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Newsletter

Virginia Association of Broadcasters

December 2009

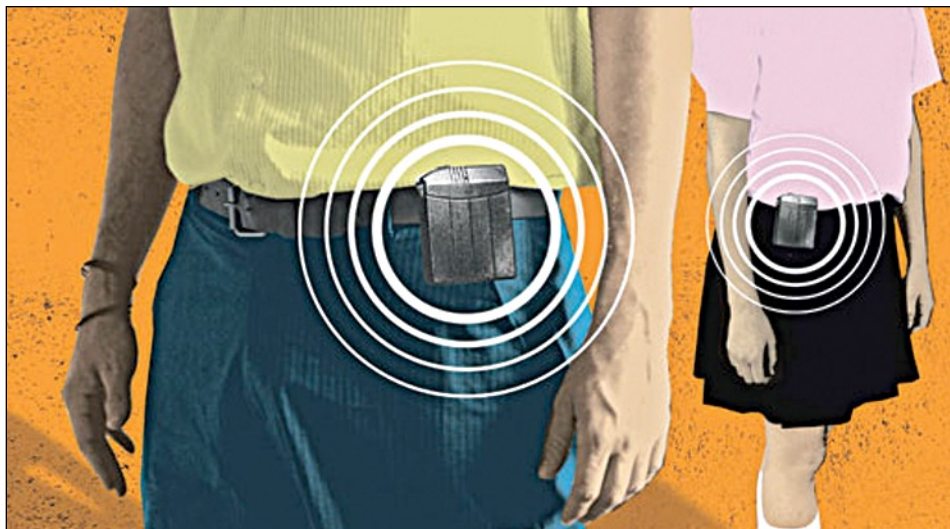
House Oversight Chairman Pushes For Arbitron PPM Overhaul

U.S. Representative Edolphus "Ed" Towns (D-NY), Chairman of the House Oversight and Government Reform Committee, is taking action to ensure that Arbitron addresses problems associated with its new rating system, the Personal People Meter (PPM), amid concerns that the system undercounts minority radio listeners. In recent letters to the heads of Arbitron, Media Rating Council (MRC) and several minority broadcasting corporations, Chairman Towns requested that these organizations work collaboratively to remedy problems with Arbitron's PPM. Noting the "hard fought battle" to establish "diversity on the airwaves," Chairman Towns stressed that the "plan of action" include "not only viable solutions, but also a realistic timetable for addressing the issues."

Chairman Towns set the deadline after a December 2 committee hearing that examined Arbitron's radio audience measurement device and its effect on diversity in radio broadcasting. At the hearing, Chairman Towns called Arbitron essentially an "unregulated monopoly."

Witnesses, including the executives of minority-owned radio stations, revealed unprecedented ratings decline as a result of the PPM. The head of the Media Rating Council (MRC), the organization that monitors Arbitron, also testified at the same hearing that it had denied accreditation for Arbitron's PPM in 31 of 33 radio markets on the grounds that Arbitron does not include enough minority listeners in its ratings samples.

Arbitron CEO Michael Skarzynski testified on behalf of his company, saying in his prepared remarks that "We share the concern regarding the health of this important voice of the broadcasting community. We are however, confident



that PPM is not the cause of the challenges faced by minority broadcasters. It is encouraging to note that Urban Adult Contemporary is the most listened to format in the top 16 PPM markets [according to a recent report]."

Skarzynski gave the example of Stevie Wonder's KJLH/Los Angeles as a station where "more timely PPM data has helped guide mid-course corrections and programming adjustments to advance their business," citing a morning drive ratings jump after the station added the syndicated Steve Harvey Show.

Skarzynski also spoke of Arbitron soliciting feedback from its customers and implementing expanded cell-phone-only sampling, country-of-origin reporting and encouragement of greater survey participation.

The Minority Media and Telecommunications Council's David Honig said radio has faced fiscal challenges for years, but once PPM came into play, ratings dropped off notably. Skarzynski responded that multiple formats saw ratings fall and it was simply a reflection of the actual listening recorded by the PPM.

Mike Ivie of the Media Ratings Council (MRC) backed up Skarzynski's claims that Arbitron has been making improvements to the PPM and listening to critiques and suggestions. However, Ivie said that the rollout of the PPM should have been held back until accreditation was given by the MRC. Towns asked Skarzynski why the PPM rollout had begun without full accreditation. He replied that Arbitron had followed the rules and such a decision is normal in the ratings industry for other mediums.

Chairman Towns also sent letters to other witnesses that testified at the December 2nd hearing, including Univision Communications, Inc.; Minority Media and Telecom Council; ICBC Holdings, Inc.; Bromley Communications, Inc.; Spanish Broadcasting System; and Radio One, Inc.

The Chairman is calling on the organizations to work together to determine "a solution that creates accurate ratings for all radio stations, including minority targeted broadcasters." He warned that he would consider legislation to address the problem if it was not resolved within the thirty-day timeframe. ♦



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DECEMBER NEWS BRIEFS

RADAR: 236 Million Hear Radio Every Week

RADAR 103, the latest Arbitron report on network radio, shows that radio reaches more than 236 million people 12 and older in a typical week. That's 92.5 percent of people 12+, and includes 90 percent of 12 to 17-year-olds.

The nearly 7,700 RADAR-affiliated stations are heard by more than 216 million people 12 and older, up from 210 million listeners a year ago, in RADAR 99. Network radio reaches 86 percent of 18-34s weekly, Arbitron reports.

Radio reaches 95 percent of college graduates ages 25-54 each week, and nearly 96 percent of 25-54s with a college degree and annual income of \$50,000 or more. Nearly 93 percent of black non-Hispanic persons 12 and older hear radio every week, as well as 94 percent of black non-Hispanics and Hispanics ages 18-49.

The full RADAR 103 report for the 56 affiliated networks will be out on December 14. ❖

Bridge Ratings: Internet Radio's Still Growing

Bridge Ratings has released some updated research that pegs Internet radio's US penetration at 30.2% on a monthly basis, up from 18.1% in 2008. That number is projected by this study to grow to 52.2% by 2012.

In a second newly released report, consumers of HD radio, MP3 Players and Satellite radio showed decreases in the category of "Intent to Listen More", while Internet radio saw the greatest increase in "Intent to Listen". But that listening is not coming at the expense of AM/FM listening according to the study, which shows that 5% more people are stating that they intend to listen to AM/FM stations than two years ago.

Internet radio also scored high marks with panelists who were asked to indicate a preference for a primary daily device, with 22% picking Internet radio, up from 17% two years ago. The only device that scored higher was mobile phones (28%). ❖

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House Extends Satellite License for 60 Days

The House has passed legislation that extends the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) by 60 days, giving legislators until March 1 to come up with a standalone bill.

The extension was included as an amendment to the Defense Appropriations Bill to prevent the satellite legislation from expiring on December 31.



The license allows satellite operators to deliver distant network affiliated TV station signals to viewers who cannot get a viewable signal of their local affiliate.

On December 3, the House approved the SHVERA. The bill combines the House Commerce and Judiciary versions and reauthorizes the satellite compulsory license for carriage of distant network affiliate TV station signals for another five years. It also deals with some cable carriage and various copyright issues, including an audit process for copyright owners so they can make sure they get the royalties they are entitled to, stiffer penalties for infringement and clarification that their royalties apply to digital multicast streams carried by satellite.

At the present time, there are 28 local TV markets in rural areas that do not have local TV signals delivered by either of the satellite TV carriers. Earlier this year Echostar, commonly known as Dish Network, agreed to uplink for local retransmission all 210 local TV markets upon certain conditions. These include that the company receive the ability to import into the markets distant network signals in order to supply the missing networks in the markets that do not have

a full complement of networks represented by local affiliates and that the law does not impose new carriage obligations that the company would have to devote satellite capacity to meeting.

Dish has been prevented by a court order from delivering distant signals after the court concluded it had problems determining who was eligible to receive them. The bill enhances penalties for any future problems and requires a GAO audit of Dish. But it also has an amendment that would require Dish to deliver high-definition noncommercial station signals on an advanced timetable—by 2011 instead of the FCC's current 2013, a timetable Dish has said it can't meet.

Legislators suggested that the amendment would not be a poison pill to the local-into-local deal, suggesting Dish might be close to its own deal with noncommercial stations that would moot the amendment or that even if there was no deal, Dish would be able to provide both noncommercial HD signals and local stations on the government's timetable.

SHVERA must now either be reconciled with two different Senate versions, or the Senate could vote to approve the House version. ❖

Federal Shield Law Passes Senate Judiciary Committee

On December 10, 2009, the Senate Judiciary Committee approved federal shield legislation by a 14-5 vote. The Free Flow of Information Act (S. 448) generally provides a qualified statutory privilege against compelling a covered person to disclose information in certain federal proceedings. The bill enjoyed the support of Senate Judiciary Chairman Patrick Leahy (D-VT) and Committee Members Arlen Specter (D-PA), Charles Schumer (D-NY), and Lindsey Graham (R-SC), but has been strongly opposed by certain members of the Committee, including Senator Jon Kyl (R-AZ).

"NAB salutes Chairman Leahy and Senators Specter, Schumer and Graham for their commitment to the enactment of a federal media shield law," said Ex-

ecutive Vice President Dennis Wharton. "Broadcast journalists have a proven track-record of quality journalism, keeping Americans informed with timely investigative reporting on issues of critical importance to their local communities and our nation. NAB looks forward to our continued work with Congress, the White House and our media partners to ensure journalists have the continued ability to report the news without fear of prosecutorial reprisal."

The bill was scheduled for mark-up in the Judiciary Committee on multiple occasions, but, repeatedly, mark-up was delayed due to continuing bi-partisan conflict over the terms of the bill. A key point of disagreement has been who will be covered by the federal shield—the

bill as passed by the Judiciary Committee incorporates a broad definition that encompasses bloggers and other non-traditional journalists. There have also been concerns about how a federal shield law would affect national security; however, according to news reports, the bill as passed by the Senate Judiciary Committee has the approval of the Obama Administration and Department of Justice.

With the approval of the Senate Judiciary Committee, the bill now moves to the Senate floor. If the bill is passed by the full Senate, it still must be reconciled with the House bill passed earlier this year (H.R. 985) before the federal shield law can be enacted. ❖

FCC Holds Media Ownership Workshops in Washington D.C.

The Commission recently held the first of its Media Ownership Workshops as part of its required review of the FCC ownership regulations every four years. The Ownership Workshop was held over three days in Washington, D.C. Panels of scholars, public interest groups, and broadcast industry representatives offered their views on the scope and analytical framework of the media ownership review process; competition, diversity, and localism goals; and data and issues for further study.

Members of the broadcast industry have long advocated loosening the FCC's ownership rules. In the Ownership Workshop broadcast and industry panel, David Barrett of Hearst Television Inc. joined Jane Mago from the NAB, George Mahoney of Media General, and other industry leaders to make the case to the Commission for relaxing the ownership rules. The thrust of Mr. Barrett's testimony was that consolidation of ownership, operational, and technological resources allows local television stations to achieve new economic efficiencies and to compete more effectively in the digital era. Mr. Barrett proposed a new local television ownership metric as a method for determining "undue concentration of media ownership." Rather than focus on market revenue, Mr. Barrett's proposal focuses on market audience share. Specifically, the HTV proposal would presumptively permit common ownership of local television stations if (1) the combination's collective share of the viewing audience is 30% or less and (2) the resulting concentration of audience share of the local television stations, together with the increase in concentration of such audience share, satisfied a standard based on a general numerical antitrust standard used by the Department of Justice and Federal Trade Commission.

Ms. Mago made three main points in her testimony to the FCC during the Ownership Workshop. First, the basic principle the FCC should keep in mind as it examines the broadcast ownership rules is that the public interest is best served by permitting broadcasters to compete effectively in the digital multi-channel marketplace. Second, the analytical framework for the FCC's review of the ownership rules requires the FCC

to take current competitive conditions into account. Third, the FCC should base its decisions on real evidence, not unsupported opinion—Ms. Mago argued that it is important to have current, realistic data that fully accounts for the impact that new media sources have on broadcast stations and the audiences they serve.

Finally, Mr. Mahoney attacked the newspaper/broadcast cross-ownership rule. He related Media General's successful experience with "convergence"—the delivery of information across multiple media platforms—in several of its markets. For example, in the Tampa market, the company uses consolidated operations for its commonly owned newspaper, local television station, and online news outlet; newspaper reporters appear in television broadcasts and television news reporters write stories for the paper or online. Convergence has "significantly increased the output of news content and ensured the delivery of better, faster, and deeper news in Tampa." (Media general has been permitted to own a newspaper and broadcast station in Tampa due to the Commission's cross-ownership grandfathering policy and in other markets due to waivers granted by the FCC.) In addition to extolling the convergence benefits of cross-ownership, Mr. Mahoney challenged the rationales underlying the cross-ownership ban and argued that the ban is unconstitutional.



By statute, the Commission is required during this 2010 Quadrennial Review to determine whether its ownership rules "are necessary in the public interest as a result of competition," and, if any regulation is no longer in the public interest, the Commission is required to repeal or modify it. The ownership rules have been the subject of repeated court challenges and proposed revision at the FCC. The FCC proposed certain revisions to the rules in 2002, which were challenged in federal court—the U.S. Court of Appeals for the Third Circuit stayed the effectiveness of the rules and ordered the FCC to modify or justify certain aspects of the regulations. More recently, in February 2008, the FCC released an order related to the ownership rules, which was again the subject of appeal to the federal courts and petitions for reconsideration at the FCC. (The Third Circuit held the appeal in abeyance pending FCC reconsideration of the issues.)

With this first Ownership Workshop in November, the 2010 Quadrennial Review is now underway and remains ongoing. According to a recent public notice, the Commission plans to hold its next Ownership Workshop on January 12, 2010. For updates on the proceeding, visit the FCC's ownership website at www.fcc.gov/ownership. ♦

Broadcasters Respond To FCC'S Spectrum Inquiry

On December 22, the National Association of Broadcasters (NAB) and the Association for Maximum Service Television (MSTV) filed joint comments with the Federal Communications Commission concerning the agency's National Broadband Plan inquiry.

As part of the filing, NAB and MSTV also submitted, "A Proposed Framework for Discussion," which included a new study that shows nearly 750 MHz of spectrum is currently available for licensed broadband use. That figure is more than double the amount of spectrum allocated exclusively for TV broadcasters, which totals 294 MHz. The study, conducted by a pair of Purdue University engineering professors, also questions the validity of a recent spectrum forecast by CTIA-The Wireless Association, calling its results "flawed or, at best, highly suspect."

The joint filing and additional 'Framework' document are available

online at www.nab.org.

From the outset, NAB and MSTV urged the Commission to "conduct a comprehensive inventory of present and future spectrum usage by all parties," including the wireless industry, satellite, broadcasters and the government. "To the extent that more spectrum is needed for broadband uses -- a proposition that should be fully tested -- the Commission should not assume that broadcast spectrum is the best or even a viable place to find that spectrum," NAB and MSTV wrote.

Broadcasters also outlined four overarching principles relevant to the FCC's Public Notice on the National Broadband Plan.

1. Broadcasting and broadband are not "either/or" propositions; that is a false choice.

2. Local TV broadcasters offer an array of social benefits that are irreplace-

able by other services.

3. The FCC's spectrum policy must be guided Section 1 of the Communications Act and by Congress's directive to provide local service.

4. Throughout the DTV transition, the Administration, Congress and the FCC told American consumers that they would benefit from the digital transition with free, over-the-air HDTV and additional free multicast channels.

NAB and MSTV also reminded the Commission of the promising future for mobile DTV. "Broadcasters are poised to meet consumer demand for mobile video -- one of the key services behind the wireless industry's claims to need more spectrum. Such service can be offered more effectively, efficiently and expeditiously by broadcasting's point-to-multipoint distribution architecture and technology," the groups wrote. ❖

FCC Suspends January 11 Biennial Ownership Filing Deadline

On December 23, 2009, the FCC issued an Order suspending the requirement for commercial radio and television stations to file Biennial Ownership Reports on FCC Form 323 by January 11. The Order also announces that the FCC has temporarily suspended the ability to start a new biennial Form 323 during the interim suspension period. In other words, Form 323 has temporarily been taken offline for biennial filings. (According to the Order, a filer who launched a new Form 323 prior to the suspension will still be able to complete and file the previously launched form should the filer wish to do so.)

The Order also states that the FCC will grant an extension of time to file Biennial Ownership Reports once Form 323 is made available again for biennial filings. According to the Order, the extension will be at least 90 days from the date Form 323 has been made available again. The Commission will announce the new filing deadline in a future Public Notice. When the deadline is announced, ownership data reported in the Biennial Ownership Report must still be current as of November 1, 2009.

According to the Order, the FCC will not require those broadcasters who have

already completed and filed their 2009 Biennial Ownership Reports reflecting ownership data as of November 1, 2009, to file again.

Additionally, this suspension does not affect non-biennial ownership filings. Non-biennial ownership filings, such as post-consummation ownership reports, must still be filed according to deadlines established in the FCC's rules.

The FCC suspended the filing deadline in response to requests by broadcast industry representatives for an extension

of the filing deadline and additional form changes to reduce technical and logistical problems that have caused delays with completing Form 323. The Order states that the temporary suspension of the filing requirement "will permit [the Commission] to investigate what changes can be made to the form to reduce the time required to complete it and to lessen any unanticipated burdens in this regard without undermining the completeness, quality, usefulness, and aggregability of the data." ❖

For coverage in future issues, please send announcements/press releases and accompanying photographs to derek.breen@easterassociates.com or mail to:

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NAB Strengthens State Association Outreach

NAB has announced the hiring of Sue Keenom as senior vice president, state associations. Keenom, who most recently served as executive director of the International Women's Forum Leadership Foundation, will manage the organization's outreach to the state broadcast associations. She will report to NAB President and CEO Gordon Smith.

"I have enormous respect for the role played by our state broadcast association members," said Smith. "Effective grassroots coupled with the contributions of our state association partners are paramount to the overall success of NAB. Sue Keenom is a trusted and proven leader, and I am honored that she has decided to join our organization."

"I am very excited to join the NAB team and look forward to working closely with the state broadcast associations," said Keenom. "NAB is a tremendous organization and I am pleased and honored to be a part of it."

Prior to heading the International Women's Forum Leadership Foundation, Keenom served for 12 years on the staff of Senator Smith in the U.S. Senate, capping her tenure in his office as director of administration. Prior to that, she was an assistant vice president for First Interstate Bank of Oregon. She began her professional life with Citicorp in Walnut Creek, Cal. and shortly thereafter moved

to New York City where she worked for Citibank. She has a background in program and administrative management, fundraising and event planning.

A Portland, Ore. native, Keenom graduated from the University of the Pacific in Stockton, Cal. with a bachelor's degree in Communications. ❖



Jonathan Collegio Wins 'Public Affairs Executive Of The Year'

Jonathan Collegio of the National Association of Broadcasters (NAB) has been honored by PR News with its 2009 Public Affairs Executive of the Year award for his work on the transition to digital television (DTV), which was completed in June when full-power television stations nationwide began broadcasting exclusively in a digital format.

Each year the PR News People awards honor top PR executives in a variety of different categories. Collegio, who ran the broadcast TV industry's public affairs campaign on the DTV transition, accepted the award on behalf of NAB.

"The broadcast television industry's campaign truly demonstrated not only

local broadcasters' commitment to public service and their communities, but the incredible reach and power of broadcast television as a platform to reach consumers everywhere," said Gordon Smith, CEO of NAB. "Jonathan Collegio did a magnificent job quarterbacking the industry's campaign to make sure America was ready for the switch."

NAB's multiplatform campaign wove together a variety of initiatives: a large PR effort including a nationwide road show and speaker's bureau; an online component involving three Web sites as well as use of social media platforms; a grassroots coalition of more than 241 organizations and outreach to tens of thousands of minority churches and

local elected officials; as well as a massive on-air campaign with public service announcements and other messages. The campaign raised consumer awareness of the DTV transition among U.S. television households from less than 38 percent at its inception to more than 98 percent by January 2009.

Launched in January 2007, NAB's DTV campaign mission was to "ensure that no consumer is left unprepared, due to lack of information, for the federally mandated transition from analog to digital broadcasting." Independently valued at more than \$1.2 billion, the campaign was the largest consumer education and public affairs campaign in the history of the broadcast television industry. ❖

Webform For Closed Captioning Complaints

The FCC recently released two orders related to the new closed captioning rules and procedures adopted by the Commission in November 2008 (the "November 2008 Order"). As we have previously reported in detail, in the November 2008 Order, the FCC adopted a new procedure for viewers to file complaints regarding closed captioning issues. The new procedures require broadcasters to make available contact information for the receipt and handling of "immediate," on-the-spot closed captioning concerns raised by consumers while they are watching a program (e.g., for garbled or missing captions). The new rules also require broadcasters to make contact information available for the receipt and handling of written closed captioning complaints that are not "immediate" in nature. Each television station also will be required to make available and file with the FCC contact information through which consumers may contact the station with either immediate or non-immediate closed captioning concerns. (For additional information on the November 2008 Order, please refer to our Special Report issued on November 26, 2008.)

The new orders released in December 2009 do two things. First, and of primary importance to broadcasters, the FCC has adopted an Internet webform through which broadcasters may notify the Commission of contact information consumers may use to contact the station with immediate or non-immediate closed captioning concerns. Previously, the FCC had directed stations to mail or e-mail contact information to the Commission. The recent order provides a third and, according to the order, strongly preferred electronic mechanism for providing the required closed captioning contact information to the FCC. Stations will be able to submit and update the required information via an electronic webform available on the FCC's website. The webform is not yet available but is expected to be released when the FCC announces the effective date of the new closed captioning rules.

Second, the FCC's December 2009 action recognizes an inconsistency between one aspect of the November 2008 Order and the existing statutory obligations of cable and satellite opera-

tors. As of December 11, 2009, the FCC has suspended the effective date of the rule adopted in the November 2008 Order that requires video programming distributors (including cable and satellite carriers) to forward closed captioning complaints about programming that the video programming distributor is exempt from closed captioning responsibility within seven days of receipt to the entity responsible for the closed captioning in question. Upon further consideration urged by cable operators, the FCC has announced that the Communications Act forbids cable and satellite from disclosing "personally identifiable information concerning any subscriber" without first obtaining the prior consent of the subscriber. A cable or satellite operator would violate its statutory obligations if it forwarded a closed captioning complaint to the television station, for example, whose responsibility it is to provide closed captioning of a particular program without first obtaining the prior consent of the subscriber who sent the complaint. Thus, the Commission has suspended the effective date of this particular rule. The Commission has announced it intends to issue a notice of proposed rulemaking soon to seek comment on a revised rule to handle these situations.

The other rules adopted in the November 2008 Order are not affected by the FCC's suspension described above and will take effect as scheduled. Therefore, broadcasters should be prepared to comply with the November 2008 Order when the effective date for the new rules is announced.

The FCC's new complaint procedures and the station contact information requirements adopted in the November 2008 Order require review by the Office of Management and Budget ("OMB") and subsequent publication in the Federal Register before they go into effect. As of December 21, 2009, notice has not yet been published. We will inform you of the effective dates of these new rules and the means of accessing the new webform when this information becomes available. ♦

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NAB Expands Working Relationship with RAB

The Radio Advertising Bureau (RAB) and National Association of Broadcasters (NAB) today announced an expanded partnership of communications and events, including a combined Radio convention Sept. 29-Oct. 1, 2010 in Washington, DC.

This natural extension of the relationship forged under one voice for Radio in 2007 entails a long-term program of communications and events for Radio sales and representation in Washington to coincide with "The Radio Show produced by RAB and NAB." More details on the fall convention will be forthcoming in early 2010.

"As part of the management structure of both the NAB and RAB, I've long felt there was tremendous value in bringing both organizations closer together," said Steve Newberry, NAB Joint Board Chairman and President and CEO Commonwealth Broadcasting Corporation. "This enhanced partnership is designed to positively address the needs of our radio station members and bring about proactive change for both of our trade associations."

"We're very pleased with our new partnership," said RAB President and CEO Jeff Haley. "As we further move our medium into a branded content and digital world, it is important we provide our members and clients with all the necessary touch points to see and hear how Radio is innovating for the future."

"NAB and RAB are very pleased to respond to the many requests to bring the best of the RAB and NAB together next year in Las Vegas, Washington DC and beyond," said NAB President and CEO Gordon Smith. "Increasing revenues at radio stations is a priority at both of our associations. Together, we can meet the demands of the business and seize opportunities that may never have surfaced otherwise. We believe that an annual communications and events dialogue provides us with those avenues."

In addition to a new and revised Radio Show, NAB and RAB will partner on programs such as the NAB Show in Las Vegas and other industry leadership events. ♦



EMPLOYMENT DISCRIMINATION UPDATE: New Claims, Theories, and Sources of Liability for Employers

By John G. Kruchko and
Kevin B. McCoy*

With winter afoot, our annual season for giving has officially begun. Giving to others this time of year usually involves sweaters and ties, cookies and cakes, or watches and earrings. However, courts and governments are “people too,” and they are not to be left out of the holiday festivities. So in order to share their holiday spirit, several have decided to give their own “gift” to employees who decide to sue their employers for unlawful discrimination. For those who follow this area of the law, it will come as no shock that new and better ways for employees to sue their employers continue to emerge. The source and theories underlying these new claims may, however, come as some surprise – although not the kind of surprise you might prefer at this time of year.

“Associational Discrimination” -- What is it and Why Should You Care?

Federal statutes like Title VII of the

Civil Rights Act of 1964 (“Title VII”), the Americans with Disabilities Act (“ADA”), the Age Discrimination in Employment Act (“ADEA”) and others all protect from discrimination employees who possess certain personal characteristics (i.e., a particular race, religion, age, disability, etc.). A key component of all these statutes is that protection extends to the individual bearing the protected characteristic. For example, a female employee would qualify for protection under Title VII, but the individual’s father (who is not female) is not protected from discrimination. That distinction is changing. Enter: Associational Discrimination.

If being a member of a protected class were analogized to smoking a cigarette, associational discrimination might be analogized to “second hand smoke.” Associational discrimination, at base, is employment discrimination against an individual who is not in a protected class, but who associates with an individual who is in a protected class. For example, if John, a 30 year-old white male, was married to an African-American

can woman, the theory of associational discrimination would prevent John’s employer from firing him because his wife is in a protected category.

This theory may seem a bit strange, but it is gaining traction with the EEOC. In 2009, the EEOC settled several associational discrimination claims – one for upwards of \$500,000. In that case, Caucasian employees were harassed and branded as “race traitors” by their supervisors because the employees had friends and family members who were African-American.

While the EEOC is understandably at the forefront of prosecuting new theories of discrimination, federal courts around the country are also starting to give credence to associational discrimination claims. In New York, for example, the Second Circuit Court of Appeals recently recognized the viability of a discrimination claim involving a Caucasian basketball coach who was allegedly fired because he married an African-American woman. The claim was viable, according to this court, because discrimination

(continued on next page)

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against the Caucasian coach was really discrimination against him because of his race (not his wife's). Ostensibly, had the coach been African-American, he would not have been fired for marrying someone of his own race.

In another case, a federal court in the Sixth Circuit recognized an associational discrimination claim where a Caucasian woman was being harassed at work because she was friends with and advocated for African-American co-workers. The harassment against the Caucasian employee included such things as racially-tinged jokes, racial slurs, graffiti, and being snubbed by other Caucasian co-workers. The court cautioned that such harassment, when it is targeted to a specific individual because of that person's association with a person in a protected category will violate federal civil rights laws and subject an employer to liability for discrimination.

Another form of associational discrimination that is taking shape in the courts stems from association with people who are disabled. Specifically, the issue often arises in the context of health insurance costs. The Seventh Circuit Court of Appeals, in Chicago, recently overruled a grant of summary judgment in favor of the employer and sent the case back for a trial where the employer fired a female employee because her spouse was disabled under the ADA and was costing the company a good deal of money as a participant in the company's health insurance plan.

This overall trend toward recognizing the viability of associational discrimination claims should serve as a cautionary reminder to employers about the ever-changing landscape of employment law. The best way to stay abreast of the changes is to frequently update applicable handbooks and policies and to train managers and supervisors on emerging theories of employment discrimination.

Employers' Liability from Discriminatory Acts of Independent Recruiters

In today's market, recruiting talented employees has become an industry unto itself. Most companies, to varying

degrees, outsource their recruiting efforts. Some use independent recruiting firms for all hiring needs, while other companies use recruiters for selected, higher-level positions. Regardless of the frequency of use, employers need to be aware that their outside recruiters can subject them to liability under federal discrimination statutes. A recent case out of the Second Circuit Court of Appeals in New York illustrates the point.

A Manhattan apartment leasing company hired a recruiter to find a new sales associate for the company. Unbeknownst to the leasing company, the independent recruiter allegedly told one of the interviewed candidates that he was too old for the position, and the candidate sued the apartment leasing company for age discrimination under the ADEA. The company contended it did not act unlawfully, as the recruiter (and not the company) made the age-based hiring decision. However, the court rejected the company's interpretation, finding that the ADEA's language lays the responsibility for discriminatory hiring practices squarely at the feet of the employer. However, the key to liability in this case was the fact that the recruiter had either actual or apparent authority to make hiring decisions for the employer – i.e., the recruiter was deemed to be an "agent" of the employer.

Tips to avoid this type of liability include carefully vetting independent recruiters, making sure they understand proper hiring and interview EEO practices, and asking about the recruiter's past training with regards to federal EEO laws. In addition, if your company does not want to give hiring authority to the recruiter, make sure that both the recruiter and the job candidates are aware that actual authority to make hiring decisions rests with the company, not the recruiter.

D.C.'s Human Rights Act Covers Non-District Employees

The District of Columbia Human Rights Act ("DCHRA") provides broad employment discrimination protection for a broad class of individuals – much broader than federal civil rights statutes and most other states' statutes. The DCHRA prohibits discrimination based on a person's race, color, religion,

national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation or political affiliation. Now, the D.C. courts are pushing the DCHRA's broad protections beyond D.C.'s geographical borders.

In *Monteilh v AFSCME, AFL-CIO*, an employee working in California and Georgia sued his employer for race and sex-based employment discrimination in a D.C. court, pursuant to the provisions of the DCHRA. The employee had never worked in or applied for a position in D.C. However, the employer is headquartered in D.C. and the challenged employment decision was made at the employer's corporate offices in the District. The D.C. Court of Appeals found the contacts with the District sufficient to invoke the DCHRA anti-discrimination provisions and to subject the claim to the jurisdiction of the D.C. courts.

While the full ramifications of this decision are yet to be determined, the implications for employers are troubling. Under the court's rationale, if employees who have never worked in the District are protected by DCHRA's anti-discrimination laws, then clearly the statute should also protect employees who regularly or even sporadically work in D.C. for an employer who is headquartered in another state.

Accordingly, all employers who are headquartered, have an office, or occasionally send employees into the District for business purposes need to be fully apprized of the expansive anti-discrimination protections afforded by the DCHRA and take appropriate steps to bring their policies and practices into compliance. Unlike federal discrimination statutes, DCHRA has no damages cap and provides aggrieved employees with an immediate choice to proceed to court rather than going through the standard administrative agency complaint process.

If you have any questions about whether your company's policies or practices might subject it to liability under D.C.'s anti-discrimination statutes, we strongly advise you to consult your Labor and Employment counsel for further guidance and compliance assistance. ♦

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VIRGINIA ASSOCIATION OF BROADCASTERS LEGISLATIVE COCKTAIL RECEPTION

Wednesday, January 20, 2010

The Jefferson Hotel

101 West Franklin Street, Richmond, VA

Name: _____ Spouse/Guest: _____

Name: _____ Spouse/Guest: _____

Call Letters: _____ Company: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

E-mail: _____ Phone: _____

VAB Member Registration Fees:

Member: \$50 per person

Number of registrants: _____ x \$50 = \$ _____

Guest: \$35 per person

Number of registrants: _____ x \$35 = \$ _____

Non-Member Registration Fees:

Non-Member: \$80 per person

Number of registrants: _____ x \$80 = \$ _____

Guest: \$60 per person

Number of registrants: _____ x \$60 = \$ _____

TOTAL AMOUNT ENCLOSED: \$ _____

Make checks payable to VAB and mail with your registration form to:

Virginia Association of Broadcasters
600 Peter Jefferson Parkway, Suite 300
Charlottesville, VA 22911
(434) 977-3716 • fax (434) 979-2439
www.vabonline.com

Full payment must accompany registration form. Cancellations must be received in the VAB office by Wednesday, January 13 to qualify for a refund. For lodging reservations, call (800) 424-8014 or (804) 788-8000. **Hotel reservations must be received at the hotel on or before Monday, December 21, 2009.** After this time, reservations will be made based on space and rate availability.



DECEMBER 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.

Submit to the Online Job Bank:

- Go to www.vabonline.com

REPORTER/PRODUCTION

TV3 Winchester is looking for a talented, organized and motivated Reporter / Producer to help take our station to the next level. We're looking for a natural story-teller who can creatively showcase the "Big Story." The ideal candidate will also have some line producing experience. Knowledge and experience with internet news presentation is desired. Experience with I-News and non-linear show editing and production is a plus. This is a great opportunity to work in a growing market just an hour from Washington DC. Check us out on the web at tv3winchester.com to see our product. If you think you can take us to the next level, please RUSH your resume, tape and news philosophy to Denise Chandler, News Director, TV3 Winchester, 633 Millwood Avenue, Winchester, VA 22601. You may email your resume to denise@tv3winchester.com. TV 3 Winchester is a drug-free workplace. EOE

GRAPHIC DESIGNER: TV/WEB

WAVY-TV (NBC) and WVBT-TV (FOX) in Norfolk VA is seeking a highly skilled graphic designer to join our team. The right person needs to be comfortable with taking projects on from start to finish. Well-rounded design sensibility is a must. Candidate will work the evening shift and will be responsible for creating news graphics and animations. Other duties include operate Deko 3000 during newscast and update web content on regular basis. Must be flexible with hours and can learn and work quickly. College degree or relevant experience required. The ideal candidate should be proficient in Photoshop, Illustrator and After Effects. Deko 3000, Web design and 3D experience a definite plus. Send resume and DVD to: Design Director, WAVY-TV/WVBT-TV, 300 Wavy St., Portsmouth, VA 23704 or email to: ashish.banthia@wavy.com. EOE.

NEWS PRODUCER

WAVY-TV, the #1 station in the Norfolk, Virginia market is looking for a multi-platform newscast producer. Candidate must function well in a fast-paced, content-driven environment with an ability to direct a team of reporters, writers, and production staff to be the best on the air and online. You'll conceive and execute daily newscasts & webcasts. Creativity with graphics and strong

tease-writing skills are necessary. Send your latest newscast and resume to: Kathy Hostetter News Director WAVY-TV 300 Wavy St. Portsmouth, VA 23704. No phone calls, please. EOE.

GENERAL SALES MANAGER

The Charlottesville Newsplex (home of CBS19, ABC16, WAHU FOX27, newsplex.com, and more) in award-winning Charlottesville, VA (<http://bit.ly/86LJsA>) is looking for the next leader to take our sales team and revenue to the next level. The successful candidate must be able to recruit, train, motivate, and teach by example, on the street, in sales calls... This is not a desk job! Previous media sales management experience is preferred; must have exceptional ability to price and manage the increasing pressure on our wide array of inventory. We are aggressive revenue seekers with huge upside potential in our market. Gray Television is an Equal Opportunity Employer and a Drug-Free Workplace. Excellent driving record is a MUST. If you think you have what it takes, rush your cover letter and resume to hr@newsplex.com, or to Charlottesville Newsplex, Attn: GSM Position, 999 2nd Street SE, Charlottesville, VA 22902.

METEOROLOGIST

Meteorologist- NBC12 Richmond's No. 1 news organization has an immediate opening for a dynamic Meteorologist to join its weather team. Successful candidate must be solid forecaster and concise communicator who can tell a compelling weather story. Experience required. AMS Seal preferred. Schedule includes Saturday & Sunday morning, afternoon & evening shows. Send cover letter with salary requirements, resume and non-returnable demo tape to Frank Jones, Assistant News Director, NBC12, P. O. Box 12, Richmond, VA 23218. EOE M/F/D/V.

Associate Director FT

PROMOTION WRITER/ PRODUCER/EDITOR

WAVY-TV (NBC) and WVBT-TV (Fox 43) is seeking a passionate self-starter to join a talented team of promo pros. If you are an exemplary writer & a news junkie then come live at the beach. Must have proven writing, producing and editing skills. Responsibilities include news sweeps promotion and station image promotion -- non-linear editing a must; AfterEffects and Photoshop a plus. College degree in broadcast or similar field required. Send/email cover letter, resume and memorable DVD to: Judy Triska, Creative Services Director, 300 WAVY St., Portsmouth, VA 23704, Judy.triska@wavy.com. No Calls, please. EOE.

ACCOUNT EXECUTIVES

WWDE-FM, WPTE, WNVZ-FM AND WVKL-FM have full-time positions available for account executives. The qualified candidates will be responsible for selling and servicing direct clients, agencies, developing new business accounts, coordinate production of

commercial spots with production manager and client, and create and present ideas to clients to achieve their advertising goals. The candidates will also be responsible for collection of invoices from accounts. Must be organized, idea-oriented and possess strong communication and presentation skills. Entercom Norfolk is an Equal Opportunity Employer and offers a competitive compensation package. Email resume to cmorelli@entercom.com. EOE.

ON AIR PERSONALITIES

Entercom Norfolk is looking for future air personalities both full and part time. 3 to 5 years experience is necessary for full time positions and some experience is necessary for part time positions. Full time air personalities will also be expected to be proficient in public appearances, voice work and commercial production. Entercom Norfolk is an Equal Opportunity Employer and offers a competitive compensation package. Send demo tapes or CD's, thoughtful cover letters and resumes to: Entercom Norfolk, Don London, Operations Manager, 236 Clearfield Ave., #206, Virginia Beach, VA 23462

PART TIME PROMOTIONS ASSISTANT

WWDE-FM, WPTE-FM, WVKL-FM and WNVZ-FM have part time positions available for promotions. The qualified candidates will be responsible for setting up remote broadcasts, driving station vehicles, interacting with account executives, listeners and clients, handling heavy equipment, and maintaining promotional equipment. The qualified candidates MUST BE 21 YEARS OR OLDER, have a flawless driving record, be outgoing, organized, possess strong communication skills, available nights and weekends and able to handle heavy equipment without problems. Email resume to cwilson@entercom.com. EOE.

DIGITAL SALES ACCOUNT EXECUTIVE

Entercom Norfolk is looking for a Digital Sales pro to sell our portfolio of digital assets and help oversee the executive of these transactions. The ideal candidate has experience in the media/internet industry and can step in and drive the company's revenue generation with online assets. They will have the ability to pitch and close business. They will be able to comfortable in communication about the latest online technology including streaming audio and video/viral/search/rich media/mobile and SMS marketing technologies, methods and best practices. Prior experience with an online ad network is a plus, and having an entrepreneurial personality is a must. You should be able to express yourself well in email, Power point, Excel and in person. Entercom Norfolk is an Equal Opportunity Employer and offers a competitive compensation package. Email resume to hcleveenger@entercom.com EOE.

To view the latest listings visit www.vabonline.com and click "Careers."

MAR
10
2009

Performance Tax HOT 100

Radio is where listeners discover new music and new artists. It's where the artists you love got their big breaks. But the record labels are pushing a bill that would levy a fee, or "performance tax," on the music local radio plays. That means radio stations will inevitably play less music and stop taking chances on unknown artists. The performance tax – bad for radio, bad for music.

THIS WEEK	LAST WEEK	WEEKS ON	TITLE PRODUCER, RECORD LABEL	THIS WEEK	LAST WEEK	WEEKS ON
1	1	52		1	1	52
2	2	52		2	2	52
3	3	52		3	3	52
4	4	52		4	4	52
5	5	52		5	5	52
6	6	52		6	6	52
7	7	52		7	7	52
8	8	52		8	8	52
9	9	52		9	9	52
10	10	52		10	10	52
11	11	52		11	11	52
12	12	52		12	12	52
13	13	52		13	13	52
14	14	52		14	14	52
15	15	52		15	15	52
16	16	52		16	16	52



WHAT THE WEEKLY HOT 100 LIST MIGHT LOOK LIKE IF THERE WAS A PERFORMANCE TAX ON RADIO.

