



# Newsletter

Virginia Association of Broadcasters

August 2011

## State Attorneys General Call for Reallocation of Spectrum for Public Safety Network

Most of the nation's state attorneys general are calling on Congress to reallocate spectrum to public safety officials for the creation of a national broadband network aimed at improving emergency communications.

In a letter to congressional leaders sent in late August, 42 state attorneys general urged lawmakers to pass legislation that would reallocate a swath of spectrum known as the D-block to public safety officials for a national broadband network. That spectrum is slated under current law to be auctioned to commercial bidders. The Senate Commerce Committee approved spectrum legislation in June that would give the D-block to public safety agencies and authorize funding to build such a network, but GOP leaders on the House Energy and Commerce Committee would prefer to see the D-block auctioned.

The Sept. 11, 2001 terrorist attacks and natural emergencies such as Hurricane Katrina in 2005 exposed deep problems with the communications systems used by police, firefighters and other emergency responders who had difficulties communicating with each other. The proposed national public safety network would eventually address those problems while also allowing first responders to use the latest technologies to improve how they respond to emergencies.

The letter from the attorneys general, organized by the National Association of Attorneys General, did not endorse any particular bill, but said that "by providing the resources to develop a reliable, rapid and comprehensive wireless communications system, the D-block designation would serve all our citizens well."

The letter added that, "We understand that Congress may take action on



this important legislation prior to the 10th anniversary of the September 11 terrorist attacks. Nothing could be more appropriate than marking this solemn anniversary by making a genuine commitment to public safety communication, for this and future generations."

Senate Commerce Chairman Jay Rockefeller, D-W.Va., has been pushing for passage of his spectrum legislation before the 10th anniversary of the 2001 attacks but it appears increasingly unlikely that lawmakers will act before that date.

Still, Rockefeller and Senate Commerce ranking member Kay Bailey Hutchison, R-Texas, touted the bill in a letter to the Federal Communications Commission urging the agency to do what it can to ensure the reliability of both private and public safety communications during emergencies such as last week's earthquake that struck the East Coast and jammed cellphone networks. Such problems highlight the need for police, fire and other public safety officials to have their own dedicated network so that they do not have to

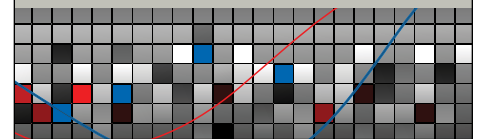
rely on commercial networks, which can become overloaded during emergencies, Rockefeller and Hutchison wrote. ❖

*Article courtesy of Juliana Gruenwald from the National Journal.*

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## VAB Newsletter

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## WHRO Wins National Award



On Saturday, August 6, 2011, WHRO received the award for Best Documentary, Market Size 16 and Above for its 2010 production, Code Switching. The award was presented to WHRO producer Lisa Godley by the National Association of Black Journalists, at its 36th Annual Convention in Philadelphia.

The annual competition honors work from print, television, radio, online, photojournalism, and public relations. The WHRO documentary was honored for its critical look at the practice of code-switching – intentionally transitioning from an informal speech pattern to a more formal type of speech. Code Switching also revealed how the inability to code-switch can impact where you work and

what you earn, and addressed the pitfalls of only being able to speak informally in a society that expects formal speech in certain environments.

“The idea for Code Switching came to WHRO from Robert Nusbaum, a local attorney,” said Barbara Hamm Lee, who served as Executive Producer for the documentary. “Mr. Nusbaum was instrumental in helping us secure additional needed funding as well, with a generous gift from the Clark-Janis Foundation.”

“Bob is passionate about effective communication, and it was important to him – and to us at WHRO – that this topic be addressed with sensitivity and accuracy,” said Godley. “We were very pleased to receive this award, and are even more honored that area school systems have requested copies to use in their classrooms.” The University of Southern California is also using the documentary as a teaching resource.

“WHRO is extremely proud of this excellent documentary and the impact it continues to have,” said Bert Schmidt, President and Chief Executive Officer of WHRO. ❖

## VAB to Launch New Marketing Campaign

The VAB would like to invite you to a sneak peak of the NEW television and radio advertisements for our NEW Marketing Campaign entitled, “Reaching More People, Touching More Lives” that is scheduled to kick off mid-September.

Please join us at a location near you!

- **Tuesday, September 6th**-Norfolk Marriott
- **Wednesday, September 7th**-OMNI Richmond
- **Thursday, September 8th**-Boar’s Head Inn
- **Friday, September 9th**-Hotel Roanoke

The sneak peak will begin at 4:30 p.m. and will be followed by a reception with light hors d’oeuvres and cocktails.

For questions about the event or to RSVP, please contact Amy Shaw at [amy.shaw@easterassociates.com](mailto:amy.shaw@easterassociates.com) or call 434/326-9811. ❖



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## Meet the New Face of FOX43

The votes are in and the winner has been announced! Congratulations to Tracie Paige, the new Face of FOX43! Tracie competed with 104 hopefuls who submitted online entries and auditioned for the opportunity to represent FOX43 on air and online as the new Face of FOX43!



"I am beyond happy to be the new Face of FOX43," said Norfolk native Tracie Paige. "This is my childhood dream come true, and I expect every day of this next year to be just as magical as the day I was announced as the new Face of FOX43!"

Tracie brings strong interviewing skills with him to his new gig. The Norfolk State University graduate gained media experience while working for Hampton Roads Magazine. During his time with the magazine, Tracie learned to conduct interviews and was even featured in a photo shoot. Viewers may also be surprised to learn that this self-proclaimed "sneaker" fanatic enjoys photography, has a hidden talent of singing and hopes to become an actor one day.

"We are just thrilled to have Tracie join our staff! All of the Top Ten finalists this year brought their "A" games and made the contest so much fun," said Face of FOX43 Executive Producer Stephanie Cooke. "Having Tracie win was icing on the cake. For three years we've really enjoyed providing area residents the opportunity to step up and become a star. I know in our fourth year, our newest star-to-be Tracie will bring yet another great perspective to the Face of FOX43, and everyone will love seeing him on the air and out at events!"

Face of FOX43 casting calls were held in June at the Cox Wireless Kiosk in MacArthur Center and BayPort Credit Union in Newport News. Each contestant competed by recording a one-to-two minute video which was posted

on FOX43tv.com. Viewers were then able to log on and cast their vote for the individual who would best represent FOX43 and their community. After in-person appearances and campaigning online in various social media, the Top Ten finalists endured a week-long elimination on The Hampton Roads Show. Each day, two hopefuls were eliminated until the hard-fought contest came down to Jarrod "J-Rod" Tanner and Tracie Paige on the final day.

"BayPort is extremely pleased to be a major sponsor of the Face of FOX43. It's exciting to see young talent develop during the year and promote the community," said Bayport Credit Union President and CEO George R. Dudley, Jr. "We look forward to another wonderful year of working with the Face of FOX43 and believe Tracie will bring a new level of enthusiasm to the entire Hampton Roads area."

As the new FACE of FOX43, Tracie will receive a one-year, paid contract to keep you updated on the latest happenings and events in the Hampton Roads community. The new FACE of FOX43's first appearance will be at the Hampton Bay Days Festival in Downtown Hampton on September 10th and 11th. Viewers can also check in with Tracie by following him on Facebook and Twitter, as well as by logging on to FOX43tv.com. The Face of FOX43 is presented on air and online by BayPort Credit Union and Cox Wireless.

"The Face of FOX43 program is a great community initiative, and we're pleased to be part of it," said Cox Wireless Director of Public Affairs Felicia Blow. "Cox is very active in the Hampton Roads community and we are happy to know that we can continue our community involvement as we partner further with Tracie and the FOX43 team." ❖



### VAB Lunches with Robert Hurt

Members of the VAB met with Congressman Robert Hurt (R-VA5) on Wednesday, August 10th at the Charlottesville Newsplex. Topics of discussion included retransmission consent, the Performance Rights Tax and the use of spectrum. ❖



# Citizen Guide to Freedom of Information Act

Virginia's Freedom of Information Act starts from the presumption that all government records and meetings are open and available to the public. A record cannot be withheld and a meeting cannot be closed unless a specific exemption applies, or unless some other statute in Virginia law applies. Just because an exemption could apply, however, doesn't mean it must. Exemptions are discretionary, and they must be interpreted narrowly to increase awareness of all citizens of government activities.

## Getting a Public Record

Any Virginia citizen can ask to look at government records or ask for copies of them in any medium the public body itself uses. This includes e-mail. You do not have to cite FOIA when you ask, the request does not have to be in writing, and you do not have to tell the government why you want access to the record. You may want to write down your request anyway, as this will help both you and the government keep track of the request. Requests should be as specific as possible. Public officials are required to make reasonable efforts to reach an agreement over requests.

When the government gets your FOIA request, it has five days to respond to you, by either giving you the entire record, withholding the entire record, giving you part of the record, or letting you know that it will take another seven days to fulfill the request. If any part of the record is withheld, the government must tell you exactly which FOIA exemption or other statute justifies the denial. The government doesn't have to create a new record where one doesn't already exist.

There are more than 100 exemptions for disclosing records, and they are arranged under various categories. Many of the exemptions can be invoked only by specific agencies. Other exemptions are of a more general nature. Some of the most commonly used exemptions have to do with

**The public has a right to attend and record or film meetings, work sessions and retreats of all public bodies, which includes local governing bodies, state agencies and their committees, subcommittees and commissions.**

personnel records; scholastic records that identify students; health, medical and social services records; records that are part of various administrative investigations; and records that reveal security or anti-terrorism measures.

There is also a special section in FOIA that deals with criminal records. Police must provide "criminal incident information," which includes the date, general location and general description of felonies. Other records may be kept confidential, though, including ones being used in criminal investigations, those that would jeopardize undercover operations or expose an anonymous tipster, and those involving misdemeanors.

The government can charge for the actual, reasonable cost of locating, copying and providing the records in response to your request. You can ask the government to itemize in advance approximately how much your request will cost. The government may ask you to make a deposit if the estimate is over \$200.

## Going to a Public Meeting

The public has a right to attend and record or film meetings, work sessions and retreats of all public bodies, which includes local governing bodies, state agencies and their committees, subcommittees and commissions.

Before the public can attend a meeting, it has to know about it. FOIA requires the government to post no-

tice of an upcoming meeting in two prominent locations where other public notices are kept. Usually notice is also posted in the local newspaper and on the government's website, if it has one. The notice must be given at least three working days before the meeting, and it must state the date, time and location of the meeting.

If there is an agenda, at least one copy of it must be made available to the public at the same time the members of the public body get it. You may request that the public body send you notice of every upcoming meeting. The government has some flexibility for notice, however, when there's a special or emergency meeting, but at least some kind of notice must still be given.

You may record the meeting on your own, provided you don't get in the way. The government must take minutes at the meeting. Minutes are considered public records. Though minutes don't have to be in a specific format, they must, at a minimum, include the date, time and location of the meeting, which members of the public body were there and which ones weren't, a summary of the discussions and a record of any votes taken. All votes must be made in front of the public; no secret ballots are allowed, nor are binding votes taken in closed session.

There are certain exemptions that a public body may use to go into a closed meeting, though there aren't as many exemptions as with records. Some frequently used exemptions are for discussions of personnel matters involving specific individuals; the sale or purchase of real estate when a bargaining position could be jeopardized; consultation with legal counsel about probable or existing lawsuits; and certain discussions that require the public body to protect its negotiating strategy.

Before a public body may go into a closed meeting, it must make a motion in open session identifying the subject matter, stating the purpose of

the meeting and identifying the specific exemption that covers the topic. A general reference to the subject is not sufficient. The members of the public body must vote on the motion. No official action may be taken in the closed session.

When the public body comes out of the closed meeting, it must take another vote on a motion certifying that the topics identified in the motion to go into closed session were the only issues discussed. If a member of the public body disagrees with the motion and believes that other topics were discussed, that member should say why, and this reason has to be recorded in the minutes.

### Enforcing Your Rights

If you feel you've been wrongfully denied a public record, if the government doesn't respond to your request for records, or if you think the notice for a meeting or the topic of the meeting was improper, there are a few things you can do. For starters, you can try to work out a mutually satisfactory agreement with the public body directly. You can ask the Freedom of Information Advisory Council to issue an oral or written opinion. The council's opinions are persuasive, and its answers are generally respected by citizens and government alike. There is no charge for the council's help.

If an amicable solution cannot be reached, a lawsuit is an option. Anyone can file a petition in general district or circuit court asking for an injunction or for a writ of mandamus, which is basically an order directing the government to do something. If you win against the government, you may be able to recoup your attorneys' fees and costs, and the public body (or government official) may be required to pay a fine.

For more information, go to [www.opengovva.org](http://www.opengovva.org) or call (540) 353-8264. Funding for this summary was provided by the National Freedom of Information Coalition, and was made possible by the John S. and James L. Knight Foundation. ❖

## National EAS Test Scheduled for November 9

On February 2, 2011, the Federal Communications Commission (Commission) amended its Part 11 rules governing the Emergency Alert System (EAS) to provide for national testing of the EAS and the collection of data from such tests.<sup>1</sup> On June 9, 2011, the Commission provided notice to all EAS Participants that the first nationwide test of the EAS will occur on November 9, 2011 at 2 PM Eastern Standard Time (EST). The test will include transmission by the Federal Emergency Management Agency (FEMA) of a "live" Emergency Action Notification (EAN) code to all EAS Participants and notice to the general public that the EAS has been activated for a national emergency, along with an audible notice that "this is a test." The Commission and FEMA, in conjunction with broadcasters and cable providers, are engaged in outreach efforts aimed at informing the general public that the November 9 test will be just that – a test.

The Commission's Third Report and Order, which adopted the rule allowing for national testing of the EAS, delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to determine, in consultation with FEMA and other EAS stakeholders, as appropriate, various operational procedures for implementing national tests of the EAS.<sup>5</sup> These procedures included: (1) whether the test will use an Emergency Action Termination (EAT) code; (2) the location code for the test; (3) the duration of the test; and (4) possible pre-tests of EAS equipment. With this public notice, the Bureau provides further guidance regarding these and other operational procedures for the first nationwide EAS test.

- The test will conclude with transmission of the End Of Message (EOM) code. The test will not use the Emergency Action Termination (EAT) code. The Bureau's understanding is that use of the EOM code instead of the EAT code during the national test will not require EAS Participants to reconfigure their EAS encoder/decoder devices in any way.
- The location code for the EAS test will be the code for Washington, DC. The Bureau's understanding is that most EAS encoder/decoder devices will automatically forward the EAN with the Washington, DC location code and will not require further configuration by the EAS Participant. If you are unsure whether your device will forward an EAN with the Washington, DC location code, please contact your device's manufacturer or FEMA's Integrated Public Aler and Warning System (IPAWS) Office at [IPAWS@dhs.gov](mailto:IPAWS@dhs.gov).
- The test will last approximately three (3) minutes.
- While the Commission does not plan to conduct pre-tests in advance of the November 9, 2011 nationwide test, FEMA is presently working with selected states, EAS Participants, and equipment manufacturers to conduct statewide tests of EAS equipment and procedures in those states in advance of the November 9, 2011 nationwide test. Such tests will serve the same purpose as the pre-tests discussed in the Third Report and Order. Any questions regarding this matter should be directed to either FEMA's IPAWS Office or to your state's EAS authority. To find your state's EAS contact, please refer to your state's EAS plan online at <http://transition.fcc.gov/pshs/services/eas/chairs.html>.

The Bureau will continue to provide additional information about this first nationwide test of the EAS through the release of further public notices. Please also visit the Bureau's web page at <http://www.fcc.gov/pshs>, where we will post announcements of significant developments affecting nationwide EAS testing for both EAS Participants and the general public. Updated information on this test, including recommended "best practices," can also be found on FEMA's "Emergency Alert System (EAS) Community Information Updates and Test Preparations" web page [http://www.fema.gov/emergency/ipaws/eas\\_info.shtm](http://www.fema.gov/emergency/ipaws/eas_info.shtm).

For further information regarding this test, contact Tom Beers, Chief, Policy Division, Public Safety and Homeland Security Bureau, (202) 418-0952; or Gregory Cooke, Associate Chief, Policy Division, Public Safety and Homeland Security Bureau, 202/418-2351. ❖

## Clarification of Freeze on FM Translator “Move-In” Applications

As we previously reported, the FCC recently imposed a freeze on “move-in” FM translator modification applications as part of its proceeding regarding low power FM stations. This update reflects new information we have learned about the freeze.

The Notice that imposed the freeze states that “[w]e also impose an immediate freeze on the filing of translator ‘move-in’ modification applications and direct the [FCC staff] to dismiss any such application filed after the adoption of this Third Further Notice.”

However, in recent discussions with the FCC staff, the staff has clarified that the freeze does not apply to “move-in” modification applications proposing to relocate FM translators to so-called “green” radio markets. “Green” markets are those for which the FCC has tentatively concluded that there is sufficient spectrum for new low power FM stations.

While the Commission’s language quoted above suggests a categorical freeze, the staff’s interpretation is based on the overall text of the Notice, which suggests that the Commission is only concerned with spectrum-limited markets.

Of course, staff interpretations are not binding and are always subject to being overruled by the Commission. Nonetheless, at this time, the staff has indicated that “green” market “move-in” modifications will be processed.

Applicants should carefully consider this issue in connection with any such applications.

To view the notice, please visit [www.vabonline.com](http://www.vabonline.com) and click on “downloads”. ❖

## FCC Announces Elimination of 83 Outdated Rules

FCC Chairman Julius Genachowski has announced the elimination of 83 outdated and obsolete media-related rules, including Fairness Doctrine regulations. This action is part of the FCC’s reform agenda, which includes retrospective review of rules, elimination of rules that are no longer needed, and revision of rules to reflect changes in technology, thereby clearing the path for greater competition, investment and job creation. Chairman Genachowski has consistently and repeatedly stated his opposition to the Fairness Doctrine, which he pressed to eliminate by the end of August. The Fairness Doctrine is not currently enforced by the FCC and has not been applied for more than 20 years.

In addition, the FCC also announced the deletion of obsolete “broadcast flag,” cable programming service tier rate, and broadcast applications and proceedings rules. The elimination of these rules adds to the over 50 outdated regulations that have already been deleted as part of Chairman Genachowski’s robust regulatory review process. Moreover, the FCC has significantly reduced Commission backlogs, including an 89% reduction in satellite licensing applications and a 30% reduction in broadcast licensing applications. The FCC is currently in the process of moving to eliminate 25 sets of data collections from industry that are no longer necessary.

Chairman Genachowski said, “Our extensive efforts to eliminate outdated regulations are rooted in our commitment to ensure that FCC

rules and policies promote a healthy climate for private investment and job creation. I’m proud of the work we are doing toward our goal of being model of excellence in government.

This includes our recent commitment to act in accordance with the recent Executive Order on Regulation and Independent Agencies, which is consistent with the values and philosophy we apply at the FCC.

“The elimination of the obsolete Fairness Doctrine regulations will remove an unnecessary distraction. As I have said, striking this from our books ensures there can be no mistake that what has long been a dead letter remains dead. The Fairness Doctrine holds the potential to chill free speech and the free flow of ideas and was properly abandoned over two decades ago. I am pleased we are removing these and other obsolete rules from our books.

“Our work is not done. I have directed each bureau at the FCC to conduct a review of rules within their areas with the goal of eliminating or revising rules that are outdated or place needless burdens on businesses. We are also in the process of developing a retrospective review plan, pursuant to the recent Executive Order. We will continue on this regulatory reform track thoughtfully and diligently conducting our reviews of existing rules and taking other important steps to meet our statutory obligation and mission in a way that grows our economy, creates jobs and benefits all Americans.” ❖

### GOT NEWS?

For coverage in future issues, please send announcements/press releases and accompanying photographs to [marci.malinowski@easterassociates.com](mailto:marci.malinowski@easterassociates.com) or mail to:  
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Submissions may be edited for length. Inclusion is not guaranteed and may be excluded due to space.

## IBC: Harris to Demo Loudness Management Solutions

As regulators in many markets around the world move to control the loudness of commercials, Harris Corporation will be demonstrating for the first time at IBC its international solutions for mitigating excessively loud commercials.

In the U.S., the passage of the Commercial Advertisement Loudness Mitigation (CALM) is requiring broadcasters and programmers to act to prevent needlessly loud commercials. Similar measures in Europe are designed to promote international harmonization around the ITU-R BS.1770 and EBU R 128 recommendations, Harris executives note.

During demos at IBC, visitors to the Harris booth will see and hear the complete loudness control in action and see how it can be dynamically controlled.

"We will be showing a complete solution from one provider to this important issue," notes Dr. Glodina Connan-Lostanlen, senior manager strategic marketing, workflow, infrastructure and networking, Harris Corporation, Broadcast Communications.

The complete Harris loudness management solution features tools for file-based analysis, real-time correction, and signal measurement and logging.

At the front end, the Harris QuiC



solution provides file-based analysis and correction tools for ingest applications.

Harris will also show its APM6803+ multichannel audio processing station to international audiences for the first time at IBC.

The APM6803+ features DTS Neural Loudness Control and uses critical band analysis for perceptual loudness measurements, an approach that preserves the spectral balance of the signal and delivers a natural, open quality not found in traditional multiband compression technology.

In addition, the Harris Videotek LLM-1770 device provides real-time

measurement and logging for transmission and compliance applications at the third and final stage of the loudness management control.

Harris also will integrate Videotek loudness logging into the "as-run log" of Harris ADC automation software--an industry first.

Additionally, Harris will show new enhancements to the Videotek MSA Series for multi-source analysis at IBC, including loudness monitoring and alarms for MPEG streams. ❖

*Article by George Winslow from broadcast-ingcable.com.*

### Ad Council Launches 9/11 Memorial Campaign

Ten years after the tragic events of September 11th, 2001, the National September 11 Memorial will open in New York City, with the Museum scheduled to open a year following.

The Memorial is a tribute to the nearly 3,000 people killed in the terror attacks of September 11, 2001 at the World Trade Center site, near Shanksville, Pa., and at the Pentagon, as well as the six people killed in the World Trade Center bombing in February 1993. The Museum will honor the memory of the victims and preserve the history of 9/11. In doing so, it will aspire to educate the millions of people expected to visit the World Trade Center each year in hopes of building a better future.

The PSA campaign is designed to raise awareness of the importance of the Memorial, and features individuals impacted by the tragedies of September 11th, 2001 - including first responders, family members, survivors, neighbors and flight attendants. Their words show how the Memorial will help Americans and people from all over the world to "Honor, Remember, and Reunite." The campaign encourages viewers to support the Memorial, learn more and reserve a visit.

The ads are complemented by a redistribution of the Ad Council's "I am an American" PSA. In September 2001, Texas ad agency GSD&M created a PSA to celebrate the country's extraordinary diversity and remind Americans that it was the time to unite as a country. And 10 years later, the message continues to resonate. Response to the PSAs in 2001 was unprecedented - the media donated \$100 million in time and space in the first year, and Americans around the world voiced their support for such an important and timely message. ❖

## National Labor Relations Board to Issue Guidelines on Facebook-Related Conduct

By John G. Kruchko and Paul Lusky

For some time now, the National Labor Relations Board ("NLRB" or the "Board") has been grappling with the issue of whether off-duty employee comments regarding their employer on social media sites such as Facebook, MySpace or Twitter should be protected from discipline or discharge. The National Labor Relations Act (the "Act") prohibits employers from interfering with rights guaranteed to employees by Section 7 of the Act. In part, Section 7 protects an employee's right to engage in concerted activities for the purpose of "mutual aid or protection." The NLRB has used the "mutual aid or protection" clause to protect employee communications on social media sites in a number of cases even where the employee postings have been severely critical of the employer.

For example, in October, 2010, the Board issued a complaint against a Connecticut ambulance service company who discharged an employee for posting negative comments about her supervisor on her Facebook page. The employee's communication was critical of her employer for "allowing a 17 to become a supervisor." The ambulance service company used the number "17" to refer to psychiatric patients. Although the employee posted the comments on her personal computer during non-working hours, the Board issued a complaint anyway concluding that off-duty discussions among employees on Facebook are no different than discussions that occur in the workplace and should be protected as concerted activity. Although the case was settled in February of this year, the employer was required to agree not to improperly restrict employees from discussing their wages, hours and working conditions on electronic media sites.

According to a study released on August 5, 2011 by the U.S. Chamber of Commerce, the Board has reviewed 129 cases since 2009 involving social media and the workplace, most of which were filed this year. A recent Deloitte study found that 53 percent of employees don't think their social media presence should be subject to their boss' oversight. Obviously, this is an issue that is not going away anytime



soon. As a consequence, the NLRB may soon be releasing formal guidelines as to how it will deal with certain social media scenarios. The Board is already urging its regional offices to send all Facebook-related cases to its Washington headquarters.

The issue of whether an employee who is posting a comment about his employer on a social media site is engaging in protected concerted activity can be confusing. Even though the employee appears to be acting alone, the NLRB may find the communication to be concerted activity. For example, in a recent Advice Memorandum issued by the Board's Office of the General Counsel, the test for concerted activity was described as follows:

The question is a factual one and the Board will find concert "[w]hen the record evidence demonstrates group activities, whether 'specifically authorized' in a formal agency sense, or otherwise." Thus, individual activities that are the "logical outgrowth of concerns expressed by the employees collectively" are considered concerted. Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action" and whether individual employees bring "truly group complaint" to management's attention.

Thus, in any particular case, the Board can massage the facts to either dismiss a case because it concludes the individual was acting alone or issue a complaint because it finds the employee was looking to induce group action.

## **Until the Board issues formal guidelines for dealing with these kinds of cases, employers must proceed with caution before disciplining or terminating an employee for comments made on social media sites.**

A similar set of facts can produce two different results. Two recent Advice Memoranda issued by the Board illustrate the capricious nature of the concerted activity test.

In one of the cases, a bartender used Facebook to complain about his employer's tip policy and said he hoped the employer's "redneck" customers "choked on glass as they drove home drunk." The bartender's conversation was limited to his step-sister, however, and he did not discuss his posting with other employees nor did any employee respond to it. The Board concluded that the bartender's discharge was lawful because he had not engaged in concerted activity. The Board noted that "the conversation did not grow out of [a] prior conversation with a fellow bartender months earlier about the tipping policy." Instead, the employee was only "responding to an internet question from his step-sister about how his evening at work went." Of course, if the bartender had discussed his posting with other employees, the result may well have been different.

In another case, a Wal-Mart customer service employee who was irritated with her assistant manager posted the following comment on her Facebook page: "Wuck Falmart! I swear if this tyranny doesn't end in this store they are about to get a wakeup call because lots are about to quit!" The employee's Facebook friends were largely composed of co-workers and two Wal-Mart employees responded with supportive remarks. Despite this fact, the Board upheld Wal-Mart's discipline of the customer service employee, concluding that the Facebook discussion was not concerted activity but merely the expression of an individual gripe. The Board said: "[C]omments made 'solely by and on behalf of the employee himself' are not protected. Comments must look toward group action; 'mere griping' is not protected." Again, this decision could easily have gone the other way. The Board could have just as easily concluded that the customer service employee was attempting to solicit support for a group complaint to the store manager about the assistant manager. In a follow-up communication, the employee posted: "I'm talking to the store manager about this ... cuz if it don't change walmart can kiss my royal white ass!"

Perhaps these recent decisions by the Board represent a retreat from the agency's current proactive stance in protecting even the most opprobrious communications by employees on social media sites so long as the comments concern terms and conditions of employment. If so, perhaps employers will see the Board employ a more restrictive definition of concerted activity in these Facebook cases. Of course, that is not something employers can rely on where the test is so ephemeral. Next month could bring a new round of unfair labor practice charges against employers who discipline or discharge employees for Facebook conduct.

Until the Board issues formal guidelines for dealing with these kinds of cases, employers must proceed with caution before disciplining or terminating an employee for comments made on social media sites. Nevertheless, the recent decisions do appear to provide the following general guidance:

- Complaining about working conditions to non-coworkers will not receive protection under the Act as concerted activity;
- Even some interaction between employees on Facebook will not automatically convert individual gripes into protected concerted activity;
- The more profane or inappropriate the Facebook commentary is, the greater the likelihood it is that the Board will find the conduct to be unprotected, usually by concluding that the offending employee was not engaged in concerted activity; and
- Criticism of an employer's customers will not be protected.

This is an area of the law that is evolving rapidly. Employers contemplating discipline of an employee for social media comments must take all of the facts into consideration and should not focus solely on the employee's comments in a vacuum. The involvement of co-workers, either before, during, or after the Facebook posting, is a factor that must be investigated thoroughly. ❖

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# AUGUST JOB BANK

## SUBMIT JOBS

### Submit to VAB Newsletter:

- Please e-mail the listing directly to [marci.malinowski@easterassociates.com](mailto:marci.malinowski@easterassociates.com).
- Be sure to include your station ID or company name, information on how the applicant can apply and where to send the applications materials.

### Submit to the Online Job Bank:

- Go to [www.vabonline.com](http://www.vabonline.com)

### Reporter/Video-Journalist FT Lynchburg, VA

The Reporter/Video-Journalist position is primarily responsible for gathering and reporting news, as well as shooting and editing video of news, sports, and special features. This person must display high journalistic standards and be prepared to cover stories alone, which will require using effective interviewing techniques. The individual will participate in the public affairs of the station and must be a good communicator, work well with others, and take direction from management regarding job performance and reporting/shooting/editing style, technique, and content. Requires Advanced Education in the field of Broadcast Journalism or equivalent broadcasting work experience. Valid Virginia Driver's license within 30 days of employment. Apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applicants for positions in the News Department should submit a non-returnable DVD resume tape with letter, resume, and references. EEO/M/F.

### Program Director Fredericksburg, VA

Program Director The Free Lance-Star Radio Group has an immediate opening for a Programming team leader for two diverse formats. Our Classic Rock and Rhythmic CHR stations have solid foundations and staffs waiting for a top-notch coach and strategic thinker. Compete with local signals and strong presence from DC and Richmond. The Free Lance-Star is a strong, locally owned company that believes in product development. If you believe in the continued vitality of radio and understand how to be relevant to listeners regardless of format, rush examples of your successes and samples of your current or most recent station to: WFLS-WVBX-WWUZ-WNTX Radio Human Resources 616 Amelia St. Fredericksburg, VA 22401 E-mail: [jobs@freelancestar.com](mailto:jobs@freelancestar.com) Deadline to apply is 9/5/11. EOE.

### Director Richmond, VA

NBC12 seeks experienced director for production team. Responsibilities include directing/technical directing, pre-production, audio operation, floor directing, robotic camera operation. Experience with Kahuna HD Video switcher, Pinnacle Deko/Thunder and audio consoles a plus. Social media competency required. Qualified applicants only send cover letter and resume to Judy Gibson, Human Resources Director, NBC12, P. O. Box 12, Richmond, VA 23218. Drug Screen required. EOE M/F/H/V.

### Senior Promotions Producer Roanoke, VA

WFXR FOX 21/27 and WWCW the CW5 in Roanoke Virginia is looking for a top notch promotion producer who has excellent communication and public relations skills! Must have the ability to write scripts and proposals. Proficiency in graphics programs such as Photoshop, Illustrator, Adobe After Effects or other graphics software. Working knowledge of MS Word and Excel. Proficient in use of non-linear computer editing (AVID a plus). Ability to handle a large workload and a number of different projects simultaneously. Ability to meet deadlines and work under pressure. Proficiency in field videography using station equipment. Proficiency in lighting, sound and other elements considered essential to commercial production. Must be friendly, understanding and outgoing to both station employees as well as general public. Please send your resume and a demo reel to: Creative Services Director WFXR 2618 Colonial Ave., SW Roanoke, VA 24015.

### Assistant General Manager Wytheville, VA

Three Rivers Media Corporation has an opening for and Assistant General Manager for three Radio Stations in South Western Virginia. We are looking for someone with a good track record and strong background in Radio with a college Degree in Broadcast. The qualified candidate will be responsible for handling Sales, Budgeting, Forecasting with strong communication skills, if your energetic and creative problem solver who is not afraid of hard work we want to meet you. Applicants must apply on line to be considered. Resumes to [TRMedia@msn.com](mailto:TRMedia@msn.com). We are an equal opportunity employer and Drug Free Workplace.

### Promotion Producer Portsmouth, VA

WAVY TV10 and WVBT is searching the nation for a Promotion Producer Specialist who has the promo know-how to build ratings and beat the competition with great writing, crafty editing and compelling sound design. We are looking for someone who has unmatched talent and an unyielding passion to produce must-watch spots. We need someone who can promote the distinct brands of WAVY-TV 10 and WVBT FOX43 10 by producing compelling nightside topicals from concept to completion. You must be able to champion pulse-pounding proof of performance spots under tight deadlines. Being comfortable with a camera is key. Qualified applicants will have at least three years

of experience as a writer/producer/editor, with demonstrated success in topical writing. Must have strong interpersonal skills and the ability to successfully interact with all departments. Please send your resume and reel to: Kristen Joyal, Creative Services Director, WAVY TV10 / WVBT FOX43, 300 WAVY Street, Portsmouth, VA 23704. [kristen.joyal@wavy.com](mailto:kristen.joyal@wavy.com). No phone calls please. EOE.

### Chief Engineer Richmond, VA

WUPV-TV, the CW affiliate in Richmond, VA seeks Chief Engineer. Successful candidate will possess strong skills in operation, maintenance, troubleshooting and repair of digital television transmitters and broadcast equipment. Hands-on position requires thorough understanding of broadcast operations workflow, excellent people/communication skills and proficiency with computers and software applications. Responsibilities include all aspects of maintaining UHF DTV transmitters, ensuring compliance with FCC rules and regulations and operation and maintenance of station equipment. Ideal candidate will have experience with broadcast automation, video file servers, video file transcoding and computer networking. Formal electronics education or military electronics training and 5 years hands-on broadcast engineering experience required. Send cover letter with salary requirements and resume to: WUPV-TV, Attn: Bruce Tinoco, Director of Engineering, 5710 Midlothian Turnpike, Richmond, VA 23225 or [btinoco@nbc12.com](mailto:btinoco@nbc12.com). No phone calls please. EOE-M/F/D/V.

### Chief Engineer Harrisonburg, VA

WHSV Chief Engineer- We are searching for an engineering professional to work in a modern broadcast facility. The successful candidate will be able to combine hands on approach and engineering IT management skills for a dominant full power television station in the Harrisonburg area. Ability to oversee and interact with IT based workflow in an automated environment and digital transmitter experience is required. Good communication skills in a fast paced news environment and professional appearance a must. Please send resumes to Tim Merritt at WHSV, 50 North Main Street, Harrisonburg or you can email at [tmerritt@whsv.com](mailto:tmerritt@whsv.com). Gray Television is an equal opportunity employer and a drug free environment. Salary DOE

### Promotions Director Roanoke, VA

Candidates will be responsible for the management of the WSLQ Promotions Department including supervision of promotions staff. Primary duties include coordinating live events, developing on-air and off-air promotions, weekly contest preparation, and maintaining station vehicles for events. Good writing, interpersonal, organizational and communication

*(continued on next page)*

skills are necessary to succeed. Ideal candidates will also have on-air skills and experience. Qualified candidates must also possess a valid driver's license, be able to lift 50 lbs. and be willing to work nights and weekends, in all weather conditions. We offer a competitive benefits package, including 401(k). For consideration please send resume to: Cheryl Skinner, HR Director [cskinner@wheelerbroadcasting.com](mailto:cskinner@wheelerbroadcasting.com). EOE.

#### **New Business Account Representative FT Lynchburg, VA**

The sale of television and web advertisement to new and existing accounts, the supervision and follow-through of all sales, and the development of New Business as defined by the Sales Manager. Requires Advanced education in the field of Marketing and Advertising which has given the applicant the ability to perform the required functions of the job, or equivalent sales background which has prepared the applicant to perform the required functions of the job. Sales aptitude with one year previous television or media sales experience. Automobile and valid Virginia driver's license. Apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Mon.-Fri. or online at [www.wset.com](http://www.wset.com). EEO/M/F.

#### **Reporter/Video-Journalist FT Danville, VA**

The Reporter/Video-Journalist position is primarily responsible for gathering and reporting news, as well as shooting and editing video of news, sports, and special features. This person must display high journalistic standards and be prepared to cover stories alone, which will require using effective interviewing techniques. Must be a good communicator, work well with others, and take direction from management regarding job performance and reporting/shooting/editing style, technique, and content. Advanced Education in the field of Broadcast Journalism or equivalent work experience. Available 24/7, if needed. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Mon.-Fri., or online at [www.wset.com](http://www.wset.com). No phone calls please! Applicants for positions in the News Department should submit a non-returnable DVD resume tape. EEO/M/F.

#### **Video-Journalist FT Lynchburg, VA**

The Video-Journalist position, with emphasis on Photojournalism, is primarily responsible for gathering news by shooting and editing videotape of news, sports, and special features and responsible for setting up ENG vans for live remotes. Requires Advanced Education in the field of Broadcast Journalism which has given the applicant the ability to perform the required functions of the job or equivalent broadcasting work experience. Demonstration of skills by

performance in audition or aircheck, supported by references and pre-employment interviews. Valid Virginia Driver's license. Ability to lift and transport standard camera equipment. Apply to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Mon.-Fri. or online at [www.wset.com](http://www.wset.com). Applicants for positions in the News Department should submit a non-returnable DVD resume tape. EEO/M/F.

#### **Radio Marketing Consultant Fredericksburg, VA**

The Free Lance-Star Radio Group is seeking an energetic person to partner with businesses to develop successful marketing campaigns. The successful candidate must possess strong communication and customer service skills, have solid organizational and multitasking skills plus the ability to work in a competitive, diverse market. High earning potential/excellent training/great benefits! The Free Lance-Star Radio Group offers professional challenges and opportunities, competitive salaries with excellent benefits in a rewarding environment. Please send your cover letter and résumé to: The Free Lance-Star WFLS-WVBX-WWUZ-WNTX Radio ATTN: Human Resources 616 Amelia Street Fredericksburg, VA 22401 Fax: 540/374-5449 Email to [jobs@freelancestar.com](mailto:jobs@freelancestar.com) Application Deadline 9/12/11. EOE.

#### **Director Norfolk, VA**

WVEC-TV has an immediate opportunity for an experienced "live" broadcast Director proficient at directing and technical directing fast-paced newscasts and other programming. Applicant must have excellent operational knowledge of video switchers, DVE's, graphics, still stores, and other broadcast equipment. A minimum one year experience as a "live" director and technical director is mandatory. Experience producing multi-camera "live" remotes, lighting and CG are a plus. College degree in Mass Communications preferred. Send resume and non-returnable DVD or VHS tape with director track to: WVEC-TV Human Resources 613 Woodis Avenue Norfolk, VA 23510 Email: [jobs@wvec.com](mailto:jobs@wvec.com). No phone calls please!

#### **Local Sales Assistant Roanoke, VA**

Seeking a team player to assist our sales department in achieving their goals. Candidate must be detail-oriented, professional and able to work on multiple projects under tight deadlines. Candidate must also have advanced skills in Microsoft Word, PowerPoint and Excel. Adobe Creative Suite experience would be a plus. A positive attitude, successful interpersonal skills and a willingness to learn are essential to the success of this candidate. This position will also include data entry, customer service and clerical duties. This position reports directly to the Local Sales Manager. Send cover letter and resume to Kim Smith, Local Sales Manager, Grant Broadcasting, 2618 Colonial

Avenue, SW, Roanoke, VA 24015 or by email at [ksmith@fox2127.com](mailto:ksmith@fox2127.com).

#### **Weekday Anchor Charlottesville, VA**

The Charlottesville Newsplex (home of CBS19, ABC16, WAHU FOX27, and Newsplex.com) is seeking an anchor for weekday evening newscasts. This is a destination position in an aggressive, stable, friendly, and diva-free newsroom just honored for producing the best newscast in Virginia. You must have substantial anchor and reporting experience and be eager to get involved in our community. Strong writing, producing, shooting and editing skills are a plus. Reels with resumes sent to [Jim.Hanchett@Newsplex.Com](mailto:Jim.Hanchett@Newsplex.Com) get first look. Or send them to: Charlottesville Newsplex Attn: Anchor Position 999 2nd Street SE Charlottesville, VA 22902. EOE.

#### **Account Representatives Richmond, VA**

Account Reps at Radio One develop partnerships with local merchants in the Richmond/Petersburg Metropolitan area. This is all about building relationships, identifying needs and meeting those needs. If you are hip to all of the new media...texting, mobile apps, internet video, streaming, and also still appreciate the power of great radio stations that motivate people to click and shop, this could be your next career move. Radio One is the Only Media Company in Richmond, VA with ideas to engage the Urban Consumer. On Air. On Line. On Site. We hire engaging individuals with the talent and the drive to sell for Radio One Richmond's four radio stations. Experience with online sales, outside sales, advertising and prospecting/cold calling are beneficial to an Account representative's success and fit within our team. Go to [http://www.radio-one.com/careers/search\\_results.asp](http://www.radio-one.com/careers/search_results.asp) to apply. EOE.

#### **Morning Anchor/Executive Producer Roanoke, VA**

Southwest Virginia's leading television station is seeking an outstanding morning anchor who can also handle the dual role of executive producer for our morning news. This hybrid position will play a key leadership role in the WDBJ7 newsroom and in addition to co-anchoring 2 hours of news each day, the incumbent will be responsible for the growth of our morning news block through consistent guidance, coaching, and accountability. Superior presentation, writing, producing, and leadership skills required. Minimum of 3-5 years of full-time anchor experience required, as well as demonstrated work as a line or executive producer. This is not a job for beginners. Pre-employment background and drug screen required. Must have a valid driver's license with a good driving record. No phone calls please. Send DVD or tape along with resume and references to: Human Resources Attn: AM Producer/Executive Producer Position 2807 Hersberger Road Roanoke, VA 24017 Emails and video links will not be considered. EOE.



## Virginia Association of Broadcasters **LEGAL REVIEW**

### The Time is Right for Stations to Ensure EAS Compliance

by Stephen Hartzell

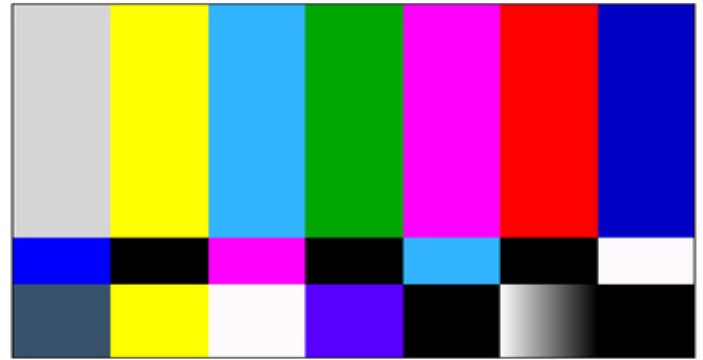
As you know, the FCC has announced that it will conduct the first-ever national Emergency Alert System (EAS) test on Wednesday, November 9, 2011, at 2 p.m. eastern time. The national test will replace the required weekly test for that week and the required monthly test for November.

Accompanying the test are new recordkeeping and reporting requirements. Currently, there are limited recordkeeping requirements for stations' EAS test performance. The FCC's new rules require more extensive recordkeeping for national tests and, for the first time, reporting of certain data to the FCC (within 45 days of the national test), including (1) whether the alert message was received and retransmitted during the designated test; (2) if the message was not received and/or retransmitted, the station's "best effort diagnostic analysis regarding the cause(s) for such failure"; (3) the station's identification and level of designation, e.g., PEP, LP-1, etc.; (4) the date/time of receipt of the EAN (Emergency Alert Notification) message by all stations; (5) the date/time of PEP (Primary Entry Point) station acknowledgement of receipt of the EAN message to the FEMA Operation Center; (6) the date/time of initiation of actual broadcast of the Presidential message; (7) the date/time of receipt of the Emergency Action Termination message by all stations; (8) identity of the station monitored at the time of the test; and (9) the make and model number of the EAS equipment utilized.

While the FCC has stated that the primary purpose of the national test is to evaluate the EAS system and not to "catch" stations that are in violation of the EAS rules, the FCC has left the door open to taking enforcement action against stations. Thus, stations should take steps now to ensure that they have fully operational EAS equipment, that station personnel know how to use it, and that they know which stations they are required to monitor during tests. Stations should run through the nine categories of information above to ensure that they will be prepared to report on them to the FCC following the November 9 national test.

As you assess your equipment readiness and review your station's EAS test/alert protocol, keep in mind the following points:

- The FCC routinely issues \$8,000 fines to broadcasters for failure to maintain operational EAS equipment. In many instances stations have EAS equipment but it is either not functioning properly or employees are not properly trained in its use.
- Stations must maintain a copy of the FCC's current EAS



Handbook, which can be downloaded for free at <http://transition.fcc.gov/pshs/services/eas/#handbooks>.

- New EAS equipment can cost less than the standard \$8,000 fine. The FCC maintains on its website a list of companies that it has certified to sell EAS equipment. Go to <http://transition.fcc.gov/pshs/services/eas/vendors.html>.
- If a station's EAS encoder or decoder becomes defective, the station may operate for 60 days without the defective equipment, pending repair or replacement of the unit. No permission from or notification to the FCC during the first 60 days is necessary, but stations must note in the station logs the dates the equipment went out of service and returned to service. Should a station anticipate the period of time for repair or replacement to exceed 60 days, it must submit a request for additional time to the closest Enforcement Bureau Field Office. Such a request must explain (i) the steps taken by the station to repair or replace the defective equipment, (ii) the alternative procedures being used while the EAS equipment is out of service, and (iii) when the equipment will be repaired or replaced.
- Digital broadcast stations, including digital TV, digital radio, digital LPTV and digital Class A television stations, have EAS obligations, including an obligation to participate in the November 9 national EAS test. Digital broadcasters that multicast have EAS obligations on all of their program streams.

Stations should familiarize themselves with all EAS requirements and details, including monitoring, testing, and logging obligations. Stations with questions about EAS operation and requirements should contact their communications counsel. ❖

This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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