to assist it in designing or implementing their recruitment efforts. Each broadcaster (or MVPD) remains individually responsible for compliance with our rule. No broadcaster (or MVPD) is required to use the services of an outside party.

52. We will not require recruitment for internal promotions, nor will we require recruitment for temporary employees. Typically, we view temporary employees as including those hired as emergency replacements for absent regular employees or those hired to perform a particular job for a limited period of time. If a person is hired full-time to perform a regular station function for an extended period of time (e.g., more than six months), such a hire will be treated as a permanent hire for which recruitment would be required. We recognize that some broadcasters may wish to hire employees initially on