Newsletter Virginia Association of Broadcasters May 2009

House Judiciary Passes Performance Tax Bill

Despite pleas from local radio stations, listeners, and civil rights leaders, the House Judiciary Committee passed a bill by a vote of 21 to 9 that would levy a new fee on local radio stations for music aired free to listeners. If enacted, 50 percent of the new fee would go directly into the coffers of the major record label companies, three out of four of which reside outside the United States.

Voting against the RIAA-backed tax were House Judiciary Committee Members Maxine Waters (CA-35), Lamar Smith (TX-21), Howard Coble (NC-6), Dan Lungren (CA-3), Louie Gohmert (TX-1), Jim Jordan (OH-4), Ted Poe (TX-2), Jason Chaffetz (UT-3) and Gregg Harper (MS-3).

"We were pleasantly surprised by the considerable bipartisan opposition to a performance tax, even in a committee where support for the record labels is strongest," said NAB Executive Vice President Dennis Wharton. "NAB applauds these nine members for standing with America's hometown radio stations, their 235 million weekly listeners, and the yet-to-break artists who will lose their number one promotional platform if this bill is enacted.'

A bipartisan group of 200 House lawmakers are now on record in opposition to a record label-led campaign to begin charging local radio stations a new fee for music aired free to listeners.

"Lawmakers are growing increasingly skeptical over record label claims that this legislation is about 'helping artists'," said Wharton. "And given the historic abuse of artists by the labels, who can blame them? The sad truth is that a performance tax will cripple an artist's number one promotional vehicle -- free radio airplay, and it will transfer hundreds of millions of dollars from America's hometown radio stations into the coffers of foreign-owned record labels."

The Local Radio Freedom Act, unveiled at a February Capitol Hill event hosted by the Free Radio Alliance, was introduced by Reps. Gene Green (TX-29) and Mike Conaway (TX-11). In March, an identical resolution was introduced in the Senate (S. Con. Res.



14) by Sens. Blanche Lincoln (AR) and John Barrasso (WY).

"Congress should not impose any new performance fee, tax, royalty, or other charge relating to the public performance of sound recordings on a local radio station for broadcasting sound recordings over-the-air, or on any business for such public performance of sound recordings," reads The Local Radio Freedom Act.

Final DTV Transition Deadline Approaches

The FCC has announced the agenda for their June 3 open meeting will focus on the DTV transition, including a status report on final preparations for the June 12 deadline and availability of consumer support and handson assistance for those who may need it.

According to Nielsen, while nearly twice as many Americans are ready for the digital switch than were in February, 3.3 million are "completely unready." The NAB has taken issue with Nielsen's accounting, pointing out that some of those homes may have DTV-top-analog converter boxes that just aren't hooked up yet.

"America's broadcasters are pulling out all the stops during these final weeks to ensure

viewers are ready for the June 12 deadline," said Jonathan Collegio, NAB's vice president of DTV transition. "This critical on-air campaign culminates our industry's billion-dollar education effort to educate consumers about this historic switch."

The FCC has been working with community groups for months to get the word out. Congress also approved \$650 million as part of the economic stimulus recovery package to be used for a range of transition help, from additional \$40 coupons for digital TV converter boxes to improving the DTV education and assistance campaign.

That campaign includes actual in-home,

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Final DTV Transition

(continued from page 1)

come-to-your door help — at no charge. For those who are struggling to set up a converter box the FCC will, on a case-by-case basis, send a technician to your home if the problem can't be solved with a phone call through the commission's toll-free line.

"Our in-home converter box installation services are available all across the country," said Rick Kaplan, FCC spokesman. Just in the last few weeks, contractors "have performed in the neighborhood of 2,500 free in-home installations."

Kaplan says the FCC will keep the DTV. gov website and toll-free DTV helpline active "far past the transition." The NAB will do the same with their website, DTVanswers. com.



On May 21, a nationwide "soft test" was done, with TV stations interrupting their broadcast three times during the day with an informational message to remind households about the June 12 switch.

Of 1,787 stations, 750 had already made a complete switch to digital broadcasts by the last week in May, according to the FCC.

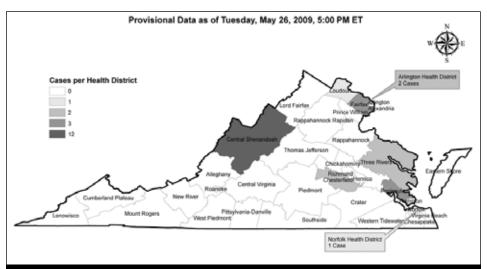


Remember to update your station profiles on the VAB website! New information has been added to make it easier for VBS media buyers to market your station. To update your information, please go to http://www.vabonline.com/members/login.aspx, log in, then click on "Your Stations." If you've forgotten your username or password, email christina.meyer@easterassociates.com.

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VDH Confirms 26 Swine Flu Cases



Virginia Department of Health Office of Epidemiology - Division of Surveillance and Investigation

The Virginia Department of Health (VDH) had confirmed 26 cases of the new influenza A (H1N1), also known as "swine flu," statewide as of May 22.

"The good news is that we are continuing to see mild cases of H1N1 infection and patients are receiving good medical care and are recovering," said Virginia's Health Commissioner, Karen Remley, MD, MBA. "It also will be helpful that we are among the first states in the country to be allowed by the CDC to conduct all testing for the H1N1 virus. This will enhance our ability to identify and track where these cases are occurring and to respond as necessary," Dr. Remley said.

Dr. Remley said most patients being tested do not have the new virus and that the state will now concentrate its testing on those segments of the population that are at higher risk for complications from the new influenza H1N1. These include people who are hospitalized with influenza-like illnesses, pregnant women, the elderly, the very young, health care workers, and people with underlying chronic health conditions.

The current H1N1 influenza outbreak is caused by an influenza Avirus previously not detected in humans or animals. Symptoms are similar to those of seasonal flu and typically include fever, cough and sore throat. Additional symptoms may include headache, chills, fatigue and body aches. Persons with H1N1 influenza are contagious for up to seven days after the onset of illness and possibly longer if they are still symptomatic.

Dr. Anne Schuchat of the U.S. Centers for Disease Control and Prevention said

the agency began shipping virus samples to manufacturers in the past several days. The government will have to review the safety and effectiveness of what's produced, and decide if a vaccination campaign is warranted. October is about the time seasonal flu vaccine campaigns generally get rolling.

Dr. Remley advised anyone with these symptoms to protect themselves and others by:

- Staying home from work or school and limiting their contact with others to keep from infecting them
- Calling their health care providers or their health department before seeking care so that the necessary infection control measures can be put in place
- Covering their nose and mouth with a tissue when they cough or sneeze and throwing the tissue in the trash after use.
- Washing their hands often with soap and water, especially after they cough or sneeze. Alcohol-based hand cleaners also are effective
- Limiting close contact with sick people
- Preventing the spread of germs by not touching eyes, nose or mouth

VDH has established an information line at (877) ASK-VDH3, or (877) 275-8343, for anyone with concerns or questions about H1N1 influenza.

Also, for further information, consult the CDC's Web site at www.cdc.gov/h1n1flu and the VDH Web site at www.vdh.virginia. gov.

Swine Flu PSAs

By Chris Manzella, VP/GM Virginia Broadcast Solutions, Inc.

Just a few thoughts regarding public service obligations and how we as broad-casters can make a difference during times of genuine need. In recent years, Virginia Broadcast Solutions has developed a close relationship with the Virginia Department of Health (VDH). They have budgeted and committed advertising dollars that continue to provide Virginia broadcasters with significant new revenue streams - from an entity that previously sought mainly FREE advertising.

Obviously, in today's challenging business climate, the free PSA strategy is inconsistent and unrealistic for achievement of any meaningful results. VDH has recognized that the best way to clearly communicate with the consumers of its many programs and services is paid broadcast advertising. All our stations have done a great job in getting behind these worthy projects and have "gone the extra mile" to make them successful! Now the Virginia Department of Health needs our help and unfortunately, there is no current advertising budget! As you know, a new strain of H1N1 virus otherwise know as "Swine Flu" has appeared in many places around the world, including Virginia. The H1N1 Virus is a potentially life threatening disease whose transmission can be minimized through rapid education of the public.

Governor Tim Kaine has recorded three public service announcements in English and Spanish to make citizens of the Commonwealth aware of both the latest developments related to the H1N1 virus, and steps to prevent its transmission. Upon receipt of these materials, please do your best to thoroughly disseminate the messages to your listeners and viewers. Your support is critical and will help prevent the needless spread of this deadly virus, while communicating "loud and clear" the strength and depth of our partnership with VDH.



NAB President And CEO David Rehr Resigns



Study Disputes Cable Income Claims

the American Cable Association (ACA), which recently asserted that cable subscription rates have risen due to "excessively large retransmission consent gains." Retransmission consent is the market-based negotiation process in which a cable operator and local television station reach a carriage agreement.

study, which details how several cable operators' gross profits increased from \$48.96 per subscriber per month in 2003 to \$62.99 per subscriber per month in 2006, an increase of same period, the cable operators' programming expenses per subscriber per month increased from \$15.63 to \$18.47, an increase of just \$2.84 per subscriber per month.

as much as their programming expenses, it is absolutely illogical to claim that retransmission consent plays a significant role in the continued escalation of cable subscrip-

NAB has responded to claims made by tion rates," NAB Executive Vice President Dennis Wharton said.

> The study found that while some recent retransmission consent deals have included monetary compensation for the local broadcaster, the compensation figure "is trivial when compared with cable operators' revenues and costs."

"Retransmission consent fees account NAB pointed to a recently released for only two tenths of one percent of cable revenues today, and industry analysts predict they will never rise above one percent," the study concluded.

The study also showed that an Ameri-\$14.03 per subscriber per month. During that can household is about 10 times as likely to experience a complete cable system outage, and about 24 times as likely to experience an electricity outage, as it is to be deprived of its first-choice television channel because "With cable's profits rising five times of a retransmission consent dispute.

The entire study can be found online at http://www.nab.org/xert/corpcomm/pressrel/releases/032009 Retrans Study.pdf.

David K. Rehr, president and CEO of the National Association of Broadcasters, announced that he is resigning.

"I have enjoyed leading America's broadcasters through this time of change and challenge," Rehr said. "Our efforts to educate America about the digital television transition have been enormously successful, and our effort to reinvigorate radio through the Radio Heard Here campaign is positioning radio broadcasters well for the future."

"I am looking forward to building on these experiences and working with the broader Washington community to further advocacy efforts through marketing, communications and education," he continued.

"David made a significant contribution and has been extremely dedicated to making NAB a stronger organization," NAB Joint Board Chairman Jack Sander said. "On behalf of the board of directors and our member stations, we thank him for his leadership and wish him well in the future."

"In large part due to David's efforts, we have a very solid infrastructure in place. Our senior staff members are experienced and extremely talented. Our board of directors and members are a powerful force comprised of the best minds in broadcasting," Sander said.

"We are prepared and well positioned to represent radio and television's best interests as we progress into the digital future," Sander continued.

Bonneville International Corp. President and CEO Bruce Reese will head a search committee charged with selecting a successor. In accordance with NAB by-laws, Reese-as NAB Immediate Past Joint Board Chairman-will serve as chairman of the search committee, which will include current members of the NAB Executive Committee. An open slot on the Radio Board Executive Committee will be filled prior to the Search Committee convening its first meeting.

Rehr said he plans to continue in his current role during a transition phase. During an interim period, Janet McGregor, NAB's chief operating and financial officer, will work closely with Rehr and assume day-today duties until a successor is named.

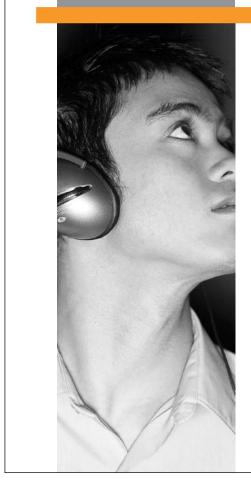
Prior to joining NAB in 2008, McGregor spent 26 years at Lockheed Martin Corporation, most recently as president and CEO of the Lockheed Martin Investment Management Company.

NAB Launches Anti-Performance Tax Competition

NAB has launched a new competition encouraging radio stations across America to produce and air their own 30-second radio spot opposing the performance tax. The competition, dubbed "Don't Tax That Dial," will call on the creative skills and promotional power of radio stations in an effort to thwart a lobbying campaign by the Recording Industry Association of America (RIAA), which aims to levy a new fee on radio stations for music aired free to listeners.

The winning entry will be awarded \$2,500 and be recognized at The 2009 NAB Radio Show in Philadelphia. Additionally, airfare, hotel accommodations and complimentary NAB Radio Show registration for two will be provided to the winning entry. Entries for the competition, open to overthe-air U.S. broadcast radio stations, must be submitted to NAB no later than 11:00 p.m. (EDT) on July 31, 2009. Stations must fill out a Political Agreement Form and place it in the political portion of their public file for a period of two years. Complete competition rules and guidelines can be found online at www.NoPerformanceTax.org.

The "Don't Tax That Dial" radio competition comes in response to a record label-led campaign to begin charging local radio stations a new fee for music aired free to listeners.



Every day radio stations provide valuable promotion to record labels and artists simply by playing their songs ...for free.

It's free play for free promotion. And it works. But the big international record labels have a problem – they haven't adapted to the digital age. Now they are asking Congress to tax local radio stations to line their pockets and preserve a declining business – to the tune of billions of dollars. The effects of this tax would be catastrophic, potentially forcing stations out of business, stifling new artists and harming the listening public who depend on local radio.

Preserve local radio.
Fight the performance tax.

FDA Advises Toning Down Drug Commercials



Guidelines proposed by the Food and Drug Administration (FDA) say television ads for drugs and medical devices should avoid distracting images and music that can reduce viewers' comprehension of potential side effects. They also suggest using similar type styles and voice-overs when conveying benefits and risks.

The guidelines follow complaints that manufacturers use various techniques in their widely seen television ads and other promotions to downplay risks while emphasizing potential benefits. Leaving out or minimizing side-effect information is the most frequent violation the FDA cites in letters to companies complaining about misleading promotions.

The draft guidelines advise manufacturers on how to present risk information adequately in print and broadcast promotions to consumers and doctors without running afoul of federal regulations. The guidelines are not mandatory.

The advice covers techniques ranging from the use of contrasting colors to highlight information, the location and timing of risk

details and other factors that can influence how well viewers understand a product.

The new guidelines say busy scenes, frequent scene changes and moving camera angles "can misleadingly minimize the risks of the product being promoted by detracting from the audience's comprehension."

The FDA also warned against speeding up an announcer's description of risks. "If risk information is considerably more difficult to hear and process than benefit information because it is presented at a much faster pace, the piece will not convey an accurate impression," the agency said.

Reviewers will consider "the net impression conveyed by all the elements of a piece. For this reason, manufacturers should focus not just on individual claims or presentations but on the messages conveyed by the promotional piece as a whole," the guidelines said.

FCC Group Will Evaluate DTV Accessibility

The FCC has established a technical working group to evaluate issues relating to the accessibility of television programming for individuals who are deaf or hard of hearing, or are blind or have a vision disability. The group was scheduled to meet for the first time on May 18.

The purpose of the working group will be to conduct an assessment of closed captioning and video description technical issues associated with the DTV transition and to recommend solutions to any problems. The working group will be supported by Commission Staff from several different bureaus.

The working group has been charged with meeting the following three goals:

- 1. To identify current and anticipated problems with the transmission and display of digital closed captions and video description
- 2. To evaluate the closed captioning and video description capabilities of digital equipment
- 3. To develop solutions to ensure that closed captions and video description are

passed through intact to consumers

The FCC will provide an opportunity for public comment to help identify issues and problems related to closed captioning and video description in the specific context of the DTV transition, such as missing or garbled captions, converter box compatibility with captions, etc.

With regard to video description (which is not presently required under the Commission's rules), some programmers do provide this feature voluntarily on certain programs. According to the FCC, many consumers are confronting the same types of problems that closed captioning users are having. For example, consumers are experiencing difficulty in accessing video descriptions through the user interfaces associated with DTV equipment, and many technicians, programming distributors, and retailers are unable to effectively address new problems with video description, often not even knowing why a given problem is occurring.

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FCC Nominees Await Confirmation

President Obama recently announced that he will nominate Mignon Clyburn to serve as FCC Commissioner. Ms. Clyburn currently serves as a Commissioner on the Public Service Commission of South Carolina. Ms. Clyburn's nomination must be approved by the U.S. Senate. If approved by the Senate, Ms. Clyburn will replace outgoing Commissioner Jonathan Adelstein, whom President Obama intends to appoint as Administrator for the Rural Utilities Service (Mr. Adelstein's appointment to RUS must also be confirmed by the Senate).

President Obama nominated Julius Genachowski to serve as FCC Chairman in March 2009. If approved by the Senate, Mr. Genachowski will replace former Chairman Kevin Martin, who departed the Commission effective January 20, 2009. (President Obama named Commissioner Michael Copps Acting Chairman shortly after Mr. Martin's departure.) According to press reports, Mr. Genachowski's confirmation hearings in the Senate have been delayed until sometime after the Senate's Memorial Day recess. Acting Chairman Michael Copps and Commissioner

Robert McDowell continue to serve on the Commission. Mr. Copps's term continues through June 30, 2010, and Mr. McDowell's runs through June 30, 2009. According to press reports, there is some uncertainty whether Commissioner McDowell will be re-nominated to the Commission when his term expires.

As of May 21, 2009, President Obama had yet to announce a nominee for the fifth and final seat on the Commission. Former Commissioner Deborah Tate departed the FCC in January 2009, and her position has remained unfilled since that time. Ms. Tate's seat on the Commission may not be occupied by a Democrat because only three Commissioners may be members of the same political party (Mr. Copps, Mr. Genachowski, and Ms. Clyburn are all Democrats). Meredith Baker, former head of the National Telecommunications and Information Administration, is thought to be the leading candidate for this Republican position.

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FCC Reform Bill

Representatives Joe Barton (R-TX) and Cliff Stearns (R-FL) have introduced a bill (H.R. 2183) that proposes to "reform" Commission decision making and public participation in Commission proceedings.

Among other proposed reforms, H.R. 2183 would require the FCC to allow certain amounts of time to pass between proposing new or amended rules and adopting final rules. For example, H.R. 2183 would require the Commission, before it adopts, modifies, or deletes a final regulation, to (1) publish the specific language of the proposed rule change; (2) provide at least 30 days for interested parties to file comments and an additional 30 days for interested parties to file reply comments; and (3) provide at least 30 days following the reply-comment deadline for agency consideration of the regulation.(Note: As broadcasters are aware, the Commission, by necessity and at the direction of Congress, has recently engaged in expedited rulemakings related to the DTV transition that involved significantly more compressed timelines than those proposed in H.R. 2183.)

The bill would also require the Commission to inform Congress when actions required to be taken within a certain amount of time have been delayed. For example, H.R. 2183 would require the Commission to publish any order, decision, report, or action of the Commission within 30 days after the date of the adoption of such an order, decision, report, or action. (Note: One recent example of a delay in the FCC's publication of an order more than 30 days after its adoption is the FCC's controversial online public file and "enhanced disclosure" proceeding, where the FCC adopted rules in late November 2007 but did not release the Report and Order adopting the rules until late January 2008.) If publication does not occur within 30 days, then the FCC would be required to inform Congress of the delay and explain the reason for the delay.

H.R. 2183 was referred to the House Committee on Energy and Commerce on April 30, 2009. It is too soon to forecast whether H.R. 2183 will be enacted. We will continue to monitor this bill for significant developments.

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Silent-Station Status Can Jeopardize License

The U.S. Court of Appeals for the District of Columbia Circuit recently upheld the Commission's decision that a radio station license automatically expired due to the station's status as "silent" for one year, even though the station had been transmitting during the one-year period from a site for which it had applied (but not yet received) FCC authorization. This case presents a good opportunity to revisit the law governing silent- station authority.

Section 312(g) of the Communications Act of 1934 states the following:

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.

In plain English, the law means that the license for a station that remains silent for a period of 365 days automatically expires at the end of that one-year period. The Commission may, but is not required to, extend or reinstate the license under certain circumstances.

The recent D.C. Circuit case demonstrates several important points that broadcasters should keep in mind with respect to silent status:

* Section 312(g) presumes that the license for a station that remains silent for one year automatically expires. The FCC may exercise its discretion whether or not to "revive" the silent station's license once 365 days have passed. But there is no requirement that the FCC must exercise its discretion to extend or reinstate the license, once expired. Moreover, in the D.C. Circuit case, the court found that the FCC had acted reasonably in declining to extend or reinstate the silent station's license. In other words, the court upheld (or deferred to) the FCC's decision not to exercise its discretion in favor of the broadcaster.

* Broadcasters should not assume the FCC will exercise its discretion to extend or reinstate a license that automatically expires by operation of Section 312(g). Rather, any time a station goes silent, station personnel should ensure that, within 365 days, the station has take all necessary steps to (1)

recommence operations under authorized parameters or (2) obtain special temporary authority to operate at variance from authorized parameters before the end of the one-year period of silence.

*Operations must be authorized, pursuant to a station's license or STA, to "stop" the one-year clock from ticking. The recent D.C. Circuit case made clear that unauthorized operations from a site for which a station has applied (but not yet received) FCC authorization are not sufficient to stop the one-year period from running and the silent station's license from expiring.

In addition to the points raised in the recent D.C. Circuit case, broadcasters should note that the FCC's Video Division has recently taken the position that "conducting equipment tests or transmitting an

equipment test pattern does not permit the automatic expiration of a license pursuant to Section 312(g)." Rather, actual programming intended to be received by the public is required to prevent license expiration.

Anytime a station goes silent for more than 10 days, a notification to the FCC is required, and silence for more than 30 days requires Commission approval in the form of Special Temporary Authority. Upon resumption of programming service, the station should immediately notify the FCC. Stations that go silent for any period of time should consult with their communications counsel to ensure compliance with all applicable requirements.

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Termination Decisions Are Never Easy–Be Sure To Clearly State The Reason For The Action

By John G. Kruchko & Kathleen A. Talty*

Employee terminations are difficult human resources decisions. Those decisions can become more complex when the employer attempts to soften the blow and skirts the real reason for the termination action or presents conflicting or contradictory reasons for the termination. For example, an employer has a long-term employee who is simply not performing at expected levels and efforts to remedy the situation have not been successful. Rather than terminating the employee for poor performance, the employer tells the employee that his/her job is being eliminated for cost containment reasons.

While the employer's explanation will mean that the employee is eligible for unemployment compensation and that the explanation will allow the terminated employee to advise prospective employers that his/her unemployment is not attributable to the employee's fault, what happens if the employer fills the "eliminated" position with a younger individual two weeks after the long-term employee was terminated? Will the terminated employee be able to then show that the stated reason, i.e., economic factors, for his/her termination was pretextual and by doing so raise an inference of employment discrimination? Perhaps.

Under evidentiary models developed by the courts which have considered employment discrimination actions, the employee has the initial burden of establishing that he/she is the victim of employment discrimination. The burden on the employee at this point is relatively minor. All that the employee need show is that: 1) he/she is a member of a protected classification; 2) that he/she was performing satisfactorily in the job; 3) that there was an adverse employment action, e.g. termination; and 4) the employee was replaced by someone who was outside the employee's protected classification.

Once the employee meets that preliminary showing, the burden shifts to the employer to show that the employment action was based on a legitimate, nondiscriminatory reason, e.g. tardiness, cost containment measures, etc. The legitimacy of the employer's explanation, however, can be refuted if the employee can show that the employer's stated reason was not true or pretextual. In the example noted above, the long-term employee could refute the legitimacy of his termination, which was stated as due to economic reasons, by pointing to the fact that barely two weeks after his termination, his supposedly eliminated position was filled by a younger person. In challenging the legitimacy of the employer's explanation, the employee then raises the inference that an impermissible reason, such as age, was the real reason for the employment action.

Those courts that have considered the issue of pretext have said that "pretext can be shown by such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact-finder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted, non-discriminatory reason." Inconsistencies and contra-

dictions can be found when the employer fails to follow its stated company policies or procedures prior to a termination. Pretext can also be found when the stated reason for the employment action is "fabricated" after the termination decision.

One recent court case illustrates such post hoc fabrication by an employer and how its use was fatal to the employer's defense. In that case, the employer argued, in part, that its decision to terminate the employee in 2007 was due to serious work performance issues that dated back to 2005. To substantiate its argument, the employer presented a 2005 performance review which it contended it had given the employee and which outlined the performance deficiencies. The employee, however, testified that the employee's signature on the document was not his own signature and that the copy of the performance review contained other signatures which were different from the ones on his own copy. Moreover, the employee was able to show that an attachment to the 2005 performance review, which listed the specific examples of the employee's performance problems, was not part of the original document that the employee had been given in 2005. In rejecting the employer's argument and ruling for the employee, the court stated that "falsifying or manipulating criteria [is] a disturbing procedural irregularity that may constitute evidence of pretext."

In another court case dealing with the issue of pretext, the court considered the employer's deviation from its normal practices in certain circumstances and found that the deviation represented discrimination

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against the terminated employee because of his age. In this case, the employee was terminated, according to the employer, because of the employee's failure to meet expected production goals. The employer utilized a detailed process to determine whether an employee was meeting expected production goals and argued, in this case, that the terminated employee failed to realize the expected criteria.

The employee, however, was able to show that in a number of instances that the employer had considered "extenuating circumstances," such as the pregnancy of one employee, to adjust the required criteria under the production goal process. As a consequence of the adjustments, the evidence showed that younger employees received more favorable treatment despite their performance issues, while the older employee was terminated. As a result of this showing, the court rejected the employer's explanation for its actions and concluded that it had discriminated against the employee because of his age.

Conflicting explanations for an employee's termination are frequently cited as indicators of pretext on the employer's part. However, a recent federal appellate court case points out that an employer's elaboration on

the reasons for an employee's termination is not always the equivalent of inconsistent or conflicting reasons. In that case, the record showed that a new management team was increasingly dissatisfied with the performance of one director. Despite repeated attempts to assist the director to adapt to the new management approach, the director was resistant to change. Eventually, the decision was made to restructure the director's department and the restructuring resulted in the elimination of the director's position. After being advised of the job elimination, the director sued alleging age discrimination.

During the course of the litigation, beginning first before the Equal Employment Opportunity Commission and continuing in federal court, the employer expanded on the reason for the termination decision. Each time that the employer expanded or elaborated on the reason for the termination action, the employer provided greater specificity for its actions. This elaboration was viewed by the employee as changing the reasons for the termination and, therefore, evidence of pretext.

The federal appellate court, however, disagreed with the employee. Rather, the court found that "[p]retext is not shown if the employer does not give inconsistent reasons, but instead merely elaborates on the initial justification for termination." The court

then found that the employer's expansion on the reason for the termination action did not present conflicting reasons. Therefore, there was no evidence of pretext.

These uncertain current economic times have spawned an increase in the filing of employment discrimination charges. Therefore, every employment termination should be approached with the expectation that the decision will be challenged either before an administrative fair employment practice agency or in court, or both. The more that it can be shown that an employment termination is based on objective and specific factors, which are consistently applied, the less likely an employee will be able to successfully show that the employer's stated reason is pretextual.

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Google Pulls Out of Radio Ad Sales Business

In 2006, they announced they would "conquer radio," but for once Google was wrong.

The company planned to end its attempt to automate radio-ad sales on May 31.

Google has been on a mission to extend its wildly successful model for selling ads linked to Internet searches to traditional media such as print and TV. Now it is beating a partial retreat. This year, it also shut its newspaper ad-sales effort. Its remaining toehold in traditional media is an effort to sell TV ads.

In a statement, Google said it had "devoted substantial resources" to developing radio and print ads, but the resulting products "didn't have the impact we had hoped for."

Google Chief Executive Eric Schmidt said the radio effort failed because Google never came up with a good way to measure listener response. On the Web, he explained, Google can charge advertisers based on how many times users click on an ad.

"With an enormous data corpus, our computers can do the math really well," he said. "But in the audio case, there wasn't a good signal back to us about which ads performed."

Google wanted to automate pricing, just as it had done with Internet-search ads. Radio advertisers generally pay a flat rate for a spot, based on how many people are expected to hear it and when it plays. Google believed it could generate more money for stations by holding online auctions in which would-be advertisers would bid on slots. It figured advertisers would be eager to bid based on the effectiveness of an ad, not how many listeners it was expected to reach.

But developing the technology to auction and track ads was harder than anticipated,

people familiar with the project say. Signing up stations to provide a portion of their advertising slots to auction also proved tough.

Google "thought the advertisers would come to them," says Lindsay Wood Davis, former executive vice president of the Radio Advertising Bureau. But media-buying agencies, fearing Google's technology would put them out of business, were a tough audience. Google refused to create bundles of spots and negotiate prices ahead of time, which was how radio was generally sold, say people familiar with the discussions.

By January 2009, Google decided to kill the entire project. But it kept the decision confidential for weeks, even going ahead with a scheduled conference for radio advertisers in February. About a week later, it disclosed in a blog post that it would pull out of radio at the end of May.

MAY JOB BANK

SUBMIT JOBS

Submit to VAB Newsletter:

- Please email the listing directly to derek.breen@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.
- Only jobs emailed to the VAB will be included in the newsletter.

Submit to the Online Job Bank:

- · Go to www.vabonline.com
- Click on "Member Area" (top right menu)
- Log in. (If you do not know your login or password, please email christina.meyer@ easterassociates.com)
- Upon login, you will see a menu at left. Select "Your Jobs." From here you can enter new jobs, edit jobs or delete job postings that have been filled.
- Don't forget, members can also view resumes by clicking on the "Resume Bank!"

Job Bank Questions:

Please contact Derek Breen at the Association office: 434-977-3716 or by email at derek.breen@easterassociates.com.

Inventory Control Supervisor

Under the supervision of the General Sales Manager, the Traffic Coordinator is responsible for managing and maintaining the Traffic computer system. In addition, the Traffic Manager is responsible for producing daily logs and reports from the Traffic system as requested. Further, the Traffic Manager works with the Sales department in order to maximize inventory profitability and station revenue. The Traffic Coordinator typically works 40 to 50 hours per week (Monday – Friday). There are high amounts of repetitive motion and moderate amounts of eyestrain associated with this position due to frequent computer use. Work-related travel is typically for training purposes only. The Traffic Coordinator has no supervisory responsibilities. There is minimal risk of injury, and little exposure to noise. There is a minimal amount of lifting associated with this position. The Traffic Coordinator has contact with people outside the organization a couple of times per week. Equal opportunity employer.

General Sales Manager

lead our outstanding sales team in beautiful Fredericksburg. Our cluster includes Hot AC WBQB and News/Talk WFVAAM 1230. The ideal candidate will possess excellent leaderships skills, a solid record of success, an ability to monetize our digital products and an obsession with new business development. Please send your resume and cover letter to David Smith, Mid-Atlantic Regional Manager: dsmith@wbqb. com. Centennial Broadcasting II, LLC is an equal opportunity employer.

Reporter

Reporter –NBC12, Richmond's No. 1 TV news station seeks reporter with proven track record investigating and reporting stories. Live remote reporting experience is critical. Two years professional experience preferred. Excellent computer and internet skills required. Send cover letter with salary requirements, resume and non-returnable demo tape to Nancy Kent Smith, News Director, NBC12, P. O. Box 12, Richmond, VA23218. Drug/Background Screen. EOE M/F/D.

Experienced Sales Account Executive

If you wish the company you worked for didn't have so much corporate paperwork and allowed you to be more creative, then we might have what you're looking for. If you have media sales experience and thrive on competition and creativity, we want to talk to you. Generous commissions, established clients and a sales environment that breeds success. WINC has been a legendary radio station for years and now we have a sales position open for just the right person. ***Join a company that believes people make the difference! Send your resume and cover to: vreynolds@winc.fm. No phone calls please. Centennial Broadcasting II, LLC is an equal opportunity employer.

Web Sales Production Coordinator

This position will work closely with the Internet sales and graphics departments to implement all components of web sales. This individual will design, code and integrate web applications and user interfaces to meet client and station marketing goals. This person must have the ability to work in a fast-paced environment, juggle competing priorities and meet deadlines. Qualified candidates will have strong communication skills and a minimum of 2 years of web development experience. They should also have extensive knowledge of web content management tools, HTML, Flash, JavaScript, Photoshop and Illustrator. Strong skills in design, layout and typography are essential. Please send cover letter, resume and URL's to Michelle Campbell Internet Director WAVY-TV 10/ WVBT FÖX 43-TV 300 Wavy Street Portsmouth, VA 23704 No phone calls, please. EOE.

Meteorologist

WHSV-TV is looking for an experienced and dynamics meteorologist to join our morning show team. Candidate should be a degreed meteorologist and possess a strong working knowledge of WSI systems. Our next morning meteorologist should be able to create graphics to compliment a convincing and energetic weather story while maintaining a strong interaction with the news anchors. The Shenandoah Valley is a four season weather location which will challenge your forecasting skills. Additional duties include involvement in the community, public relations and other station events. RUSH a DVD, resume and salary requirements to WHSV-TV, Attn: Ed Reams, News Director, 50 North Main St., Harrisonburg, VA 22802. You may also email your clips and resume to ereams@whsv.com. NO Phone calls please. WHSV-TV is a drug free workplace. EOE.

Account Executive

WHSV TV-3 has an opening for an energetic, highly motivated Account Executive in our Sales Department. Account Executive's work directly with local and regional business to

achieve marketing goals through our multimedia outlets WHSV TV-3, The Valley's FOX, My Valley TV and WHSV.com. Must be self motivated with strong presentation ability, computerskills, and excel at building and growing business relationships. Attractive income package managing established accounts and generating new business with full benefits and 401K. Previous media sales experience not necessary and training program provided. Reply with cover letter and resume to: WHSV TV Attn: Jamey Hansbrough Director of Sales 50 North Main Street Harrisonburg, VA 22802 WHSV TV is a drug free workplace. EOE.

National Promotions/Continuity Director

Position available at WAVA Radio in Washington, DC Enthusiastic and energetic individual sought to coordinate events and on air promotion for WAVA. Person will work with ministries, advertisers and the national and local Sales Representatives to manage on-air promotional activity and fund raising efforts. Position also includes outside preparation for station events and promotions. Compensation includes Salary plus Health/Life/401(k). To apply send resume to Gerald Halstead, Office Manager, WAVA Radio, 1901 North Moore Street, Suite 200, Arlington, VA 22209 or fax to (703) 807-2216. No e-mails or phone calls please. WAVA is an Equal Opportunity Employer.

Anchor/ Reporter

One of America's fastest-growing small market stations offers a special opportunity to an experienced anchor/reporter. You'll anchor creative, thoughtful newscasts. You'll have to know how to do it all; report, produce, shoot, edit, post. You'll have the time and guidance to do it right. You'll live in a vibrant, educated small city close to mountains, beaches and metro areas. You'll replace an anchor/reporter moving up to a top ten market job. Please, for this job, no beginners. If this is the place you want to learn, live and grow, rush non-returnable DVD to: News Director WCAV 999 2nd Street S.E. Charlottesville, VA 22902. Equal Opportunity Employer.

Senior Web Producer

You're responsible for keeping the Newsplex digital content and format at the cutting edge. Your creativity, enthusiasm and skills will turn our web and other digital platforms into the goto source of news and information for our techsavvy audience. You'll work with our newsroom web editor and our news team. You'll join forces with our sales and promotions teams to execute marketing projects. Your experience in news and website design will be a plus. You'll live in a vibrant, educated small city, the home of the University of Virginia and close to mountains, beaches and metro areas. If this is where you want to learn, live and grow, rush your resume and examples of your work to: News Director WCAV 999 2nd Street S.E. Charlottesville, VA 22902. Equal Opportunity Employer.

Account Executive

CW Richmond is looking for our next superstar. We are a top rated CW affiliate in Virginia's capitol city. Our ideal Account Executive candidate has 2-3 years experience in broadcast sales, is a relationship builder, a skilled negotiator, loves the new business close and knows how to excel in a team environment. We seek an individual of high integrity, motivation and creativity. Contact GSM John Rezabeck at jrezabeck@cwrichmond.tv. EEO M/F/D/V.

MAY JOB BANK

General Manager

The Charlottesville Radio Group is now accepting applications for the General Manager position. The General Manager provides principal accountability for the mission, goals and objectives of the WWWV, WINA, WQMZ, WVAX and WCNR radio stations. This position is responsible for the overall operation of the radio group, including resource development, personnel and budget management, and the maintenance of facilities and systems to ensure smooth daily operation. The General Manager is responsible for the leadership and management with attention to operational efficiency through strategic planning, budget oversight, and collaboration with multiple agencies. In addition to all the attributes that you see in every other ad, we look for passion, drive, commitment to excellence and a leader that can command the respect and trust of the staff and the community. Interested? Tell us about yourself. Your confidentiality is assured. Fax or email Warren Lada at (313) 886-7150 or wlada@sagacom. com. Equal Opportunity Employer.

TV News Assignment Editor

WRIC TV presently has the following opening. It is our policy to encourage the appliacation of minorities and women as WRIC TV is an Equal Opportunity Employer and does not discriminate in the hiring, training or promotion of employees by reason of race, color, religion, sex, or national origin. Excellent benefits available. Due to the urgency of filling these positions, an immediate response is recommended. Please notify us immediately if you will not be disseminating information about this job opening to potential candidates. TV News Assignment Editor Applicants must exhibit solid editorial judgment, possess excellent organizational and communication skills, and thrive in a fast paced environment. Please send resume to: WRIC TV8 Personnel Department, 301 Arboretum Place, Richmond, VA 23236-3464, or fax your resume to (804) 330-8881, or email your resume to personnel@wric.com. NO phone calls please. EOE.

News Photographer

30 hrs/wk. Entry-level position for News Photographer to shoot and edit news stories. Experience with Panasonic P2 cameras and non-linear Grass Valley editors desired. Must have valid driver's license with a good driving record. Two-year technical degree preferred. Send cover letter, resume, and non-returnable tape to: Chief Photographer Attn: News Photographer (PT) Position WDBJ Television, Inc. 2807 Hershberger Road Roanoke, VA 24017 Email: jobs@wdbj7.com We are an Equal Opportunity Employer. We do not discriminate on the basis of race, religion, color, sex, age, national origin, or disability.

Associate Producer

30 hrs/wk Responsibilities include assisting the Producer in preparation of newscasts, general newsroom traffic, and aiding the closed captioning system by scrolling teleprompter scripts during all newscasts. Must have computer experience with the ability to work well under pressure. Communications/Journalism degree preferred. Send resume and cover letter to News Director Attn: Associate Producer Position WDBJ Television, Inc. 2807 Hershberger Road Roanoke, VA 24017 Email: jobs@ Wdbj7.com WDBJ Television, Inc. is an Equal Opportunity Employer. Pre-employment drug screening required.

Sales/Administrative Assistant

We are currently accepting applications for a part-time Sales/Administrative Assistant. This position requires a well-organized person who is capable of multi-tasking under tight deadlines. Responsibilities include providing support for sales managers and account executives, creating sales pieces and proposals, tracking sales progress and other general office duties. Qualifications include excellent communication skills, strong knowledge in Microsoft Word, Excel and PowerPoint. College degree and previous broadcast media experience preferred. Successful candidate must have a valid driver's license and a good driving record. Send cover letter and resume to: Human Resources Manager Attn: Sales/Administrative Assistant Position WDBJ Television, Inc. 2807 Hershberger Road Roanoke, VA 24017 We are an Equal Opportunity Employer. We do not discriminate on the basis of race, religion, color, sex, age, national origin or disability. Preemployment drug screening required.

TV Master Control Operator / Full Time

WRLH FOX Richmond & MyTV Richmond have a great opportunity for you! We are seeking a highly detail oriented operator with good communication skills and who learners quickly. Duties include on-air switching, operating video tape recorders and satellite receivers. You must be computer literate and self motivated. Good attendance is essential. Ability to work well independently as well as with others is key. You must be flexible and be able to work evenings, weekends and holidays. All Interested Applicants MUST apply online at www.sbgi.net. Sinclair Broadcast Group, Inc. is proud to be an Equal Opportunity Employer and Drug Free Workplace!



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