VAB Newsletter July 2016

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Upcoming Events:

October 27-28, 2016
VAB Board Retreat
Keswick Hall
Charlottesville, VA

June 22-24, 2017
VAB 80th Summer Convention
Hilton
Virginia Beach, VA

It's CAREER FAIR Time Again for the VAB!

Below is the schedule for the 2016 Career Fairs that the VAB will be participating in this fall. Please let Christina Sandridge know if you will be available to assist in staffing the booth. She will need 1 to 2 volunteers per school.

Old Dominion University:
Tuesday, September 20th from 10:30 am - 2:30 pm. Location: Ted Constant Convocation Center

Virginia Commonwealth University:
Thursday, September 22nd from 10:00 am - 3:00 pm. Location: VCU School of Business, Snead Hall

Christopher Newport University:
Tuesday, September 27th from 12:00 pm - 3:00 pm. Location: David Student Union, 2nd Floor

Hampton University:
Wednesday, September 28th from 10:00 a.m. - 3:00 p.m. Location: Convocation Center

Virginia State University:
Thursday, September 29th from 9:30 a.m. - 12:30 p.m. - Location: Gateway Dining & Event Center

University of Virginia:
Wednesday, October 26th from 10:00 am - 3:00 pm. Location: Newcomb Hall, 3rd Floor

Working the Career Fair means an EEO Credit for your station AND helping me explain the Summer Internship Program available to rising Juniors and Seniors at our stations throughout the state. Not to worry, I'll train you on what to say and it's super, super easy! And, if you volunteer to work with me, you are more than welcome to put out information about your station and any available positions that you might currently have available as well as any knick-knacks you are looking to give away. Students LOVE giveaways!

Thank you in advance for your help and please let me know if you have any questions!

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WFQX-FM / WKSI-FM / WMRE-AM / WUSQ-FM
Winchester

VAB Members:

We are proud to announce the fifth year of the Virginia Association of Broadcasters Best of the Best Leadership Program.

This eight-month program is designed to provide participants with the opportunity to build leadership skills, develop a diverse business network, meet legislative leaders, become an advocate for the broadcast industry, and prepare for the future challenges facing the industry.

If you are interested in expanding your leadership potential, please submit the application and supporting materials by Wednesday, August 31, 2016. Visit www.vabonline.com to download the flyer and application.

If you have any questions, please contact Jonathan Williams at (804) 643-4433 x202 or jonathan.williams@easterassociates.com.

VAB JOB|BANK

How to Submit to the VAB Job Bank

Jobs that are printed in the newsletter are pulled directly from the online Job Bank. To include your listing:

- Go to **www.vabonline.com**. Login with your user name and password.
- Be sure to include your station ID or company name, information on how the applicant can apply and where to send the applications materials.

Position	Locations	Type	Department	Organization	
Technical Media Producer	WHSV	Full Time	Production	WHSV-TV	7/29/2016
Digital News Producer	Roanoke	Full Time	News	Nexstar Broadcasting	7/25/2016
News Specialist	Richmond, VA	Part Time	News	WWBT, Inc.	7/20/2016
Underwriting Sales Associate	Richmond/ Charlottesville	Full Time	Sales	wnrn fm	7/20/2016
TV Photojournalist/ Satellite Truck Operator – WAVY TV	Norfolk/Portsmouth/ Virginia Beach	Full Time	News	WAVY-TV 10 Media General	7/15/2016
Account Executive	Richmond, VA	Full Time	Sales	WUPV-TV	7/11/2016
Digital Account Executive WAVY-TV10/WVBT Fox 43	Norfolk/Portsmouth/ Virginia Beach	Full Time	Sales	WAVY-TV 10 Media General	7/11/2016
Nightside News Reporter/ Photojournalist	WHSV	Full Time	News	WHSV-TV	7/6/2016
Regional Account Executive	WDBJ - Roanoke, VA	Full Time	Sales	WDBJ Television, Inc.	7/6/2016
News Director	Roanoke, VA	Full Time	News	WVTF-RADIO IQ Virginia Tech Foundation Inc.	7/1/2016
Production Assistant	Lynchburg	Full Time	Production	Sinclair Television Stations, LLC	7/1/2016
Account Executive	Danville	Full Time	Sales	Lakes Media, LLC	7/1/2016
News Director	Lynchburg	Full Time	News	Sinclair Television Stations, LLC	6/24/2016

To learn more about these jobs and to see new postings, please visit

www.vabonline.com/careers

LEGALREVIEW

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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**John G. Kruchko*

NLRB Holds Employer Consent Not Required for a Union to Represent a Bargaining Unit Combining both Regular and Temporary Employees

By John G. Kruchko and Nancy V. Holt*

Executive Summary: In a July 11, 2016 decision that will make it easier for unions to organize temporary employees, the National Labor Relations Board (NLRB) overruled existing precedent and held a union may represent a bargaining unit consisting of both regular employees and temporary employees supplied by another employer even if the employers do not consent. See Miller & Anderson, Inc., 364 NLRB No. 39 (2016). Previously, the NLRB would not permit an election in a bargaining unit that combined employees from more than one employer unless all employers agreed. This decision increases the likelihood that employers who use temporary employees will become enmeshed in labor relations disputes involving those temporary employees.

The NLRB's Traditional Rule for Multi-Employer Bargaining Units

The NLRB's traditional rule has been that under the National Labor Relations Act it could not approve an election in a bargaining unit that combined employees from multiple employers unless all the employers consented. This multi-employer situation frequently arises where an employer (which the NLRB refers to as the user employer) supplements its workforce of regular employees with temporary employees supplied by another employer (which the NLRB refers to as the supplier employer).

The NLRB departed from its traditional rule in M.B. Sturgis, Inc., 331 NLRB 1298 (2000). In that case, the NLRB held employer consent was not required for a bargaining unit consisting of the user employer's regular employees and temporary employees who are jointly employed by both the user employer and the supplier employer. The M.B. Sturgis decision was short lived. In Oakwood Care Center, 343 NLRB 659 (2004), the Board overruled M.B. Sturgis and returned to its traditional rule holding that regular employees and temporary employees cannot be combined into one bargaining unit unless both the user employer and the supplier employer agreed.

The Board Overrules Its Traditional Rule

In Miller & Anderson, the Board concluded its traditional rule was not consistent with the growing trend to use temporary employees in a variety of industries and that the rule limited those employees' opportunity for workplace representation. Accordingly, the Board held employer consent will no longer be required for a bargaining unit that combines the user employer's regular employees and temporary employees jointly employed by the user employer and the supplier employer. The Board now will approve such a unit if the regular employees and the temporary employees share a community of interest.

The Impact on Employers

If a union wins an election in a bargaining unit consisting of both regular employees and temporary employees, the user employer and the supplier employer both would have an obligation to bargain with the union with respect to the terms and conditions of the jointly employed temporary employees. According to the Board, each employer would have an obligation to bargain "only with respect to such terms and conditions that it possesses the authority to control." Importantly, an employer's bargaining obligation is not limited to terms and conditions over which it has actually exercised control. Instead, it extends to those topics over which it possesses the authority to control even if that authority has never been exercised.

The NLRB's decision leaves a number of questions unanswered. For example, how do the user employer and the supplier employer decide which of them is obligated to bargain over which topics? Similarly, how are disputes resolved when the user employer and the supplier employer do not agree during bargaining? Bargaining also will be complicated by the fact that the user employer will simultaneously be bargaining with the union in the same negotiations about its regular employees' terms and conditions of employment, which may be dramatically different from those of the temporary employees.

Employers' Bottom Line

The Board's Miller & Anderson decision will make it easier for unions to organize temporary employees. As a result, employers that use temporary employees face an increased risk of becoming involved in and being required to bargain over the terms and conditions of employment of the temporary employees.

© 2016 FordHarrison LLP | *John G. Kruchko is a Partner with the Management Labor and Employment Law Firm of FordHarrison, LLP, in Tysons Corner, Virginia; B. Patrice Clair is a Senior Associate in the firm's Washington, D.C. office. Rachel Ullrich, an attorney in the firm's Dallas office, prepared an original version of this article. For more information please contact Mr. Kruchko at (703) 734-0554 or Ms. Clair at (202) 719-2055 or by e-mail at jkruchko@fordharrison.com or pclair@fordharrison.com. This article is published for general information purposes and does not constitute legal advice.

Americans Embrace Alternatives to Cable & Satellite TV

Almost four in 10 homes with an 18-34 year-old resident rely on broadcast-only or Internet-only alternatives to cable or satellite, according to new research from GfK.

The study found that levels of broadcast-only reception and Internet-only video subscriptions have both risen over the past year, with one-quarter of U.S. TV households now going without cable or satellite reception.

GfK's "2016 Ownership and Trend Report" reveals that 17 percent of TV households now rely on broadcast-only "over-the-air" reception, up from 15 percent last year, according to a summary of the research findings on TVNewsCheck.com. Another 6 percent say all of their TV comes from Internet-based streaming services such as Netflix, Amazon Prime, Hulu, and YouTube, up from 4 percent a year ago.

Another key finding was that TV households with a resident between 18 and 34 years old are much more likely to be opt for alternatives to cable and satellite TV; 22 percent of these homes get their TV exclusively over the air (versus 17 percent for all households) and 13 percent from Internet-based streaming services (versus 6 percent of all TV homes).

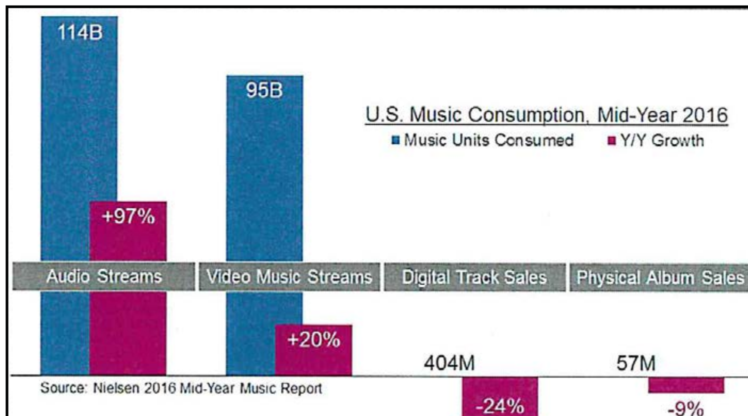
Overall, the report found that 38 percent of 18-to-34 households rely on some kind of alternative TV reception or video source, versus 25 percent of all homes. On the other hand, households with at least one resident age 50 or above were found to have higher rates of subscribing to cable or satellite services. More than eight in 10 (82 percent) have some sort of pay TV subscription, versus 75 percent for all U.S. TV households.

"The fact that a statistically significant increase in broadcast-only reception occurred over just one year may be further proof that the cord-cutting/cord-never phenomenon is accelerating," GfK's David Tice, told TVNewsCheck. "If you include homes that have no TVs at all—about 3 percent of all households—then less than three quarters (73 percent) of U.S. homes continue to have pay TV service."

Broadcast-only reception is more common in TV households earning less than $30,000 per year (26 percent, versus 17 percent among all TV homes) and in Hispanic homes (24 percent). Households with incomes of $50,000 a year or more have higher levels of satellite subscription—27 percent, compared with an average of 21 percent.

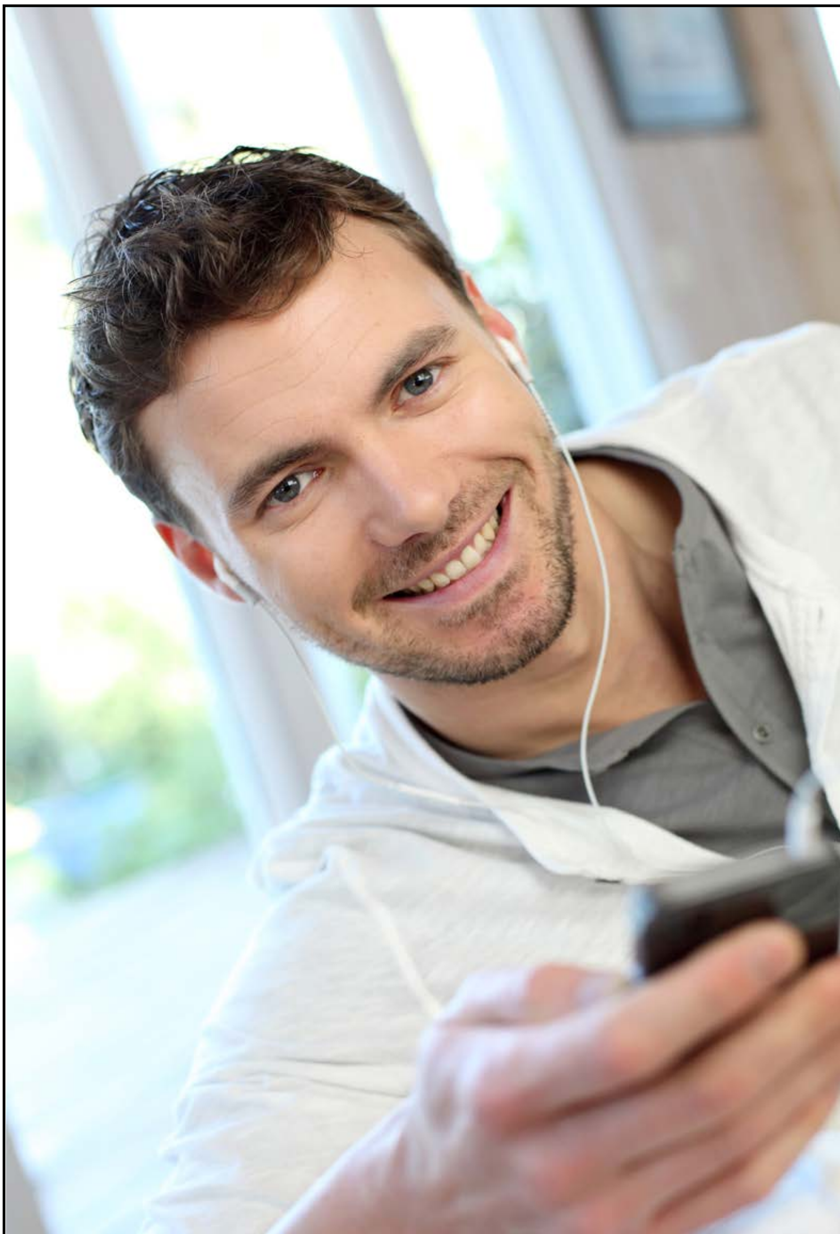
Read more at **http://www.soundandvision.com/content/americans-embrace-alternatives-cable-and-satellite-tv#wIE54IsWpsB8hxDw.99**

Personal Music Collections Suffer as Audio Streams Grow



Nielsen recently released their Mid-Year U.S. Music Report, looking at overall music consumption of the U.S. through the lens of the total number of on-demand streams, and track/album sales. Looking at the first half of 2016 compared to the same time period of 2015, the report shows the continuing trend of declining physical (-24%) and digital (-9%) music sales, alongside the robust growth of total on-demand music streaming (+59%).

This mid-year report marks a first for ondemand music streaming: audio music streams have overtaken video music streams, nearly doubling in number since the first half of 2015, and driving the majority of growth in on-demand music streaming as a whole.



In the wake of such growth in on-demand music streams, the appetite for digital downloads is waning, leading to a steep decline in digital track sales, down nearly a quarter from the first half of 2015.

Physical albums are losing footing in the competition with on-demand music streams as well, with sales down 9%. However, they did see growth in one sector - LP/Vinyl (+12%). Though vinyl LPs are looking to become an important player in physical music sales, they were not enough to stem the tide of overall loss in the first half of 2016.

One medium that has consistently stood strong against the growth of on-demand music streaming is Radio. In fact, Radio has gained over 2 million users and 6 minutes of weekly listening compared to a year ago.[1] Armed with the ample research Nielsen is doing in the audio universe, one thing is clear: Consumers are listening to less of their personal music collections, not less Radio.

Meredith Murphy I Radio Insight I Manager, Marketing Strategist

1 QI 2016 Nielsen Comparable Metrics Report

In the July Newsletter we are highlighting the three issues that the VAB and its members will be discussing during our Congressional lunches throughout the Commonwealth: **Performance Tax, Retransmission Consent and Preventing Harmful Changes to Advertising Tax Treatment.** Please read the issue papers and make your congressman or senator aware of our industry's point of view either during one of the VAB luncheons or when they personally visit your station during the August recess.

A Performance Tax Threatens Local Jobs

The Issue:

Congress should not mandate a performance tax on free, local radio stations that would jeopardize local jobs, prevent new artists from breaking into the recording business and harm the more than 265 million Americans who rely on local radio.

Broadcasters urge legislators to stand up for their local radio listeners by cosponsoring the Local Radio Freedom Act, which opposes a performance tax.

Here's Why:

For more than 80 years, record labels and performers have thrived from radio airplay – which is essentially free advertising – from local radio stations. But as the big record labels struggle to keep profit margins high, they are urging Congress to impose a tax on local radio stations that are, ironically, their greatest promotional tool. Legislation backed by the record labels has been introduced in Congress to impose a new fee on local radio stations, simply for airing music on the radio. A performance tax could financially cripple local radio stations, harming the millions of listeners who rely on local radio for news, emergency information, weather updates, and entertainment daily.

Radio's free promotion is worth more than $2.4 billion annually in music sales, concert tickets and merchandise to record labels. Here's how:

- Local radio continues to be the top source for listeners seeking new music, far surpassing other sources.

- Free radio airplay provides the recording industry increased popularity, visibility and sales for both established and upcoming artists.

- Promotion by local radio goes beyond the music to include concert and festival promotion, on-air interviews and social media marketing.

Recognizing the promotional value of free radio airplay, Congress has repeatedly rejected the record labels' attempts to impose a harmful performance tax on local radio stations.

Broadcasters have worked with bipartisan leaders in the House and Senate to introduce the Local Radio Freedom Act, which opposes any new tax, fee or royalty on local radio stations. The legislation – H. Con. Res. 17, led by Reps. Mike Conaway (TX-11) and Gene Green (TX-29), and its companion, S. Con. Res. 4, led by Sens. John Barrasso (WY) and Heidi Heitkamp (ND) – currently has more than 250 cosponsors, including a bipartisan majority of the House of Representatives.

In previous Congresses, broadcasters demonstrated good faith in working with the record labels to try to resolve the performance tax issue through private discussions. Yet musicFIRST, representing the big record labels and performers, rejected compromise and walked away from negotiations. Since that time, numerous radio companies and record labels have negotiated private deals of their own that compensate copyright owners and performers, demonstrating the ability of the marketplace to best address the issue.

Broadcasters are firmly opposed to a government-imposed performance tax, but stand ready to work with Congress on a balanced music licensing proposal that promotes innovation and recognizes the benefit of radio's free, locally-focused platform to artists and listeners.

Allow Broadcasters to Continue Negotiating in the Free Market

The Issue:

Congress and the Federal Communications Commission (FCC) should allow broadcasters and pay-TV operators to

Continued on page 8

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continue to conduct private, market-driven negotiations for retransmission consent and avoid tilting the scales in favor of either party. Government intervention will only disrupt a marketplace that has resulted in more programming choices and services for local television viewers.

Here's Why:

Congress has long recognized that local TV stations should be allowed to negotiate compensation with cable and satellite operators for the retransmission of their signals. Cable and satellite operators resell broadcast signals to subscribers, making billions.

While complaining about programming costs, cable and satellite companies are pocketing big profits. In 2015, AT&T/DIRECTV had revenues of $146.8 billion and DISH had revenues of $15.1 billion. These companies are aggressively lobbying the government to upend the retransmission consent process and weigh in on these private, market-based negotiations. This is simply an attempt to avoid fairly compensating broadcasters, who produce the highest-rated content on television.

The current free-market process provides incentives for both parties to come to mutually beneficial arrangements, which is why negotiations are completed with no service interruptions or fanfare the great majority of the time. However, in the last two years, four out of five impasses involved AT&T/DIRECTV or DISH[1]– the same big companies begging for government intervention.

These big pay-TV companies claim that broadcast retransmission fees are responsible for higher cable bills. The truth is, cable bills have risen faster than – sometimes double – the rate of inflation since the mid-1990s, long before broadcasters received cash compensation for their signals.

Despite having the highest-rated programming on television, broadcasters have routinely been the least compensated. Wells Fargo analyst Marci Ryvicker estimated that if broadcasters received retransmission consent payments at a rate comparable to what is paid to cable networks, broadcasters would receive five times their current compensation.

Broadcasters strongly oppose government intervention that would upend the retransmission consent system solely for the benefit of the big cable and satellite companies. The negotiation process is fair and market- driven. Eliminating stations' ability to negotiate for the value of their signals would mean less choice for viewers and fewer resources for stations to dedicate to local news, public affairs programming, coverage of emergency weather events, and community activities.

[1] Source: SNL Kagan, "Retransmission Databases: 2014 and 2015"

Prevent Harmful Changes to Advertising Tax Treatment

The Issue:

Congress should not enact legislation that would restrict advertising and impose cumbersome burdens on advertiser-supported, free, local broadcasting.

Ads on local television and radio stations are treated as an ordinary and necessary business expense – just like salaries, rent and utilities – under the U.S. Tax Code. This means a business can deduct the expense in the year it was incurred.

Some in Congress have suggested changing the tax treatment of advertising, which would ultimately make advertising more expensive for local businesses and have a devastating impact on radio and television stations that rely on ad revenue to survive.

Here's Why:

- For many local retailers, local television and radio are the best ways to reach their customers and grow their businesses. Making advertising more expensive would hamper the growth of these businesses and their ability to provide jobs in the community.

- The stimulating effect of advertising on local commercial broadcasts is very significant. An estimated $1 trillion in U.S. economic output and 1.38 million jobs are attributable to the stimulating effects of advertising on local television and radio.[1]

- Advertising revenue enables stations to reinvest in their newsrooms and local communities. Making it more expensive for businesses to advertise would impede the ability of stations to offer the high-quality news, information, and entertainment on which the public relies.

- The local broadcast radio and television industry contributes $1.19 trillion of gross domestic product and 2.49 million jobs to the American economy annually.[2]

- By 2019, advertising is projected to support 23.2 million U.S. jobs and $7.4 trillion in U.S. output.[3]

For these reasons, advertising should remain fully deductible as an ordinary and necessary business expense in the year the expense is incurred. Any legislation that discourages advertising would harm broadcasters' ability to serve their local communities.

[1] Source: Woods and Poole Economics, "Local Broadcasting: An Engine for Economic Growth, 2015"

[2] Source: Woods and Poole Economics, "Local Broadcasting: An Engine for Economic Growth, 2015"

[3] Source: IHS Economics and Country Risk, "The Economic Impact of Advertising in the United States: March 2015"