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# Newsletter

Virginia Association of Broadcasters

March 2010

## Broadcasters Question FCC National Broadband Plan

The FCC has unveiled its National Broadband Plan, a blueprint aimed at bringing faster Internet speeds to all U.S. households at affordable prices. While Representative Rick Boucher, chairman of the House Energy and Commerce Subcommittee on Communications, Technology, and the Internet, calls the proposal by the Federal Communications Commission "the right approach," broadcasters are raising concerns.

"We were pleased by initial indications from FCC members that any spectrum reallocation would be voluntary, and were therefore prepared to move forward in a constructive fashion on that basis," says NAB Executive Vice President Dennis Wharton. "However, we are concerned by reports today that suggest many aspects of the plan may in fact not be as voluntary as originally promised. Moreover, as the nation's only communications service that is free, local and ubiquitous, we would oppose any attempt to impose onerous new spectrum fees on broadcasters."

Democrat John Dingell says he is concerned because broadcasters already gave up airwaves during the digital transition, and it could hamper the promotion of diversity and localism.

"Further loss of spectrum can have a very serious adverse affect on the public," Dingell said at the hearing to examine the FCC's broadband plan.

The blueprint, which was requested by Congress, also proposes that broadcasters like CBS Corp voluntarily give up some of their airwaves for auction to wireless broadband providers, with broadcasters getting some of the proceeds.

In the plan the FCC is seeking to free 500 megahertz of airwaves for mobile broadband services over the next decade. The agency wants additional authority from Congress to conduct those auctions.

FCC Chairman Julius Genachowski

and wireless companies such as AT&T Inc, Verizon Wireless, Sprint Nextel Corp and T-Mobile, the U.S. unit of Deutsche Telekom AG, have been warning of a looming spectrum crisis. Verizon Wireless is a venture of Verizon Communications Inc and Vodafone Group Plc.

Members of the House panel did not say when they might introduce legislation to expand the FCC's auction authority.

Fred Upton, a Michigan Republican, said committee members are working on auction legislation but also expressed concern that reallocating airwaves could cause harm to consumers and broadcasters.

The FCC is also proposing to auction a section of the airwaves called the "D Block" for commercial purposes. The proceeds of that auction is expected to fund an emergency broadband response

network for firefighters, police and other public safety officials.

"We strongly support congressional efforts to conduct an inventory of all available spectrum," says Wharton, "And believe that no reallocation plan should move forward without a complete accounting of how the airwaves are allocated, licensed and used."

The FCC's National Broadband Plan would need Congressional approval before taking affect.

"NAB intends to work with the FCC and Congress to build a communications system that benefits all Americans," says Wharton. "We will examine closely the details of the National Broadband Plan, and encourage Members of Congress to do the same."

The National Broadband Plan is available for review on the FCC's website at [www.broadband.gov](http://www.broadband.gov). ♦

### The Spectrum Reclamation Timeline

Band	Key Actions and Timing	MHz Made Available
Broadcast TV	2011 Order Issued 2012-13 Auction 2015 Band Transition/Clearing	120
Wireless Communications Service	2010 Order Issued	20
Advanced Wireless Services	2010 Order Issued 2011 Auction	60
D Block	2010 Order Issued 2011 Auction	10
Mobile Satellite Services	2010 L-Band and Big LEO Orders Issued 2011 S-Band Order Issued	90
Total		300



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## MARCH COMPLIANCE TIP

### Compliance is like Golf!

With the warmer temperatures and longer days, my thoughts of golf and tuning up my game after a long cold winter are on the rise. I am reminded of the advice of a former golf instructor when I complained that I had problems hitting out of sand bunkers. He quipped, "Then don't hit the ball into the sand." As unusual as this advice seemed for my sand play, it once again reminded how compliance is like golf.

Using the example of my sarcastic golf instructor, want to be compliant, don't NOT do compliance. Maybe a better way to say it is, "just do it" (With thanks to NIKE).

- Need to recruit for a new vacancy, just do it!
- Need to place that information into the Public File, just file it!
- A report due, then assign it, make sure it is completed, and just file it.
- Have a question, call your compliance attorneys, receive their guidance and follow it.

It seems so simple. In 2010, here is to keeping it in the fairway, no sand bunkers or compliance issues. Let's just do it! ❖

This compliance tip has been provided by Harrison Pittman of On-Time Online Broadcast Compliance, [www.OnTimeOnlinebc.com](http://www.OnTimeOnlinebc.com), [hpittman@ontimeonlinebc.com](mailto:hpittman@ontimeonlinebc.com).



**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 [www.vabonline.com/members/login.aspx](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](mailto:christina.meyer@easterassociates.com).**

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# "Equal Opportunities" Refresher for 2010 Political Season

by **Stephen Hartzell  
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With the 2010 political election cycle underway, many stations have questions about application of the "equal opportunities" law. At this time, stations may wish to refresh their staff on various aspects of how the "equal opportunities" rule works. Of course, this refresher is not intended to be legal advice that applies to any station's particular circumstances or any specific set of facts—stations should not rely on this article for legal advice and instead should contact their legal counsel to determine whether and how the equal opportunities law applies in a particular situation.

The equal opportunities rule states that when a station permits a "legally qualified" candidate for public office to "use" its facilities, the station must afford "equal opportunities" to all other candidates for that office. Here is an overview of issues that station staff should be aware of with respect to candidate appearances and equal opportunities:

## All Public Offices and Elections

The "equal opportunities" requirement applies in elections for all public offices, including federal, state, regional, county, and municipal offices. Similarly, the law covers all public elections including primary, general, run-off, and special elections.

## Candidates Must Be Opposing Candidates

A candidate acquires a right to equal time only when an appearance is made by an "opposing" candidate. Thus, an appearance by a Republican candidate for sheriff would not give rise to equal time by a Democratic candidate for Congress—because the candidates are running for different offices, they are not "opposing" candidates.

## "Equal Opportunities" Means Equal Opportunities

Once a station adopts a policy of selling or giving time it may not discriminate

in any way among opposing candidates. A station, upon timely demand, must afford "equal opportunities" to all opposing candidates for the same office. This requirement applies to the availability of broadcast time and the desirability of the specific time period, the use of production facilities, the extension of credit, and the application of technical requirements.

## A Timely Request Must Be Made for "Equal Opportunities"

A candidate's right to "equal opportunities" arises only when a timely request is made. Such requests must be made within seven days of an appearance by an opposing candidate (or in advance of an appearance if directed to a specific future use known at the time of the request). Except for the limited exceptions discussed in the following paragraph, stations have no obligation to notify candidates when time is sold to other candidates, nor is a station required to notify a candidate of time given without charge to opposing candidates. Stations must ensure that records of free time and notations of all requests for time are immediately placed in the station's public political file. Failure to promptly place notification of a use in the political file may extend the seven-day period due to lack of proper notice.

If a station chooses to tell a candidate that it has sold time to one or more of his or her opponents, it must provide the same information to all the opponents. Also, if a station initially told candidates that it would not sell time on election day, but then does sell or give time on that day to a candidate, the station must notify opposing candidates to give them a reasonable opportunity to request equal time. A station may not discriminate in any way in its dealings with candidates.

"Equal opportunities" rights cannot be "daisy chained." Assume, for example, that X, Y, and Z are all legally qualified candidates for governor. X broadcasts an announcement (a "use") to which Y makes a timely "equal opportunities" request, but Z fails to do

so. Z is barred from responding within seven days of Y's responsive use. Z is required to respond to the first prior use triggering the right of response which, in this example, was X's use.

The FCC has held that stations may be justified in rejecting a candidate's "eleventh hour" request for equal time. The Commission has said that if a candidate, during the closing days of an election, "sits" on his or her rights and does not make a request for equal time until a day or two before the election, a station may limit the amount of time sold if (1) grant of the request would seriously interfere with the station's duty to program in the public interest or (2) grant of the request would give the last-minute purchaser an unfair advantage over opposing candidates by allowing him or her to saturate broadcast time during the last few days before an election. This FCC policy applies to both federal and non-federal candidates. But the rule may be slightly different for *federal* candidates. If a *federal* candidate "sits" on his or her rights, the Commission has said he or she may still be entitled to purchase some amount of time.

## Network Programming

Appearances by candidates on network programs will trigger "equal opportunities." In such cases, the "equal opportunities" requirement is ultimately the station's obligation if the network does not provide "equal opportunities" upon a proper request.

## Some Appearances Are Exempt from the "Equal Opportunities" Requirement

Even if the broadcast constitutes a "use" by a "legally qualified" candidate, the "equal opportunities" requirement does not apply to an appearance by a candidate on any of the following types of programs:

- Bona fide newscasts, including specialized news shows such as "Entertainment Tonight" and "Inside Edition."

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# FCC Commission Approves FM Digital Power Increase

The FCC has released an order ("Order") adopting changes to its digital audio broadcasting technical rules to permit most FM stations to voluntarily increase FM hybrid digital effective radiated power ("FM Digital ERP") from the current maximum permissible level of one percent of authorized analog effective radiated power ("FM Analog ERP") up to a maximum of 10 percent of authorized FM Analog ERP. The Order also implements interference mitigation and remediation procedures to promptly resolve allegations of digital interference to an authorized full-service FM analog facility caused by a digital power increase. As noted below, these changes are not yet in effect.

**Background.** In October 2008, the FCC released a public notice soliciting comment on a request filed in June 2008, which asked the Commission to modify the technical specifications for FM digital audio broadcasting and also sought comment on two related technical studies. The request was filed by a group of 18 broadcasters operating over 1,200 commercial and noncommercial educational FM radio stations and the four largest manufacturers of broadcast transmission equipment (collectively, the "Joint Parties"). The Joint Parties requested that the Commission increase the maximum permissible digital operating power of FM stations from the current level of one percent of a station's authorized analog power (-20 dB) to a maximum of 10 percent of a station's authorized analog power (-10 dB). The Joint Parties also requested that the Commission establish a procedure for investigating and resolving reasonably documented allegations of harmful interference caused by increased FM digital power.

**Voluntary Increases Up to 6 dB.** According to the Order, "[v]irtually all of the licensees of the nearly 1,500 commercial and noncommercial FM stations currently operating hybrid FM digital facilities have concluded that the coverage resulting from their operations at maximum permissible FM Digital ERP levels (one percent of FM Digital ERP) does not replicate analog coverage, and that indoor and portable coverage are particularly and significantly diminished." The Order also reports that the number of notifications of new hybrid FM digital operations has decreased

"significantly" in the past two years. Based on these findings, the Commission has concluded that it must increase permissible FM Digital ERP "to improve FM digital coverage and to eliminate regulatory impediments to FM digital radio's ability to meet its full potential and deliver its promised benefits."

Thus, the FCC has determined that an immediate voluntary 6 dB increase in FM Digital ERP is appropriate for all FM stations, except for "super-powered" FM stations. The maximum permissible FM Digital ERP for "super-powered" stations will be limited initially to the higher of either (1) the currently permitted -20 dBc level or (2) 10 dB below the maximum analog power that would be authorized for the class of the "super-powered" FM station adjusted for the station's antenna height above average terrain and predicted in accordance with existing FCC rules. For a station to determine if it is, by definition, a "super-powered" FM station, the FCC has provided an FM Super-Powered Maximum Digital ERP Calculator on the FCC's website at <http://www.fcc.gov/mb/audio/digitalFMpower.html>. (The calculator requires the licensee to enter the FM station's call sign and Facility ID Number.) A "super-powered" FM station must file an application, in the form of an informal request, for any increase in the station's FM Digital ERP.

Beginning on the effective date of the Order and subject to the "super-powered" limitations described above, an eligible FM station may begin operation with FM digital operating power up to -14 dBc (that is, up to a 6 dB increase). The station must electronically notify the FCC of increased power FM digital operation within 10 days of commencement using the Digital Notification form available through the FCC's Consolidated Database System Electronic Filing System. Eligible FM stations that wish to begin increased power FM digital operation before the effective date of the Order must file a request for Special Temporary Authorization.

**Increases Over 6 dB.** FM digital broadcasters may be able to increase digital power more than 6 dB, or beyond -14 dBc, in certain circumstances by submitting an informal request to the FCC. The Order sets out specific technical standards for FM digital operations

beyond -14 dBc.

**No LPFM Protection Rights.** Some commenters in the power increase proceeding initiated by the Joint Parties requested that the Commission establish protection rights for LPFM stations from digital FM interference. The FCC specifically declined to establish new protection rights for secondary services, like LPFM, from first-adjacent channel full-service analog FM stations commencing new or higher power digital operations within the narrow scope of the Order. Stations will not be required to take into account nearby LPFM stations in calculating permissible digital power levels in excess of -14 dBc.

**Digital/Analog Protection Standards.** Certain commenters also suggested that the FCC adopt protection standards that would, for example, require a station seeking a digital power increase to document the potential for interference to analog signals. The FCC rejected this proposal, finding instead that the current record does not support the establishment of protection standards. According to the Order, the FCC is "convinced that it is imperative for us to implement a power increase promptly and that the record establishes that the digital power limits set forth in the Order will provide the necessary protection to analog FM stations. However, "out of an abundance of caution," the Order establishes interference remediation procedures (discussed below) to address instances of loss of analog service within a full-service FM station's protected contour.

**Interference Protection and Complaint Remediation.** The Order establishes explicit resolution procedures to address interference that may result to full-service analog FM stations due to another FM station's digital power increase. However, LPFM and FM translator stations are not eligible to avail themselves of these interference remediation procedures.

FCC staff will review each FM digital interference complaint and order appropriate action by the licensee of the interfering FM digital facilities within 90 days of the date on which a complete and sufficient complaint has been filed. If the FCC fails to act within the allow-

*(continued on next page)*

## FM Power Increase

(continued from previous page)

able 90-day period, the interfering station must immediately reduce its FM Digital ERP. Stations operating with FM Digital ERP in excess of -14 dBc must immediately reduce FM Digital ERP to -14 dBc. If ongoing complaints of objectionable interference from the FM digital facilities persist, then the Commission may require subsequent 3 dB reductions in FM Digital ERP to -17 dBc and -20 dBc, respectively, until it acts on the pending interference complaint. Stations operating with FM Digital ERP of -14 dBc or less must immediately reduce FM Digital ERP to -17 dBc. If interference complaints persist after this initial reduction, the

FCC will order the station to reduce FM Digital ERP to the currently permitted maximum of -20 dBc and require it to remain at that level until the FCC acts on the pending FM digital interference complaint.

According to the Order, the FCC reserves the right to revisit the maximum permissible FM digital power levels in the future if implementation of the new FM digital power increases results in a widespread, "unacceptable" level of interference to existing FM analog stations.

The new digital power increase rules and interference procedures go into effect 30 days after publication of the Order in the Federal Register, or announcement in the Federal Register that OMB has approved the information collection

aspects of the Order, whichever is later. As of March 12, 2010, neither publication has occurred.

If you should have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned. ❖

*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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## Equal Opportunities

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- Bona fide news interview programs that are regularly scheduled in which newsworthy guests are occasionally featured and the host controls the interview process (e.g., "Meet the Press," "Face the Nation," "Nightline," "Today," "Good Morning America," "The Tom Joyner Radio Program," "Politically Incorrect with Bill Maher," "Donahue," "Face to Face," "Larry King," "The Howard Stern Show," and similar shows). Stations must be careful to ensure that all elements of this exemption are present. For example, radio shows on which the Mayor, Sheriff, or other local official provides a weekly update of local affairs may or may not qualify for the exemption—if a local official who is running for office has control over the content presented on the show and is not being interviewed by the show's host, or if the local official is the host of the show, then the appearance by the local official is not exempt and the appearance would trigger the equal opportunities rule. Stations should carefully evaluate appearances made by local officials who are running for office.

- Bona fide news documentaries if the appearance of the candidate is incidental to the presentation of the

subject or subjects covered by the news documentary.

- On-the-spot coverage of bona fide news events including, but not limited to, political conventions and activities incidental thereto.

### More About "On-the-Spot Coverage of Bona Fide News Events—Debates and Special Programming"

With respect to the exemption for candidate appearances during "on-the-spot coverage of bona fide news events," a couple of points warrant further discussion. First, the FCC has ruled that the broadcast of a debate between candidates qualifies as "on-the-spot coverage of a bona fide news event" so long as (1) a decision to broadcast a debate is a bona fide journalistic decision and the format of the debate is determined by the station or an independent third party; (2) there are structural safeguards to ensure that no candidate will be favored or disfavored in the broadcast; and (3) all station decisions are based on bona fide news judgments—there must be reasonable, objective standards for deciding which candidates to include and which to exclude. The FCC also has made clear that political candidate debates that meet the three factors and are sponsored by broadcast stations are exempt from the "equal opportunities" requirement.

Second, the FCC has ruled that

special programs featuring candidate interviews and candidate discussions qualify as "on-the-spot-coverage of a bona fide news event" provided that the decision to broadcast the special programs is a bona fide journalistic decision based on bona fide news judgments and that there are structural safeguards designed to avoid favoritism towards one candidate or the other. The "on-the-spot" element of the news event exemption is not lost when programming is taped and shown at some later date so long as the broadcast is of a "reasonably recent event." Many stations have used this ruling to provide "free time" to candidates for the discussion of public issues in increments of 5, 15, or even 30 minutes.

### Consult with Communications Counsel

Stations that receive an equal opportunities request may wish to consult with their communications counsel prior to granting (or denying) the request. ❖

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## Bipartisan House Opposition to RIAA Performance Tax Reaches 260

Reps. Suzanne Kosmas (D-FL) and Tim Murphy (R-PA) have become the latest House co-sponsors of a bipartisan Congressional resolution opposing a performance tax on local radio stations. The Local Radio Freedom Act (H. Con. Res. 49), which opposes "any new performance fee, tax, royalty, or other charge," is now backed by 260 House lawmakers. An identical Senate resolution is supported by a bipartisan group of 27 U.S. Senators.

The growing Congressional opposition comes as the Recording Industry Association of America (RIAA) continues to lobby in support of legislation that would require local radio stations to pay an additional fee for every song aired free to listeners.

"Local radio broadcasters and our 239 million weekly listeners appreciate the growing Congressional opposition to RIAA's performance tax campaign," said NAB Executive Vice President Dennis Wharton. "We remain cautiously

optimistic that Congress will ultimately reject RIAA's effort to enact this job-killing legislation, which would threaten the very future of a musician's greatest promotional vehicle: free, local radio."

Earlier this month, a giant inflatable pig was planted in front of the NAB headquarters by the Radio Accountability Project, whose members include the Recording Industry Association of America, SoundExchange, and the American Federation of Musicians.

"It's no surprise that RIAA is now employing silly frat-boy stunts, given its well-documented practice of suing college kids to rescue a bankrupt business model," said NAB Executive Vice President Dennis Wharton. "It also seems appropriate for RIAA to use an inflatable pig as its mascot, since its foreign-owned members would be the biggest beneficiaries of performance tax pork. RIAA is losing this issue on Capitol Hill and in the court of public opinion, and today's demonstration represents a new low in

a campaign of utter desperation."

The broadcast association provided sausage pizza for the five protestors demonstrating outside NAB's offices. "We're suggesting they provide this food to the scores of exploited musicians who have had to sue their record label to recoup allegedly unpaid album royalties," Wharton said.

"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, which was unveiled at a 2009 Capitol Hill event hosted by the Free Radio Alliance. The resolution was introduced by Reps. Gene Green (TX-29) and Mike Conaway (TX-11) in the House and by Sens. Blanche Lincoln (AR) and John Barrasso (WY) in the Senate. ❖

### Save The Date

## 73rd Annual VAB Summer Convention

### June 24-26, 2010

## Hilton Virginia Beach Oceanfront





## SPECIAL SECTION: 2010 Industry-Related Legislation

**HB 27 Bristol Virginia Utilities (BVU) Authority; created.** Creates an authority and converts Bristol Virginia Utilities into that authority, to be known as the BVU Authority. This bill is identical to SB 12. *Patrons:* Johnson and Kilgore. 02/04/10 House: VOTE: --- PASSAGE (97-Y 0-N 2-A) 02/26/10 Senate: Passed Senate (39-Y 0-N)

**HB 79 Concealed handgun permit; prohibits clerk of court from providing public access to applications.** Prohibits a clerk of court from providing public access to concealed handgun permit applications and information regarding identifiable permittees without the written consent of the applicant or permittee. The applications and information would be available to law-enforcement agencies, and the clerk of court would be authorized to release aggregate information that does not identify individual applicants or permittees. *Patrons:* Ware, R.L., Cole, LeMunyon and Pollard. 03/08/10 Senate: Left in Courts of Justice

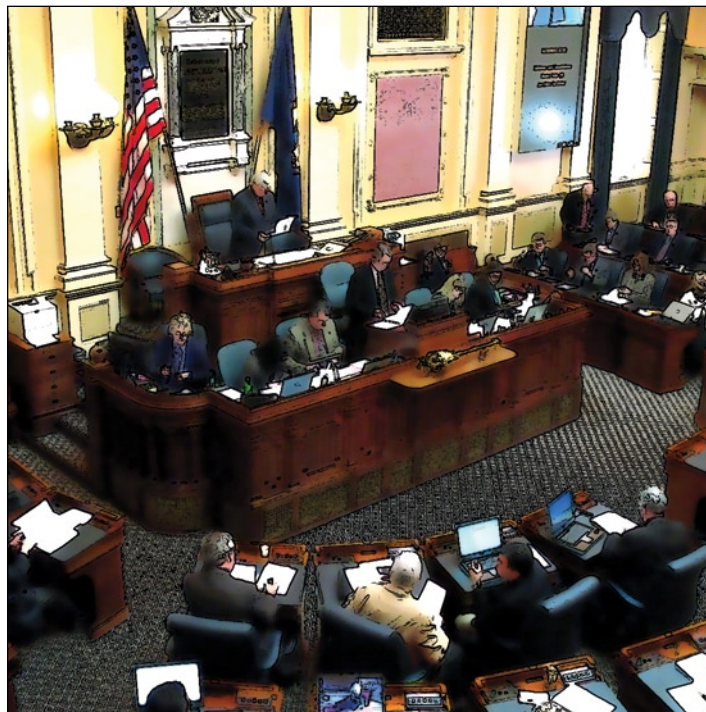
**HB 123 Nanotechnology Authority Act; created.** Establishes the Virginia Nanotechnology Authority to promote development of nanotechnology in Virginia. The Authority will be responsible for administering a fund to be used to provide industry and institutions of higher education with discovery grants, collaboration grants, and prototype grants. The Authority will be governed by a board of directors and managed by a president at the direction of the Board. The president is responsible for creating a virtual Virginia Nanotechnology Users Network to facilitate research and development of nanotechnology at the Commonwealth's institutions of higher education. *Patrons:* Purkey and Nutter. 02/03/10 House: Continued to 2011 in Science and Technology

**HB 211 Freedom of Information Act; definition of scholastic record.** Includes in the definition of scholastic records, those records of an applicant for admission that are maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution. *Patron:* Bulova. 03/02/10 Senate: Passed Senate with amendment (40-Y 0-N) 03/04/10 House: VOTE: --- ADOPTION EMERGENCY (100-Y 0-N)

**HB 280 Fraud to accomplish vote on union organization; person guilty of misdemeanor.** Any person who (i) knowingly and intentionally fails to provide full and complete information regarding the consequences of a signature or a vote or an affirmation by another, or (ii) by fraud, material artifice, trickery, or deception, causes or assists in causing a vote to be taken by non-union employees on whether to organize a union, is guilty of a Class 1 misdemeanor. *Patrons:* Albo, Gilbert and Lingamfelter. 02/10/10 House: Continued to 2011 in Courts of Justice

**HB 431 Freedom of Information Act; proceedings for enforcement.** Clarifies that a FOIA action may be brought in the name of a person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. The bill also clarifies that costs and reasonable fees for expert witnesses may be recovered by the petitioner in a FOIA action. *Patron:* Griffith. 02/08/10 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N) 03/01/10 Senate: Passed Senate (40-Y 0-N)

**HB 432 FOIA; exemption for working papers and correspondence of Clerks of House and Senate.** Provides an exemption from the mandatory disclosure requirements of FOIA for the working papers and correspondence of the Clerks of the House of Delegates and



the Senate of Virginia. *Patron:* Griffith. 02/08/10 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N) 03/01/10 Senate: Passed Senate (40-Y 0-N)

**HB 433 Government Data Collection and Dissemination Practices Act; collection of social security numbers.** Sets out the original date (January 1, 1975) when social security numbers were authorized to be collected/required by state and local agencies under federal law, which is a recommendation of the Freedom of Information Advisory Council. The bill also provides that nothing shall be construed to prohibit the collection of a social security number for the sole purpose of debt collection by state and local agencies. *Patron:* Griffith. 02/16/10 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N) 03/01/10 Senate: Passed Senate (40-Y 0-N)

**HB 434 Freedom of Information Act; exemption for credit card and bank account data.** Exempts from the mandatory disclosure provisions of the Freedom of Information Act those portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. The bill provides, however, that access shall not be denied to the person who is the subject of the record. The bill defines "financial institution" and contains an emergency clause. The bill is a recommendation of the Freedom of Information Advisory Council. *Patron:* Griffith. 02/08/10 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N) 03/01/10 Senate: Passed Senate (40-Y 0-N)

**HB 449 Freedom of Information Act; injunctive relief for public bodies under certain circumstances.** Provides that any public body may petition a court for injunctive relief to restrain a requester from harassment or other abuse of the rights or privileges granted under FOIA. *Patron:* Ware, R.L. 02/02/10 House: Passed by in General Laws with letter

(continued on next page)

# Industry-Related Legislation

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**HB 478 Citizen reported issues and requests; locality to establish database for information.** Requires every locality to establish a database of citizen-reported issues and requests for information, and the governmental responses to such citizen inquiries. Such database shall be maintained in a format that allows public access via the Internet. *Patron:* Carrico. 02/16/10 House: Left in Science and Technology

**HB 510 State Inspector General; established.** Establishes the Office of the State Inspector General to examine the management and operation of state agencies and nonstate agencies that receive state funds, conduct independent evaluations of the programs and activities of such agencies, and investigate complaints alleging fraud, waste, abuse, or corruption by state officers and state employees. A record exemption from the Freedom of Information Act is also provided for investigative notes, correspondence, and information furnished in confidence to the State Inspector General during the investigation of a complaint. *Patron:* Brink. 02/04/10 House: Passed by in General Laws with letter

**HB 518 Freedom of Information Act; public body shall remain responsible for retrieving public records, etc.** Provides that in the event a public body transferred possession of public records for storage, maintenance or archiving, the public body initiating the transfer shall remain the custodian of the records for the purpose of responding to FOIA requests. The bill also adds a definition of "criminal investigative file" and clarifies what records are exempt from FOIA as so defined. The bill provides that undercover operations and protective detail records as well as records of background and internal affairs investigations held by any state or local law-enforcement agencies are exempt from the mandatory disclosure provisions of FOIA. *Patron:* Rust. 02/12/10 House: VOTE: BLOCK VOTE PASSAGE (96-Y 0-N) 03/01/10 Senate: Passed Senate (40-Y 0-N)

**HB 613 Machinery and tools; classification as intangible personal property, exemption from local tax.** Classifies new investments in machinery and tools for manufacturing, processing and reprocessing, mining, and radio or television broadcasting made after July 1, 2010, as intangible personal property and not subject to local property tax. *Patrons:* Purkey, Athey, Cline, Cole, Lingamfelter, Pollard and Villanueva; *Senator:* Wagner. 02/16/10 House: VOTE: --- DEFEATED #2 (48-Y 50-N)

**HB 641 Freedom of Information Act; requests for records may be made by any citizen of United States.** Provides that FOIA requests may be made by any citizen of the United States and not just citizens of the Commonwealth and extends the same privilege to representatives of newspapers and magazines. The bill provides that this privilege is limited to those states which give reciprocal rights to make FOIA requests to Virginia citizens. The bill also allows a public body to require prepayment before providing requested records when the amount for so producing is likely to exceed \$100. *Patrons:* Armstrong and Dance. 02/24/10 Senate: Subject matter referred by letter to the Freedom of Information Advisory Council

**HB 679 Social security numbers; no state or local agency may collect under certain circumstances.** Clarifies that no state or local agency may collect a social security number from an individual unless (i) the collection is required by state or federal law or (ii) the collection is imperative for the performance of that agency's duties and respon-

sibilities as prescribed by law. The bill also makes technical changes. *Patron:* May. 02/11/10 House: Tabled in General Laws

**HB 689 FOIA; party whom writ is served must be served a copy of petition prior to filing.** Clarifies that when an FOIA petition is filed, the party against whom the writ is brought must be served with a copy of the petition prior to filing. The bill contains a technical amendment. *Patron:* Miller, J.H. 02/02/10 House: Incorporated by General Laws (HB976-Anderson)

**HB 836 Social security numbers; no state or local agency may collect under certain circumstances.** Clarifies that a government entity cannot require an individual to furnish his entire social security number or any portion thereof. The bill also clarifies that a social security number or any portion thereof cannot be displayed on a student or government identification card. *Patrons:* Carr and May. 02/11/10 House: Tabled in General Laws

**HB 857 Line of Duty Act; access to records of investigation.** Provides that evidence and documents obtained by or created by, and the report of investigation prepared by, the Department of State Police in carrying out the provisions of this chapter shall (i) be deemed confidential, (ii) be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.), and (iii) not be released in whole or in part by any person to any person except as provided in the Line of Duty Act. *Patron:* Carrico. 02/16/10 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N) 03/08/10 Senate: Passed Senate (40-Y 0-N)

**HB 903 Threat assessment teams; exempts certain records established at higher educational institutions.** Exempts all records of threat assessment teams established at public institutions of higher education from the provisions of the Freedom of Information Act, and allows these teams to receive health and criminal history records of students for the purposes of assessment and intervention. *Patron:* Bell, Robert B. 03/13/10 House: Conference report agreed to by House (97-Y 0-N) 03/13/10 Senate: Conference report agreed to by Senate (39-Y 0-N)

**HB 976 FOIA; party whom writ is served must be served a copy of petition prior to filing.** Clarifies that before a FOIA petition is filed, the party against whom the writ is brought must receive a copy of the petition within a reasonable time prior to the petitioner filing the petition with the court. The bill contains a technical amendment and incorporates HB 689. *Patrons:* Anderson and Lingamfelter. 02/24/10 Senate: Subject matter referred by letter to the Freedom of Information Advisory Council

**HB 977 Freedom of Information Act; record exclusion for visitor information systems in public schools.** Excludes from the mandatory disclosure requirements of FOIA software programs, data, or other records relating to electronic or automated security systems used to monitor or control access to public school buildings or other school property, the disclosure of which would jeopardize the operational or access control features of such system, or would reveal personal information of individuals seeking access to a school building or other school property. The bill defines personal information. *Patron:* Anderson. 02/16/10 House: Left in General Laws

**HB 1028 Freedom of Information Act; recording of public meetings.** Prohibits any public body from conducting a meeting required to be open in any building or facility where any recording devices are prohibited. The bill also clarifies that no public body may prohibit

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# Industry-Related Legislation

(continued from previous page)

or prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. *Patrons:* Pollard; Senator: Stuart. 02/08/10 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N) 03/01/10 Senate: Passed Senate (40-Y 0-N)

**HB 1073 Tobacco Indemnification & Community Revitalization Commission; proprietary record disclosed thereto.** Excludes from the mandatory disclosure provisions of FOIA trade secrets and certain proprietary records disclosed to, provided to, or held by the Virginia Tobacco Indemnification and Community Revitalization Commission in support of or as may be required for an application for or the awarding of a grant. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission. The bill requires the grant applicant to specify the records for which protection is sought before submitting them to the Commission. The bill contains a corresponding meeting exemption for the Commission when discussing the excluded records. *Patron:* Kilgore. 02/08/10 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N) 03/01/10 Senate: Passed Senate (40-Y 0-N)

**HB 1261 Political campaign advertisements; disclosure requirements.** Provides that advertisements on the Internet that do not contain sufficient space to display the required disclosure statement may meet disclosure requirements by providing a direct link to another Internet site that displays the required disclosure statement. *Patrons:* Englin, Morrissey, Sickles and Toscano. 02/16/10 House: Left in Privileges and Elections

**SB 12 Bristol Virginia Utilities (BVU) Authority; created.** Creates an authority and converts Bristol Virginia Utilities into that authority, to be known as the BVU Authority. *Patron:* Wampler. 03/11/10 Governor: Approved by Governor-Chapter 117 (effective 7/1/10)

**SB 147 Freedom of Information Act; proceedings for enforcement.** Clarifies that when an FOIA petition is filed, the party against whom the writ is brought must be served with a copy of the petition prior to filing. The bill contains a technical amendment. *Patron:* Puller. 02/10/10 Senate: Subject matter referred by letter to the Freedom of Information Advisory Council

**SB 207 Threat assessment teams; exempts certain records established at higher educational institutions.** Authorizes threat assessment teams to receive health and criminal history records of students for the purposes of assessment and intervention. *Patron:* Edwards. 03/13/10 Senate: Conference report agreed to by Senate (39-Y 0-N) 03/13/10 House: Conference report agreed to by House (97-Y 0-N)

**SB 274 Animal control records; exempt from release to public name & address of owner of an animal taken in.** Exempts from release to the public the name and address of the owner of an animal that has been taken into custody by animal control officers, law-enforcement officers, humane investigators, or any pound or shelter. *Patron:* Whipple. 02/16/10 Senate: Left in Agriculture, Conservation and Natural Resources

**SB 432 Freedom of Information Act; record exemption for the Statewide Agencies Radio System (STARS).** Provides an exemption from

FOIA for documentation or other information that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the Statewide Agencies Radio System (STARS) or any other similar local or regional communications system (similar communications system) (ii) relates to radio frequencies assigned to or utilized by STARS or similar communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or similar communications system; those portions of engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or similar communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of any person. *Patron:* Edwards. 03/04/10 House: VOTE: BLOCK VOTE PASSAGE (100-Y 0-N) 03/08/10 Senate: House amendments agreed to by Senate (40-Y 0-N)

**SB 525 Cooperative Marketing Fund; dedicates revenues from soft drink excise tax and litter tax thereto.** Dedicates the revenues from the Commonwealth's soft drink excise tax and litter tax to the Cooperative Marketing Fund administered by the Virginia Tourism Authority. The first priority for moneys in the Cooperative Marketing Fund shall be as a match for private funds to be used for the promotion, marketing, and advertising of the Commonwealth's tourist attractions and locations. Current law dedicates the revenues from the two taxes to the Litter Control and Recycling Fund. *Patron:* Norment. 02/16/10 Senate: Left in Finance

**SB 555 Tobacco Indemnification & Community Revitalization Commission; excludes grant application records.** Excludes from the mandatory disclosure provisions of FOIA trade secrets and certain proprietary records disclosed to, provided to, or held by the Virginia Tobacco Indemnification and Community Revitalization Commission in support of or as may be required for an application for or the awarding of a grant. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission. The bill requires the grant applicant to specify the records for which protection is sought before submitting them to the Commission. The bill contains a corresponding meeting exemption for the Commission when discussing the excluded records. *Patron:* Puckett. 02/15/10 Senate: Passed Senate (40-Y 0-N) 02/25/10 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)

**SB 711 Freedom of Information Act; disclosure of criminal investigative records.** Limits the exemption for criminal investigative or prosecution records to those investigations or prosecutions that are ongoing. As a result, criminal investigative and prosecution records would be open to the public after the ongoing criminal investigation or prosecution has become final or has been otherwise terminated, unless there is jeopardy to any other criminal investigation or prosecution. The bill contains technical amendments. *Patron:* Edwards. 02/10/10 Senate: Subject matter referred by letter to the Freedom of Information Advisory Council ♦

# Consumer Health Association Comments on New Bill

**James P. Carroll,**  
**Consumer-Health.net**

The following are some comments regarding the recently passed Health Care Bill. Please keep in mind that this is a 2000+ page bill and that no regulations have been published as of yet. Regulations are the instructions from the various governmental agencies that guide us with respect to compliance. Also, most of the provisions in the bill take effect on January 1, 2014.

Here are some major provisions and I will identify those provisions that take effect in 2010:

1. Community rating- standards are being established for a modified community rating basis. This means that insurance companies will be allowed to rate using only age, tobacco use, family composition, and geographic regions. Experience rating (rating based claim history) would be prohibited. Throughout the bill there is emphasis placed on wellness.

2. Children up to age 26, including married children, can be covered under their parents plan. This will be effective in 2010.

3 Coverage must be offered on a guarantee issue basis in all markets and be guaranteed renewable. Exclusions based on preexisting conditions and policy rescissions would be prohibited in all markets.

4. Lifetime limits are banned and this is effective in 2010.

5. In January 2014, each state must create an Exchange for the sale of individual plans and for small groups.

6. Initially, small groups are defined as employers with up to 100 employees. States can elect to reduce this definition to 50 in 2016.

7. Carriers must pool all individual market and small group market in respective single risk pools.

8. The Department of Health and Human Services (DHHS) must establish four types of coverage (bronze, silver, gold, and platinum). All individual and small group insurers would be required to offer the silver and gold plans.

9. Benefits are expanded beyond the ambulatory, emergency, hospitalization, maternity, prescription, newborn to include behavioral, rehabilitative, preventive and vision care.

10. Insurers who contract to market on a multistate basis must have plans available in all states by year four of participation.

11. Within 90 days of enactment, any individual who has been uninsured for at least 6 months and has a preexisting medical condition can receive coverage through a high risk pool. The pool will end in 2014.

12. A reinsurance program will be established for individual and group markets and all carriers will be required to contribute \$25 billion total to a non-profit reinsurance entity over a two year period.

13. Employers do not have to provide coverage, but if they employ 50 full-time employees they must pay a fine from \$750 to \$2,000 for each full time employee they don't cover, but exempts the first 30 employees from the fine.

14. Effective December 31, 2013 all American citizens must

purchase qualified health insurance.

15. Individuals must report on their federal income tax return the months of the year for which they had qualified health insurance plans. Employers are required to report the value of health benefits on W-2 forms.

16. Individuals and employer group plans that wish to keep their current policy would be able to do so if they included the new mandatory benefits. (Children to 26, no preexisting condition clause, elimination of lifetime maximums, etc.)

17. With respect to HSA's, HRA's, and FSA's, over-the-counter prescriptions drugs can not be reimbursed with these funds.

18. The Secretary of DHHS, together with the states, have new authority to monitor health insurance company premium increases. This begins in 2010.

19. Create a voucher system of tax credits for people with incomes between the 100% and 400% of the Federal Poverty Level (FPL). The voucher would be used at the exchanges.

20. Beginning in 2010, provides tax credits for qualified small employer contributions to purchase coverage for employees. Average annual wages must be under \$40,000.

21. Creates incentives for wellness program for up to 50% of premiums. Establish a 10-state pilot program.

22. The bill assumes the use of agents and brokers to sell, enroll, and assist individuals.

23. Allows the creation of interstate plans and national plans.

24. Creates a National Long Term Care Program for adults who have or develop functional impairments. There would be a 5 year vesting period before beneficiaries would be eligible for benefits. No underwriting would be required.

25. An Excise tax of 40% would apply to insurance premiums in excess of \$8,500 for individuals and \$23,000 for families. Increases the Medicare payroll tax from 2.9% to 3.8% for wages and self-employment income above \$200,000 (\$250,000 married). Increases the penalty for "taxable distributions" for non-qualified medical expenses from HSA's from 10% to 20%.

At this writing, the bill is being sent back to the House of Representatives for corrections. Over the next weeks, months, and I expect years we will be receiving information as how to proceed with various aspects of the bill. I will keep you informed as we learn more about the bill and the respective administrative procedures required to comply. ❖



**CONSUMER  
HEALTH  
ASSOCIATION**





## Virginia Association of Broadcasters Legal Review



### FCC Fines Virginia Broadcaster for Public Inspection File Violations

The FCC Commission recently released a Forfeiture Order ("Order") finding a Virginia broadcaster liable for public inspection file violations related to its obligation to maintain quarterly issues/programs lists in the station's public file. The FCC initially fined the broadcaster \$9,000 for its failure to maintain the required issues/programs lists in the public file for each quarter during the license term (a total of 32 issues/programs lists). The station disclosed in its license renewal application that it was missing issues/programs lists for three full years, or 12 issues/programs reports.

In its response to the FCC's initial fine, the station noted that during the same year that it filed its license renewal application, it had participated in the state broadcaster association's voluntary inspection program, which involves an audit of the contents of the station's public file—the missing issues/programs lists were apparently in the public inspection file at the time of the voluntary inspection because, according to the Order, the state broadcaster association reported no violations to the station. Thus, the Commission concluded that the missing issues/programs lists were created and timely placed in the public file as required, but the 12 reports in question were apparently "misplaced for a brief period of time" at some point after the voluntary inspection.

In the Order, the FCC treated the station's participation in the voluntary inspection as a "good faith effort to comply with our rules," which, according to the Order, warranted a downward adjustment in the fine. This fact, coupled with the station's history of compliance, led the FCC to reduce the fine to \$1,000.

This case offers an opportunity to remind radio and television broadcasters of their obligations to maintain in each station's public inspection file, issues/programs lists for each quarter during the station's license term. As broadcasters are aware, the FCC's rules

require each station to place in the public inspection file every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.

The list for each calendar quarter must be placed in the public file by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October through December, April 10 for the quarter January through March, etc.). The list must include at a minimum a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs must include the time, date, duration, and title of each program in which the

issue was treated. Issues/programs lists must remain in the public inspection file until the station's next license renewal is granted.

Additionally, the Order presents an opportunity to remind stations to consider participating in the VAB's voluntary inspection program to ensure proper maintenance of issues/programs lists and other materials required to be in the public inspection file in compliance with the FCC's rules. Such an inspection should result in the identification of discrepancies so the station may take corrective action. Note: participation in the voluntary inspection program does not eliminate the possibility of fines for public inspection file violations. ♦

### Third Circuit Lifts Stay On FCC Ownership Rules

On March 23, 2010, the U.S. Court of Appeals for the Third Circuit lifted the long-imposed stay on certain of the FCC's ownership rules adopted in 2003 and 2007. At the same time it lifted the stay, the Court established a briefing schedule that begins May 17, 2010.

In 2003, the FCC, under the leadership of then-Chairman Michael Powell, adopted rules that significantly relaxed the cross-ownership regulations. The 2003 ownership rules were challenged in federal court, and the Third Circuit ultimately granted a motion to stay certain of the new rules until full judicial review of the rules could be completed. Ultimately, the Third Circuit vacated certain ownership rules adopted in 2003 and remanded the ownership proceeding back to the

FCC for further consideration, but kept the stay in place.

In late 2007, the FCC, under the leadership of then-Chairman Kevin Martin, adopted a rule that relaxed the newspaper/broadcast cross-ownership rule. This rule was generally considered to be more conservative than that adopted by the FCC in 2003. Again, this new ownership rule was challenged in federal court, and the Third Circuit imposed a stay as to the new rule.

It is uncertain at this stage what practical effect, if any, the lifting of the stay will have on station ownership.

With its action on March 23, the Third Circuit has opened the door to begin consideration of the legal arguments challenging the ownership rules. ♦

**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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## EMPLOYMENT LAW UPDATE: New Rules and Regulations from the Feds

By John G. Kruchko and  
Kevin B. McCoy\*

For most news consumers, the last several months have been dominated by Congress' health care debate (or debacle, depending on your perspective). Even the Employee Free Choice Act (i.e., the card check bill), once considered an imminent foregone conclusion, has disappeared into the health care morass that has consumed the valuable time of our federal congressmen and senators. If you didn't know it, you might think that the entire federal government has done nothing else at all in the interim. Regrettably for employers, the current administration is continuing its efforts (sort of "on the sly") to provide more rights and remedies to employees and punish unwary employers. What follows are a few examples that could dramatically impact your business.

A.Its Time to Re-evaluate Your

Company's Independent Contractors

Depending on the industry or area of the country in which your company does business, you may recognize such terms as "consultant," "contractor," or even "1099 employee," which are all used interchangeably to describe those individuals who perform services for a company but are not considered to be regular employees. It will come as a surprise to many to learn that such terms have no legal meaning whatsoever. Legally speaking, there are only two terms that matter: "employee" and "independent contractor." Furthermore, whether a person is an "independent contractor" or "employee" cannot be determined by a private agreement between the parties. For years, employers have blurred the lines between these two types of workers, often preferring to classify people as "independent contractors," because such personnel are not due health insurance, vacation, sick leave, nor are they

subject to payroll employment taxes. As a result, employers routinely misclassify their contractor personnel, and the law provides hefty fines and penalties (some accruing daily) for such errors.

In its 2011 budget, the Obama administration set aside \$25 million dollars for new Internal Revenue Service ("IRS") compliance investigations. In particular, the agency is adding about 100 new enforcement personnel who will spearhead the agency's crackdown on employers' misclassifying their workers as "independent contractors." With its strengthened staff, in February 2010, the IRS began a three-year audit of 6,000 small and large U.S. based companies. Unlike a tax audit, these investigations are being done by statistical sampling, i.e., random selection, so there is no way to predict which employers will be hit or when the IRS will come knocking. To

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make matters worse, several states are getting tough too – enacting legislation or ramping up enforcement efforts of existing legislation to try to correct erroneous worker classifications.

From an economic standpoint, it's easy to understand the enforcement push. At the federal level, the government estimates that employers' non-compliance with federal employment-related tax laws creates an annual \$350 billion dollar tax shortfall. Many states also estimate tax shortfalls from similar non-compliance. With both states and the federal government lacking for cash in the current economic climate, recouping money they feel is already due them is one way to help alleviate the budget crunch.

However, government investigations are not the only risk employers are running. Workers who are misclassified may simply sue the company for whom they are performing services to recoup unpaid wages, statutory penalties, and attorneys' fees. For example, a worker who has been misclassified as an "independent contractor" and was, in the eyes of the law, really an "employee," may be due back overtime wages for hours he or she worked in excess of forty per week. Or worse yet, the person's agreed upon contractor rate may not have met the minimum hour wage requirement (state or federal) when dividing their contractor payments by the number of hours they actually performed services.

So, what should employers do? Be proactive. Before the IRS comes knocking or before one of your "consultants" decides to sue you for unpaid wages, conduct a thorough wage and hour audit to determine these workers' true legal status. With the assistance of your Labor and Employment counsel, reviewing the job descriptions and duties of those persons the company believes are "independent contractors" is an easy and cost effective way to manage risks associated with non-compliance.

**B. Do You Have a Social Media Policy? If Not, It's Time to Get One**

For the last several years, many employers have toiled over what to do about the outgrowth of social media. Sites such as Facebook, My Space, You Tube, Twitter, and a myriad of blogging sites are but a few examples of the electronic

tools through which employees can post information about their employers. A public space in which employees can freely disseminate information about the company is problematic on many levels; it implicates everything from defamation, to the disclosure of company secrets, to violation of securities laws, for those publicly-traded companies. Yet, many employers have declined to create a comprehensive social media policy as part of their employee handbook. Recent action by the Federal Trade Commission ("FTC"), however, has now made employer ambivalence about social media a real liability risk that must be addressed.

In October, 2009, the FTC issued new regulations that will substantially impact every business – particularly, businesses whose employees use or have access to the internet (both during and after work). Among other responsibilities, the FTC is charged with protecting consumers against false and deceptive advertisements by businesses. The agency's recent regulations concerning the use of endorsements and testimonials provide that advertisers will be subject to liability for "false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers." Interestingly, individual endorsers may also be held liable for false statements they make in the body of the endorsement, itself. An "endorsement" is defined to include any advertising message that a consumer reasonably believes reflects the beliefs or experiences of someone other than the advertiser. So what is the impact on employers?

Under the new regulations, any time an employee endorses her employer's product or service, she is required to disclose the fact that she is an employee of the company. In other words, employees are now obligated to disclose their connection to the company whenever they promote or defend the company or the products and services it offers. For example, if Jane (an employee of XYZ Company) posts a statement in an on-line blog attesting to the "world class" engineering services offered by XYZ, she must also disclose the fact that she is an employee of the company. If Jane fails to disclose her connection, both Jane and the employer are subject to liability if her statement turns out to be false or unsubstantiated. Thankfully,

the FTC rules do not allow aggrieved consumers to directly sue either Jane or the employer, but consumers can certainly report both parties to the FTC, who can then conduct an investigation or sue the parties for any violations on the consumers' behalf.

The crucial point for employers to take from the new FTC regulations is that it is now time (if you have not done so already) to create a social media policy and to educate your workforce about public statements made about the company to third parties via the myriad of social media applications now available for use. As this is an emerging area of the law, we strongly recommend you consult your Labor and Employment counsel to assist with drafting a policy that is specifically tailored to your type of business and workforce. ❖

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## ***2010 VAB Station Awards***

*The Virginia Association of Broadcasters Station Awards Program is sponsored annually by the VAB to recognize outstanding achievement by Virginia radio and television broadcasters.*

*This competition was established to encourage the highest standards of reporting, community service and production creativity.*

*To find out more about the VAB Station Awards, please visit [www.vabonline.com](http://www.vabonline.com).*

*Entries must be postmarked no later than April 9, 2010.*

# MARCH JOB BANK

## SUBMIT JOBS

### Submit to VAB Newsletter:

- Please email the listing directly to [derek.breen@easterassociates.com](mailto: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](http://www.vabonline.com)

### Media Assistant

WHSV-TV is looking for an individual who wants to join the fast paced TV industry. This candidate must demonstrate excellent analytical, organizational, multi-tasking and communication skills. The individual must be detail-oriented and able to meet deadlines with accuracy. Regular and timely attendance is required. Send resume to WHSV-TV, Attn: Station Manager, 50 North Main Street, Harrisonburg, VA 22802. No phone calls please. WHSV-TV is a drug free workplace. EOE.

### Radio Advertising Sales

We've got a great opportunity for someone who enjoys working with local businesses to help them grow through local radio and various digital platforms. Monticello Media is a locally-based, private company. We don't answer to Wall Street analysts or a corporate office. The potential is unlimited for someone who will hit the streets and provide the highest level of service. We're in Charlottesville, Virginia with six great radio stations and interactive products for you to make money with. If you're committed to outworking the rest of the market and focused on winning let's talk soon. Successful media sales experience is preferred. Send a cover letter and resume to [jobs@cvillestations.com](mailto:jobs@cvillestations.com) or to Sales, Monticello Media, 1150 Pepsi Place #300, Charlottesville, VA 22901. Monticello Media is an equal opportunity employer and a great place to work.

### Production Assistant (PT)

The Production Assistant is responsible for operating studio cameras, character generator, ESS, digital paint system and studio mixers. Must possess working knowledge of basic broadcasting. Excellent communication skills and computer experience required. Previous production experience desired. Background and pre-employment drug screen required. Send resume and cover letter to: Operations Manager WDBJ Television Attn: Production Assistant Position 2807 Hershberger Road Roanoke, VA 24017 WDBJ Television is an Equal Opportunity Employer.

### Master Control Operator

WHSV-TV3 has an opening for a full-time master control operator. Job duties include program switching, monitoring and maintaining multiple broadcast programs, operating transmitter within FCC specifications,

satellite recording and prep of syndicated programs, and monitoring and operation of program automation system. Operator must be prepared to work any and all shifts at various times. Computer literacy a must. Experience and SBE certification helpful, but will train the right person. Former applicants encouraged to re-apply. Position carries with it a competitive benefits package. Send resume to WHSV-TV3, Attn: Master Control Supervisor, 50 North Main St., Harrisonburg, VA 22802, or email to [cmrag-ni@whsv.com](mailto:cmrag-ni@whsv.com). No phone calls, please.

### News Producer

WDBJ7, the number one station in the Roanoke - Lynchburg market, is looking for a strong line producer. This is not a job for a show stacker. Candidates must have excellent journalism skills, understand how to use graphics effectively and can produce and post content to [wdbj7.com](http://wdbj7.com). This person must have clear news judgment and a good handle on what makes an informative and watchable newscast from beginning to end. Must have a valid driver's license with a good driving record. Background and pre-employment drug screen required. Send cover letter, resume, and your most recent newscast by mail to: Producer Position Attn: News Director WDBJ Television, Inc. 2807 Hershberger Road Roanoke, VA 24017 WDBJ Television is an Equal Opportunity Employer.

### Assignment Editor

WTVR-TV CBS-6 has an immediate opening for a part-time Assignment Editor. WTVR is seeking a candidate who can multi-task as well as work under pressure. Good writing, solid people and phone skills are a must. The ideal candidate will help gather, confirm, generate and assign news stories. The candidate will also assist in writing, creating and publishing content for our web site, [www.wtvr.com](http://www.wtvr.com). Community contacts a plus. Please send resumes to Nicole Leasure, Managing Editor, WTVR, 3301 West Broad Street, Richmond, VA 23230, or email resumes to [nleasure@wtvr.com](mailto:nleasure@wtvr.com). WTVR is an EEO employer.

### Local Sales Manager

Vox Communications (WBOP & WSIG) Harrisonburg, Virginia is looking for a ridiculously motivated, self-starting, highly organized Local Sales Manager. As we continue to grow, we're looking for someone who can help us get to the next level. If you're an AE looking for your first management position, this could be your shot and an excellent place to grow into a GSM or GM. You will carry an account list, prospect for new business, and motivate our staff to reach their goals. We believe in local radio and work harder than anyone in the market. If you're not afraid to be in the trenches and love the challenge of selling radio in a down economy, we want to hear from you! Send your resume and letter of interest to [mike@969wsig.com](mailto:mike@969wsig.com). Excellent compensation package including Health & Dental. Vox is EOE.

### On Air Personality

Vox Communications (WBOP & WSIG) Harrisonburg, Virginia is looking for a warm, friendly-sounding talent for caller-intensive show. We need someone who will do a live

shift, work the phones, assist with various production duties, do a massive amount of appearances and remotes and be entrenched in the community. We have been consistently growing in a shrinking economy and we need someone who will help us continue to grow. If you are not afraid to work, want to work for one of the best companies in the industry, are dedicated, loyal, and honest...send your 3MB or smaller demo with resume to [race@969wsig.com](mailto:race@969wsig.com). Someone from VA preferred as there is no relocation. Newly created position equals modest salary to start (Mid-Upper 20s). This is a great opportunity for someone looking to gain experience and grow with us (although some experience is definitely required)! FEMALES STRONGLY ENCOURAGED... Vox is EOE...and of course, no phone calls please.

### General Manager

Two Rivers Communications Inc. has an opening for the General Manager position. The General Manager will be responsible for managing two FM radio stations and a community website portal. Management duties include supervision of the sales, programming, engineering and administrative staff, as well as direct marketing to local, regional and national clients. Applicants should have proven success in developing broadcast sales staffs, and a working knowledge of broadcast programming and promotions. Two Rivers Communications, Inc. operates 101.7 BAY FM (WKWI), 104.9 WIGO Country (WIGO-FM) and MiddleNeckNews.com from its offices in Kilmarnock, Virginia and provides advertising based marketing solutions to businesses in the Middle Peninsula and Northern Neck. We are an Equal Opportunity Employer. Qualified applicants should send resume with work history to: [billsherard@tworivers.net](mailto:billsherard@tworivers.net) or mail to: Bill Sherard Two Rivers Communications, Inc. P. O. Box 819 Kilmarnock, VA 22480.

### Temporary Administrative Assistant

WAVA Radio is seeking temporary administrative help for our offices in Arlington, Virginia. We are looking for enthusiastic and energetic individuals with a great attitude and strong administrative skills. Duties include answering phones and providing support to the WAVA staff on a variety of administrative projects. Applicants must have solid computer skills including knowledge of Excel, Word and Power Point. To apply, e-mail your resume to [Advertising@wava.com](mailto:Advertising@wava.com) or fax a copy to 703.807.2216. WAVA is an Equal Opportunity Employer. To apply, e-mail your resume and cover letter to [Advertising@wava.com](mailto:Advertising@wava.com) or mail to: Tom Moyer, Station Manager WAVA Radio 1901 North Moore Street, Suite 200 Arlington, VA 22209. WAVA Radio is an Equal Opportunity Employer.

### Reporter/Photojournalist

WDBJ, the CBS affiliate in Roanoke, VA has an opening for a creative/talented Reporter/Photojournalist in our Lynchburg newsroom. We want someone who is creative, with a sharp eye and can do it all under deadline pressure. Must have excellent interviewing and writing skills. Ideal candidate will have experience with Panasonic P2 cameras, non-linear Grass Valley editors, and micro-

*(continued on next page)*



## Job Bank Listings

(continued from previous page)

wave and SNG trucks. Must have a valid driver's license with a good driving record. Background and pre-employment drug screen required. What we want to offer you is a chance to become a better journalist as well as a better photographer. That "little extra" we can offer you is feedback, helping you grow. We have the people who will take the time to look at the details and help you grow. Please send your resume and a non-returnable DVD or tape to: Reporter/Photojournalist Position Attn: News Director 2807 Hershberger Road Roanoke, VA 24017 WDBJ Television is an Equal Opportunity Employer.

### Reporter

The #1 station in Roanoke, VA, WDBJ7, is looking for a full time reporter who thrives on digging for stories, uses investigative tools, persistence, strong storytelling, and compelling LIVE shots. Your Hometown Station is not just a slogan, we want to hire someone who is willing to serve the community by searching out and executing stories that best serve our viewers. Our reporters come to the table daily with enterprise story ideas that can lead a newscast and impact those watching. You will be expected to contribute daily to WDBJ7.com with web extras that broaden each story. Our newsroom is a highly collaborative work environment. Only reporters who work well with producers and photojournalists need apply. We are looking for a journalist with a minimum of 3 years' experience. Anchoring experience is preferred. Knowledge of the market is a plus. Must have a valid driver's license with a good driving record. Background and pre-employment drug screen required. Send non-returnable DVD or tape to: Reporter Position Attn: News Director WDBJ Television, Inc. 2807 Hershberger Road Roanoke, VA 24017 WDBJ Television is an Equal Opportunity Employer.

### Account Executive - Digital Media

WDBJ7.com, the region's premier media website, is looking for an entry-level Account Executive - Digital Media to join our sales team to develop new business. Successful candidate must have strong presentation and communication skills, be highly motivated, and be able to build strong client relationships. College degree preferred. Must have a valid driver's license with a good driving record. Background and pre-employment drug screen required. Send cover letter and résumé to: Digital Sales Manager Account Executive - Digital Media Position WDBJ Television 2807 Hershberger Road Roanoke, VA 24017. Email: jobs@wdbj7.com. WDBJ is an Equal Opportunity Employer.

### Video-Journalist FT

Video-Journalist position, with emphasis on Photojournalism, is primarily responsible for gathering news by shooting and editing videotape of news, sports, and special features and responsible for setting up ENG vans for live remotes. This person must display high journalistic standards and be prepared to cover stories alone, which will require using effective interviewing techniques. Ad-

vanced Education in the field of Broadcast Journalism which has given the applicant the ability to perform the required functions of the job or equivalent broadcasting work experience, which has prepared the applicant to perform the required functions of the job. Demonstration of skills by performance in audition or aircheck, supported by references and pre-employment interviews. Knowledge of journalistic standards as they relate to on-air presentation of news stories. Accurate and comprehensive writing skills. Ability to act and react appropriately on camera. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588, or apply in person at WSET-TV, 2320 Langhorne Road, Lynchburg, VA 24501 from 8:30 a.m. to 5:30 p.m., Monday through Friday. No phone calls please! EEO/M/F. Applicants for positions in the News Department should submit a non-returnable VHS or DVD resume tape with letter, resume, and references. WSET-TV is an Equal Opportunity Employer. No qualified person shall be discriminated against in employment because of race, color, creed, religion, sex, national origin, age, or any other reason prohibited by federal, state, or local law.

### Photographer

WVEC-TV is looking for a creative and energetic photographer with an understanding of NPPA principles. Candidates should have at least one year experience shooting and editing news. One year working/operating a microwave truck necessary. Candidates should be flexible in work schedule to provide maximum news coverage and work a specific "on call" schedule. Live in a great region, right on the ocean and cover stories in a very competitive news market. Send resume and tape (DVD, Beta SP or SX) to Tony Church, Chief Photographer, WVEC-TV, 613 Woodis Avenue, Norfolk Virginia, 23510. tchurch@wvec.com. No phone calls. WVEC-TV is an Equal Opportunity Employer.

### Newscast/Web Producer

WTVR-TV has an immediate opening for a part time Newscast/Web Producer. Applicant should have at least two years of experience line producing. Applicant must be a strong writer, have solid news judgment, produce energetic and compelling newscasts and adjust quickly and efficiently to breaking news situations. Monitoring and updating the news portion of our station web site is also required. Please send your resume and most recent newscast to: WTVR-CBS6, Attention Sheryl Barnhouse, Assistant News Director, 3301 W. Broad Street, Richmond, VA 23230. EOE.

### General Manager

Tidewater Communications is seeking a General Manager. This is an attractive position in an attractive market, Norfolk, VA. Quality staff with historic years of strong positioning. The proper candidate should excel in sales, sales structure, and organization. This candidate should also be able to demonstrate that he/she understands the importance of programming and has successfully run profitable stations with healthy reputations in their markets. Large market management is preferred, but don't be intimidated if you know that it is now your time in the sun. We also look for career stability. Email resume to: Warren Lada, Sr. Vice

President/Operations, Saga Communications, warren.lada@sagacom.com. Saga Communications, Inc. is an Equal Opportunity Employer.

### PT Evening Production Assistant

Start your career in television as part of our evening news production team. The hours for this position are 3 p.m.-12a.m. and must be willing to work weekends. Responsibilities include video editing and camera operation. Experience preferred, but training is available. Pay rate starts at \$8.00 an hour. Send resume to WHSV-TV, Attn: John Davis, Evening Production Assistant Part-Time, 50 North Main St., Harrisonburg, VA 22802. WHSV-TV is a drug free workplace. EOE

### MCO

CBS19 is now hiring for full time TELEVISION MASTER CONTROL OPERATOR. Responsibilities include on-air operation of master control switcher and related equipment plus set-up and airing of program material. Requires strong attention to detail, and the ability to handle multiple simultaneous functions. Strong technical and computer operating skills, the ability to maintain accurate logs and calculate program timings are also required. Position is full time and must be available for all shifts, including overnights, weekends and holidays. Charlottesville Newsplex is an Equal Opportunity Employer and a Drug-Free Workplace.

### Engineer

CBS19 is currently seeking full time, experienced ENGINEER to assist in newscasts and perform electronic maintenance. This person will have excellent people skills, strong electronic maintenance skills and the ability to calmly adapt to the changing priorities of a busy news-oriented television stations. The ideal candidate will have a working knowledge of video, audio, LAN systems, TCP/IP, computer configuration & software installation. Candidate must be capable of lifting a minimum of fifty pounds, must possess a current driver's license with a great driving record and be available for all shifts, including overnights, weekends and holidays. Charlottesville Newsplex is an Equal Opportunity Employer and a Drug-Free Workplace.

### New Media Sales Director

WAVY-TV in the Norfolk, VA market is seeking a New Media Sales Manager to lead an experienced, high-performance sales team on selling the fastest growing websites in Hampton Roads. Successful candidates should have minimum three years of advertising/new media sales experience, management experience a plus. A focus on leadership, technology, customer service, presenting and positioning is key. You will be leading a great Local Sales team on the latest new media technology in a great market. Please mail cover letter and resume to Michelle Campbell, New Media Sales Development Director, LIN Media, 300 WAVY Street, Portsmouth, VA. 23704 or e-mail michelle.campbell@wavy.com No phone calls, please. EOE. ❖

**View the latest listings at  
www.vabonline.com**

# 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.

