

**Virginia Association of Broadcasters**

December 2008

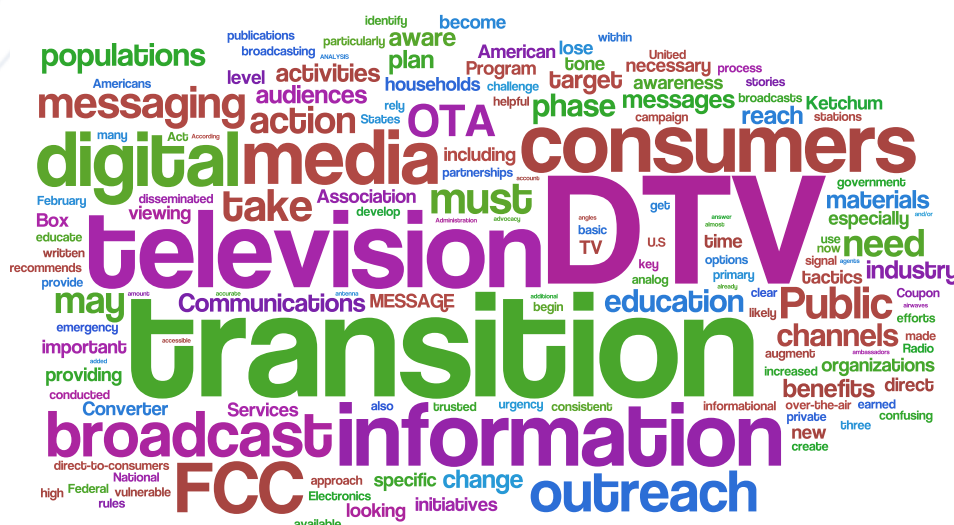
On December 16, the National Association of Broadcasters announced they will create a national hotline to answer calls from consumers about the upcoming transition to digital television.

The toll-free national hotline will serve as an important resource for viewers seeking general information about the DTV transition or the Commerce Department's TV Converter Box Coupon Program. It will also provide additional resources for pay television service subscribers and consumers with technical questions related to converter boxes and installation.

Based on the results from analog shut-off tests already conducted by more than 400 local television stations, NAB anticipates there will be approximately two million calls from viewers during the five days following February 17, roughly half of which would occur on February 18.

And with the recent passage of legislation to voluntarily extend analog broadcasting of DTV-related information for 30 days after February 17 where technically feasible, NAB has proposed broadcasting a brief DTV educational video that can replay on local television station's analog broadcasts nationwide throughout the days after the transition.

(continued on page 2)



Within days of conducting a nationwide analog shut-off test on December 17, the Federal Communications Commission asked stations to schedule another test on Monday, January 12. The VAB had already coordinated member stations for three more tests in January, on the 6th, 15th and 21st, and has decided to add the 4th test rather than substitute for an existing date.

Like the previous test, participating stations will shut off their analog transmitters for five minutes, with viewers asked to turn on each set in their homes to see if they are receiving normal TV programming. Any set that doesn't work as usual during the test period proves it is analog only and needs to be replaced or modified with a converter box, cable or satellite signal before the digital transi-

tion occurring February 17, 2009.

The FCC asked all U.S. full-power TV broadcast stations to voluntarily participate in the tests. While the FCC did not specify format or exact time, the VAB urges stations to run the tests during live newscasts so anchors can introduce the test and explain what is about to take place.

"Everything went very much as expected," said Randy Smith, President/General Manager, of WSET-TV in Lynchburg. "We did get viewer response—some people still don't understand it's not voluntary, that we are going to switch whether they want to upgrade to digital or not."

Stations which do not have a news operation will participate in a format that best fits their station. ♦

<b>Tuesday, January 6</b>	<b>6:30-7 a.m. newscast</b>
<b>Monday, January 12</b>	<b>6-6:30 p.m. newscast</b>
<b>Thursday, January 15</b>	<b>6-6:30 p.m. newscast</b>
<b>Wednesday, January 21</b>	<b>11-11:30 p.m. newscast</b>



## VAB Newsletter

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Robert Scutari	<i>WJLA-TV, Arlington</i>

## NAB DTV Hotline

(continued from page 1)

NAB will produce and distribute this program, which will address common questions received from viewers in the Wilmington experiment and other DTV readiness testing.

"Establishing a plan to respond to consumer questions about the DTV transition is another example of the broadcast industry's continuing leadership and unwavering commitment to help Americans prepare for the historic transition to digital television," said NAB President and CEO David K. Rehr. "Utilizing the airwaves, numerous grassroots and marketing initiatives and now a nationwide hotline, NAB and broadcasters are doing everything possible to ensure a smooth transition for all viewers across the nation."

The NAB hotline will supplement

DTV hotlines sponsored by local television stations, state broadcast associations, pay television service providers, the Commerce Department's coupon program and the Federal Communications Commission.

The instructional video that is being developed by NAB will attempt to answer frequently asked viewer questions on such topics as converter box installation, rescanning, antenna positioning and general DTV transition questions, among other issues. At the end, the video will promote the toll-free national hotline number and regional numbers where applicable. NAB outlined these commitments in a letter to President-elect Barack Obama's transition team, in response to a December 5th meeting where they requested a specific plan from the NAB on what the broadcast industry would do to answer DTV-related phone calls from viewers. ❖

## ADVERTISE IN 2009

The official newsletter of the Virginia Association of Broadcasters is distributed on a monthly basis to the entire membership and other industry individuals.

For rates call 434-977-3716 or email [derek.breen@easterassociates.com](mailto:derek.breen@easterassociates.com)

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# Timley VAB Sales Strategies Seminar Draws Crowd

Nearly two hundred people turned out for this year's VAB Fall Sales Seminars in Richmond December 1st and Blacksburg December 2nd. Local direct expert Paul Weyland captivated the audience with a lively presentation of his "Recession-Proof Sales Strategies."

"It has been several years since we have had such high attendance at the combined Fall Sales Seminars," says Amy Shaw, VAB Director, Meeting and Convention Services. "Recession-Proof Sales Strategies was definitely a hot topic this year!"

"Being an experienced person in media sometimes you forget about some of the essentials. To have those reaffirmed is invaluable," says Catherine Maino, of WCNR-FM/WINA-AM/WQMZ-FM/WVAX-AM/WWV-FM.

Weyland emphasized the current economic situation must be seen as an opportunity by marketers. "All I wanna hear in a commercial now is 'We don't know what all the fuss in the economy is, we sold six houses last week.'" He defined the role of a salesperson as simply identifying and solving problems for your client, then laid out ten key sales strategies to pull it off:

1. How to get decision makers to return your phone calls.
2. How to be a creative genius in four simple steps.
3. How to make a proposal they really want to read.
4. How to get clients for life.
5. How to handle objections.
6. How to work smarter, not harder.
7. Better ways to negotiate with your clients.
8. How to stand out from most media salespeople.
9. Great new ways to prospect local direct accounts.
10. How to make the best presentation your client has ever heard.

Rather than leaning on the podium and subjecting the crowd to PowerPoint slide after slide, Weyland spent most of the time working the room like a seasoned stand-up comedian. While most comics can get old after a few minutes, he was able to engage the crowd hour after hour because the humor was coming from situations most could relate to, alternating with valuable sales insights gleaned from decades of experience.

"I enjoy Paul's energy in delivering sometimes uncom-



fortable truths about our industry," says Chris Lagey, of WNIS-AM/WPYA-FM/WROX-FM/WTAR-AM/WUSH-FM. "Adding a grain of humor makes it a lot easier to see our problems more clearly and makes the solutions seem more approachable."

"When you're going fishing," says Weyland, "you don't put what you want to eat on the hook, you put what the fish wants to eat." He said too often you try to tailor a commercial to the client, rather than their potential customers. "Show clients our plan is better than theirs."

The way to win their confidence is by doing your homework, researching not only their store, but also their competitors and the industry. "Do you think it would be good to know gross margin after the cost of labor before walking through the door?" asks Weyland. "Presearch. . . find out as much as you can."

Knowing a divorce attorney will earn \$20,000 for a disputed divorce with kids, or that a mattress dealer will net fifty percent of a \$2,000 average bedroom purchase gives you specific data to craft a marketing strategy before you set foot in their office or store, and shows the client your commitment and expertise before they see one commercial.

"Let us handle the creative," says Weyland, "Let us find a plan they can't live without. What we're trying to show the client is that our plan is better than theirs. If I identify and solve the problem, -identifying and solving problems in words people understand-it's a public service."

The plan he says you should be working toward is not for this week, or this month or the next three months. "I'm here to help you set up a five year sales and marketing plan. . . they don't have a three month plan. . . they need us, but they don't know they need us because they think we're human spam." By spam, Weyland means too often potential clients just view you as another flashing sign trying to get their attention in a sea of flashing signs.

(continued on page 5)





## NAB Calls For Crystal Radio Award Entries

The National Association of Broadcasters' 2009 Crystal Radio Awards entry information is now available online at [www.nab.org](http://www.nab.org). The entry deadline is February 3.

The NAB Crystal Radio Awards acknowledge radio stations that demonstrate year-round commitment to service to their communities. To enter, a station must submit a 12-page document describing their service to the community for the past calendar year.

"We are proud to recognize radio stations for their

dedication to serving their community," said NAB Executive Vice President of Radio John David.



Crystal Radio Awards finalists and winners are chosen by judges with a broadcast and community service background. Finalists will be announced March 16 and winners will be announced at the NAB Radio Luncheon. The Luncheon, sponsored by ASCAP, will be held Tuesday, April 21 during the 2009 NAB show in Las Vegas. ❖

## Cable's Digital Freeze

Brooks, Pierce, McLendon,  
Humphrey & Leonard, L.L.P.

On December 16, cable operators serving 90 percent of the nation's cable subscribers pledged, with limited exceptions, to stop moving television channels from their cable systems' analog tiers to digital tiers during the period from December 31, 2008, to March 1, 2009. The cable operators have offered this proposed "freeze" in order to respond to concerns about potential consumer confusion related to the DTV transition.

According to industry reports, FCC Chairman Kevin Martin has expressed concern about cable operators moving analog signals to digital tiers and charging subscribers more, through equipment or other fees, in order to access the same number of channels. If analog tier to digital tier "channel migration" practices were to continue in the days leading up to and immediately following the DTV transition, viewers may become confused if they are required to subscribe to digital cable service in order to continue receiving the channels they had previously received on the analog tier. Because DTV consumer education efforts have consistently informed viewers who subscribe to cable that they will continue to receive television signals following the DTV transition without taking any further action, any cable system requirement that analog subscribers upgrade to digital service in order to continue to receive the same local TV stations may cause confusion.

In letters to members of both chambers of Congress, the cable operators explained that, under their proposal, they would not move analog signals to digital tiers during the period from December 31, 2008, to March 1, 2009, unless the move is necessary to make bandwidth available to comply with the requirement to carry broadcast signals in both analog and digital formats or to meet contractual carriage obligations.

In addition to the "freeze," the cable operators also proposed additional "consumer oriented" measures related to digital channel migration. Significantly, the proposed digital channel migration "freeze" is unrelated to the proposed retransmission consent "quiet period," on which there are no new developments to report at this time. ❖



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Virginia



## STATION SPOTLIGHT: WFAX Online Makeover

WFAX-AM has come a long way since broadcasting from the attic of a Seven Corners, Virginia gas station back in 1948. This month, they launched a major redesign of their website, [www.wfax.com](http://www.wfax.com).

"We had been thinking for some time that we needed a new look," says President and General Manager Doris Newcomb. "We had done a homegrown job with some friends before. This time we really wanted to turn to someone outside who knew about language and design, to go for something a lot more sophisticated, but keeping the personality of the station."

One of the most important aspects for WFAX is the online streaming of their Christian programming. "At sunset we have to lower our power, from 5,000 to 50 watts," says Doris, "So we lose a great deal of our audience. Streaming allows far more people to listen to programs they might have missed earlier in the day. Even our older listeners are calling in, they are using the internet far more than we realized."

While they have been providing



streaming audio online for years, Doris hopes the more accessible navigation and program guide will draw audience members deeper into the website.

Since 1948, WFAX has grown to serve America's ninth-largest radio market. Now broadcasting from Falls Church, Virginia, they are able to reach 4 million residents.

WFAX was founded by Doris Newcombs' parents, Lamar and Genevieve,

with Lamar serving as general manager and Genevieve as program director. Their long hours and hard work helped make WFAX a success.

Doris says as their online audience grows, they hope to eventually add more features to their website. "We would like to give listeners a way to interact with us and with each other, to comment on programs and participate in new ways." ❖

## VAB Sales Seminar

(continued from page 3)

"10 years ago, the average American was subjected to 2,500 commercial impressions a day. . . Now the average person is actually exposed to 5,000 commercial impressions a day." Weyland is talking about impressions by brands, and by extension, sales people, who are just another form of brand, just another kind of commercial, competing for a person's attention.

"I believe in high frequency just to get through the clutter. . . It's harder to break through. . . how much like the other human spam are we?" He says the age-old "frequency of three" rule will not longer cut it. "Shouldn't we reach for a frequency of eight or nine?"

An increase in frequency will also necessitate a more creative approach so as not to alienate them with your seventh voicemail.

Instead of another, "I just called to see if you're interested in running an ad this month," Weyland says get specific. "If you see them trying to get customers in the door with 10%, 20%, 30% off

promotions. . . call them and say 'I can tell you how to keep that 30%. Rather than slashing your profit, I can help you increase your margin.'"

"They think the only way to compete with national competitors is price. . . but can they beat Walmart? They will spend 90% of their marketing budget trying to attract the worst kind of customers."

Getting a client committed to a long-term plan will free you from having to resell them every month, so you can focus on the more creative aspect. "I want to stop the monthly shakedown. . . I hate it. . . they hate it. As soon as I get over that selling part, now when they see me it's a treat!"

It's also about getting into a client's circle of trust, those doctors, dentists, stores, brands we are willing to pay a premium for. "What's more important than price? Value. Why can't we be like that?"

The concept of true value should also play a role in every marketing campaign, i.e. getting audience members into your client's circle of trust. "Do people buy logically? No. How? Emotionally. I want to give every reason to buy. Selling is the modification of the behavior of

another person without them knowing it's being modified in order to arrive at a mutually beneficial conclusion."

The flip side of this, says Weyland, is knowing when to fire a client. "Why waste time with clients that aren't going to spend any money?"

Once you've won a client, the most common issue, according to Weyland, is mismanaged expectations. "They think they should get a line of a hundred people when we know they only need three to justify the campaign." This gets back to presearch—gross margin and average sale tells you how many customers a commercial needs to win for you to be the hero, instead of the human spam.

Weyland reminds sales people to always be on the lookout for ways to continually cultivate relationships with clients. "Half of your clients have never been in a tv or radio station. . . bring them in, give them a tour. We have access to the best ticket in town. I represent the entertainment industry for my client. . . we're their connection to the world."

At the end of the day, Amy Shaw notes a telling sign that the audience remained engaged. "This year nobody snuck out at lunch." ❖



## FCC Considering “Share Time” Licensing Proposal For Multicast Streams

Another indication that digital broadcasting for TV and radio broadcasters will be different from analog emerged in a filing under the FCC’s “share time” rules. ION Media Networks (“ION”), which owns 42 television stations throughout the country, and Urban Television, LLC (“Urban”), a company operated by BET founder Bob Johnson, filed a series of applications with the FCC seeking “share time” licenses, pursuant to the FCC’s “share time” rule, to operate new television “stations” on the digital multicast channels of 42 existing ION stations. Significantly, each of the applications requests that the Commission “confirm” that these new “stations” would be entitled to “must carry” under existing Commission rules. The applications pose significant regulatory implications—not only for digital television stations, but for digital radio stations as well. If granted, the applications would fundamentally change the broadcast industry.

### What Is The “Share Time” Rule?

The FCC’s decades-old “share time” licensing rule allows the operation of “two or more broadcast stations using the same channel in accordance with a division of hours mutually agreed upon and considered part of their licenses.” In other words, under the share time rule, the FCC will consider licensing two or more broadcasters to operate separate stations that use the same frequency to operate in the same geographic area. In the analog world, the rule generally contemplates that two share time licensees may divide the operational hours of their stations so that, for example, one would operate from 5 a.m. to 3 p.m. and the other would operate on the same frequency from 3 p.m. to 5 a.m. Under the rule, each share time licensee has its own “station” and each is separately licensed. Historically, the share time rule has been implemented most often by radio broadcasters.

### What Do The Applications Propose?

The ION/Urban applications seek authority to establish share time licenses with respect to the frequencies used by 42 television stations currently licensed to ION companies. As proposed, Urban would operate a new television “station”

on a digital multicast stream of each of the 42 ION stations, and each of the current ION stations would simultaneously remain on the air. In other words, instead of dividing the operating time of the ION stations by daypart (as would be done by share time licensed stations in the analog world), each of the applications seeks share time licenses that would provide for simultaneous operation of the share time stations, with the new station operating on a digital multicast stream of the corresponding ION station. The applications allege that “grant of these applications would allow this substantially minority-owned new entrant to enhance diversity of programming and provide service to an underserved segment of the proposed stations’ communities.” The applications also specifically seek “confirm[ation]” from the FCC that the new share time stations would be entitled to must carry rights.

### What Is The Significance Of Separately Licensing These Facilities As “Share Time Stations”?

There are several potential, significant consequences that would result from a grant of the applications and licensure of the facilities as share time stations:

**Must Carry Rights.** Under the Communications Act, as amended, and the FCC’s rules, each full-power digital television “station” is entitled to “must carry” for its primary digital channel. As television broadcasters are well aware, the FCC has denied efforts of the broadcast industry to secure must carry rights for digital multicast channels. If the proposed share time operations are viewed merely as multicast “streams,” they would not qualify for must carry. Thus, the share time station licensing proposal is a novel way to try to accomplish mandatory carriage of digital multicast streams under certain conditions, i.e., under formally-licensed share time arrangements. A grant of must carry rights to share time “stations,” as sought in the ION/Urban applications, would fundamentally change the way television stations and programmers (and cable and satellite carriers) approach digital multicasting opportunities.

**Increase in Duopoly Opportunities.** Through a share time licensing scheme such as that proposed in the applica-



tions, it may be possible to increase the number of “stations” in a market to the point where one or more television or radio duopolies would become permissible where the number of local stations previously would not otherwise allow it. In other words, if a “share time” channel (radio or TV) is treated as a separate station under the ownership rules, then the Commission’s local ownership rules would be affected.

**Monetizing Multicasting.** A share time licensing scheme for multicast channels may fundamentally change the way broadcasters and programmers approach digital multicasting opportunities. A broadcaster may be able to monetize a dormant multicast stream by inviting a separate entity to acquire a share time license for that stream. On the other hand, a large supply of such spectrum may depress its value.

**Hue and Cry to “Reclaim” Broadcast Spectrum.** A grant of these applications to license separate television stations on digital multicast streams may engender a hue and cry that digital broadcasters are not using all of their allotted spectrum, do not need all of their allotted spectrum, and should be required to return some of their allotted spectrum to the government. It could be argued that an individual station licensee should not be allowed to leave unused a digital multicast channel when the government could license (and perhaps auction off) under a share time arrangement that portion of the station’s spectrum to another entity who will use it.

### Will The FCC Grant These Applications?

It is too soon to tell. While the ap-  
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# Cox Radio Leads “Feed Richmond” Food Drive

By the time Cox Radio Richmond (WKHK K95, WKLR 96.5, WMXB 103.7, WDYL Y101.1) wrapped up a two week food drive called “Feed Richmond” last month over 90,000 meals were donated to the Central Virginia Foodbank.

“Through the generosity of our listeners and local businesses, we were able to provide over 90,000 meals for local Richmond families and help to fill the empty shelves of the CVFB warehouse,” said Cox Radio Richmond VP/Market Manager Bob Willoughby. “The local community really stepped forward and took care of their neighbors in need. We are very pleased with the results.”

Feed Richmond was created in response to the steady increase in demand for food donations due to rough economic times and the increased number of local businesses that have closed.

As a part of Feed Richmond, three

different ways to donate were offered. Contributions could be made online to [feedrichmond.com](http://feedrichmond.com), [K95country.com](http://K95country.com), [965klr.com](http://965klr.com), [mix1037.com](http://mix1037.com), and [y101rocks.com](http://y101rocks.com). All 15 area Kroger locations had donation bins on site and are also accepted monetary donations at checkout. First Community Bank, a community partner of Feed Richmond, had donation bins at all five Richmond locations and the two locations in Emporia.

In a final push for donations, all four Cox Radio stations broadcasted live at



area Kroger stores on November 19th and 20th, from 9 AM until 7 PM. The stations encouraged listeners to come out and give the gift of food. ❖

## FCC Rules for Broadcast Station Contests and Promotions

**Stephen Hartzell  
Brooks, Pierce, McLendon,  
Humphrey & Leonard, L.L.P.**

When stations conduct contests and promotions, they must keep in mind the FCC’s following rules: (1) if a station mentions on air how to enter or participate in a contest, all “material terms” of the contest must be fully and accurately disclosed and (2) the contest must be conducted substantially as announced or advertised—no contest description may be false, misleading, or deceptive with respect to any material term. Stations are regularly fined by the FCC for failing to comply with these fundamental requirements. The “base” FCC fine is \$4,000, but the FCC has discretion to impose higher fines.

Often, fines are imposed by the FCC after a disgruntled contestant files a complaint. Complaints are frequently filed by “losing” contestants or disgruntled employees—but winners have also been known to file complaints for various reasons, including dissatisfaction with the valuation of a prize (for example, where the winner feels that the prize value is “inflated” which leads to higher tax consequences for the winner) and

disappointment that an event ticket awarded as a prize did not guarantee the winner’s entrance into the event.

Here are some tips to help stations minimize the likelihood that contest participants will file complaints with the



FCC and to help stations avoid incurring unbudgeted expenses for extra prizes, legal fees, or FCC fines:

1. Use complete and accurate official rules to govern your contest. If you

anticipate the possibility that the operation of the contest or the contest rules may need to be changed mid-stream, disclose that possibility in the rules and describe the nature of the reasons for any such potential changes, as well as their potential impact on the operation of the contest. Generally speaking, though, once a contest begins or the rules are “published,” you cannot thereafter change the rules.

2. Stations should make the official contest rules available at the station and on the station’s website (if the station has a website), and rules should be posted and available at any location where participants can submit an entry.

3. Operate and administer your contest as described in the rules. Ensure that any contest co-sponsors correctly and properly execute their contest responsibilities consistently with the official rules. The station can find itself in hot water when a co-sponsor fails to execute its contest responsibilities properly.

4. Disclose all material terms of your contest. Stations must disclose all mate-

*(continued on page 11)*





## Labor And Employment Stocking Stuffers To Brighten the New Year

By: John G. Kruchko and  
Kevin B. McCoy

Unlike Christmas, the conglomeration of state and federal Labor & Employment laws is constantly in flux. Statutes, rules, cases, agency decisions, and executive orders from around the country act in concert to make employers' firm grasp of this area of the law tenuous and often short-lived. This past year has seen some significant changes and developments. However, the changes we have seen pale in comparison to the changes that likely lay ahead with a new administration and Congress set to take the helm. Discussing all the changes (both real and potential) would take far more space that we have here. While additional legislative updates will be forthcoming, for now we have decided to answer a few "letters to Santa" from various employers about how best to comply with situations that arise every day.

### A. Dear Santa: When Must Virginia Employers Pay their Employees and when can they Deduct Wages from their Paychecks?

Dear Employer:

All Virginia employers must establish regular paydays and rates of pay for every employee. It is a violation of Virginia law to fail to pay an employee on his or her established payday that you (as the employer) have set for them. Employees earning an hourly wage must be paid at least once every two weeks or twice a month (although more frequent payment is allowed); and employees earning a yearly salary must be paid at least once monthly. However, executives

(i.e., company officers) are exempt from these requirements.

In addition, there is no prohibition against lowering an employee's hourly rate of pay or salary, so long as the reduction does not bring the employee below the hourly minimum wage (currently \$6.55) set by the federal Fair Labor Standards Act ("FLSA"). Note, however, that employers must notify employees of the rate reduction before asking or requiring them to perform work at the new reduced level, because the law affords the employee the opportunity to accept the lower rate or seek employment elsewhere.

When an employee leaves your employ (either through termination or resignation) you must pay him or her all wages they are due on or before the next regularly scheduled pay day on which the employee would have been paid had they remained employed with you. This includes paying the employee all vacation, sick, or other accrued, unused paid time-off to which they are entitled to be paid as of their separation date. While Virginia employers do not have to provide benefits such as vacation, sick pay, retirement, severance, or holiday pay, if you choose to do so you are then obligated to let the employee utilize the benefits provided according to your policy.

In addition, you cannot make deductions from your employees' paychecks for damage to company property or lost revenue. Virginia employers are only allowed to deduct money from an employee's paycheck in two very limited instances: (1) for taxes or other deductions authorized by law (such as a garnishment order from a Court);

and (2) for an amount authorized by the employee, based on a written, signed, and voluntary agreement with the employee. Note, however, this "catch all" provision does not mean you can get the employee to agree to allow you to withhold money for damage to company property. Virginia law specifically forbids an employer from requiring an employee to sign an agreement forfeiting a portion of his wages as a condition of employment.

In short, employers should err on the side of caution and pay their employees at set rates, at set intervals, and without utilizing wages or benefits as a bargaining tool or point of leverage to get the employee to perform better or as a form of discipline. Significant civil penalties can result from an employer's failure to comply with Virginia wage and hour laws.

### B. Dear Santa: I Don't Mind Employees Wearing Red Stocking Caps, but the Headscarves and Periodic Praying are a Bit Too Much – What can I Do?

Dear Employer:

Not much, I'm afraid. Religious discrimination has long been the "red-headed stepchild" of the Civil Rights Act of 1964, as amended ("Title VII") – everyone knew it was there, but it drew much less attention than its sex or race discrimination counterparts. As a result, religious discrimination has taken a bit of a backseat in the public relations context. However, that does not diminish its importance as a part of Title VII, nor does it diminish the liability exposure that can result from a

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violation – after all, a Title VII violation is the same no matter what the basis of the prohibited conduct.

Based in part on this perceived “underexposure,” the EEOC recently issued new compliance guidance on religious discrimination. Just as background, recall that Title VII prohibits religious discrimination against employees with regards to the terms, conditions, or privileges of their employment. However, with respect to religious discrimination, Title VII also requires employers to reasonably accommodate an employee’s sincerely held religious beliefs, observances, and practices unless doing so would result in an “undue hardship” for the employer.

In its new guidelines, the EEOC has offered its interpretations and expectations for employers in managing employees with varying religious views. While the EEOC made no earthshaking pronouncements on the subject, the agency made several noteworthy points:

First and most obvious, religious harassment is just as illegal as sexual harassment, which often receives much of the “buzz” in the press. Next, the definition of religion is very broad and encompasses not only obvious, well-known religions (i.e. – Christianity, Islam, etc.) but most any sincerely-held moral or ethical beliefs as to what is right or wrong, which can include beliefs that are theistic or non-theistic (i.e., without a god). Also, the prohibition against religious discrimination covers all aspects of the work environment – hiring, termination, promotion, recruiting, pay rates, benefits, etc. The good news is that employers’ burden of proving “undue hardship” on accommodation issues is not as onerous as that associated with disability discrimination. In the religious context, an employer must show that the proposed accommodation poses more than a *de minimus* cost or burden to the organization.

To supplement its new guidance, the EEOC also set forth several “best practice” tips for employers confronting religious discrimination issues. These tips include (1) exploring multiple options for accommodating religious beliefs before deciding it is an undue hardship; (2) training managers adequately about the “ins and outs” of religious discrimination and harassment; (3) being flexible in work times or scheduling to avoid work conflicts with religious

practices or holidays; and (4) updating your handbook or policies to include a statement on religious discrimination and harassment.

But just as a note of caution, this is a fairly complex area of the law. Employers are wise to consult with their Labor & Employment counsel about discrimination or accommodation issues surrounding a particular employee.

### **C. Dear Santa: How can an Employer Tell when an Employee is Disabled and when he is Not?**

Dear Employer:

On September 25, 2008, no doubt in direct response to your query, President Bush signed into law the ADA Amendments Act of 2008. The law amends the Americans with Disabilities Act of 1990 (“ADA”) to clarify the definition of “disability” and overturns a few Supreme Court cases and EEOC regulations that had narrowly interpreted the ADA in recent years. The new law goes into effect on January 25, 2008. The most significant change is with regards to the definition of “disability.” Under the ADA a disability is defined as:

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such impairment; or

(C) being regarded as having such an impairment.

42 U.S.C. § 12102. While the new law does not alter the basic definition of disability, it provides much needed examples of what constitutes a “major life activity.” Now, activities such as caring for oneself; performing manual tasks; seeing; hearing; eating; sleeping; walking; standing; lifting; bending; speaking; learning; breathing; concentrating; reading; communicating; thinking and working will be considered “major life activities.” The term will also include

the operation of major bodily functions, including the operation of the immune system, and digestive; bowel; neurological; brain; bladder; respiratory; circulatory; reproductive and endocrine system functions. These changes indicate that long-term, progressive illnesses, such as cancer, heart disease, diabetes, epilepsy, etc., will likely be consistently viewed as disabilities under the ADA.

Another significant change will be the elimination of ameliorative effects of treatments in determining whether an employee is disabled. Before, a person’s bi-polar disorder was judged in conjunction with the ability to correct the disease with medication, for example. Under the new law, such aids are not to be considered when deciding whether an employee is disabled. Thus, such common things as prosthetic limbs, hearing aids, and other medical or physical therapy devices cannot likely be considered when evaluating the extent of an employee’s alleged disability.

The new law’s further clarification of the ADA will likely spark significant implementation issues for employers and renewed litigation efforts by employees (which had subsided in recent years). As with any new legislative enactment, employers should use caution and, where necessary, consult their legal counsel about how to proceed so as to ensure compliance. ❖

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John G. Kruchko is a partner with the Management Labor & Employment Law Firm of Kruchko & Fries in McLean, Virginia. Kevin B. McCoy is a Senior Associate with the Firm. For more information, please contact Mr. Kruchko or Mr. McCoy at (703) 734-0554 or [jkruchko@kruchkoandfries.com](mailto:jkruchko@kruchkoandfries.com), or [kmccoy@kruchkoandfries.com](mailto:kmccoy@kruchkoandfries.com). This article is published for general information purposes, and does not constitute legal advice.

## **Does your company have news to share?**

**Send all announcements & press releases to:  
[derek.breen@easterassociates.com](mailto:derek.breen@easterassociates.com).**

**Submissions may be edited for length. Inclusion is not guaranteed and may be excluded due to space or relevance.**

# DECEMBER JOB BANK

For the latest VAB job listings, check the employment section of [www.vabonline.com](http://www.vabonline.com). VAB members can post jobs, delete filled openings, and search our resume bank.

## Sales Account Executive

WTVZ is seeking an enthusiastic, highly motivated Account Executive to sell commercial advertising time to local businesses and advertising agencies. Responsibilities: handle outside sales calls, prospect customers and lead generation, attract and close advertisers to sell products and services via TV, provide input on sales promotion ideas to sales management, retail current business and develop new business contacts, present marketing/advertising ideas to area businesses, sell commercial advertising time and other station products, attain budgeted revenue goals, help clients achieve their objectives through effective advertising. Requirements: strong organizational, written and presentation skills, competitive, energetic and self-starter, ability to overcome objections, outside media sales experience preferred (but not required), enjoy a fast-paced environment, professional appearance a must. Please submit resumes and salary requirements to: [www.mytvz.com](http://www.mytvz.com) and click on Inside MYTVZ and Employment. Applicants requiring disability-related accommodations for interviews should request them in advance. WTVZ is proud to be an Equal Opportunity Employer and Drug-Free Workplace.

## Account Executive

Tired of big brother and corporate radio (YOU KNOW WHO THIS IS) constantly looming over your shoulder? Remember when radio was FUN? Need a change? New location, new start? If you have radio sales experience, are a self-starter, and competitive, you need to consider this. You will have the opportunity to be creative, be paid for your performance, and grow with a company that believes employees are the most valuable assets. Looking for a change locally?? All inquiries are confidential. If you are organized, enjoy meeting with business people, and want an exciting career opportunity, send your cover letter and resume to [vreynolds@winc.fm](mailto:vreynolds@winc.fm) or 520 N Pleasant Valley Road Winchester, VA 22601. We offer a competitive compensation package for full time employees. CENTENNIAL BROADCASTING IS AN EQUAL OPPORTUNITY EMPLOYER

## Television Master Control

CBS 19 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. Position is full time and must be available for all shifts, including overnights, weekends and holidays. WCAV, Attn: Master Control Position, 999 2nd St. S.E., Charlottesville, VA. 22902. WCAV/WVAW/WAHU is a drug free workplace. EOE.

## News Producer

WRIC-TV8 is looking for a producer who is a strategic thinker that can execute a plan. The successful candidate will be excellent handling breaking news situations, possess strong writing and people skills and exhibit solid editorial judgment. Previous TV newscast producing preferred. Send resume to: WRIC TV8 Personnel Department, 301 Arboretum Place, Richmond, VA 23236-3464, or fax your resume to (804) 330-8881, or email your resume to [personnel@wric.com](mailto:personnel@wric.com). NO phone calls please. EOE

## Television Production Specialist

(Part-time 26 hours/week)

Immediate opening for someone with strong working knowledge of television broadcast facility. Audio operation and character generator operation experience preferred. Other duties include studio set-up and maintenance, studio camera operation and floor direction, video tape operation, and other assigned duties. Early morning, late night and weekend work required. Send resume to: WRIC TV8 Personnel Department, 301 Arboretum Place, Richmond, VA 23236-3464, or fax your resume to (804) 330-8881, or email your resume to [personnel@wric.com](mailto:personnel@wric.com). NO phone calls please. EOE

## News Producer

The Producer will direct and supervise News Reporters, Photographers, and Editors, and be responsible for ensuring that high quality news programs are aired and standards of quality are maintained. The Producer will produce assigned newscasts and have complete control over how news shows are produced, and ensure that all Reporters, Photographers, and Editors handle their responsibilities for format, organization with other departments, news writing, and distribution of final scripts. The Producer will also perform other related duties as assigned by the Director of News. Requires advanced education in the field of Broadcast Journalism or equivalent broadcasting work experience which has prepared the applicant to perform the required functions of the job. Virginia Driver's license within 30 days of employment, acceptable driving record maintained. Access to an automobile if needed for transportation. Apply in writing to Director of HR, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588, or in person at WSET-TV, 2320 Langhorne Road, Lynchburg, VA 24501. Applicants for positions in the News Department should submit a non-returnable VHS resume tape or DVD with letter, resume, and references. EEO/M/F. Equal Opportunity Employer.

## Reporter

WHSV-TV is accepting resume for a full-time REPORTER. Candidates must be able to shoot and edit DVC Pro tape and be familiar with non-linear editing. We are looking for an imaginative storyteller who can take a routine story and make viewers care about it. Experience with web-publishing is a plus. A good driving record is also required. Send a tape and resume to: WHSV-TV, Attn: Ed Reams, News Director, 50 North Main St., Harrisonburg, VA 22802. You may also email resumes to [ereams@whsv.com](mailto:ereams@whsv.com). WHSV-TV is a drug free workplace. EOE.

## Part time Production Assistant

Start your career in television as part of our news production team. The hours vary. Responsibilities include video editing and camera operation. Experience preferred, but training is available. Send resume to WHSV-TV, Attn: John Davis, Position 11308, 50 North Main St., Harrisonburg, VA 22802. WHSV-TV is a drug free work place. EOE.

## 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.
- Only jobs emailed to the VAB will be included in the newsletter.

### Submit to the Online Job Bank:

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

### Job Bank Questions:

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

## STATION PROFILE REMINDER

Remember to update your station profiles on the VAB website! New information has been added to make it easier for VBS media buyers to market your station. To update your information, please go to <http://www.vabonline.com/members/login.aspx>, login with your un/pw, then click on "Your Stations."

If you've forgotten your username or password, email [christina.meyer@easterassociates.com](mailto:christina.meyer@easterassociates.com).





## Share Time License

(continued from page 6)

plicants cast each proposal as one that would provide diverse programming to underserved communities—a goal that will resonate strongly with some Commissioners—the applications also present significant regulatory issues for the FCC to address. As noted above, the FCC has previously determined that digital multicast streams do not qualify for must carry rights, and the Commission would be faced with finding, over objection from the cable and satellite industries, a rationale to impose must carry in this context.

In addition, the share time rule has never been applied to separate digital channels of a licensee. Traditionally, when the FCC has applied an analog

rule to digital stations, it has first undertaken a rulemaking proceeding to establish precisely how the rule should apply in the digital world. For example, before the FCC formally applied to digital stations the must carry rules, the station identification rules, the closed captioning rules, and the children's television programming rules, the FCC launched rulemaking proceedings and sought comments on how to apply the analog rules to digital stations. Because a decision on these applications has the potential to effectuate a structural and regulatory change in the broadcast industry, the FCC may prefer to—indeed may be legally required to—launch one or more rulemaking proceedings to address the myriad issues presented by the applications.

### Can Broadcasters File Comments

### With The FCC About These Applications?

Yes. Parties who wish to file comments with the FCC must do so by December 26, 2008.

**BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**

(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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## FCC Contest Rules

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rial terms when first announcing how to enter or participate in the contest, and then periodically thereafter. Disclosure of the material terms is not required every time the contest is promoted on air, but the station must disclose the material terms in a "reasonable number" of announcements throughout the course of the contest. Many stations create a special promotional spot designed to fulfill this requirement.

5. Material terms will, of course, vary from contest to contest. According to FCC rules, material terms generally include, but are not limited to, the following:

- How to enter or participate
- Eligibility restrictions
- Entry deadline dates
- Whether prizes can be won
- The odds of winning
- The extent, nature, and value of prizes
- The basis for valuation of prizes (e.g., approximate retail value)
- Time and means of selection of winners
- Tie-breaking procedures, if any

6. Stations should pay close attention to the terms and conditions imposed by prize sponsors. Tickets for many sporting events, for instance, are subject to limitations and restrictions printed

on the tickets themselves—including restrictions governing the use of tickets as prizes in a promotion, sweepstakes, or contest. Should a station, without working out an arrangement with an event promoter, choose to use tickets containing such a restriction as a prize, the station faces the possibility of legal action by the event promoter and the possibility of facing the embarrassment and negative PR from having to retract the ticket offer and substitute a different prize. A prize substitution may cause a winner to complain to the FCC, and the FCC has fined stations in connection with some prize substitutions.

7. Stations may wish to reserve the right to substitute a prize and should disclose the specific circumstances under which prize substitution may become necessary. Stations should be very careful about substituting prizes—the FCC has sometimes viewed a station's prize substitution as the failure to conduct the contest substantially as announced.

8. Educate your staff—receptionists, webmasters, on-air talent, programming

and marketing staff, and anyone else that has responsibilities that may relate to contests and promotions—about the importance of adhering to the FCC's contest rules and each contest's official rules.

9. If something goes awry during the contest, contact your communications counsel immediately for advice on how best to address the problems.

In addition to the FCC's station-conducted contest rules, state laws also govern contests, promotions, and sweepstakes. Consultation with local counsel on the specifics of applicable state law is strongly encouraged to ensure compliance with all such regulations. These laws and regulations may subject a station to civil and criminal liability, and it cannot be overemphasized that stations should consult with counsel during the conceptual stage of a contest, sweepstakes, or promotion—i.e., before the contest, sweepstakes, or promotion begins—to minimize the risks associated with these activities. ♦





VIRGINIA ASSOCIATION OF BROADCASTERS

# Legislative Gala



Wednesday, January 21, 2009

**The Jefferson Hotel**

101 West Franklin Street, Richmond, VA

**Entertainment: The Capitol Steps**

Name: \_\_\_\_\_ Spouse/Guest: \_\_\_\_\_

Name: \_\_\_\_\_ Spouse/Guest: \_\_\_\_\_

Call Letters: \_\_\_\_\_ Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

**Registration includes Lunch, Afternoon Sessions, Legislative Reception, Dinner & Entertainment.**

Number attending lunch: \_\_\_\_\_

## VAB Member Registration Fees:

Member: \$85 per person

Guest: \$55 per person

Number of registrants: \_\_\_\_\_ x \$85 = \$ \_\_\_\_\_

Number of registrants: \_\_\_\_\_ x \$55 = \$ \_\_\_\_\_

## Non-Member Registration Fees:

Non-Member: \$150 per person

Guest: \$60 per person

Number of registrants: \_\_\_\_\_ x \$150 = \$ \_\_\_\_\_

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](http://www.vabonline.com)

Full payment must accompany registration form.  
Cancellations must be received in the VAB office by  
Wednesday, January 14, 2009 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 22, 2008.**  
After this time, reservations will be made based on space  
and rate availability.

## Schedule of Events

**10 a.m. - Noon Board Meeting**

**Noon - 1 PM Lunch with Special Guest  
David Rehr, NAB (invited)**

**1 - 2 PM A Partnership For Success:  
The Ad Agency & Broadcasting**  
A panel featuring executives from  
local advertising agencies

**2 - 3 PM A Partnership For Success:  
Automobiles & Broadcasting**  
A panel featuring executives in the  
heart of the automobile business